



# AGENDA

## CAPITOLA PLANNING COMMISSION

### Thursday, November 4, 2021 – 7:00 PM

Chairperson            Mick Routh  
Commissioners        Courtney Christiansen  
                                 Ed Newman  
                                 TJ Welch  
                                 Peter Wilk

#### **NOTICE OF REMOTE ACCESS ONLY:**

In accordance with the current Order from Santa Cruz County Health Services and Executive Order regarding social distancing, the Planning Commission meeting will not be physically open to the public and in person attendance cannot be accommodated.

#### **To watch:**

1. Attend Zoom Meeting (link and phone numbers below)

#### **To participate remotely and make public comment:**

1. Send email:
  - a. Prior to the meeting day, send additional materials to the Planning Commission via [planningcommission@ci.capitola.ca.us](mailto:planningcommission@ci.capitola.ca.us) by 5 p.m. the Tuesday before the meeting and they will be distributed to agenda recipients.
  - b. During the meeting, send comments via email to [publiccomment@ci.capitola.ca.us](mailto:publiccomment@ci.capitola.ca.us)
    - Identify the item you wish to comment on in your email's subject line. Emailed comments will be accepted during the Public Comments meeting item.
    - Emailed comments on each General Government/ Public Hearing item will be accepted after the start of the meeting until the Chairman announces that public comment for that item is closed.
    - Emailed comments should be a maximum of 450 words, which corresponds to approximately 3 minutes of speaking time.
    - Each emailed comment will be read aloud for up to three minutes and/or displayed on a screen.
    - Emails received by [publiccomment@ci.capitola.ca.us](mailto:publiccomment@ci.capitola.ca.us) outside of the comment period outlined above will not be included in the record.
2. Zoom Meeting (Via Computer or Phone)
  - a. Please click the link below to join the meeting:
    - <https://us02web.zoom.us/j/88345953509?pwd=RDFtVDY0TXBHWVJWdnp3U2VzTEQ0QT09> (link is external)
    - If prompted for a password, enter **517532**
    - Use participant option to "raise hand" during the public comment period for the item you wish to speak on. Once unmuted, you will have up to 3 minutes to speak
  - b. Dial in with phone:
    - Before the start of the item you wish to comment on, call any of the numbers below. If one is busy, try the next one
    - **1 669 900 6833**

- **1 408 638 0968**
- **1 346 248 7799**
- **1 253 215 8782**
- **1 301 715 8592**
- **1 312 626 6799**
- **1 646 876 9923**
- Enter the meeting ID number: **883 4595 3509**
- When prompted for a Participant ID, press #
- Press **\*9** on your phone to “raise your hand” when the Chairman calls for public comment. It will be your turn to speak when the Chairman unmutes you. You will hear an announcement that you have been unmuted. You may need to press **\*6** to enable talking. The timer will then be set to 3 minutes.

**REGULAR MEETING OF THE PLANNING COMMISSION – 7 PM**

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

*All matters listed on the Regular Meeting of the Capitola Planning Commission Agenda shall be considered as Public Hearings.*

**1. ROLL CALL AND PLEDGE OF ALLEGIANCE****2. ORAL COMMUNICATIONS****A. Additions and Deletions to Agenda****B. Public Comments**

*Short communications from the public concerning matters not on the Agenda. 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.*

**C. Commission Comments****D. Staff Comments****3. APPROVAL OF MINUTES****1. Planning Commission - Regular Meeting - Aug 19, 2021 7:00 PM****2. Planning Commission - Regular Meeting - Sep 2, 2021 7:00 PM****4. CONSENT CALENDAR**

*All matters listed under "Consent Calendar" are considered by the Planning Commission to be routine and 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 Planning Commission votes on the action unless members of the public or the Planning Commission request specific items to be discussed for separate review. Items pulled for separate discussion will be considered in the order listed on the Agenda.*

**A. 115 Saxon Avenue #21-0339 APN: 036-131-02**

Design Permit to convert a roof to a second-story deck on a single-family residence located within the R-1 (Single-Family Residential) zoning district.

This project is in the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Brian and Danielle Wiese, Filed: 07.28.21

## 5. PUBLIC HEARINGS

*Public Hearings are intended to provide an opportunity for public discussion of each item listed as a Public Hearing. The following procedure is as follows: 1) Staff Presentation; 2) Public Discussion; 3) Planning Commission Comments; 4) Close public portion of the Hearing; 5) Planning Commission Discussion; and 6) Decision.*

### A. 111 Capitola Avenue #21-0408 APN: 035-241-04

Amendment to Conditional Use Permit for alcohol sales to include beer and wine at the English Ales tasting room located within the C-V (Central Village) zoning district. This project is in the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: John Kettmann

Representative: Peter Blackwell, English Ales Brewery, Filed: 09/13/2021

### B. 1500 Wharf Road #21-0287 APN: Common Walkways 'B' through 'H'

Master Sign Program for common area walkways of the Capitola Venetian Condominiums located within the MU-V (Mixed Use Village) zoning district.

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

Environmental Determination: Categorical Exemption

Property Owner: Venetian Court HOA

Representative: Craig Nunes – Venetian Court HOA Filed: 07.09.21

### C. Outdoor Dining Ordinance

Update to Zoning Ordinance/Local Coastal Plan Implementation Plan to repeal and replace Zoning Code Section 17.96.170 Outdoor Dining in Public Right of Way, amend Section 17.120.030 Design Permits When Required, and add Section 17.96.175 Outdoor Dining on Public Property.

The Zoning Code serves as the Implementation Plan of the City's Local Coastal Program and must be certified by the Coastal Commission prior to taking effect in the Coastal Zone.

Environmental Determination: Categorical Exemption 15305 and 15311

Property: The draft ordinance affects all properties within the Mixed use, Commercial, and Zones in the City of Capitola.

Representative: Katie Herlihy, Community Development Director, City of Capitola

## 6. DIRECTOR'S REPORT

## 7. COMMISSION COMMUNICATIONS

## 8. ADJOURNMENT

**APPEALS:** The following decisions of the Planning Commission can be appealed to the City Council within the (10) calendar days following the date of the Commission action: Conditional Use Permit, Variance, and Coastal Permit. The decision of the Planning Commission pertaining to an Architectural and Site Review Design Permit can be appealed to the City Council within the (10) working days following the date of the Commission action. If the tenth day falls on a weekend or holiday, the appeal period is extended to the next business day.

All appeals must be in writing, setting forth the nature of the action and the basis upon which the action is considered to be in error, and addressed to the City Council in care of the City Clerk. An appeal must be accompanied by a five hundred dollar (\$500) filing fee, unless the item involves a Coastal Permit that is appealable to the Coastal Commission, in which case there is no fee. If you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this agenda, or in written correspondence delivered to the City at, or prior to, the public hearing.

**Notice regarding Planning Commission meetings:** The Planning Commission meets regularly on the 1<sup>st</sup> Thursday of each month at 7 p.m. in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

**Agenda and Agenda Packet Materials:** The Planning Commission Agenda and complete Agenda Packet are available on the Internet at the City's website: [www.cityofcapitola.org](http://www.cityofcapitola.org). Need more information? Contact the Community Development Department at (831) 475-7300.

**Agenda Materials Distributed after Distribution of the Agenda Packet:** Materials that are a public record under Government Code § 54957.5(A) and that relate to an agenda item of a regular meeting of the Planning Commission that are distributed to a majority of all the members of the Planning Commission more than 72 hours prior to that meeting shall be available for public inspection at City Hall located at 420 Capitola Avenue, Capitola, 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 Community Development Department 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:** Planning Commission meetings are cablecast "Live" on Charter Communications Cable TV Channel 8 and are recorded to be replayed on the following Monday and Friday at 1:00 p.m. on Charter Channel 71 and Comcast Channel 25. Meetings can also be viewed from the City's website: [www.cityofcapitola.org](http://www.cityofcapitola.org).



**FINAL MINUTES  
CAPITOLA PLANNING COMMISSION MEETING  
Thursday, August 19, 2021  
7 P.M. – CAPITOLA CITY COUNCIL CHAMBERS**

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

Chair Routh called the meeting to order at 7 P.M. Commissioners Christiansen, Newman, Westman, Wilk and Chair Routh were present remotely.

**2. ORAL COMMUNICATIONS**

**A. Additions and Deletions to Agenda**

Community Development Director Katie Herlihy stated additional public comments were received concerning items 4C and 4D.

**B. Public Comments**

Chair Routh accepted a general public comment regarding a proposed roundabout.

**C. Commission Comments**

**D. Staff Comments**

Director Herlihy continued item 4A to the October 7, 2021 Planning Commission meeting. She also stated an additional condition was added for item 4B, and clarified a noticing error for item 4C in that the permit is appealable, after all possible appeals have been exhausted through the City, to the Coastal Commission based on its location.

**3. APPROVAL OF MINUTES**

**1. Planning Commission - Regular Meeting - Jul 15, 2021 7:00 PM**

<b>RESULT:</b>	<b>ACCEPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Peter Wilk
<b>SECONDER:</b>	Courtney Christiansen
<b>AYES:</b>	Courtney Christiansen, Ed Newman, Mick Routh, Susan Westman, Peter Wilk

**4. CONSENT CALENDAR**

**A. Ordinance amending Capitola Zoning Code/LCP IP Section 17.96.170 Temporary Outdoor Dining**

Request to Continue Ordinance Amending the Capitola Zoning Code/Local Coastal Program Implementation Plan Section 17.96.170 for Temporary Outdoor Dining.

MOTION: Continue item 4A to the October 7, 2021 Planning Commission meeting.

<b>RESULT:</b>	<b>ACCEPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Ed Newman
<b>SECONDER:</b>	Susan Westman
<b>AYES:</b>	Courtney Christiansen, Ed Newman, Mick Routh, Susan Westman, Peter Wilk

**B. 523 Oak Drive**

**#21-0032**

**APN: 035-082-03**

Design Permit for first- and second-story additions to an existing nonconforming single-family residence located within the R-1 (Single-Family Residential) zoning district.

Minutes Acceptance: Minutes of Aug 19, 2021 7:00 PM (Approval of Minutes)

This project is in the Coastal Zone but does not require a Coastal Development Permit.  
Environmental Determination: Categorical Exemption  
Owner: James & Andrea Habing  
Representative: Dennis Norton, Filed: 02.02.2021  
Commissioner Westman recused herself due to proximity.

Commissioner Newman asked staff to clarify the application of the eighty percent rule from the old Code. Director Herlihy answered that the eighty percent rule still applies due to Coastal Commission certification issues. Commissioner Newman stated his concern that the rule is incorrectly implemented and expressed his disappointment in its continued application. Director Herlihy offered to provide additional information regarding the rule's formula at a future meeting.

MOTION: Approve the design permit with the following conditions and findings:

### **CONDITIONS OF APPROVAL**

1. The project approval consists of construction of 98 square-feet of first- and second-story additions. The maximum Floor Area Ratio for the 2,800 square foot property is 57% (1,596 square feet). The total FAR of the project is 55.5% with a total of 1,555 square feet, compliant with the maximum FAR within the zone. The proposed project is approved as indicated on the final plans reviewed and approved by the Planning Commission on August 19, 2021, except as modified through conditions imposed by the Planning Commission during the hearing.
2. Prior to construction, a building permit shall be secured for any new construction or modifications to structures authorized by this permit. Final building plans shall be consistent with the plans approved by the Planning Commission. All construction and site improvements shall be completed according to the approved plans
3. At time of submittal for building permit review, the Conditions of Approval must be printed in full on the cover sheet of the construction plans.
4. At time of submittal for building permit review, Public Works Standard Detail SMP STRM shall be printed in full and incorporated as a sheet into the construction plans. All construction shall be done in accordance with the Public Works Standard Detail BMP STRM.
5. Prior to making any changes to approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department. Any significant changes to the size or exterior appearance of the structure shall require Planning Commission approval.
6. Prior to issuance of building permit, a landscape plan shall be submitted and approved by the Community Development Department. The landscape plan can be produced by the property owner, landscape professional, or landscape architect. Landscape plans shall reflect the Planning Commission approval and shall identify type, size, and location of species and details of any proposed (but not required) irrigation systems.
7. Prior to issuance of building permit, all Planning fees associated with permit #21-0032 shall be paid in full.

8. Prior to issuance of building permit, the developer shall pay Affordable housing in-lieu fees as required to assure compliance with the City of Capitola Affordable (Inclusionary) Housing Ordinance.
9. Prior to issuance of a building permit, the applicant must provide documentation of plan approval by the following entities: Santa Cruz County Sanitation Department, Soquel Creek Water District, and Central Fire Protection District.
10. Prior to issuance of building permits, a drainage plan, grading, sediment and erosion control plan, shall be submitted to the City and approved by Public Works. The plans shall be in compliance with the requirements specified in Capitola Municipal Code Chapter 13.16 Storm Water Pollution Prevention and Protection.
11. Prior to issuance of building permits, the applicant shall submit a stormwater management plan to the satisfaction of the Director of Public Works which implements all applicable Post Construction Requirements (PCRs) and Public Works Standard Details, including all standards relating to low impact development (LID).
12. Prior to any land disturbance, a pre-site inspection must be conducted by the grading official to verify compliance with the approved erosion and sediment control plan.
13. Prior to any work in the City right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way.
14. During construction, any construction activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B
15. Prior to a project final, all cracked or broken driveway approaches, curb, gutter, or sidewalk shall be replaced per the Public Works Standard Details and to the satisfaction of the Public Works Department. All replaced driveway approaches, curb, gutter or sidewalk shall meet current Accessibility Standards.
16. Prior to issuance of a Certificate of Occupancy, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.
17. This permit shall expire 24 months from the date of issuance. The applicant shall have an approved building permit and construction underway before this date to prevent permit expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code section 17.156.080.
18. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the



applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.

19. At time of building permit submittal, the applicant shall submit a revised site plan demonstrating to the satisfaction of the Community Development Director that the siting of the accessory dwelling unit and carport reflects the Paul Jensen survey dated January 2021.

### **DESIGN PERMIT FINDINGS**

- A. The proposed project is consistent with the general plan, local coastal program, and any applicable specific plan, area plan, or other design policies and regulations adopted by the city council.**  
Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project. The proposed 98-square-foot first- and second-story addition is consistent with the general plan and the local coastal program.
- B. The proposed project complies with all applicable provisions of the zoning code and municipal code.**  
Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project. The proposed 98-square-foot first- and second-story addition complies with the development standards of the R-1 (Single-Family Residential) zoning district.
- C. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).**  
Section 15301(e) of the CEQA Guidelines exempts additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less. The proposed additions add 98 square feet (10%) of floor area, so this exemption applies. No adverse environmental impacts were discovered during review of the proposed project.
- D. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.**  
Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project. The proposed 98-square-foot first- and second-story addition will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.
- E. The proposed project complies with all applicable design review criteria in Section 17.120.070 (Design review criteria).**  
Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project. The 98-square-foot first- and second-story addition complies with the applicable design review criteria as described in the staff report.
- F. For projects in residential neighborhoods, the proposed project maintains the character, scale, and development pattern of the neighborhood.**  
Community Development Staff, the Architectural and Site Review Committee, and the

Planning Commission have all reviewed the application for the 98-square-foot first- and second-story addition. The design of the home, with a repeating gable roof pattern, vertical board on the first story and shingle siding on the second story, will fit in nicely with the existing neighborhood. The project will maintain the character, scale, and development pattern of the neighborhood.

<b>RESULT:</b>	<b>APPROVED [3 TO 1]</b>
<b>MOVER:</b>	Peter Wilk
<b>SECONDER:</b>	Mick Routh
<b>AYES:</b>	Courtney Christiansen, Mick Routh, Peter Wilk
<b>NOES:</b>	Ed Newman
<b>RECUSED:</b>	Susan Westman

**C. 106 Sacramento Avenue #21-0259 APN: 036-143-09**

Accessory Dwelling Unit Permit for a new 1,183-square-foot two-story Accessory Dwelling Unit (ADU) for a single-family residence located within the R-1 (Single-Family Residential) zoning district.

This project is in the Coastal Zone and requires a Coastal Development Permit which is not appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

Environmental Determination: Categorical Exemption

Property Owner: Michael & Meghan Morrissey

Representative: Danielle Grenier, Filed: 06.03.2021

Chair Routh pulled item 4C for discussion to the Public Hearing section.

Assistant Planner Sean Sesanto presented the staff report. He stated that items on today's agenda were reviewed under the recently adopted Code.

Commissioner Wilk requested confirmation from staff that the project does not obstruct the view of the coastline. Director Herlihy responded that there is a public viewpoint at the end of Sacramento Avenue that is protected. However, private views are not protected by local ordinance.

Commissioner Westman stated the olive trees that were planted on the public right of way may block the public viewpoint in the future. She would like a condition on the encroachment permit that the City may require the owner to remove the trees if they begin to block the public's view of the bay.

Michael and Meghan Morrissey, the applicants and property owners, stated that they are willing to exclude the olive trees from the design if the Commission made that recommendation.

During public comment, owners of neighboring properties, Lee Lehman, and his wife Olivia Lehman and their neighbor Edward Beal, stated their opposition to the design permit for the following reasons: 1) the proposed design is an invasion of privacy as it provides a direct line of sight to neighboring properties; 2) the project sits on an unstable location which poses a threat to public safety; 3) the project sits on a portion of a cliff that recently collapsed; and 4) the project will eliminate their private views of Monterey Bay.

Director Herlihy confirmed with the Commission that they received written public comment from Edward Beal.

Commissioner Newman stated he appreciates the public's statements, but the Planning Commission has a long-established practice of not protecting private views from projects that comply with development standards.

Commissioner Westman believed that the application complies with all development standards.

Commissioner Wilk requested clarification from Commissioner Westman as to which trees she was concerned with. Commissioner Westman responded that the two trees planted on the public right of way may block public view in the future. Commissioner Wilk stated he would not object to the olive trees but would agree to Commissioner Westman's amendment should she choose to amend the permit. Commissioner Wilk addressed Mr. Lehman's concerns with staff and the Commissioners.

Chair Routh stated his concerns regarding the Architectural and Site Committee's relaxed review of details in the design of this project. Commissioner Christiansen agreed with Chair Routh.

MOTION: Approve the ADU permit with the following conditions and findings:

#### **CONDITIONS OF APPROVAL**

1. The project approval consists of construction of a new, 1,183-square-foot, two-story Accessory Dwelling Unit (ADU) for a single-family residence. The project is compliant with the development standards in CMC Chapter 17.74. The proposed project is approved as indicated on the final plans reviewed and approved by the Planning Commission on August 19, 2021, except as modified through conditions imposed by the Planning Commission during the hearing.
2. Prior to construction, a building permit shall be secured for any new construction or modifications to structures authorized by this permit. Final building plans shall be consistent with the plans approved by the Planning Commission. All construction and site improvements shall be completed according to the approved plans.
3. At time of submittal for building permit review, the Conditions of Approval must be printed in full on the cover sheet of the construction plans.
4. At time of submittal for building permit review, Public Works Standard Detail SMP STRM shall be printed in full and incorporated as a sheet into the construction plans. All construction shall be done in accordance with the Public Works Standard Detail BMP STRM.
5. Prior to making any changes to approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department. Any significant changes to the size or exterior appearance of the structure shall require Planning Commission approval.
6. Prior to issuance of building permit, a landscape plan shall be submitted and approved by the Community Development Department. The landscape plan can be produced by the property owner, landscape professional, or landscape architect. Landscape plans

shall reflect the Planning Commission approval and shall identify type, size, and location of species and details of any proposed (but not required) irrigation systems.

7. Prior to issuance of a building permit, the applicant must provide documentation of plan approval by the following entities: Santa Cruz County Sanitation Department, Soquel Creek Water District, and Central Fire Protection District.
8. Prior to issuance of building permits, a drainage plan, grading, sediment and erosion control plan, shall be submitted to the City and approved by Public Works. The plans shall be in compliance with the requirements specified in Capitola Municipal Code Chapter 13.16 Storm Water Pollution Prevention and Protection.
9. Prior to issuance of building permits, the applicant shall submit a stormwater management plan to the satisfaction of the Director of Public Works which implements all applicable Post Construction Requirements (PCRs) and Public Works Standard Details, including all standards relating to low impact development (LID).
10. Prior to any land disturbance, a pre-site inspection must be conducted by the grading official to verify compliance with the approved erosion and sediment control plan.
11. Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way.
12. During construction, any construction activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B
13. Prior to a project final, all cracked or broken driveway approaches, curb, gutter, or sidewalk shall be replaced per the Public Works Standard Details and to the satisfaction of the Public Works Department. All replaced driveway approaches, curb, gutter or sidewalk shall meet current Accessibility Standards.
14. Prior to issuance of a Certificate of Occupancy, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.
15. This permit shall expire 24 months from the date of issuance. The applicant shall have an approved building permit and construction underway before this date to prevent permit expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code section 17.156.080.
16. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.

17. Upon receipt of certificate of occupancy, garbage and recycling containers shall be placed out of public view on non-collection days.
18. Before obtaining a building permit for an accessory dwelling unit, the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:
  - a. The accessory dwelling unit may not be used for vacation rentals; and
  - b. The secondary dwelling unit shall not be sold separately from the primary dwelling.
19. If the City determines they have become a visual impairment to public coastal views, the City may require the owners of 106 Sacramento Avenue to remove the two proposed trees within the public right-of-way.

### **ACCESSORY DWELLING UNIT DESIGN PERMIT FINDINGS**

- **The exterior design of the accessory dwelling unit is compatible with the primary dwelling on the parcel through architectural use of building forms, height, construction materials, colors, landscaping, and other methods that conform to acceptable construction practices.**  
The proposed ADU utilizes a combination of stucco and wood siding with colors similar to the primary dwelling and has an identical 1.25/12 roof pitch. The exterior design is compatible with the primary dwelling on the parcel.
- **The exterior design is in harmony with, and maintains the scale of, the neighborhood.**  
The proposed ADU utilizes materials and a two-story building form common throughout Depot Hill. Also, the ADU complies with the 22-foot maximum ADU height limit and is well within the zone height limit of 25. Therefore, the exterior design is in harmony with, and maintains the scale of the Depot Hill neighborhood.
- **The accessory dwelling unit will not create excessive noise, traffic, or parking congestion.**  
Even with the proposed ADU, the structures on the large parcel are well below the maximum floor area ratio (FAR) of the lot and a parking space for the ADU is provided in the garage on the first story of the ADU. The ADU has a studio configuration of one combined bedroom and living space, and a garage. The ADU will not create excessive noise, traffic, or parking congestion.
- **The accessory dwelling unit has or will have access to adequate water and sewer service as determined by the applicable service provider.**  
The proposed ADU is located on a developed lot in a residential neighborhood with adequate water and sewer service.
- **Adequate open space and landscaping have been provided that are usable for both the accessory dwelling unit and the primary residence. Open space and landscaping provide for privacy and screening of adjacent properties.**  
The property is extremely large with a blufftop area of approximately 19,000 square feet and includes usable open space for the ADU and primary residence. The landscape plan includes fruitless olive trees and other shrubs both on the property and in the public right of way adjacent to the property that provide for privacy and screening of adjacent properties.

- **The location and design of the accessory dwelling unit maintain a compatible relationship to adjacent properties and do not significantly impact the privacy, light, air, solar access, or parking of adjacent properties.**

The proposed ADU is located along the street side yard. The nearest residential property is located approximately 50 feet way on the other side of Sacramento Avenue to the west. The location and design of the proposed ADU maintains a compatible relationship to adjacent properties and does not significantly impact the privacy, light, air, solar access, or parking of adjacent properties.

- **The accessory dwelling unit generally limits the major access stairs, decks, entry doors, and major windows to the walls facing the primary residence, or to the alley if applicable. Windows that impact the privacy of the neighboring side or rear yard have been minimized. The design of the accessory dwelling unit complements the design of the primary residence and does not visually dominate it or the surrounding properties.**

The external staircase to the proposed second-story ADU faces the interior of the lot and the primary residence and the entry door to the ADU is on the south side of the second story facing the ocean. There are no windows that impact the privacy of the neighboring side or rear yards. The design of the ADU, with siding materials similar to the primary residence and similar roof pitch, complements the design of the primary residence and does not visually dominate it or the surrounding properties.

- **The site plan is consistent with physical development policies of the general plan, any area plan or specific plan, or other city policy for physical development. If located in the coastal zone, the site plan is consistent with policies of the local coastal plan. If located in the coastal zone and subject to a coastal development permit, the proposed development will not have adverse impacts on coastal resources.**

The location of the proposed ADU complies with the development standards in CMC §17.74.080 and is located outside the 50-year geologic hazard setback from the coastal bluff, so the proposed site plan is consistent with the physical development policies of the general plan and zoning code and will not have adverse impacts on coastal resources.

- **The project would not impair public views along the ocean and of scenic coastal areas. Where appropriate and feasible, the site plan restores and enhances the visual quality of visually degraded areas.**

There is a public viewpoint at the end of Sacramento Avenue, but the seaward most point of the proposed ADU is located approximately 74 feet from the edge of the coastal bluff, so the project would not impair public views along the ocean or of scenic coastal areas.

- **The project deviation (if applicable) is necessary due to special circumstances applicable to subject property, including size, shape, topography, location, existing structures, or surroundings, and the strict application of this chapter would deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zoning classification.**

Not applicable. The project does not include deviations.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS**

**A. This project is categorically exempt under Section 15303(a) of the California Environmental Quality Act and is subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15303(a) of the CEQA Guidelines exempts one single-family residence, or a second dwelling unit in a residential zone. The project involves the construction of a second dwelling unit in a residential zoning district. No adverse environmental impacts were discovered during review of the proposed project.

## **COASTAL FINDINGS**

### **D. Findings Required.**

1. **A coastal permit shall be granted only upon adoption of specific written factual findings supporting the conclusion that the proposed development conforms to the certified Local Coastal Program, including, but not limited to:**
  - a. A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to subsection (D)(2) of this section. The type of affected public access and recreation opportunities shall be clearly described;
  - b. An analysis based on applicable factors identified in subsection (D)(2) of this section of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act;
  - c. A description of the legitimate governmental interest furthered by any access conditioned required;
  - d. An explanation of how imposition of an access dedication requirement alleviates the access burdens identified.
    - The proposed development conforms to the City's certified Local Coastal Plan (LCP). The specific, factual findings, as per CMC Section 17.46.090(D) are as follows:
2. **Require Project-Specific Findings. In determining any requirement for public access, including the type of access and character of use, the city shall evaluate and document in written findings the factors identified in subsections (D)(2)(a) through (e), to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the city and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the adverse effects which have been identified will be alleviated or mitigated by the dedication. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning.**
  - a. Project Effects on Demand for Access and Recreation. Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development. Analysis of the project's effects upon existing public access and recreation opportunities. Analysis of the project's cumulative effects upon the use and capacity of the identified access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout. Projection for the anticipated demand and need for increased coastal access and recreation opportunities for the public. Analysis of the contribution of the project's cumulative effects to any such projected increase. Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail

- linkages to tidelands or recreation areas. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities;
- The proposed project is located at 106 Sacramento Avenue. The ADU is not located in an area with coastal access. The ADU will not have an effect on public trails or beach access.
- b. Shoreline Processes. Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site. Identification of anticipated changes to shoreline processes at the site. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development. Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to: wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity. Analysis of the effect of any identified changes of the project, alone or in combination with other anticipated changes, will have upon the ability of the public to use public tidelands and shoreline recreation areas;
- The proposed project is located along Sacramento Avenue. The project is located along a coastal bluff above the shoreline and beach. There is a public viewpoint at the end of Sacramento Avenue, but the seaward most point of the proposed ADU is located approximately 74 feet from the edge of the coastal bluff, so the project would not impair public views along the ocean or of scenic coastal areas.
- c. Historic Public Use. Evidence of use of the site by members of the general public for a continuous five-year period (such use may be seasonal). Evidence of the type and character of use made by the public (vertical, lateral, blufftop, etc., and for passive and/or active recreational use, etc.). Identification of any agency (or person) who has maintained and/or improved the area subject to historic public use and the nature of the maintenance performed and improvements made. Identification of the record owner of the area historically used by the public and any attempts by the owner to prohibit public use of the area, including the success or failure of those attempts. Description of the potential for adverse impact on public use of the area from the proposed development (including but not limited to, creation of physical or psychological impediments to public use);
- There is not a history of public use on the subject lot.
- d. Physical Obstructions. Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline;
- The proposed project is located on private property on Sacramento Avenue. The project will not block or impede the ability of the public to get to or along the tidelands, public recreation areas, or views to the shoreline.



- e. Other Adverse Impacts on Access and Recreation. Description of the development's physical proximity and relationship to the shoreline and any public recreation area. Analysis of the extent of which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation. Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development.
- The proposed project is located on private property that will not impact access and recreation. The project does not diminish the public's use of tidelands or lands committed to public recreation nor alter the aesthetic, visual, or recreational value of public use areas.
- 3. Required Findings for Public Access Exceptions. Any determination that one of the exceptions of subsection (F)(2) applies to a development shall be supported by written findings of fact, analysis and conclusions which address all of the following:**
- a. The type of access potentially applicable to the site involved (vertical, lateral, bluff top, etc.) and its location in relation to the fragile coastal resource to be protected, the agricultural use, the public safety concern, or the military facility which is the basis for the exception, as applicable;
  - b. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that agricultural resources, fragile coastal resources, public safety, or military security, as applicable, are protected;
  - c. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an accessway on the subject land.
- The project is not requesting a Public Access Exception, therefore these findings do not apply.
- 4. Findings for Management Plan Conditions. Written findings in support of a condition requiring a management plan for regulating the time and manner or character of public access use must address the following factors, as applicable:**
- a. Identification and protection of specific habitat values including the reasons supporting the conclusions that such values must be protected by limiting the hours, seasons, or character of public use;
    - The project is located in a residential area without sensitive habitat areas.
  - b. Topographic constraints of the development site;
    - The project is located on a flat lot.
  - c. Recreational needs of the public;
    - The project does not impact the recreational needs of the public.
  - d. Rights of privacy of the landowner which could not be mitigated by setting the project back from the access way or otherwise conditioning the development;
  - e. The requirements of the possible accepting agency, if an offer of dedication is the mechanism for securing public access;

- f. Feasibility of adequate setbacks, fencing, landscaping, and other methods as part of a management plan to regulate public use.
5. **Project complies with public access requirements, including submittal of appropriate legal documents to ensure the right of public access whenever, and as, required by the certified land use plan and Section 17.44.130 (coastal access requirements);**
- No legal documents to ensure public access rights are required for the proposed project.
6. **Project complies with visitor-serving and recreational use policies;**

**SEC. 30222**

**The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.**

- The project involves a new two-story accessory dwelling unit on a residential lot of record.

**SEC. 30223**

**Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.**

- The project involves a new two-story accessory dwelling unit on a residential lot of record.

**c) Visitor-serving facilities that cannot be feasibly located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.**

- The project involves a new two-story accessory dwelling unit on a residential lot of record.

7. **Project complies with applicable standards and requirements for provision of public and private parking, pedestrian access, alternate means of transportation and/or traffic improvements;**
- The project involves the construction of a new two-story accessory dwelling unit. The project complies with applicable standards and requirements for provision for parking, pedestrian access, alternate means of transportation, and/or traffic improvements.
8. **Review of project design, site plan, signing, lighting, landscaping, etc., by the city's architectural and site review committee, and compliance with adopted design guidelines and standards, and review committee recommendations;**
- The project complies with the design guidelines and standards established by the Municipal Code.

**9. Project complies with LCP policies regarding protection of public landmarks, protection or provision of public views; and shall not block or detract from public views to and along Capitola's shoreline;**

- The project will not negatively impact public landmarks and/or public views. There is a public viewpoint at the end of Sacramento Avenue, but the seaward most point of the proposed ADU is located approximately 74 feet from the edge of the coastal bluff, so the project would not impair public views along the ocean or of scenic coastal areas. The project will not block or detract from public views to and along Capitola's shoreline.

**10. Demonstrated availability and adequacy of water and sewer services;**

- The project is located on a legal lot of record with available water and sewer services.

**11. Provisions of minimum water flow rates and fire response times;**

- The project is located 0.7 miles from the Central Fire Protection District Capitola Station. Water is available at the location.

**12. Project complies with water and energy conservation standards;**

- The project is for a new two-story accessory dwelling unit. The GHG emissions for the project are projected at less than significant impact. All water fixtures must comply with the low-flow standards of the Soquel Creek Water District.

**13. Provision of park dedication, school impact, and other fees as may be required;**

- The project will be required to pay appropriate fees prior to building permit issuance.

**14. Project complies with coastal housing policies, and applicable ordinances including condominium conversion and mobile home ordinances;**

- The project does not involve a condo conversion or mobile homes.

**15. Project complies with natural resource, habitat, and archaeological protection policies;**

- Conditions of approval have been included to ensure compliance with established policies.

**16. Project complies with Monarch butterfly habitat protection policies;**

- The project is outside of any identified sensitive habitats, specifically areas where Monarch Butterflies have been encountered, identified and documented.

**17. Project provides drainage and erosion and control measures to protect marine, stream, and wetland water quality from urban runoff and erosion;**

- Conditions of approval have been included to ensure compliance with applicable erosion control measures.
- 18. Geologic/engineering reports have been prepared by qualified professional for projects in seismic areas, geologically unstable areas, or coastal bluffs, and project complies with hazard protection policies including provision of appropriate setbacks and mitigation measures;**
- Geologic/engineering reports have been prepared by qualified professionals for this project. Conditions of approval have been included to ensure the project applicant shall comply with all applicable requirements of the most recent version of the California Building Standards Code.
- 19. All other geological, flood and fire hazards are accounted for and mitigated in the project design;**
- Conditions of approval have been included to ensure the project complies with geological, flood, and fire hazards and are accounted for and will be mitigated in the project design.
- 20. Project complies with shoreline structure policies;**
- The proposed project is not located along a shoreline.
- 21. The uses proposed are consistent with the permitted or conditional uses of the zoning district in which the project is located;**
- This use is an allowed use consistent with the R-1 (Single-Family Residential) zoning district.
- 22. Conformance to requirements of all other city ordinances, zoning requirements, and project review procedures; and**
- The project conforms to the requirements of all city ordinances, zoning requirements, and project development review and development procedures.
- 23. Project complies with the Capitola parking permit program as follows:**
- a. The village area preferential parking program areas and conditions as established in Resolution No. 2596 and no permit parking of any kind shall be allowed on Capitola Avenue.
  - b. The neighborhood preferential parking program areas are as established in Resolution Numbers 2433 and 2510.
  - c. The village area preferential parking program shall be limited to three hundred fifty permits.
  - d. Neighborhood permit areas are only in force when the shuttle bus is operating except that:
    - i. The Fanmar area (Resolution No. 2436) program may operate year-round, twenty-four hours a day on weekends,
    - ii. The Burlingame, Cliff Avenue/Grand Avenue area (Resolution No. 2435) have year-round, twenty-four hour per day “no public parking.”
  - e. Except as specifically allowed under the village parking program, no preferential residential parking may be allowed in the Cliff Drive parking areas.

- f. Six Depot Hill twenty-four minute “Vista” parking spaces (Resolution No. 2510) shall be provided as corrected in Exhibit A attached to the ordinance codified in this section and found on file in the office of the city clerk.
  - g. A limit of fifty permits for the Pacific Cove parking lot may be issued to village permit holders and transient occupancy permit holders.
  - h. No additional development in the village that intensifies use and requires additional parking shall be permitted. Changes in use that do not result in additional parking demand can be allowed and exceptions for onsite parking as allowed in the land use plan can be made.
- The project site is not located within the area of the Capitola parking permit program.

<b>RESULT:</b>	<b>APPROVED AS AMENDED [4 TO 1]</b>
<b>MOVER:</b>	Peter Wilk
<b>SECONDER:</b>	Susan Westman
<b>AYES:</b>	Courtney Christiansen, Ed Newman, Susan Westman, Peter Wilk
<b>NOES:</b>	Mick Routh

**D. 1485 47th Avenue #21-0295 APN: 034-034-10**

Design Permit for demolition of an existing nonconforming single-family residence and construction of a new single-family residence located within the R-1 (Single-Family Residential) zoning district.

This project is in the Coastal Zone and requires a Coastal Development Permit which is not appealable to the California Coastal Commission.

Environmental Determination: Categorical Exemption

Property Owner: Smitty & Tambi Harwood

Representative: John Hofacre, Filed: 06.29.2021

Chair Routh and Commissioner Newman recused themselves due to proximity.

Commissioner Westman requested that item 4D be pulled for discussion to the Public Hearing section.

Assistant Planner Sesanto presented the staff report.

During public comment, Ron Burke, a neighboring resident, stated his list of design concerns regarding the lighting and materials that he hoped would be used in the project.

John Hofacre, the representative for the project, addressed Mr. Burke’s comments, and clarified details of the design and materials.

Commissioner Wilk requested clarification from Mr. Hofacre to ensure the light fixtures do not pose a hazard to the public. Mr. Hofacre agreed with Commissioner Wilk’s concerns.

Commissioner Westman stated she was prepared to make a motion to approve the permit with the following conditions: (1) the porch posts shall be 6 inches x 6 inches, (2) all exterior lighting shall be downfacing, and (3) the shed roof shall include brackets over doors located on the north elevation.

Commissioner Wilk stated that he trusted the Architect’s design, and that he found it inappropriate for the Commission to request specific details in the design of the applicant’s

Minutes Acceptance: Minutes of Aug 19, 2021 7:00 PM (Approval of Minutes)

property. Commissioner Wilk asked Commissioner Westman if she was willing to remove her proposed amendments. She responded that she opposed removing the amendments. Commissioner Christiansen stated a duplicate provision regarding the lighting is included in the plans. Commissioner Westman agreed to remove her amendment regarding the lighting fixtures.

MOTION: Approve the design permit with the following conditions and findings:

### **CONDITIONS OF APPROVAL**

20. The project approval consists of demolition of an existing nonconforming, 921-square-foot, two-story, single-family residence and construction of a 1,824-square-foot single-family residence. The maximum Floor Area Ratio for the 3,200-square-foot property is 57% (1,824 square feet). The total FAR of the project is 57% with a total of 1,824 square feet, compliant with the maximum FAR within the zone. The proposed project is approved as indicated on the final plans reviewed and approved by the Planning Commission on August 19, 2021, except as modified through conditions imposed by the Planning Commission during the hearing.
21. Prior to construction, a building permit shall be secured for any new construction or modifications to structures authorized by this permit. Final building plans shall be consistent with the plans approved by the Planning Commission. All construction and site improvements shall be completed according to the approved plans
22. At time of submittal for building permit review, the Conditions of Approval must be printed in full on the cover sheet of the construction plans.
23. At time of submittal for building permit review, Public Works Standard Detail SMP STRM shall be printed in full and incorporated as a sheet into the construction plans. All construction shall be done in accordance with the Public Works Standard Detail BMP STRM.
24. Prior to making any changes to approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department. Any significant changes to the size or exterior appearance of the structure shall require Planning Commission approval.
25. Prior to issuance of building permit, a landscape plan shall be submitted and approved by the Community Development Department. The landscape plan can be produced by the property owner, landscape professional, or landscape architect. Landscape plans shall reflect the Planning Commission approval and shall identify type, size, and location of species and details of any proposed (but not required) irrigation systems.
26. Prior to issuance of building permit, all Planning fees associated with permit #21-0295 shall be paid in full.
27. Prior to issuance of building permit, the developer shall pay Affordable housing in-lieu fees as required to assure compliance with the City of Capitola Affordable (Inclusionary) Housing Ordinance.
28. Prior to issuance of a building permit, the applicant must provide documentation of plan approval by the following entities: Santa Cruz County Sanitation Department, Soquel Creek Water District, and Central Fire Protection District.

29. Prior to issuance of building permits, a drainage plan, grading, sediment and erosion control plan, shall be submitted to the City and approved by Public Works. The plans shall be in compliance with the requirements specified in Capitola Municipal Code Chapter 13.16 Storm Water Pollution Prevention and Protection.
30. Prior to issuance of building permits, the applicant shall submit a stormwater management plan to the satisfaction of the Director of Public Works which implements all applicable Post Construction Requirements (PCRs) and Public Works Standard Details, including all standards relating to low impact development (LID).
31. Prior to any land disturbance, a pre-site inspection must be conducted by the grading official to verify compliance with the approved erosion and sediment control plan.
32. Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way.
33. During construction, any construction activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B
34. Prior to a project final, all cracked or broken driveway approaches, curb, gutter, or sidewalk shall be replaced per the Public Works Standard Details and to the satisfaction of the Public Works Department. All replaced driveway approaches, curb, gutter or sidewalk shall meet current Accessibility Standards.
35. Prior to issuance of a Certificate of Occupancy, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.
36. This permit shall expire 24 months from the date of issuance. The applicant shall have an approved building permit and construction underway before this date to prevent permit expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code §17.156.080.
37. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.
38. Upon receipt of certificate of occupancy, garbage and recycling containers shall be placed out of public view on non-collection days.
39. Prior to issuance of building permits, the building plans must show that the existing overhead utility lines will be underground to the nearest utility pole.

40. Prior to demolition of the existing structure, a pest control company shall resolve any pest issues and document that all pest issues have been mitigated. Documentation shall be submitted to the city at time of demolition permit application.
41. The porch posts shall be 6"x6" beams, outdoor lighting shall be downward facing, and the shed roof over the north elevation doors shall include supporting brackets.

### **DESIGN PERMIT FINDINGS**

- G. The proposed project is consistent with the general plan, local coastal program, and any applicable specific plan, area plan, or other design policies and regulations adopted by the city council.**  
Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project. The proposed demolition of an existing nonconforming, 921-square-foot, two-story, single-family residence and construction of a 1,824-square-foot single-family residence is consistent with the general plan and the local coastal program.
- H. The proposed project complies with all applicable provisions of the zoning code and municipal code.**  
The proposed demolition of an existing nonconforming, 921-square-foot, two-story, single-family residence and construction of a 1,824-square-foot single-family residence complies with all applicable provisions of the zoning code for the R-1 (Single-Family Residential) District.
- I. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).**  
Section 15303(a) of the CEQA Guidelines exempts one single single-family residence, or a second dwelling unit in a residential zone. The project involves the construction of a new single-family residence in the R-1 (Single-Family Residential) District. No adverse environmental impacts were discovered during review of the proposed project.
- J. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.**  
The proposed demolition of an existing nonconforming, 921-square-foot, two-story, single-family residence and construction of a 1,824-square-foot single-family residence will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.
- K. The proposed project complies with all applicable design review criteria in Section 17.120.070 (Design review criteria).**  
The proposed demolition of an existing nonconforming, 921-square-foot, two-story, single-family residence and construction of a 1,824-square-foot single-family residence complies with the applicable design review criteria in Section 17.120.070 of the zoning code.
- L. For projects in residential neighborhoods, the proposed project maintains the character, scale, and development pattern of the neighborhood.**  
Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the application for the demolition of an existing nonconforming, 921-square-foot, two-story, single-family residence and construction of a 1,824-square-foot single-family residence. The design of the two-story home with stucco siding, white painted wood trim at the doors and windows, a pitched roof with



composition shingles, and covered entryways, will fit in nicely with the existing neighborhood. The project will maintain the character, scale, and development pattern of the neighborhood with entrances oriented toward 47<sup>th</sup> Avenue and Garnet Street.

## **COASTAL PERMIT FINDINGS**

### **D. Findings Required.**

20. **A coastal permit shall be granted only upon adoption of specific written factual findings supporting the conclusion that the proposed development conforms to the certified Local Coastal Program, including, but not limited to:**
- a. A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to subsection (D)(2) of this section. The type of affected public access and recreation opportunities shall be clearly described;
  - b. An analysis based on applicable factors identified in subsection (D)(2) of this section of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act;
  - c. A description of the legitimate governmental interest furthered by any access conditioned required;
  - d. An explanation of how imposition of an access dedication requirement alleviates the access burdens identified.
    - The proposed development conforms to the City’s certified Local Coastal Plan (LCP). The specific, factual findings, as per CMC Section 17.46.090(D) are as follows:
21. **Require Project-Specific Findings. In determining any requirement for public access, including the type of access and character of use, the city shall evaluate and document in written findings the factors identified in subsections (D)(2)(a) through (e), to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the city and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the adverse effects which have been identified will be alleviated or mitigated by the dedication. As used in this section, “cumulative effect” means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning.**
- a. **Project Effects on Demand for Access and Recreation.** Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development. Analysis of the project’s effects upon existing public access and recreation opportunities. Analysis of the project’s cumulative effects upon the use and capacity of the identified access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout. Projection for the anticipated demand and need for increased coastal access and recreation opportunities for the public. Analysis of the contribution of the project’s cumulative effects to any such projected increase. Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities;

- The proposed project is located at 1485 47<sup>th</sup> Avenue. The home is not located in an area with coastal access. The home will not have an effect on public trails or beach access.
- b. Shoreline Processes.** Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site. Identification of anticipated changes to shoreline processes at the site. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development. Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to: wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity. Analysis of the effect of any identified changes of the project, alone or in combination with other anticipated changes, will have upon the ability of the public to use public tidelands and shoreline recreation areas;
- The proposed project is located along 47<sup>th</sup> Avenue. No portion of the project is located along the shoreline or beach.
- c. Historic Public Use.** Evidence of use of the site by members of the general public for a continuous five-year period (such use may be seasonal). Evidence of the type and character of use made by the public (vertical, lateral, blufftop, etc., and for passive and/or active recreational use, etc.). Identification of any agency (or person) who has maintained and/or improved the area subject to historic public use and the nature of the maintenance performed and improvements made. Identification of the record owner of the area historically used by the public and any attempts by the owner to prohibit public use of the area, including the success or failure of those attempts. Description of the potential for adverse impact on public use of the area from the proposed development (including but not limited to, creation of physical or psychological impediments to public use);
- There is not a history of public use on the subject lot.
- d. Physical Obstructions.** Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline;
- The proposed project is located on private property on 47<sup>th</sup> Avenue. The project will not block or impede the ability of the public to get to or along the tidelands, public recreation areas, or views to the shoreline.
- e. Other Adverse Impacts on Access and Recreation.** Description of the development's physical proximity and relationship to the shoreline and any public recreation area. Analysis of the extent of which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation. Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of

the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development.

- The proposed project is located on private property that will not impact access and recreation. The project does not diminish the public's use of tidelands or lands committed to public recreation nor alter the aesthetic, visual, or recreational value of public use areas.
22. **Required Findings for Public Access Exceptions. Any determination that one of the exceptions of subsection (F)(2) applies to a development shall be supported by written findings of fact, analysis and conclusions which address all of the following:**
- a. The type of access potentially applicable to the site involved (vertical, lateral, bluff top, etc.) and its location in relation to the fragile coastal resource to be protected, the agricultural use, the public safety concern, or the military facility which is the basis for the exception, as applicable;
  - b. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that agricultural resources, fragile coastal resources, public safety, or military security, as applicable, are protected;
  - c. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an accessway on the subject land.
- The project is not requesting a Public Access Exception, therefore these findings do not apply.
23. **Findings for Management Plan Conditions. Written findings in support of a condition requiring a management plan for regulating the time and manner or character of public access use must address the following factors, as applicable:**
- a. Identification and protection of specific habitat values including the reasons supporting the conclusions that such values must be protected by limiting the hours, seasons, or character of public use;
    - The project is located in a residential area without sensitive habitat areas.
  - b. Topographic constraints of the development site;
    - The project is located on a flat lot.
  - c. Recreational needs of the public;
    - The project does not impact the recreational needs of the public.
  - d. Rights of privacy of the landowner which could not be mitigated by setting the project back from the access way or otherwise conditioning the development;
  - e. The requirements of the possible accepting agency, if an offer of dedication is the mechanism for securing public access;
  - f. Feasibility of adequate setbacks, fencing, landscaping, and other methods as part of a management plan to regulate public use.
24. **Project complies with public access requirements, including submittal of appropriate legal documents to ensure the right of public access whenever, and as, required by the certified land use plan and Section 17.46.010 (coastal access requirements);**

- No legal documents to ensure public access rights are required for the proposed project.

25. **Project complies with visitor-serving and recreational use policies;**

**SEC. 30222**

**The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.**

- The project involves a new single-family residence on a residential lot of record.

**SEC. 30223**

**Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.**

- The project involves a new single-family residence on a residential lot of record.

**c) Visitor-serving facilities that cannot be feasibly located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.**

- The project involves a new single-family residence on a residential lot of record.

26. **Project complies with applicable standards and requirements for provision of public and private parking, pedestrian access, alternate means of transportation and/or traffic improvements;**

- The project involves the construction of a single-family residence. The project complies with applicable standards and requirements for provision for parking, pedestrian access, alternate means of transportation, and/or traffic improvements.

27. **Review of project design, site plan, signing, lighting, landscaping, etc., by the city's architectural and site review committee, and compliance with adopted design guidelines and standards, and review committee recommendations;**

- The project complies with the design guidelines and standards established by the Municipal Code.

28. **Project complies with LCP policies regarding protection of public landmarks, protection or provision of public views; and shall not block or detract from public views to and along Capitola's shoreline;**

- The project will not negatively impact public landmarks and/or public views. The project will not block or detract from public views to and along Capitola's shoreline.

29. **Demonstrated availability and adequacy of water and sewer services;**

- The project is located on a legal lot of record with available water and sewer services.
30. **Provisions of minimum water flow rates and fire response times;**
- The project is located 0.7 miles from the Central Fire Protection District Capitola Station. Water is available at the location.
31. **Project complies with water and energy conservation standards;**
- The project is for a new single-family residence. The GHG emissions for the project are projected at less than significant impact. All water fixtures must comply with the low-flow standards of the Soquel Creek Water District.
32. **Provision of park dedication, school impact, and other fees as may be required;**
- The project will be required to pay appropriate fees prior to building permit issuance.
33. **Project complies with coastal housing policies, and applicable ordinances including condominium conversion and mobile home ordinances;**
- The project does not involve a condo conversion or mobile homes.
34. **Project complies with natural resource, habitat, and archaeological protection policies;**
- Conditions of approval have been included to ensure compliance with established policies.
35. **Project complies with Monarch butterfly habitat protection policies;**
- The project is outside of any identified sensitive habitats, specifically areas where Monarch Butterflies have been encountered, identified and documented.
36. **Project provides drainage and erosion and control measures to protect marine, stream, and wetland water quality from urban runoff and erosion;**
- Conditions of approval have been included to ensure compliance with applicable erosion control measures.
37. **Geologic/engineering reports have been prepared by qualified professional for projects in seismic areas, geologically unstable areas, or coastal bluffs, and project complies with hazard protection policies including provision of appropriate setbacks and mitigation measures;**
- Geologic/engineering reports have been prepared by qualified professionals for this project. Conditions of approval have been included to ensure the project applicant shall comply with all applicable requirements of the most recent version of the California Building Standards Code.

38. **All other geological, flood and fire hazards are accounted for and mitigated in the project design;**
- Conditions of approval have been included to ensure the project complies with geological, flood, and fire hazards and are accounted for and will be mitigated in the project design.
39. **Project complies with shoreline structure policies;**
- The proposed project is not located along a shoreline.
40. **The uses proposed are consistent with the permitted or conditional uses of the zoning district in which the project is located;**
- This use is an allowed use consistent with the R-1 (Single-Family Residential) zoning district.
41. **Conformance to requirements of all other city ordinances, zoning requirements, and project review procedures; and**
- The project conforms to the requirements of all city ordinances, zoning requirements, and project development review and development procedures.
42. **Project complies with the Capitola parking permit program as follows:**
- a. The village area preferential parking program areas and conditions as established in Resolution No. 2596 and no permit parking of any kind shall be allowed on Capitola Avenue.
  - b. The neighborhood preferential parking program areas are as established in Resolution Numbers 2433 and 2510.
  - c. The village area preferential parking program shall be limited to three hundred fifty permits.
  - d. Neighborhood permit areas are only in force when the shuttle bus is operating except that:
    - i. The Fanmar area (Resolution No. 2436) program may operate year-round, twenty-four hours a day on weekends,
    - ii. The Burlingame, Cliff Avenue/Grand Avenue area (Resolution No. 2435) have year-round, twenty-four hour per day “no public parking.”
  - e. Except as specifically allowed under the village parking program, no preferential residential parking may be allowed in the Cliff Drive parking areas.
  - f. Six Depot Hill twenty-four minute “Vista” parking spaces (Resolution No. 2510) shall be provided as corrected in Exhibit A attached to the ordinance codified in this section and found on file in the office of the city clerk.
  - g. A limit of fifty permits for the Pacific Cove parking lot may be issued to village permit holders and transient occupancy permit holders.
  - h. No additional development in the village that intensifies use and requires additional parking shall be permitted. Changes in use that do not result in additional parking demand can be allowed and exceptions for onsite parking as allowed in the land use plan can be made.
- The project site is not located within the area of the Capitola parking permit program.

<b>RESULT:</b>	<b>APPROVED AS AMENDED [2 TO 1]</b>
<b>MOVER:</b>	Susan Westman
<b>SECONDER:</b>	Courtney Christiansen
<b>AYES:</b>	Susan Westman, Courtney Christiansen
<b>NAYS:</b>	Peter Wilk
<b>RECUSED:</b>	Ed Newman, Mick Routh

## 5. PUBLIC HEARINGS

### A. 208 Magellan Street #21-0057 APN: 036-194-04

Design Permit for a second-story addition to a nonconforming single-family residence with a Minor Modification for a reduced second-story side setback located within the R-1 (Single-Family Residential) zoning district.

This project is in the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Kent & Julie Cramer

Representative: Daryl Woods, Filed: 02.16.2021

Director Herlihy presented the staff report.

Commissioner Newman requested clarification from staff regarding the different standards that would have applied under the old Code. Director Herlihy responded that under the previous code a variance would have been required, but the new code allows limited deviations from the code through the less stringent minor modification.

MOTION: Approve the design permit with the following conditions and findings:

### CONDITIONS OF APPROVAL

- A. The project approval consists of construction of a 438-square-foot second-story addition to an existing nonconforming single-family residence with a minor modification for a reduced second-story side setback. The maximum Floor Area Ratio for the 6,273-square-foot property is 48% (3,011 square feet). The total FAR of the project is 41.7% with a total of 2,621 square feet, compliant with the maximum FAR within the zone. The proposed project is approved as indicated on the final plans reviewed and approved by the Planning Commission on August 19, 2021, except as modified through conditions imposed by the Planning Commission during the hearing.
- B. Prior to construction, a building permit shall be secured for any new construction or modifications to structures authorized by this permit. Final building plans shall be consistent with the plans approved by the Planning Commission. All construction and site improvements shall be completed according to the approved plans
- C. At time of submittal for building permit review, the Conditions of Approval must be printed in full on the cover sheet of the construction plans.
- D. At time of submittal for building permit review, Public Works Standard Detail SMP STRM shall be printed in full and incorporated as a sheet into the construction plans. All construction shall be done in accordance with the Public Works Standard Detail BMP STRM.
- E. Prior to making any changes to approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department. Any

significant changes to the size or exterior appearance of the structure shall require Planning Commission approval.

- F. Prior to issuance of building permit, all Planning fees associated with permit #21-0057 shall be paid in full.
- G. Prior to issuance of building permit, the developer shall pay Affordable housing in-lieu fees as required to assure compliance with the City of Capitola Affordable (Inclusionary) Housing Ordinance.
- H. Prior to issuance of a building permit, the applicant must provide documentation of plan approval by the following entities: Santa Cruz County Sanitation Department, Soquel Creek Water District, and Central Fire Protection District.
- I. Prior to issuance of building permits, a drainage plan, grading, sediment and erosion control plan, shall be submitted to the City and approved by Public Works. The plans shall be in compliance with the requirements specified in Capitola Municipal Code Chapter 13.16 Storm Water Pollution Prevention and Protection.
- J. Prior to issuance of building permits, the applicant shall submit a stormwater management plan to the satisfaction of the Director of Public Works which implements all applicable Post Construction Requirements (PCRs) and Public Works Standard Details, including all standards relating to low impact development (LID).
- K. Prior to any land disturbance, a pre-site inspection must be conducted by the grading official to verify compliance with the approved erosion and sediment control plan.
- L. Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way.
- M. During construction, any construction activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B
- N. Prior to a project final, all cracked or broken driveway approaches, curb, gutter, or sidewalk shall be replaced per the Public Works Standard Details and to the satisfaction of the Public Works Department. All replaced driveway approaches, curb, gutter or sidewalk shall meet current Accessibility Standards.
- O. Prior to issuance of a Certificate of Occupancy, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.
- P. This permit shall expire 24 months from the date of issuance. The applicant shall have an approved building permit and construction underway before this date to prevent



permit expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code §17.156.080.

- Q. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.
- R. Upon receipt of certificate of occupancy, garbage and recycling containers shall be placed out of public view on non-collection days.
- S. Prior to issuance of building permits, applicant shall incorporate a curb drain per city standard at the southwest corner of the property.

### **DESIGN PERMIT FINDINGS**

- A. The proposed project is consistent with the general plan, local coastal program, and any applicable specific plan, area plan, or other design policies and regulations adopted by the city council.**

Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project. The proposed 438-square-foot second-story addition with a minor modification for a reduced second-story side setback is consistent with the general plan and the local coastal program.

- B. The proposed project complies with all applicable provisions of the zoning code and municipal code.**

Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project. The proposed 438-square-foot second-story addition with a minor modification for a reduced second-story side setback complies with the development standards of the R-1 (Single-Family Residential) zoning district.

- C. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).**

Section 15301(e) of the CEQA Guidelines exempts additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less. The proposed additions add 438 square feet (19.9%) of floor area, so this exemption applies. No adverse environmental impacts were discovered during review of the proposed project.

- D. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.**

Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project. The proposed 438-square-foot second-story addition with a minor modification for a reduced second-story side setback will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.

- E. The proposed project complies with all applicable design review criteria in Section 17.120.070 (Design review criteria).**

Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project. The 438-square-foot second-story

addition with a minor modification for a reduced second-story side setback complies with the applicable design review criteria as described in the staff report.

**F. For projects in residential neighborhoods, the proposed project maintains the character, scale, and development pattern of the neighborhood.**

Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the application for the 438-square-foot second-story addition with a minor modification for a reduced second-story side setback. The design of the home, with a Dutch hip roof with Class “B” asphalt shingle roofing and horizontal cement lap board siding, will fit in nicely with the existing neighborhood. The project will maintain the character, scale, and development pattern of the neighborhood.

**MINOR MODIFICATION FINDINGS**

**A. The modification will be compatible with adjacent structures and uses and is consistent with the character of the neighborhood or district where it is located.**

Within the Cliffwood Heights neighborhood, many of the homes have nonconforming side yard setbacks. The adjacent structure at 212 Magellan Street is one example of a home in close proximity which is non-conforming in terms of side yard setbacks.

**B. The modification will not adversely impact neighboring properties or the community at large.**

The addition is proposed within nine feet of the south property line. The proposed project includes two windows along the proposed second story on the south elevation. The windows are adjacent to the single-story structure and not directly next to the backyard of the neighboring property.

**C. The modification is necessary due to unique characteristics of the subject property, structure, or use.**

The applicant is requesting the minor modification to construct the second-story wall on top of the existing wall on the first story as it can sustain more weight and will require less structural improvements. The first story is setback eight feet ten inches from the property line, almost three feet more than the required six feet by code.

**D. The modification will be consistent with the purpose of the zoning district, the general plan, local coastal program, and any adopted area or neighborhood plan.**

Under Capitola Municipal Code §17.16.010, the purpose of residential zoning districts is “to support attractive, safe, and friendly neighborhoods consistent with Capitola’s intimate small-town feel and coastal village charm.” Development should “feature high-quality design that enhances the visual character of the community” and the “mass, scale, and design of new homes shall be compatible with existing homes in neighborhoods and carefully designed to minimize impacts to existing homes.” The main purpose of the increased second-story side setback is to reduce second-story massing along the side lot lines. As stated within finding C, the first floor is setback almost three feet more than the required first floor setback. This provides increase spacing between the homes than is typical and required. The modification would permit an 18 and a half feet tall, two-story wall one foot closer than required by code.

**E. The modification is consistent with the general plan, local coastal program, and any applicable specific plan or area plan adopted by the city council.**

General Plan Policy LU-5.3 states that the mass, scale, and height of new development should be compatible with existing homes within residential neighborhoods. There are many homes within the Cliffwood Heights neighborhood with nonconforming first-story

side setbacks and a few two-story properties with existing nonconforming second-story side setbacks.

**F. The modification will not establish a precedent.**

The majority of single-family residences in the Cliffwood Heights neighborhood have nonconforming first-story side setbacks because they were built many years ago under a different zoning code. The subject property, however, has a first-story side setback that exceeds the required first-story setback by a large enough amount that it comes within ten percent of the required second-story side setback. Most properties in the neighborhood with nonconforming side setbacks would not be able to construct second-story additions at the same setback as the nonconforming first-story walls because they are not within ten percent of the required second-story side setback. Therefore, this modification would not establish a precedent.

**G. The modification will not adversely impact coastal resources.**

The subject property is not located in an area with coastal resources, therefore the modification will not adversely impact coastal resources.

<b>RESULT:</b>	<b>ACCEPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Courtney Christiansen
<b>SECONDER:</b>	Peter Wilk
<b>AYES:</b>	Courtney Christiansen, Ed Newman, Mick Routh, Susan Westman, Peter Wilk

**B. 1855 41st Avenue #21-0320 APN: 034-261-07, -37, -38, -40, & -52**

Six Month Review of Conditional Use Permit #21-0023 for Mobile Food Vendors located at 1855 41<sup>st</sup> Avenue at the Capitola Mall within the C-R (Regional Commercial) zoning district. This project is not in the Coastal Zone and does not require a Coastal Development Permit. Environmental Determination: Categorical Exemption  
 Property Owner: Merlone Geier Management, LLC  
 Representative: Brian Kirk, Merlone Geier Management, LLC, Filed: 7/19/2021  
 Director Herlihy presented the staff report.

Chair Routh asked staff if the Commission will have an opportunity to review the permit in six months. Commissioner Newman stated the permit expires 24 months from the date of issuance so there is an opportunity to revisit the permit if the need arises.

Commissioner Wilk stated that he visited the site and found evidence that businesses were complying with the conditions of their permit, specifically Capitola Municipal Code Section 8.36.040.

**MOTION:** Provide direction and allow businesses to operate within the Conditions of Approval.

Minutes Acceptance: Minutes of Aug 19, 2021 7:00 PM (Approval of Minutes)

<b>RESULT:</b>	<b>ACCEPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Ed Newman
<b>SECONDER:</b>	Susan Westman
<b>AYES:</b>	Courtney Christiansen, Ed Newman, Mick Routh, Susan Westman, Peter Wilk

## 6. DIRECTOR'S REPORT

## 7. COMMISSION COMMUNICATIONS

Commissioner Newman commented on an article he submitted to Director Herlihy via email, and noted it contained information that may be useful to the Commission. Director Herlihy responded that she will forward the article to the Commissioners.

Chair Routh stated that the Architectural and Site Committee must address various aspects of the design features in the plans. Director Herlihy stated that the updated zoning Code removed the requirement of Architectural and Site review for single family homes. Rather, only multi-family residential and commercial property designs will be reviewed by a third party.

## 8. ADJOURNMENT

The meeting was adjourned at 8:20 P.M. to the next regular meeting of the Planning Commission on September 2, 2021.

Approved by the Planning Commission

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Edna Basa, Clerk to the Commission



**FINAL MINUTES  
CAPITOLA PLANNING COMMISSION MEETING  
Thursday, September 2, 2021  
7 P.M. – CAPITOLA CITY COUNCIL CHAMBERS**

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

Chair Routh called the meeting to order at 7 P.M. Commissioners Christiansen, Newman, Westman, Wilk and Chair Routh were present remotely.

**2. ORAL COMMUNICATIONS**

**A. Additions and Deletions to Agenda**

Community Development Director Katie Herlihy stated there are no additions or deletions to the Agenda, but the department received timely public comments concerning items on the Agenda.

**B. Public Comments**

**C. Commission Comments**

**D. Staff Comments**

Director Herlihy announced a grant opportunity for small businesses that were negatively impacted by COVID-19. Interested businesses may apply to receive up to \$7,500 towards reimbursement of qualified mortgage and rental payments.

She also stated that a discussion regarding non-conforming structures in Capitola is expected for the October meeting. Additionally, in-person meetings will resume on the October 7<sup>th</sup> meeting.

**3. PUBLIC HEARINGS**

**A. 325 Cherry Avenue                      #21-0255                      APN: 035-181-19**

Design Permit and Historical Alteration Permit for first- and second-story modifications to a historic single-family residence located within the Mixed Use Village (MU-V) zoning district and the Village Residential (VR) overlay zone. This project is in the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Craig Paxton

Representative: Craig Paxton, Filed: 06.04.21

Commissioners Peter Wilk and Ed Newman recused themselves due to proximity.

Assistant Planner Sean Sesanto presented the staff report. Assistant Planner Sesanto stated all projects on tonight's agenda have been reviewed under the new code.

Applicant Craig Paxton was present. He stated his family's desire to repair the property, and sought clarification regarding public comments that were received, and the basis for Commissioners Newman and Wilk's recusal. Chair Routh addressed Mr. Paxton's questions.

Commissioner Routh felt the proposal effectively preserved the character of the historic home.

MOTION: Approve the design permit and historical alteration permit with the following conditions and findings.

**CONDITIONS**

1. The project approval consists of construction of a new 2,688-gross-square-foot, single-family home with an attached secondary dwelling unit. The maximum Floor Area Ratio for the property is 2,703 square feet. The FAR of the primary residence is 2,195 square feet. The secondary dwelling unit is 493 square feet. The secondary dwelling unit may not exceed 500 square feet.
2. The proposed project is approved as indicated on the final plans reviewed and approved by the Planning Commission on September 5, 2013, except as modified through conditions imposed by the Planning Commission at the time of the hearing. A building permit shall be secured for any new construction or modifications to structures, including interior modifications, authorized by this permit. Final building plans shall reflect the set of plans approved by the Planning Commission. All construction shall be completed according to the approved plans on which building permits are issued.
3. Any modifications to approved plans after the issuance of any building permit must be specifically requested and approved in writing prior to execution. Minor modifications to the design permit (i.e. minor material change, color change) shall require Community Development Department approval. Any significant changes (increase in size, modification to massing) shall require Planning Commission approval.
4. Prior to building permit sign off, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Zoning Administrator or Community Development Director. The application shall be reviewed by the Planning Commission upon evidence of non-compliance with conditions of approval or applicable municipal code provisions.
5. Hours of construction shall be Monday through Friday 7:30 a.m. – 9 p.m., and Saturday 9 a.m. – 4 p.m., per city ordinance.
6. The utilities shall be underground to the nearest utility pole in accordance with PG&E and Public Works Department requirements. A note shall be placed on the final building plans indicating this requirement.
7. An encroachment permit shall be acquired for any work performed in the right-of-way.
8. The existing sidewalk will be cut for driveway access onto the property at 410 Bay Avenue. The sidewalk replacement shall be built to ADA standards.
9. A drainage plan or design shall be submitted with the final building plans, to the satisfaction of the Public Works Director.
10. The project shall implement Low Impact Development BMPs outlined in the *Slow it. Spread it. Sink it. Homeowner's Guide to Greening Stormwater Runoff* by the Resource Conservation District of Santa Cruz County. The applicant shall provide details on the BMPs implemented and with a goal of not allowing more than 25% of total impervious area from discharging directly from the site.
11. The final landscape plan shall be submitted with the building permit application and will include the specific number of plants of each type and their size, as well as the irrigation system to be utilized. Front yard landscaping and all trees shall be installed prior to final building occupancy.

12. Planning fees associated with permit #13-102 shall be paid in full prior to building permit issuances.
13. Affordable housing in-lieu fees shall be paid as required to assure compliance with the City of Capitola Affordable (Inclusionary) Housing Ordinance. Any appropriate fees shall be paid prior to building permit issuance.
14. Prior to granting of final occupancy, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Zoning Administrator or Community Development Director.
15. This permit shall expire 24 months from the date of issuance, unless an application for an extension is submitted prior to expiration pursuant to Municipal Code section 17.81.160.

### **DESIGN PERMIT FINDINGS**

**A. The proposed project is consistent with the general plan, local coastal program, and any applicable specific plan, area plan, or other design policies and regulations adopted by the city council.**

Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have reviewed proposed first- and second-story modifications to a single-family residence and determined complies with the development standards of the MU-V (Mixed Use Village) zoning district and VR (Village Residential) zone.

**B. The proposed project complies with all applicable provisions of the zoning code and municipal code.**

Community Development Staff and the Planning Commission have reviewed the application for first- and second-story modifications to a single-family residence and determined the project complies with all applicable provisions of the zoning code and municipal code.

**C. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.**

Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have reviewed the project. The proposed first- and second-story modifications to a single-family residence will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity. The project will maintain the existing residential use which is compatible within the Mixed-Use Village (MU-V) zoning district.

**D. The proposed project complies with all applicable design review criteria in Section 17.120.070 (Design review criteria).**

The Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have reviewed the application. The proposed first- and second-story modifications to a single-family residence comply with all applicable design review criteria in Section 17.120.070.

**E. For projects in residential neighborhoods, the proposed project maintains the character, scale, and development pattern of the neighborhood. (Ord. 1017 § 2 (Exh. A) (part), 2018)**

Community Development Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the application for the first- and second-story modifications to a single-family residence. The project will repair or replace existing materials while preserving the historic significance of the home, which will fit in nicely

with the existing neighborhood. The project will maintain the character, scale, and development pattern of the neighborhood.

### **HISTORIC ALTERATION PERMIT AND CEQA FINDINGS**

- A. The historic character of a property is retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize the property is avoided.**

Community Development Staff and the Planning Commission have reviewed the proposed first- and second-story modifications to a single-family residence and determined it will retain and preserve the primary front elevation, maintain spatial relationships, and allow the structure to continue the existing residential use.

- B. Distinctive materials, features, finishes, and construction techniques or examples of fine craftsmanship that characterize a property are preserved.**

Community Development Staff and the Planning Commission have reviewed the proposed first- and second-story modifications to a single-family residence and determined that distinctive materials and design will be preserved.

- C. Any new additions complement the historic character of the existing structure. New building components and materials for the addition are similar in scale and size to those of the existing structure.**

Community Development Staff and the Planning Commission have reviewed the proposed first- and second-story modifications to a single-family residence and determined that the new rear shed roof is on a non-primary elevation and fenestration changes are not readily visible to the public. Differentiation between new and original board-and-batten walls will be accomplished with narrower batten spacing.

- D. Deteriorated historic features are repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature matches the old in design, color, texture, and, where possible, materials.**

Community Development Staff and the Planning Commission have reviewed the proposed first- and second-story modifications to a single-family residence and determined that historic features will be repaired to the extent possible. Character-defining features, such as wood window surrounds and wood wall cladding will be repaired rather than replaced.

- E. Archeological resources are protected and preserved in place. If such resources must be disturbed, mitigation measures are undertaken.**

Community Development Staff and the Planning Commission have reviewed the proposed first- and second-story modifications to a single-family residence and determined it will not disturb archeological resources.

- F. The proposed project is consistent with the general plan, any applicable specific plan, the zoning code, and the California Environmental Quality Act (CEQA) and is subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Community Development Staff and the Planning Commission have reviewed the proposed first- and second-story modifications to a single-family residence and determined the project is consistent with the general plan and the zoning code for historic preservation. Section 15331 of the CEQA Guidelines categorically exempts rehabilitation projects of historic resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic buildings. The proposed project is consistent with the Secretary of the Interior's Standards and no



adverse environmental impacts were discovered by Planning Staff during the review of the proposed project.

<b>RESULT:</b>	<b>APPROVED [3 TO 0]</b>
<b>MOVER:</b>	Susan Westman
<b>SECONDER:</b>	Courtney Christiansen
<b>AYES:</b>	Courtney Christiansen, Mick Routh, Susan Westman
<b>RECUSED:</b>	Ed Newman, Peter Wilk

**B. 1501 41st Avenue Ste. I #21-0262 APN: 034-151-20**

Conditional Use Permit Amendment to change the allowed sale of beer and wine to include the sale of distilled spirits for on-site consumption at the East End Gastropub restaurant located within the C-C (Community Commercial) zoning district.

This project is not in the Coastal Zone and does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Ow Commercial

Representative: Quinn Cormier, Filed: 06.04.21

Assistant Planner Sesanto presented the staff report.

Commissioner Westman stated that she was not aware of the establishment ever being problematic and supported the proposal.

MOTION: Approve the Conditional Use Permit Amendment with the following conditions and findings:

**CONDITIONS**

1. The project approval consists of an amendment to a Conditional Use Permit to include the on-site consumption of distilled spirits in addition to beer and wine for an existing restaurant at 1501 41<sup>st</sup> Avenue Suite I. The proposed amendment is approved as outlined in the analysis of the staff report reviewed and approved by the Planning Commission on September 2, 2021, except as modified through conditions imposed by the Planning Commission during the hearing.
2. The conditional use permit allows the restaurant to operate with a California Department of Alcoholic Beverage Control (ABC), Type 47 license for “on sale general eating place. The sale of beer, wine, and distilled spirits shall be permitted for on-site consumption. Retail sale of beer and wine for off-site consumption is permissible as an accessory use to the primary restaurant use and must comply with any and all restrictions from the ABC. The retail sale of distilled spirits and alcoholic “mini-bottles” for off-site consumption is prohibited.
3. Prior to making any changes to approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department. Any significant changes to the size or exterior appearance of the structure shall require Planning Commission approval.
4. Prior to sale of distilled spirits, all Planning fees associated with permit #21-0262 shall be paid in full.

5. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.
6. This permit shall expire 24 months from the date of issuance. The applicant shall have an approved building permit and construction underway before this date to prevent permit expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code section 17.156.080.
7. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.

### **USE PERMIT FINDINGS**

**A. The proposed use is allowed in the applicable zoning district.**

Community Development Staff and the Planning Commission have reviewed the project and determined restaurants with alcohol sales requires a are allowed with the issuance of a Conditional Use Permit within the C-C (Community Commercial) zoning district.

**B. The proposed use is consistent with the general plan, local coastal program, zoning code, and any applicable specific plan or area plan adopted by the city council.**

Community Development Staff and the Planning Commission have reviewed the proposed Conditional Use Permit and determined it complies with all development standards and meets the intent and purpose of the C-C (Community Commercial) zoning district.

**C. The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and planned land uses in the vicinity of the property.**

Community Development Staff and the Planning Commission have reviewed the proposed use and determined it fits well with the existing blend of commercial uses found within the Kings Plaza shopping center and the zoning district.

**D. The proposed use will not be detrimental to the public health, safety, and welfare.**

Community Development Staff, and the Planning Commission have reviewed the proposed use and determined it will not be detrimental to the public health, safety, or welfare. Conditions of approval have been included to carry out these objectives.

**E. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure**

The proposed use is located along within the Kings Plaza shopping center near 38<sup>th</sup> Avenue within the city and are already adequately served by existing services and infrastructure.

### **CEQA FINDINGS**

- A. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA) and is not subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15301 of the CEQA Guidelines exempts the permitting, licensing, and minor alterations to existing private facilities. This project involves an existing commercial space with a change in the type of alcohol sales within the C-C (Community Commercial) zoning district. No adverse environmental impacts were discovered during review of the proposed project.

<b>RESULT:</b>	<b>APPROVED [4 TO 0]</b>
<b>MOVER:</b>	Courtney Christiansen
<b>SECONDER:</b>	Susan Westman
<b>AYES:</b>	Courtney Christiansen, Mick Routh, Susan Westman, Peter Wilk
<b>ABSTAIN:</b>	Ed Newman

**C. 720 Hill Street Conceptual Review #21-0284 APN: 036-011-28**

Conceptual Review to receive guidance on a preliminary development concept for a new three-story 42-room boutique hotel with 30 new onsite parking spaces adjacent to an existing hotel in the C-C (Community Commercial) Zoning District and the AHO (Affordable Housing Overlay) District.

This project is a conceptual review; therefore, a Coastal Development Permit is not required.

CEQA review not required for conceptual review

Owner: Dhanesh Patel

Representative: Gwen Jarick, Filed: 06.21.2021

Director Herlihy presented the staff report.

Commissioner Wilk requested clarification from staff regarding the potential impacts of the project's location within the Affordable Housing District. Director Herlihy responded that she is working to identify alternative housing sites in preparation for the 6<sup>th</sup> Housing Cycle

Commissioner Wilk requested information regarding the site's description as a highly sensitive prehistoric site. Director Herlihy stated that Capitola refers to a map that identifies prehistoric sites, and that the first step in CEQA analysis is for a specialist to review the site.

Commissioner Newman requested clarification from staff regarding the project's impact on the Local Coastal Program and as a visitor serving site. Director Herlihy responded that the LCP is in support of visiting serving sites throughout the City.

Commissioner Westman requested clarification regarding the hotel's operation. Director Herlihy stated that the owner is available to answer questions.

Chair Routh suggested discussing the use of a shuttle during the Economic Impact Review.

In response to Commissioner Westman's questions, Gwen Jarick, the architect, stated the two hotels will have shared parking. She also stated she agreed with most of the design recommendations and she will review them with the owner.

Commissioner Christiansen asked the applicant if they have plans to integrate the landscaping with the adjoining hotel, and encourage pedestrian use to alleviate traffic. The owner, Dhanesh Patel, addressed Commissioner Christiansen's questions. Ms. Jarick provided additional background information regarding the hotel's expected clientele, and its effect on the connectivity of the grounds.

During public comment, Peter Feliz, owner of 714 Hill Street, stated his opposition to the project, and requested additional information regarding the view of the hotel from his backyard. Director Herlihy clarified the plans for Mr. Feliz. Mr. Feliz also sought clarification on affordable housing sites as it related to private homeowners. Director Herlihy explained the site must be on at least a half-acre lot.

William Babcock, the owner and resident at 905 Laurence Ave, itemized his concerns regarding the new hotel despite the hotel owner's history as a good neighbor. Specifically, he was concerned with privacy and noise from traffic at the parking lot section adjacent to his property. He requested changing the fence height to mitigate the issues he raised. He also stated his concerns of noise that would emanate from the rooftop bar and potentially intrusive security lighting.

Mr. Patel addressed Mr. Babcock's concerns and agreed to work with him.

Commissioner Newman stated it is a good use of the property, and while the applicant should consider the recommendations, he is not required to use their recommendations.

Commissioner Wilk stated it should be a visitor serving location, but he is not opposed to the project. He stated his appreciation of comments from staff, the applicant and the public. He agreed with Commissioner Newman's statements regarding the peer-reviewed recommendations.

Commissioner Westman stated her concern regarding the project's impacts on parking, and she encouraged staff and the affected parties to work together towards a solution. She stated that she may support a variance if it achieved the combined goals of the affected parties. She also stated her support for integrated landscaping, a quality design element for the windows and limited hours of rooftop use.

Commissioner Christiansen stated her support of Commissioner Westman's comments and requested clarification from staff regarding a stairwell.

Chair Routh stated his approval of the design recommendations and is in support of the applicant approving most of the peer-reviewed recommendations.

**This is a presentation only. No action is required.**

#### **4. DIRECTOR'S REPORT**

Director Herlihy stated the Inclusionary Housing Update will be discussed at the upcoming City Council meeting, and the Zoning Code will be updated to reflect the City Council's direction.

#### **5. COMMISSION COMMUNICATIONS**

#### **6. ADJOURNMENT**

The meeting was adjourned at 8:25 P.M. to the next regular meeting of the Planning Commission on October 7, 2021.

Approved by the Planning Commission

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Edna Basa, Clerk to the Commission

Minutes Acceptance: Minutes of Sep 2, 2021 7:00 PM (Approval of Minutes)



**STAFF REPORT**

TO: PLANNING COMMISSION  
FROM: COMMUNITY DEVELOPMENT  
DATE: NOVEMBER 4, 2021  
SUBJECT: **115 Saxon Avenue #21-0339 APN: 036-131-02**

Design Permit to convert a roof to a second-story deck on a single-family residence located within the R-1 (Single-Family Residential) zoning district. This project is in the Coastal Zone but does not require a Coastal Development Permit.  
Environmental Determination: Categorical Exemption  
Property Owner: Brian and Danielle Wiese, Filed: 07.28.21

**APPLICANT PROPOSAL**

The applicant is proposing to modifications to the second-story of an existing single-family residence to use a flat-roof as a second story deck at 115 Saxon Avenue within the R-1 (Single-Family Residential) zoning district. The project would not increase the existing floor area of the home.

**BACKGROUND**

On February 2, 2017, the Planning Commission approved Design Permit #16-115 for a full exterior remodel that included the removal of a large, raised deck area and new conditioned space on the first floor.

On December 7, 2017, the Planning Commission approved revisions to permit #16-115 with specific conditions that the second story deck is not accessed.

On September 22, 2021, staff held a Development and Design Review meeting for the application, discussed the project and answered applicant questions, but did not have any comments.

**DISCUSSION**

The following table outlines the zoning code requirements for development in the R-1 Zoning District. The proposed second story deck for the single-family residence complies with all development standards of the R-1 zone.

**R-1 (Residential Single-Family) Zoning District**

Development Standards		
Building Height		
R-1 Regulation	Existing	Proposed

25 ft.	23 ft.	23 ft.	
<b>Floor Area Ratio (FAR)</b>			
	<b>Existing</b>	<b>Proposed</b>	
<b>Lot size</b>	4,000 sq. ft.	4,000 sq. ft.	
<b>Maximum Floor Area Ratio</b>	54% (Max 2,160 sq. ft.)	54% (Max 2,160 sq. ft.)	
First Story Floor Area	1,236 sq. ft.	1,236 sq. ft.	
Second Story Floor Area	923 sq. ft.	923 sq. ft.	
<i>Second Story Deck</i>		<i>342 sq. ft. (exempt)</i>	
<b>Total FAR</b>	54% (2,159 sq. ft.)	54% (Max 2,159 sq. ft.)	
<b>Setbacks</b>			
<b>Corner lot? If yes, update regulations for corner lots</b>			
	<b>R-1 regulation</b>	<b>Existing</b>	<b>Proposed</b>
<b>Front Yard 1<sup>st</sup> Story</b>	15 ft.	43 ft.	43 ft.
<b>Front Yard 2<sup>nd</sup> Story</b>	20 ft.	43 ft.	49 ft.
<b>Interior Side Yard 1<sup>st</sup> Story</b>	10% lot width	Lot width 40 ft. 4 ft. min.	North: 4 ft. South: 4 in. <b>Existing nonconforming</b>
<b>Interior Side Yard 2<sup>nd</sup> Story</b>	15% of width	Lot width 40 ft. 6 ft. min	North: 6 ft. South: 4 in. <b>Existing nonconforming</b>
<b>Rear Yard 1<sup>st</sup> Story</b>	20% of parcel depth	Lot depth 100 ft. 20 ft. min.	1 ft. <b>Existing nonconforming</b>
<b>Rear Yard 2<sup>nd</sup> Story</b>	20% of parcel depth	Lot depth 100 ft. 20 ft. min.	1 ft. <b>Existing nonconforming</b>
<b>Parking</b>			
<b>Residential between 2,001 and 2,600 sq. ft.</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
	3 spaces total 1 covered 2 uncovered	2 spaces total 0 covered 2 uncovered	2 spaces total 0 covered 2 uncovered
<b>Underground Utilities: Required with 25% increase in area</b>			Not Required

The existing single-family residence is located within the Depot Hill neighborhood, surrounded by one- and two-story single-family residences. The applicant is proposing to convert 342 square feet of the first-story flat roof into a second story deck.

When the applicant applied for their first design permit in 2017, the zoning code for floor area calculations included covered exterior spaces, decks, and balconies beyond 150 square feet within the calculation. In order to stay within the maximum floor area ratio, the original proposal included the removal of a raised deck so that they could increase conditioned space.

Subsequently, the zoning code was updated earlier this year and no longer counts most unenclosed spaces towards the floor area ratio (FAR) calculation. The current proposal would

allow the applicant to construct a new doorway to the roof and utilize the roof as a deck while complying with the FAR. The indicated area of existing roof is flat and requires little modification to serve this purpose. Because the roof is within four feet of the side property line, the applicant is proposing a new inset railing set two feet from the edge to comply with the minimum six-foot side setback for second-stories. The applicant is also proposing an 18-inch privacy glass on top of the existing 42-inch wall facing the rear and side property lines to minimize privacy concerns for the adjacent property. The project otherwise retains the overall existing massing and appearance. The proposed modifications should fit well within the neighborhood.

#### Parking

Single-family dwellings with a floor area between 2,001 and 2,600 square feet are required to provide three parking spaces, one of which must be covered. The lot currently provides two uncovered parking spaces and no covered parking. Pursuant to CMC §17.76.020(C)(2), the full amount of parking to serve the residential use is required when the floor area is increased by more than ten percent. The proposed project will not increase the floor area and is therefore not required to bring onsite parking into compliance.

#### Non-Conforming Structure

The existing structure is located within the required first- and second-story rear and south side setbacks and is therefore a legal non-conforming structure. Pursuant to §17.92.070, structural alterations to an existing non-conforming structure may not exceed 80 percent of their present fair market value. A construction cost breakdown has demonstrated that the alterations are 1% of the present fair market value of the structure, so the alterations are permissible.

#### CEQA

This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations, which exempts minor additions and alterations of existing private structures that will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less. The proposed project includes second-story alterations that do not increase the floor area. No adverse environmental impacts were discovered during project review by Planning Department Staff.

#### **RECOMMENDATION**

Staff recommends the Planning Commission approve application #21-0339 based on the following Conditions and Findings of Approval.

#### **CONDITIONS OF APPROVAL**

1. The project approval consists of the conversion of an existing 342 square-foot roof into a second story deck. The maximum Floor Area Ratio for the 4,000 square foot property is 54% (2,160 square feet). The total FAR of the project is 54% with a total of 2,159 square feet, compliant with the maximum FAR within the zone. The proposed project is approved as indicated on the final plans reviewed and approved by the Planning Commission on November 4, 2021, except as modified through conditions imposed by the Planning Commission during the hearing.
2. Prior to construction, a building permit shall be secured for any new construction or modifications to structures authorized by this permit. Final building plans shall be consistent with the plans approved by the Planning Commission. All construction and site improvements shall be completed according to the approved plans



3. At time of submittal for building permit review, the Conditions of Approval must be printed in full on the cover sheet of the construction plans.
4. At time of submittal for building permit review, Public Works Standard Detail SMP STRM shall be printed in full and incorporated as a sheet into the construction plans. All construction shall be done in accordance with the Public Works Standard Detail BMP STRM.
5. Prior to making any changes to approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department. Any significant changes to the size or exterior appearance of the structure shall require Planning Commission approval.
6. Prior to issuance of building permit, a landscape plan shall be submitted and approved by the Community Development Department. The landscape plan can be produced by the property owner, landscape professional, or landscape architect. Landscape plans shall reflect the Planning Commission approval and shall identify type, size, and location of species and details of any proposed (but not required) irrigation systems.
7. Prior to issuance of building permit, all Planning fees associated with permit #21-0339 shall be paid in full.
8. Prior to issuance of a building permit, the applicant must provide documentation of plan approval by the following entities: Santa Cruz County Sanitation Department, Soquel Creek Water District, and Central Fire Protection District, as necessary.
9. Prior to issuance of building permits, a drainage plan, grading, sediment and erosion control plan, shall be submitted to the City and approved by Public Works. The plans shall be in compliance with the requirements specified in Capitola Municipal Code Chapter 13.16 Storm Water Pollution Prevention and Protection.
10. Prior to issuance of building permits, the applicant shall submit a stormwater management plan to the satisfaction of the Director of Public Works which implements all applicable Post Construction Requirements (PCRs) and Public Works Standard Details, including all standards relating to low impact development (LID).
11. Prior to any land disturbance, a pre-site inspection must be conducted by the grading official to verify compliance with the approved erosion and sediment control plan.
12. Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way.
13. During construction, any construction activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B
14. Prior to issuance of a Certificate of Occupancy, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development

Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.

15. This permit shall expire 24 months from the date of issuance. The applicant shall have an approved building permit and construction underway before this date to prevent permit expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code section 17.81.160.
16. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.
17. Upon receipt of certificate of occupancy, garbage and recycling containers shall be placed out of public view on non-collection days.

### **DESIGN PERMIT FINDINGS**

- A. The proposed project is consistent with the general plan, local coastal program, and any applicable specific plan, area plan, or other design policies and regulations adopted by the city council.**

Community Development Staff and the Planning Commission have reviewed proposed second-story modifications to a single-family residence and determined complies with the development standards of the R-1 (Single-Family Residential) zoning district.

- B. The proposed project complies with all applicable provisions of the zoning code and municipal code.**

Community Development Staff and the Planning Commission have reviewed the application second-story rooftop conversion into a deck on a single-family residence and determined the project complies with all applicable provisions of the zoning code and municipal code.

- C. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).**

Section 15301 of the CEQA Guidelines categorically exempts minor additions and alterations of existing private structures that will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less. The proposed project includes second-story alterations that do not increase the floor area. No adverse environmental impacts were discovered during project review by Planning Department Staff.

- D. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.**

Community Development Staff and the Planning Commission have reviewed the project. The proposed second-story modifications to a single-family residence will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity. The project will maintain the existing residential use which is compatible within the R-1 (Single-Family Residential) zoning district.

**E. The proposed project complies with all applicable design review criteria in Section 17.120.070 (Design review criteria).**

The Community Development Staff and the Planning Commission have reviewed the application. The proposed second-story modifications to a single-family residence comply with all applicable design review criteria in Section 17.120.070. Specifically, the project has taken potential privacy impacts into consideration as specified within Capitola's Design Review Criteria.

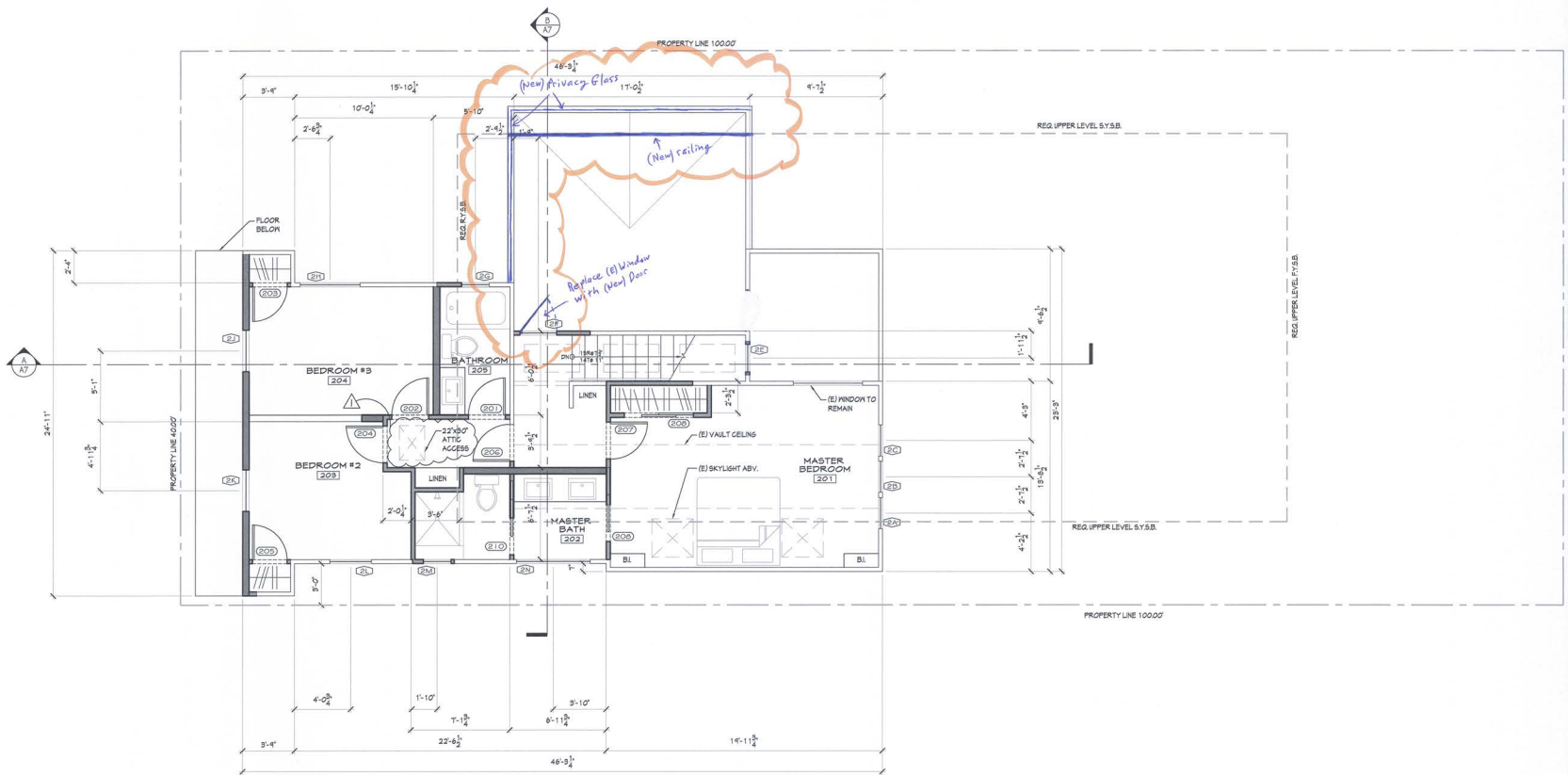
**F. The proposed project maintains the character, scale, and development pattern of the neighborhood.**

Community Development Staff and the Planning Commission have reviewed the application for the second-story modifications to a single-family residence. The project will convert an existing section of roof into a second-story deck facing the side of the property. The proposed deck is similar to other second-story decks are a commonly found within the Depot Hill neighborhood and will fit nicely within the surrounding area. The project will maintain the character, scale, and development pattern of the neighborhood.

**ATTACHMENTS:**

1. 115 Saxon Avenue - Plan Set
2. 115 Saxon Avenue - Color & Material Information
3. 115 Saxon Avenue - Application Context

Prepared By: Sean Sesanto

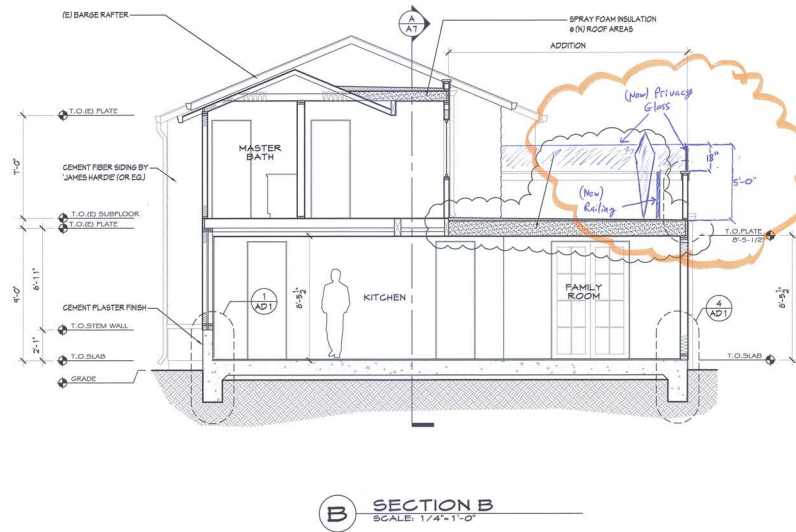
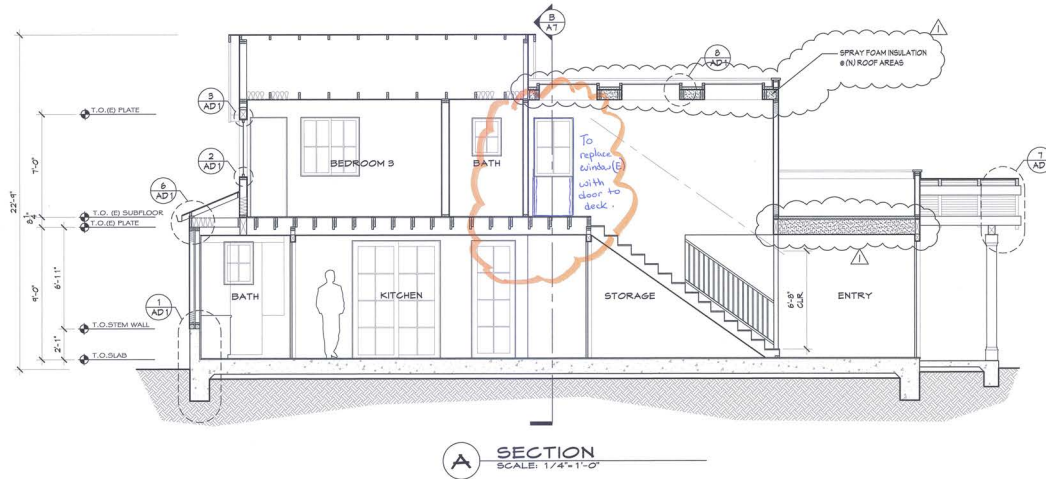


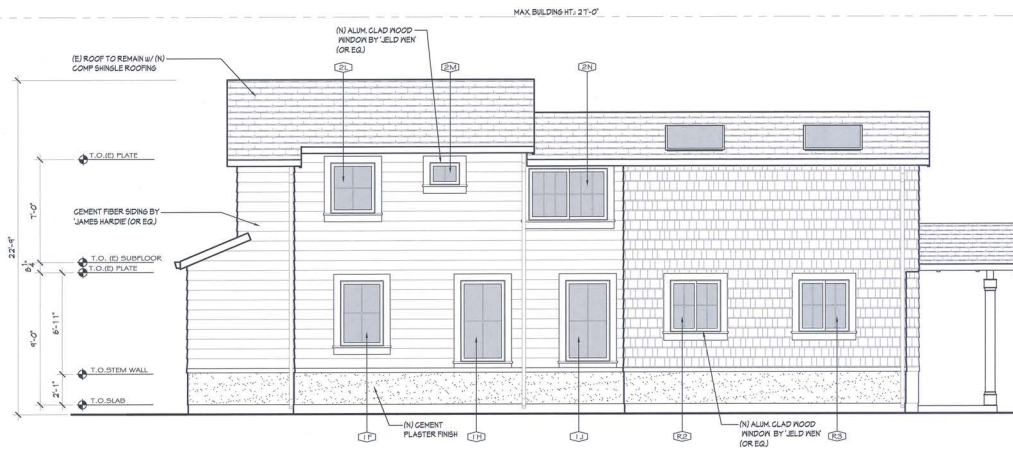
1 UPPER LEVEL FLOOR PLAN  
SCALE: 1/4" = 1'-0"

WALL LEGEND	
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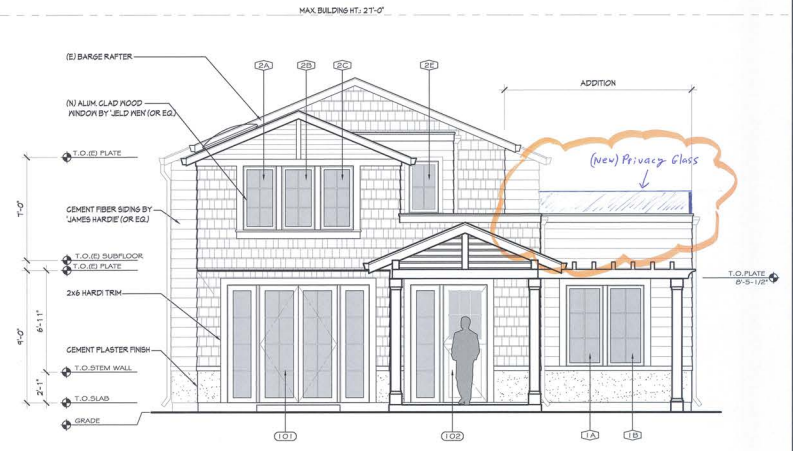
Attachment: 115 Saxon Avenue - Plan Set (115 Saxon Avenue)

4/28/2011 9:21 AM

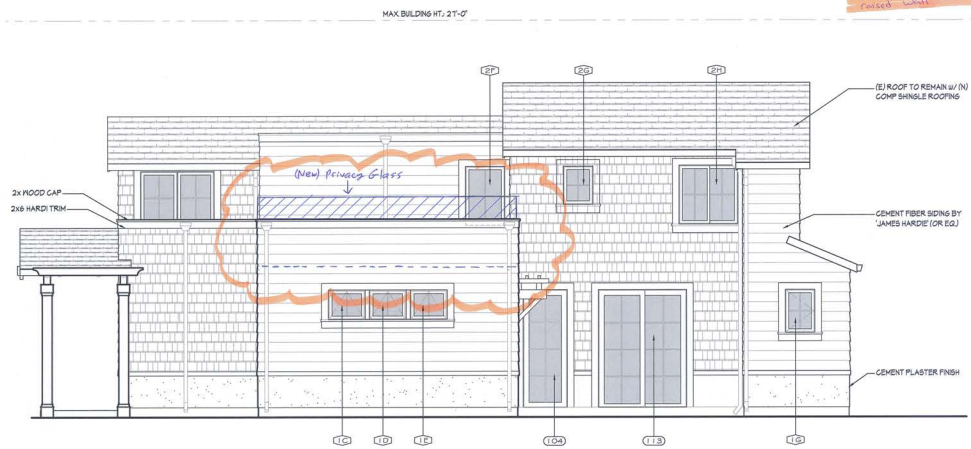




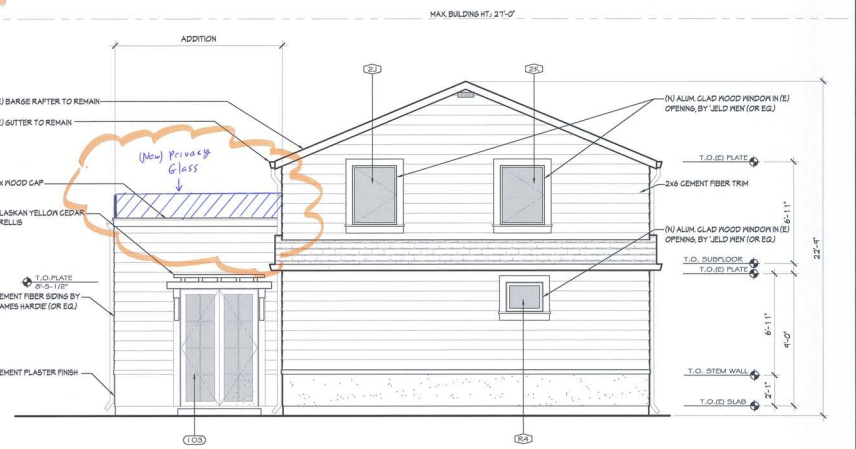
2 PROPOSED SOUTH ELEVATION  
SCALE: 1/4" = 1'-0"



1 PROPOSED EAST ELEVATION  
SCALE: 1/4" = 1'-0"



4 PROPOSED NORTH ELEVATION  
SCALE: 1/4" = 1'-0"



3 PROPOSED WEST ELEVATION  
SCALE: 1/4" = 1'-0"

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Attachment: 115 Saxon Avenue - Plan Set (115 Saxon Avenue)

## Attachment C: Materials and Design Details

**Privacy Glass:** as shown or equivalent



**Door:** Jeld Wen or eq.



Smooth-Pro™ Fiberglass  
1/2 View Vent 2-  
Panel

**Deck Railing:** Fiberon HavenView Countryside 42 inch composite railing or eq.



**Attachment A:** The pre-remodel house had an upper-level deck and a mid-level deck (5 foot above grade). The 2017 remodel design anticipated eventually having a deck in the same locations, pending the zoning code change that does not count the deck area against the allowed FAR.

**Before 2017 Remodel**

**After 2017 Remodel**



Illustration 2: After Remodel Front View

III

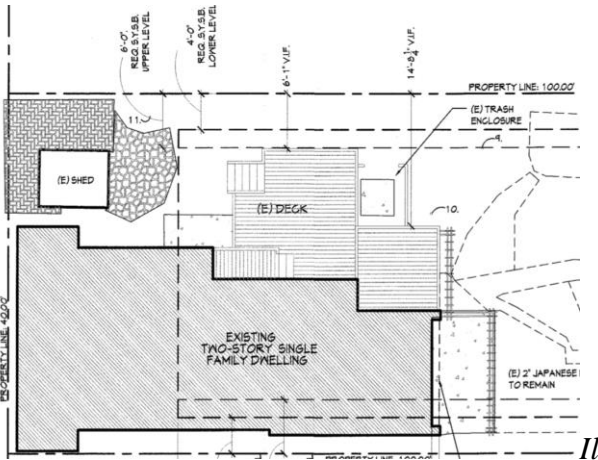


Illustration 4: After Remodel Flat Roof with

II





**Attachment B:** Nearly all nearby two-story houses have upper-level decks or balconies.

## Nearby Upper-Floor Decks and Balconies (Proposed Deck is labeled 115)



Attachment: 115 Saxon Avenue - Application Context (115 Saxon Avenue)



## STAFF REPORT

TO: PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT

DATE: NOVEMBER 4, 2021

SUBJECT: **111 Capitola Avenue #21-0408 APN: 035-241-04**

Amendment to Conditional Use Permit for alcohol sales to include beer and wine at the English Ales tasting room located within the C-V (Central Village) zoning district.

This project is in the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: John Kettmann

Representative: Peter Blackwell, English Ales Brewery, Filed: 09/13/2021

### **APPLICANT PROPOSAL**

The applicant submitted a request for an amendment to Conditional Use Permit #19-0581 to allow the sale of beer and wine at English Ales located at 111 Capitola Avenue in the CV (Central Village) zoning district. The proposed use is consistent with the General Plan, Local Coastal Program, and Zoning Ordinance with the amendment of the existing Conditional Use Permit.

### **BACKGROUND**

111 Capitola Avenue was originally a single-family home, then became a mixed-use space with commercial in the front and residential in the rear. Since 2011, the entire structure has been utilized as commercial and the nonconforming residential use was discontinued.

On December 5, 2019, the applicant, English Ales Brewery, received Conditional Use Permit #19-0581 for alcohol sales with a Type 23 Small Beer Manufacturer License from the Department of Alcoholic Beverage Control (ABC) Permit for onsite beer consumption, tasting, and sales.

### **DISCUSSION**

The applicant is requesting an amendment to the existing conditional use permit (CUP) to allow the sale of beer and wine. The existing CUP is limited to a duplicate Type 23 Small Beer Manufacturer license through the ABC. The CUP has a condition of approval which requires an amendment to the CUP for a change in the type of liquor licensed issued by ABC. A Type 23 license authorizes the sale of beer to consumers for consumption on or off the manufacturer's licensed premises. English Ales would like to modify their license to a Type 42 beer and wine license, to provide patrons with the additional option of wine.

The business is operated by English Ales Brewery, which is based in Marina, California. The small 775-square-foot building includes 341 square feet of retail space for the sale of to-go beer and beer related items and 158 square feet of space for a tasting room. The remaining 276 square feet of space in the back is utilized as storage space. The business is currently operating with a Covid-19 temporary street dining permit in two public parking spaces along the frontage of Capitola Road.

#### Conditional Use Permit

The proposed CUP amendment is to allow English Ales to modify their ABC license to a Type 42 Beer and Wine license.

Pursuant to 17.124.060, when evaluating a CUP, the Planning commission must consider the following characteristics of the proposed use:

- A. Operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts).
- B. Availability of adequate public services and infrastructure.
- C. Potential impacts to the natural environment.
- D. Physical suitability of the subject site for the proposed use in terms of design, location, operating characteristics, shape, size, topography.

In issuing a conditional use permit, the Commission may attach conditions to achieve consistency with the general plan, local coastal program, zoning code, and any applicable specific plan or area plan adopted by the city council.

The existing CUP for 111 Capitola Avenue limits the area open to customers for beer consumption to 160 square feet and the seating in the combined retail and tasting room area to six seats or less. It also included a condition limiting the establishment to a duplicate Type 23 Small Beer Manufacturer license and requires an amendment to the CUP for any modification to the type of ABC license.

Chief Daly reviewed the request for a modification to the license type and provided a letter of support. There are no negative impacts anticipated with addition of wine sales within the site or on the adjacent land uses; therefore, no additional conditions are recommended for the amendment to the CUP.

#### CEQA

The project is categorically exempt under Section 15301 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations. The proposed project involves amending a conditional use permit within an existing commercial space and the sale of beer and wine. No adverse environmental impacts were discovered during project review by either Planning Department Staff or the Planning Commission.

#### RECOMMENDATION

Staff recommends the Planning Commission approve the amendment to the Conditional Use Permit based on the following amended Conditions of Approval and updated Findings.

#### CONDITIONS OF APPROVAL

1. The project approval consists of an amendment to the Conditional Use Permit for alcohol sales (English Ales Brewery) and a 158-square-foot tasting room within a 775-square-foot commercial structure. The amendment is to allow the sale of beer and wine onsite. The proposed project is approved as indicated approved by the Planning Commission on November 4, 2021, except as modified through conditions imposed by the Planning

Commission during the hearing.

2. The primary use on the site is retail related to English Ales Brewery and includes the sale of beer for offsite consumption. The tasting room is limited to a maximum of 160 square feet of area open to customers for tasting with a maximum of 6 seats.
3. A copy of the approved Department of Alcoholic Beverage Control (ABC) Permit must be filed with the Community Development Department prior to initiating on-site beer and wine sales. The Conditional Use Permit was amended on November 4, 2021 to allow the sale of beer and wine at 111 Capitola Avenue.
4. The conditional use permit will expire in the case where the conditionally permitted use has not been exercised within two years after the date of granting thereof. Any interruption or cessation beyond the control of the property owner shall be deemed to have been "used" when actual substantial, continuous activity has taken place upon the land pursuant to the permit. Applications for extension may be submitted by the applicant prior to permit expiration, pursuant to Municipal Code section 17.81.160.
5. Compliance with all conditions of approval and the ABC license requirements and conditions shall be demonstrated to the satisfaction of the Community Development Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance issue in a timely manner may result in permit revocation.
6. There shall be no amplified audible entertainment inside the business that can be audible outside of the business.
7. Prior to making any changes to approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department. Any significant changes to the size or exterior appearance of the structure shall require Planning Commission approval.
8. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.

## **FINDINGS**

### **A. The proposed use is allowed in the applicable zoning district.**

The tasting room is allowed within the MU-V zoning district with a conditional use permit for the sale of alcohol. A tasting room is considered a retail establishment with limited onsite area for consumption.

### **B. The proposed use is consistent with the general plan, local coastal program, zoning code, and any applicable specific plan or area plan adopted by the city council.**

The retail space with alcohol sales and a tasting room with six seats or less with the added allowance of wine consumption is consistent with the Zoning Ordinance, General Plan, and Local Coastal Plan

**C. The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and planned land uses in the vicinity of the property.**

111 Capitola Avenue is located in the mixed-use village zoning district, an area with a variety of eating and drinking establishments and retail establishments. Allowing the consumption of wine to patrons at the tasting room is compatible with existing land uses in the vicinity of the property.

**D. The proposed use will not be detrimental to the public health, safety, and welfare.**

Allowing beer and wine sales at the English Ales Tasting Room will not be detrimental to public health, safety, and welfare.

**E. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.**

111 Capitola Avenue is properly located within the mixed use village and adequately served by services and infrastructure.

**F. This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15301 of the CEQA Guidelines exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. This project involves a retail space with alcohol sales and a tasting room with six seats or less with a duplicate Type 23 alcohol license for the sale of beer and wine for on-site consumption within the C-V (Central Village) zoning district. No adverse environmental impacts were discovered during review of the proposed project.

**ATTACHMENTS:**

1. ABC License Type List
2. English Ales Letter from Owner
3. English Ales PCN Request

Prepared By: Katie Herlihy  
Community Development Director

## COMMON ABC LICENSE TYPES AND THEIR BASIC PRIVILEGES

LICENSE TYPE	DESCRIPTION
01	<b>BEER MANUFACTURER - (Large Brewery)</b> Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.
02	<b>WINEGROWER - (Winery)</b> Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
20	<b>OFF SALE BEER &amp; WINE - (Package Store)</b> Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
21	<b>OFF SALE GENERAL - (Package Store)</b> Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.
23	<b>SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery)</b> Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.
40	<b>ON SALE BEER - (Bar, Tavern)</b> Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.
41	<b>ON SALE BEER &amp; WINE – EATING PLACE - (Restaurant)</b> Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
42	<b>ON SALE BEER &amp; WINE – PUBLIC PREMISES - (Bar, Tavern)</b> Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
47	<b>ON SALE GENERAL – EATING PLACE - (Restaurant)</b> Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
48	<b>ON SALE GENERAL – PUBLIC PREMISES - (Bar, Night Club)</b> Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
49	<b>ON SALE GENERAL – SEASONAL -</b> Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.



LICENSE TYPE	DESCRIPTION
51	<b>CLUB</b> - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. No off-sale privileges. Food service is not required. Minors are allowed on the premises.
52	<b>VETERAN'S CLUB</b> - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guest only, for consumption off the licensed premises. Food service is not required. Minors are allowed on the premises.
57	<b>SPECIAL ON SALE GENERAL</b> - Generally issued to certain organizations who cannot qualify for club licenses. Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guests only, for consumption off the licensed premises. Food service is not required. Minors are allowed on the premises.
59	<b>ON SALE BEER AND WINE – SEASONAL</b> - Authorizes the same privileges as a Type 41. Issued for a specific season. Inclusive dates of operation are listed on the license certificate.
60	<b>ON SALE BEER – SEASONAL</b> - Authorizes the sale of beer only for consumption on or off the premises where sold. Issued for a specific season. Inclusive dates of operation are listed on the license certificate. Wine or distilled spirits may not be on the premises. Minors are allowed on the premises.
61	<b>ON SALE BEER – PUBLIC PREMISES</b> - (Bar, Tavern) Authorizes the sale of beer only for consumption on or off the licensed premises. Wine or distilled spirits may not be on the premises. Minors are not allowed to enter and remain (warning signs required). Food service is not required.
67	<b>BED AND BREAKFAST INN</b> - Authorizes the sale of wine purchased from a licensed winegrower or wine wholesaler only to registered guests of the establishment for consumption on the premises. No beer or distilled spirits may be on the premises. Wine shall not be given away to guests, but the price of the wine shall be included in the price of the overnight transient occupancy accommodation. Removal of wine from the grounds is not permitted. Minors are allowed on the premises.
70	<b>ON SALE GENERAL – RESTRICTIVE SERVICE</b> - Authorizes the sale or furnishing of beer, wine and distilled spirits for consumption on the premises to the establishment's overnight transient occupancy guests or their invitees. This license is normally issued to "suite-type" hotels and motels, which exercise the license privileges for guests' "complimentary" happy hour. Minors are allowed on the premises.
75	<b>ON SALE GENERAL – BREWPUB</b> - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on a bona fide eating place plus a limited amount of brewing of beer. This license does not authorize the sale of alcoholic beverages for consumption off the premises where sold. Minors are allowed on the premises.
80	<b>BED AND BREAKFAST INN – GENERAL</b> - Authorizes the sale of beer, wine and distilled spirits purchased from a licensed wholesaler or winegrower only to registered guests of the establishment for consumption on the premises. Alcoholic beverages shall not be given away to guests, but the price of the alcoholic beverage shall be included in the price of the overnight transient occupancy accommodation. Removal of alcoholic beverages from the grounds is not permitted. Minors are allowed on the premises.
86	<b>INSTRUCTIONAL TASTING LICENSE</b> —Issued to the holder of and premises of a Type 20 or Type 21 licensee, authorizes the tasting of alcoholic beverages as authorized to be sold from the off-sale premises, on a limited basis. Requires physical separation from the off-sale premises while tasting is taking place and generally requires the participation of a specifically-authorized manufacturer or wholesaler licensee.



## SPECIAL EVENTS

The Department also issues licenses and authorizations for the retail sale of beer, wine and distilled spirits on a temporary basis for special events. The most common are listed below. Other less common ones are found in Business and Professions Code Section 24045.2, et seq.

**SPECIAL DAILY BEER AND/OR WINE LICENSE** - (Form ABC-221) Authorizes the sale of beer and/or wine for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to non-profit organizations. (Rule 59, California Code of Regulations)

**DAILY ON SALE GENERAL LICENSE** - (Form ABC-221) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to political parties or affiliates supporting a candidate for public office or a ballot measure or charitable, civic, fraternal or religious organizations. (Section 24045.1 and Rule 59.5 California Code of Regulations)

**CATERING AUTHORIZATION** - (Form ABC-218) Authorizes Type 47, 48, 51, 52, 57, 75 and 78 licensees (and catering businesses that qualify under Section 24045.12) to sell beer, wine and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events. Type 47, 48 and 57 licensees may cater alcoholic beverages at any ABC-approved location in the State. Type 51 and 52 licensees may only cater alcoholic beverages at their licensed premises. All licensees wishing to cater alcoholic beverages must obtain prior written authorization from the Department for each event. At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399 and Rule 60.5 California Code of Regulations)

**EVENT AUTHORIZATION** - (Form ABC-218) Authorizes Type 41, 42, 47, 48, 49, 57, 75 and 78 licensees to sell beer, wine and distilled spirits for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public. *The licensee shall obtain prior approval of the local law enforcement agency.* At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises (including any license conditions) and violations of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399)

**WINE SALES EVENT PERMIT** - (Form ABC-239) Authorizes Type 02 licensees to sell bottled wine produced by the winegrower for consumption off the premises where sold and only at fairs, festivals or cultural events sponsored by designated tax exempt organizations. The licensee must notify the city and/or county where the event is being held and obtain approval from ABC for each event (Form ABC-222). The licensee must also comply with all restrictions listed in Business and Professions Code Section 23399.6.

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### Note:

1. "Minor" means any person under 21 years of age.
2. Consult Section 25663(b) regarding age of employees in off-sale premises; consult Sections 25663(a) and 25663.5 regarding age of employees in on-sale premises.
3. In certain situations, ABC may place reasonable conditions upon a license, such as restrictions as to hours of sale, employment of designated persons, display of signs, restrictions on entertainment or dancing, etc. If a license has been conditioned, it will be endorsed as such on the face of the license. (Conditional licenses, Sections 23800-23805.)



4. Licensees whose license allows minors on the premises may have a “house policy” restricting minors from entering certain areas of the premises or prohibiting minors in the premises during certain hours.
5. This handout contains only abbreviated information. Contact your local ABC office for full information before doing anything which may jeopardize your license. Also available from the ABC: Quick Summary of Selected ABC Laws (form ABC-608); Alcoholic Beverage Control Act (complete laws); Rules & Regulations; and P-90 (describes privileges of non-retail licenses).



223 A. Reindollar Avenue  
Marina, Ca. 93933  
831 384 1253

09/13/2021

City of Capitola

Planning Dept.

Re: C.U.P. Amendment

When we first applied for an ABC license for 111 Capitola Avenue, we were advised by ABC that all we needed was a duplicate type 23, which would enable us to operate in the same manner as we do in our Marina Brewery, except that we would not be permitted to brew. In Marina, we sell beer and wine, food, wholesale and retail. Our plan for our Capitola operation, per our original C.U.P. was for retail, beer and wine, only, no food, wholesale or brewing.

Since opening in Capitola on February 29th, 2020, we have offered our beers and Santa Cruz County wines for sale in addition to several, non beverage retail items. We do not serve food, nor do we brew our beers there. Our business is best served by a transient customer, one who stops in for a tasting, or one drink and then moves on. The facility is much too small to operate as a bar, where patrons may spend several hours.

At some point in July of 2021, we were advised that the sale of wine is not permitted with our current license. A call to the Salinas office of A.B.C. confirmed that to be true, therefore we ceased service of wine, immediately. Needless to say, the financial effect on our business has been quite substantial, with a drop in sales of 39.39% during the first month, which brings me to the purpose of this letter.

We respectfully request a modification to our original C.U.P. to allow us to change our A.B.C. license from our current Type 23, to a Type 42 Beer and Wine, which will allow us to resume our operation in the same manner as we did throughout the first 16 months of our existence.

Sincerely

Peter Blackwell

Attachment: English Ales Letter from Owner (111 Capitola Avenue - Amendment to CUP)



TERRY MCMANUS  
CHIEF OF POLICE

422 CAPITOLA AVENUE  
CAPITOLA, CALIFORNIA 95010  
TELEPHONE (831) 475-4242  
FAX (831) 479-8881

October 20, 2021

District Administrator  
California Department of Alcoholic Beverage Control  
1137 Westridge Parkway  
Salinas, CA 93907

Reference: English Ales  
111 Capitola Avenue, Capitola, CA 95010  
Type 42 - Small Beer Manufacturer

Dear Administrator,

The applicant, English Ales , applied to the City of Capitola on September 13, 2021, to change their ABC license from a Type 23 (Small Beer Manufacturer) to a Type 42 (On-Sale Beer and Wine – Public Premise), authorizing the sale of beer and wine at their business located at 111 Capitola Avenue, Capitola CA.

The proposed business is located in police responsibility area 4401 and U.S. census tract number 1217.00. The site is in a high crime area and the census tract is over-concentrated (6 off-sale licenses authorized and 14 currently existing) with “off sale” alcohol outlets, thus requiring a letter of necessity and convenience.

The Local Governing Body has determined, according to §23958.4 of the Business and Professions Code, that the applicant serves the public convenience (§23958.4 b(2) B & P) and California Department of Alcoholic Beverage Control (ABC) should approve the requested change from an alcohol license Type 23 Small Beer Manufacture to a Type 42 On-Sale Beer and Wine – Public Premises.

This letter is being issued with the understanding that conditions placed by the city of Capitola on the businesses’ special use permit, be incorporated in the Type 42 On-Sale Beer and Wine – Public Premises by ABC.

October 20, 2021

In 1994, the California legislature provided amendments to the law that allowed for local control of some alcohol licenses. The purpose of this legislation is to help fight blighted and crime-impacted areas. The City Council appointed the Chief of Police as the local governing body in decisions related to public convenience or necessity in the issuance of certain alcohol licenses as required by section §23958.4 B. & P.

In the several years that we have been working with these new laws, we have applied the law of undue concentration and high crime areas as defined by the legislation. As part of our review, we look at all the circumstances that could be negative or positive about the determination of convenience or necessity.

We also weigh both sides as it applies to a specific location in the City and the specific applicant. Does the proposed establishment fit the goals of the city? Does the proposed establishment promote rather than detract from economic goals, plans, or redevelopment of the city? Does the proposed establishment pose a law enforcement or public health problem? Does the establishment help alleviate blight or a crime-affected area?

In deciding on public convenience or necessity in the aforementioned application, the following facts were considered;

1. The business has operated successfully within the city of Capitola under the currently issued ABC license and related conditions.
2. The company participates in an employee training program, with a curriculum that includes not only business-related activities but also a section on ABC Laws. The business is committed to training people and has agreed to take part in future ABC LEADS (Licensee Education on Alcohol and Drugs) workshops.
3. The Capitola Police Department has conducted a site visit of the company's current location and found it to be a professional-looking, clean, well-run business, which fits with the types of businesses the City supports in our community.

Page 3  
October 20, 2021

In summary, English Ales has been an existing and successful business in our City, and I believe they will continue to provide positive economic vitality with very few public safety concerns should the issuance of the requested license change be approved.

Sincerely,

Andrew Dally  
Acting Chief of Police

AD/ajd

cc: Sean Sesanto, Assistant Planner, Community Development Department



## STAFF REPORT

TO: PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT

DATE: NOVEMBER 4, 2021

SUBJECT: **1500 Wharf Road #21-0287 APN: Common Walkways  
'B' through 'H'**

Master Sign Program for common area walkways of the Capitola Venetian Condominiums located within the MU-V (Mixed Use Village) zoning district.

This project is in the Coastal Zone and requires a Coastal Development Permit that is appealable to the California Coastal Commission after all possible appeals are exhausted through the City. Environmental Determination: Categorical Exemption  
Property Owner: Venetian Court HOA  
Representative: Craig Nunes – Venetian Court HOA Filed: 07.09.21

### **APPLICANT PROPOSAL**

The applicant is proposing a Master Sign Program to install new pathway signs and to include several existing gateway signs at the Venetian Courts.

### **BACKGROUND**

In June 2019, the city received a complaint regarding changes in gateway signage and activities at the Venetian Court pathways which could impair coastal access. Community Development Staff worked with the Venetian Homeowners Association to ensure the gates remained open to the public and to establish neutral sign language that would not restrict public coastal access.

In June 2021, the Venetian HOA met with Community Development Staff and Coastal Commission Staff to discuss new signage efforts to limit continued disturbances experienced by residents that would comply with the Capitola Local Coastal Program.

### **DISCUSSION**

The first two seaward rows of the Venetian Courts are a series of privately owned condominiums. The main pathway walks between the Capitola Beach and the front row of condos, beginning at the eastern entrance of the Stockton bridge and terminating next to the Capitola Wharf. The Capitola Venetian Hotel, which is a separate entity, has two large signs affixed to the front of the manager's office unit facing the intersection of Wharf Road and Cliff Drive.

The pathways have been recognized by the City of Capitola and the California Coastal Commission as an active and historic means of public access to coastal recreational facilities and opportunities. However, the HOA and its residents have complained to the Capitola Police Department and Planning Department for years regarding issues of unauthorized events, blocked access, loitering, noise complaints, and illicit activities, among others, occurring during the day and night (Attachment 2). The HOA has proposed two sign configurations to be distributed throughout the facility with the goal of limiting nuisances without depriving public access.

Pursuant to Capitola Municipal Code §17.80.130, a master sign program is required for multifamily uses with more than one permanent sign. Although the signs themselves would typically be considered permit-exempt signage similar to the treatment of directional signage, §17.80.030(H) requires a Coastal Development Permit for signs within the Coastal Zone that “could reduce public coastal access, including signs limiting public parking or restricting use of existing lateral and/or vertical accessways”. Directional signs does not count toward the allowable sign area or maximum number of signs, pursuant to §17.80.050

#### Proposed Signs

The applicant proposes to install four new matching freestanding signs which would be in fixed locations near pathway intersections. Each sign would use 48-inch tall mounts and 18-inch wide by 18-inch tall sign areas. The proposed language for the freestanding signs are as follows:

*Venetian Court  
Private Residences  
Capitola Beach Access Welcome  
Do not sit, stop, loiter or  
obstruct patios/wall  
No smoking, skateboards,  
scooters, bikes, or skates*

#### Existing Signs

There are three existing gateway signs measuring 16.5-inches wide by 16.5-inches tall, which include similar language:

*Venetian Court  
Residences  
No smoking  
No bikes, no skateboards,  
No noise after 10 PM  
Please Respect our  
Private Homes*

The draft Master Sign Program includes the following standards:

- a. Location:
  - i. One freestanding sign is permitted at each of the four locations marked with a circle on the site map.
  - ii. One gateway sign is permitted at each of the three gate locations marked with a triangle on the site map.
- b. Minor changes to the sign color or style may be approved by the Community Development Director or their designee with and administrative sign permit and

- building permit.
- c. Changes in sign locations, and/or content are subject to an amendment of the Master Sign Program by Planning Commission.
- d. Sign Dimensions: gateway and freestanding signs cannot exceed the following dimensions:
  - i. Maximum sign height: 18”
  - ii. Maximum sign width: 18”
- e. Illumination: The signs shall not include illumination.

### **CEQA**

§15303 of the CEQA Guidelines exempts the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The proposed project includes the installation of four new walkway signs and three existing gateway signs. No adverse environmental impacts were discovered during review of the proposed project.

### **RECOMMENDATION**

Staff recommends the Planning Commission consider application #21-0287 and approve the project with the following Conditions and Findings for Approval.

### **CONDITIONS OF APPROVAL**

1. The project approval is for a Coastal Development Permit and Master Sign Program for the Venetian Court Condominiums at 1500 Wharf Road. The proposed project is approved as indicated on the final plans reviewed and approved by the Planning Commission on November 4, 2021, except as modified through conditions imposed by the Planning Commission during the meeting.
2. The Master Sign Program shall consist of the following:
  - a. Location:
    - i. One freestanding sign is permitted at each of the four locations marked with a circle on the site map.
    - ii. One gateway sign is permitted at each of the three gate locations marked with a triangle on the site map.
  - b. Minor changes to the sign color or style may be approved by the Community Development Director or their designee with an administrative sign permit and building permit.
  - c. Changes in sign locations and/or content are subject to an amendment to the Master Sign Program by Planning Commission.
  - d. Sign Dimensions: gateway and freestanding signs cannot exceed the following dimensions:
    - i. Maximum sign height: 18”
    - ii. Maximum sign width: 18”
  - e. Illumination: The signs shall not include illumination.
3. Minor alterations to signs covered in Condition #2 may be issued by the Community Development Director or their designee with an administrative sign permit and building permit.
4. Prior to making any changes to approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department. Any



significant changes to the size or exterior appearance of the structure shall require Planning Commission approval.

5. Prior to issuance of building permit, all Planning fees associated with permit #21-0287 shall be paid in full.
6. Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way.
7. During construction, any construction activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B
8. Compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.
9. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.

### **SIGN PERMIT FINDINGS**

- A. The proposed signs are consistent with the general plan, local coastal program, zoning code, and any applicable specific plan or area plan adopted by the city council.**

Community Development Staff and the Planning Commission have reviewed the project. The proposed master sign program complies with the development standards of the MU-V (Mixed-Use Village) zoning district.

- B. The proposed signs comply with all applicable standards in Chapter 17.80 (Signs).**

Community Development Staff and the Planning Commission have reviewed the application for the master sign program. The proposed project will maintain the character and integrity of the neighborhood.

- C. The proposed sign will not adversely impact the public health, safety, or general welfare.**

Community Development Department Staff and the Planning Commission have reviewed the sign application and determined that the proposed sign will not have adverse impact on public health, safety, or general welfare.

- D. The number, size, placement, design, and material of the proposed signs are compatible with the architectural design of buildings on the site.**

Community Development Department Staff and the Planning Commission have reviewed the sign application and determined that the proposal is compatible with the architectural design of the buildings on the site.

**E. The proposed signs are restrained in character and no larger than necessary for adequate identification.**

Community Development Department Staff and the Planning Commission have reviewed the sign application and determined that the proposal is compatible with the architectural design of the buildings on the site. The signs utilize matching designs and are restrained in character and size.

**F. This project is categorically exempt under Section 15303 of the California Environmental Quality Act and is subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15303 of the CEQA Guidelines exempts the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. This project includes the installation of four walkway signs and three gateway signs within the MU-V (Mixed Use Village) zoning district. No adverse environmental impacts were discovered during review of the proposed project.

### **COASTAL FINDINGS**

**A. The project is consistent with the LCP land use plan, and the LCP implementation program.**

The proposed development conforms to the City's certified Local Coastal Plan (LCP) land use plan and the LCP implementation program.

**B. The project maintains or enhances public views.**

The proposed project is located on the Venetian Court common walkways 'B' through 'H' located at 1500 Wharf Road. The project will not negatively impact public landmarks and/or public views. Public access is discussed in Findings D through F.

**C. The project maintains or enhances vegetation, natural habitats and natural resources.**

The proposed project is located at 1500 Wharf Road. The project is located in an area with adjacent natural resources. The proposed signs will be affixed to existing hardscape and will not negatively impact vegetation, habitats or natural resources.

**D. The project maintains or enhances low-cost public recreational access, including to the beach and ocean.**

The project involves informational signs on a site that has and is adjacent to public recreational access including the beach and ocean. Specifically, the project is along walkways between public roads and the Capitola Beach. The proposed sign language has been written to avoid restricting public access. The intent is to reduce nuisance activities, impaired walkways, and disturbances during quiet hours.

**E. The project maintains or enhances opportunities for visitors.**

The project involves informational signs on a site that has and is adjacent to visitor opportunities. Specifically, the project is along walkways between public roads and the

Capitola Beach. The proposed sign language does not restrict public access and would therefore maintain visitor opportunities.

**F. The project maintains or enhances coastal resources.**

The project involves informational signs on a site that has and is adjacent to coastal resources. Specifically, the project is along walkways between public roads and the Capitola Beach. The proposed sign language does not restrict public access and would therefore maintain visitor opportunities.

**G. The project, including its design, location, size, and operating characteristics, is consistent with all applicable design plans and/or area plans incorporated into the LCP.**

The proposed signs comply with all applicable design criteria, design guidelines, area plans, and development standards. Specifically, the project is consistent with sign standards for multifamily properties, the local coastal plan, and uses within the MU-V (Mixed Use Village) zone.

**H. The project is consistent with the LCP goal of encouraging appropriate coastal development and land uses, including coastal priority development and land uses (i.e., visitor serving development and public access and recreation).**

The project involves informational signs for a multifamily site that has and is adjacent to coastal resources. The project will not obstruct public access along the affected walkways. The project balances the priority of protecting existing public access to coastal resources with existing residential land uses.

**ATTACHMENTS:**

1. 1500 Wharf Road - Master Sign Plan
2. 1500 Wharf Road - Application Context
3. Coastal Commission - Staff Input on Sign Content

Prepared By: Sean Sesanto

### Venetian Court Signage Proposal

Craig Nunes | Venetian Court HOA President & Capitola Village BIA Board Member | July 9, 2021

#### Section 1: Signage Wording

Feedback from the Coastal Commission was an excellent start:

Venetian Accessway  
*We welcome you to use the pathways to access Capitola Beach.  
Please do not sit, stop, loiter, or obstruct the pathway.  
Skateboarding, bicycling, and skating are prohibited.*

To build on this guidance, we propose to:

1. Properly identify our residences by replacing 'Accessway' with 'private residences'
2. Incorporate a few minor modifications in the remaining text

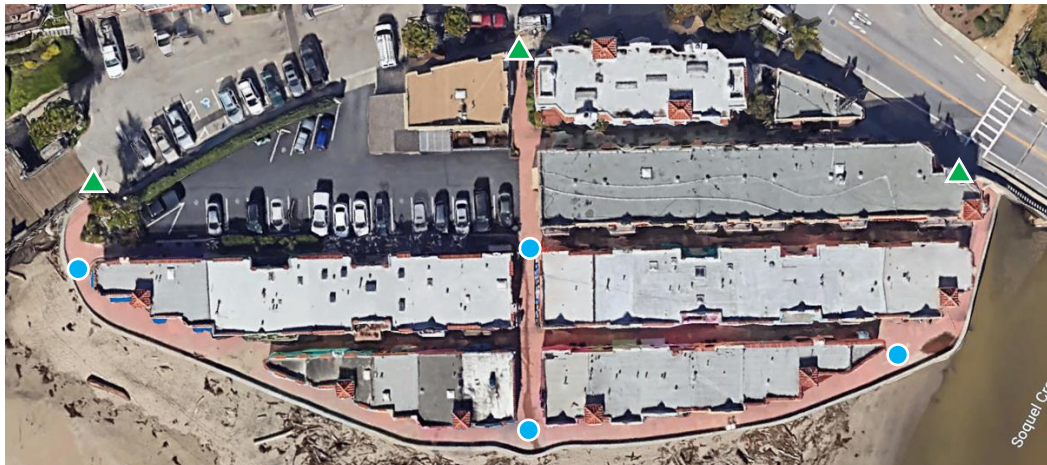
Venetian Court private residences  
*We welcome you to use our patios to access Capitola Beach.  
Please do not sit, stop, loiter or obstruct the patios & sea wall.  
Smoking, skateboards, scooters, bikes & skates are prohibited.*

For use on signage, we propose a shortened version of the above:

Venetian Court private residences  
*Beach access welcome  
Do not sit, stop, loiter or obstruct patios/wall  
No smoking, skateboards, scooters, bikes, skates*

#### Section 2: Location

We propose placing four signs at the locations below marked by a blue circle. These are the four key access points to the beach-facing residences and beach access. Existing gate signs are at the locations marked with a green triangle and are described in section 3.2.



Attachment: 1500 Wharf Road - Master Sign Plan (1500 Wharf Road)

### Section 3.1: New Sign Specifications

At each circle in the above photo, we propose placement of a portable 48" tall signpost on a 17" diameter cast iron stand. Each stand would be bolted to the sidewalk to prevent tipping or theft or movement to an unapproved location, and would be situated in such a way as to allow ample passage of beach goers with wagons, strollers, wheelchairs, etc.



Each signpost will be equipped with a decorative 18" x 18" sign complimenting the vintage of the Venetian Court.



This is an illustration of the final sign design/wording. The photos below show the proposed locations for the signs.



**Section 3.2: Existing Signage (no change)**



There are 3 existing 16.5” x 16.5” signs that replaced older non-compliant signs in 2019 with the assistance of the City of Capitola outside each of the three entrances to the Venetian residences. No changes are being proposed to these signs.



# the real Venetian Court

Craig Nunes, HOA secretary  
may 5, 2021

there is no issue with public access to Capitola beach



# the issue: the public take-over of our patios (all during COVID)



Attachment: 1500 Wharf Road - Application Context (1500 Wharf Road)

# theft, graffiti, trespassing in our homes, partying late at night



© 20

Attachment: 1500 Wharf Road - Application Context (1500 Wharf Road)

# 1500 Wharf: 72 incidents reported since Jan 2020 and rising

January 1st, 2020 - April 30, 2021

Incident #	Beat	All Assigned Units	Incident Date/Time	Type	Mod Circ	Location	Dispo	Report #
CP2000001095	4	CPM1	01/21/2020/22:27	Medical		1500 Wharf Rd	HBD - Handled By Dispatcher	N/A
CP2000001406	4	N/A	01/27/2020/17:30	911/HU		1500 Wharf Rd	Call Back	N/A
CP2000001707	4	MS20	01/31/2020 / 16:50	20002		1500 Wharf Rd	H-52 / Ha	N/A
CP2000004136	4		03/08/2020 / 09:06	JUV	CON	1500 Wharf Rd	RP Cancel	N/A
CP2000006567	4	522	04/10/2020 / 19:01	ORD VIO	COVID	1500 Wharf Rd	S-63 / Sub Dept	20C-00730
CP2000006814	4	536/531	04/14/2020 / 13:24	ORD VIO	COVID	1500 Wharf Rd	S-76 / Sub	20C-00750
CP2000006928	4	523	04/16/2020 / 05:04	XCK		1500 Wharf Rd	H-00 / Ha	N/A
CP2000007062	4	526	04/18/2020 / 17:04	LOITER		1500 Wharf Rd	H-60 / Ha	N/A
CP2000007824	4	522	05/01/2020 / 16:35	OUT		1500 Wharf Rd	S-26 & 1-7 Health Co	20C-00794
CP2000007828	4	522	05/01/2020 / 17:18	ORD VIO	COVID	1500 Wharf Rd	S-76 / Sub	N/A
CP2000007889	4	522/MS20	05/02/2020 / 15:51	OUT		1500 Wharf Rd	H-76 / Ha	N/A
CP2000007962	4	M520	05/03/2020 / 10:34	ORD VIO	COVID	1500 Wharf Rd	H-76 / Ha	N/A
CP2000008649	4	525	05/15/2020 / 11:06	FOOT		1500 Wharf Rd	H-60 / Ha	N/A
CP2000008983	4	526	05/21/2020 / 16:51	AREACK		1500 Wharf Rd	H-76 / Ha	N/A
CP2000009109	4	525	05/23/2020 / 11:05	OUT		1500 Wharf Rd	H-00 / Ha	N/A
CP2000009113	4	525	05/23/2020 / 12:37	ORD VIO	COVID	1500 Wharf Rd	X-76 / COVID	N/A
CP2000009138	4	526/525	05/23/2020 / 15:39	TRESPASS		1500 Wharf Rd	S-76 / Subject Contacted - COVID	N/A
CP2000012011	4	S513/526	7/7/2020 / 20:21			1500 Wharf Rd	Assault / Subject Contacted - COVID	N/A
CP2000012185	4	532/529	7/10/2020 / 13:38			1500 Wharf Rd	S-67 - Subject Contacted - Disturbance	N/A
CP2000012415	4	486	7/14/2020 / 13:40	Assist		1500 Wharf Rd	H-60 / Handled at Scene - Other Activity	N/A
CP2000019820	4					1500 Wharf Rd	S-60 / Subject Contacted - Other Activity	N/A
CP2000020087	4	532	11/19/2020 / 09:47	TRESPASS		1500 Wharf Rd	H-45 / Handled at Scene - Suspicious Circ	N/A
CP2000021068	4	S513/KS26	12/5/2020 / 18:09	415Domestic		1500 Wharf Rd	S-85 - Subject Contacted - Had Been Drinking	N/A
CP2100005366	4		4/24/2021 / 22:58	415	TRAFFIC	1500 Wharf Rd	H-67 / Handled at Scene - Disturbance	N/A

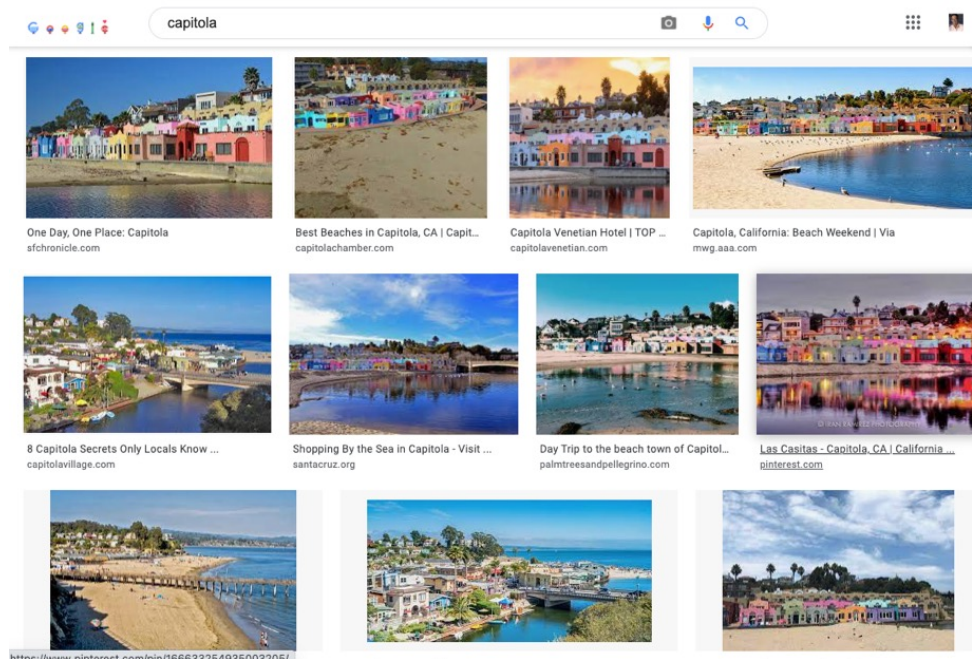
- Ordinance Violations
- Noise Complaints
- Drunk & Disorderly
- Theft & Vandalism
- Suspicious Person/Circ
- Traffic/Hit & Run
- Reports Of Fire
- Juvenile Complaints
- Loitering & Trespass
- Mental Health Complaints
- Animal Complaints

With many times this number going unreported!

Attachment: 1500 Wharf Road - Application Context (1500 Wharf Road)

the assault on our homes is non-stop and  
residents are demanding action

# the Venetian Court is central to Capitola's brand and attraction



\*Above are images appearing on a typical Google search of 'Capitola'

Attachment: 1500 Wharf Road - Application Context (1500 Wharf Road)

# the Venetian Court is also a National Historic Place

NPS Form 10-900  
0-57

OMB No. 1024-0188  
Exp. 10-31-84

United States Department of the Interior  
National Park Service

For NPS use only  
received MAR 5 1987  
date entered APR 2 1987

**National Register of Historic Places  
Inventory—Nomination Form**

See instructions in How to Complete National Register Forms  
Type all entries—complete applicable sections

**1. Name**

historic Venetian Court Apartments  
and/or common Venetian Court

**2. Location**

street & number 1500 Wharf Road N/A not for publication  
city, town Capitola N/A vicinity of  
state California code 06 county Santa Cruz code 087

**3. Classification**

Category	Ownership	Status	Present Use
<input checked="" type="checkbox"/> district	<input type="checkbox"/> public	<input checked="" type="checkbox"/> occupied	<input type="checkbox"/> agriculture
<input type="checkbox"/> building(s)	<input checked="" type="checkbox"/> private	<input type="checkbox"/> unoccupied	<input type="checkbox"/> commercial
<input type="checkbox"/> structure	<input type="checkbox"/> both	<input type="checkbox"/> work in progress	<input type="checkbox"/> educational
<input type="checkbox"/> site	Public Accession	Accessible	<input type="checkbox"/> entertainment
<input type="checkbox"/> object	<input type="checkbox"/> in process	<input type="checkbox"/> yes: restricted	<input type="checkbox"/> government
	<input type="checkbox"/> being considered	<input checked="" type="checkbox"/> yes: unrestricted	<input type="checkbox"/> industrial
	<input checked="" type="checkbox"/> N/A	<input type="checkbox"/> no	<input type="checkbox"/> military
			<input type="checkbox"/> other:

**4. Owner of Property**

name Multiple Ownership (see list attached)  
street & number  
city, town vicinity of state

**5. Location of Legal Description**

courthouse, registry of deeds, etc. Santa Cruz County Recorder's Office  
street & number 701 Ocean Street  
city, town Santa Cruz state California

**6. Representation in Existing Surveys**

title Capitola City Survey has this property been determined eligible?  yes  no  
date Ongoing  federal  state  county  local  
depository for survey records Capitola City Planning Dept., Capitola City Hall  
city, town Capitola state California



Attachment: 1500 Wharf Road - Application Context (1500 Wharf Road)

# and needs City & Coastal Commission help

the ask: a partnership that starts with simple signage that both informs and welcomes the public

Proposal based on Coastal Commission guidance:

Venetian Court Private Residences

We welcome you to use our patios to access Capitola Beach.  
Please do not sit, stop, loiter or obstruct the patios & sea wall.  
Smoking, skateboards, scooters, bikes & skates are prohibited.

A shortened version for use on signage:

Venetian Court Private Residences

Capitola Beach access welcome  
Do not sit, stop, loiter or obstruct patios/wall/walkways  
No smoking, skateboards, scooters, bikes, skates

three signs which inform and welcome beachgoers...



...and discourage the abuse that occurs every sunny weekend

Attachment: 1500 Wharf Road - Application Context (1500 Wharf Road)



thank you

**Sesanto, Sean**

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**Subject:** RE: The Venetians**From:** "Graeven, Rainey@Coastal" <[Rainey.Graeven@coastal.ca.gov](mailto:Rainey.Graeven@coastal.ca.gov)>**Date:** Wednesday, May 5, 2021 at 12:40 PM**To:** Craig Nunes <[craignunes@gmail.com](mailto:craignunes@gmail.com)>**Cc:** "Herlihy, Katie@City of Capitola" <[kherlihy@ci.capitola.ca.us](mailto:kherlihy@ci.capitola.ca.us)>, Sean Sesanto <[ssesanto@ci.capitola.ca.us](mailto:ssesanto@ci.capitola.ca.us)>**Subject:** RE: The Venetians

Hi Craig,

Thank you for sending over the presentation. I spoke with our Public Access Manager and a planner who covers Monterey County. Unfortunately, the situation at the Venetian is very unique, so there aren't any good examples to draw from. I think something along the lines of:

**Venetian Accessway**

*We welcome you to use the pathways to access Capitola Beach.  
Please do not sit, stop, loiter, or obstruct the pathway.  
Skateboarding, bicycling, and skating are prohibited.*

Similar signs are posted on the undercrossings on the levee bike/ped pathway and City Ordinance is cited re. no loitering. I know there is one that goes beneath Water Street heading toward the County building.

I hope that helps.

Rainey

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**From:** Craig Nunes <[craignunes@gmail.com](mailto:craignunes@gmail.com)>**Sent:** Wednesday, May 5, 2021 11:42 AM**To:** Graeven, Rainey@Coastal <[Rainey.Graeven@coastal.ca.gov](mailto:Rainey.Graeven@coastal.ca.gov)>**Cc:** Herlihy, Katie@City of Capitola <[kherlihy@ci.capitola.ca.us](mailto:kherlihy@ci.capitola.ca.us)>; Sesanto, Sean <[ssesanto@ci.capitola.ca.us](mailto:ssesanto@ci.capitola.ca.us)>**Subject:** Re: The Venetians

Hi Rainey,

Thanks again for the time today and for joining us in this important initiative for our residents. I am attaching the presentation I shared, and will work with Katie and Sean on our next steps. If you ever need to contact me or any of the Venetian residents, my contact information is:

Craig Nunes

Phone or text: 650.799.7710

Email: [craignunes@gmail.com](mailto:craignunes@gmail.com)

Please don't hesitate to reach out any time!

Best regards,

Craig

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## STAFF REPORT

TO: PLANNING COMMISSION  
 FROM: COMMUNITY DEVELOPMENT  
 DATE: NOVEMBER 4, 2021  
 SUBJECT: **Outdoor Dining Ordinance**

Update to Zoning Ordinance/Local Coastal Plan Implementation Plan to repeal and replace Zoning Code Section 17.96.170 Outdoor Dining in Public Right of Way, amend Section 17.120.030 Design Permits When Required, and add Section 17.96.175 Outdoor Dining on Public Property.

The Zoning Code serves as the Implementation Plan of the City's Local Coastal Program and must be certified by the Coastal Commission prior to taking effect in the Coastal Zone.

Environmental Determination: Categorical Exemption 15305 and 15311

Property: The draft ordinance affects all properties within the Mixed use, Commercial, and Zones in the City of Capitola.

Representative: Katie Herlihy, Community Development Director, City of Capitola

**OVERVIEW:** The City is considering an update to the zoning code to permit outdoor dining within the Mixed-Use Neighborhood (MU-N), Mixed-Use Village (MU-V), Community Commercial (C-C), and Regional Commercial (C-R) zoning districts. The proposed outdoor dining program would allow sidewalk dining and street dining decks located within the public right-of-way and on private property with the appropriate City issued permit.

**BACKGROUND:** In June of 2020, in response to the COVID-19 pandemic and the ensuing social distancing orders, the City issued temporary permits to local restaurants to provide outdoor dining. The existing outdoor dining Covid-19 temporary use permits are valid through January 3, 2022.

On April 22, 2021, City Council directed staff to develop a program for permanent outdoor dining.

On June 24, 2021, staff presented data and background on a permanent parklet program and reviewed key elements that could be included in a program. Staff also provided City Council the results of two public surveys, which are included as attachments. Council provided direction on some key elements for an outdoor dining program and requested staff bring additional information regarding allocation of parking spaces, maintenance, safety, program timing, winterization, and Coastal Commission certification.

On July 22, 2021, staff provide City Council an update on the requested information. The City Council directed staff to proceed with the outdoor dining ordinance and a prototype design in an effort to have a program in place in the spring of 2022.

On September 30, 2021, the public review draft of the outdoor dining ordinance was published on the City website and within the Planning Commission agenda packet.

On October 7, 2021, the Planning Commission reviewed the draft outdoor dining ordinance, provided staff with direction, and continued the public hearing to the November 4, 2021, Planning Commission meeting. The Planning Commission requested additional public notice beyond the requirements of the code. Postcards were sent to all residents and businesses within the village. Public notice was posted throughout the village and on outdoor dining decks.

The Planning Commission provided the following direction at the October 7, 2021, meeting:

1. Aesthetics and Design: Aesthetics and design are a priority for private development within city streets and sidewalks. The draft language of “high quality, durable” must be strengthened to be more objective and guide applicants. Requirements should be added to ensure the design addresses stormwater. Also, Commissioner Westman suggested that it would be helpful to review the prototype design for the diagonal space simultaneously with the outdoor dining ordinance and suggested including the BIA in the prototype design.
2. Review process: Draft ordinance allows administrative approval of sidewalk dining. Modify to require Planning Commission review of a design permit for sidewalk dining.
3. Music: Draft ordinance prohibits *amplified* music. Modify to prohibit all music.
4. Signs. Draft ordinance references sign chapter of zoning code. Modify to be more specific and either prohibit signs on outdoor dining or include specific details of size and location for one sign on the outdoor dining.
5. Activated space: Add a requirement for restaurant to activate space. Updated to require restaurant be open a minimum of five days per week and utilize outdoor dining while open, weather permitting.
6. Location of Street Dining Decks: Draft ordinance did not include street names where street dining decks would be allowed. Update to include street names but do not include Capitola Avenue because of safety.
7. Bicycle Parking: Draft ordinance requires bicycle parking within outdoor dining deck design. Update to allow an alternative to the bicycle parking requirement. Updated to include a fee in-lieu option. In-lieu fund will create central bicycle parking locations within the village.
8. Coastal Access Funds: Increase specificity in what the funds will be spent on for Coastal access.
9. Administrative Policy: The original draft ordinance allowed the City Manager to authorize the outdoor dining administrative policy. The Planning Commission directed staff to modify the ordinance to require City Council authorization of the administrative policy. Also, Planning Commission requested a copy of the draft administrative policy be published for the November 4, 2021, meeting. The administrative policy is included as Attachment 1.
10. Lottery method for parking allocation. The Planning Commission raised concerns for the proposed lottery and equity in distribution. Recommendations include phasing the parking spaces over multiple years, having a two-space minimum, and replacing the lottery system with City selected appropriate locations based on safety, air quality, and adequate spacing of dining and parking along a street. The Commission also raised questions regarding the three-year expiration and what happens after three years. An overview on the lottery system is included as Attachment 2.

#### **DISCUSSION:**

The draft ordinance modifies three sections of the Capitola Municipal Code, including Section 17.96.170 for outdoor dining within the street right-of-way (public property), Section 17.96.175

for outdoor dining on private property, and Section 17.120.030 for when Design Permits are required. The ordinance specifies the permit review process, operating and design standards, required findings for approval, and enforcement. The outdoor dining ordinance will be administered by staff and all discretionary reviews completed by Planning Commission. The updated draft ordinance includes the Planning Commission recommendation made on October 4, 2021, in red. The outdoor dining ordinance requires Planning Commission recommendation, City Council adoption, and Coastal Commission certification.

Because outdoor dining will be permitted within the public right-of-way, the ordinance will be accompanied by an administrative policy to provide guidance on how the City will lease the right-of-way for outdoor dining, including details for allocation of spaces, fees, and lease terms.

### **Draft Ordinance**

The draft ordinance establishes standards and permit requirements for outdoor dining in the public right-of-way (§17.96.170) and on private property (§17.96.175), and updates the design permit section of the code to require a design permit for custom street dining decks (§17.120.030). The following is a summary of key elements of the outdoor dining ordinance:

Location: The ordinance specifies which zoning districts sidewalk dining and street dining decks are allowed in. Sidewalk dining is allowed in the MU-N, MU-V, C-C, and C-R zoning districts. Within the MU-V, sidewalk dining is specifically allowed on Monterey Avenue and the Capitola Wharf, immediately adjacent to the restaurant it serves. Capitola Avenue is not included in the permitted locations for sidewalk dining, therefore the current sidewalk dining on Capitola Avenue (Reef Dog Deli) would not be permitted under the new ordinance.

Street dining decks are permitted solely in the MU-V on Esplanade, Monterey Avenue, and San Jose Avenue. The City Council originally directed staff to include Capitola Avenue in the permissible locations for outdoor dining. At the October meeting, Planning Commission recommended removing Capitola Avenue from the permissible locations due to safety concerns of locating a dining deck within a city arterial.

Section 17.96.175 allows all eating or drinking establishment within any zoning district to provide outdoor dining on their private property with a conditional use permit.

### **Request for Direction:**

1. Sidewalk dining will be allowed on Monterey Avenue and the Capitola Wharf, immediately adjacent to the restaurant it serves. Would the Planning Commission like to modify the proposed locations for sidewalk dining?
2. Street dining decks are permitted solely in the MU-V on Esplanade, Monterey Avenue, and San Jose Avenue. Would the Planning Commission like to modify the proposed street dining deck locations?

Maximum Number of On-Street Parking Spaces: In June of 2020, the COVID-19 temporary use permit program utilized over 50 parking spaces within the village for outdoor dining. Coastal Commission staff provided guidance to city staff to reduce the overall amount of displaced parking utilized under the COVID-19 temporary use permit program. The City Council supported this recommendation and instructed staff to draft the ordinance with a maximum of 25 parking spaces. The ordinance and the administrative policy include the maximum of 25 spaces.

Permit Review Process: As drafted, an approved prototype street dining deck would be reviewed by staff administratively. Sidewalk dining areas and custom street dining decks would require approval of a design permit by the Planning Commission. The original draft ordinance allowed administrative review of sidewalk dining areas. At the recommendation of the Planning Commission, the updated draft requires Planning Commission review of a design permit for all sidewalk dining areas in the MU-N, MU-V, C-C, and C-R zoning districts.

**Request for Direction:**

3. For sidewalk dining areas, should a design permit be required in all zoning districts or only within the MU-V?

Blanket Coastal Development Permit: At the direction of the City Council, staff is currently seeking an architect to create a prototype street dining deck which complies with all standards within of the ordinance. Staff will initiate the design process with the contracted architect followed by Planning Commission review and fine tuning the design within public hearings. Once the prototype design is created, the City will apply for a blanket Coastal Development Permit (CDP) application for the prototype street dining deck reviewed by the Planning Commission. The Coastal Commission staff allows a blanket CDP to act as an overarching permit which can be applied to multiple properties within the coastal zone. Upon Planning Commission's approval, the blanket CDP would be applicable to any application utilizing the prototype design.

Design Permits Findings: The draft ordinance includes four required findings for a design permit related to outdoor dining, including: (1) compliance with all applicable codes and laws, (2) compliance with the local coastal program, (3) consistency with the purpose of the zoning districts, and (4) use of high-quality, durable materials that can withstand inclement weather. At the direction of Planning Commission, new objective criteria was added within the development standards to provide clarity on appropriate high-quality, durable materials. The new standard for materials states, "Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are not allowed."

**Request for Direction:**

4. The new standard for materials states "Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are not allowed." Are there any other materials the Planning Commission would like to specifically allow or prohibit?

Good Standing: Through the implementation of the free temporary outdoor dining program in response to Covid-19, it was evident that not all restaurants maintain outdoor dining to the same standard. There were ongoing issues with trash, upkeep of plants, and general maintenance of the outdoor space and furniture. Since the permanent program will require a substantial financial investment by individual businesses, staff is optimistic that the businesses opting into the program will have a vested interest in maintaining their outdoor dining.

Within the draft ordinance, an applicant must be in good standing to apply for a permit for outdoor dining. “Good standing” is defined in the ordinance to mean that within the past twenty-four months, the applicant has not been issued a notice of abatement, or violation, or been subject to any code enforcement proceedings related to an ABC license, entertainment permit, or use permit by the City or any other regulatory or permitting agency. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice.

Use of Permit Fees in Coastal Zone: Coastal Commission staff recommended that a portion of the funds collected by the City for the lease of the public parking spaces be utilized to reinvest in coastal access including the shuttle program, coastal park beautification, coastal access signage, new bike racks, sidewalk improvements, maintenance of existing parking, etc.. The draft ordinance incorporates this request by including the following standard, “For sidewalk dining and street dining decks in the coastal zone, the City shall utilize no less that 50 percent of permit fees received for coastal access programs, maintenance, and improvements.”

#### Operation and Development Standards

The operation and development standards include regulations related to street dining decks and sidewalk dining. The operational standards limit the program to the eating establishments, prohibit music, establish maximum hours of operation and minimum activation requirements, and identify requirements for trash removal and maintenance. The development standards include minimum sidewalk widths, limits the location to the eating establishment frontage, and requirements for bicycle parking, signs, and materials. At the direction of Planning Commission, staff modified the draft ordinance related to signs, stormwater drainage, trash and maintenance, sound, bicycle parking, activation requirements, and materials, as described below:

- The original draft did not include standards for what is allowed within a sidewalk dining area. The updated ordinance limits the area to tables and chairs. In addition, design elements required for ABC permit compliance for separation (fences, ropes, planters, etc.), may be included in the design but shall not exceed 36-inches in height.
- The original draft referenced the sign code and did not include any specific standards for signs for outdoor dining. The updated ordinance includes an allowance for one informational sign. The sign is limited to two square feet in size and must be informational with a message such as “watch your step” or “for paying customers only”.
- The original draft did not include stormwater requirements. They were added to the updated draft requiring that dining decks not block the drainage flow along the gutter line or access into any drain inlet or other drainage/stormwater facility.
- The original draft did not include standards for utilities. The updated ordinance requires that outdoor dining not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.
- In terms of trash and maintenance, three new standards were added to ensure trash is picked up and properly disposed of; flower boxes and planters contain live, healthy vegetation; and all tables, chairs, equipment, and structures are kept clean and operational.
- The original draft prohibited amplified sound including *amplified* music. The update prohibits amplified sound and *all* music.
- The original draft requires two bicycle parking spaces for each eliminated vehicle parking space within the street deck design or on the private property. The updated draft adds

an alternative to pay an in-lieu fee towards a central bicycle parking location in the village.

- The original draft did not include a requirement for activation of the outdoor dining. The updated draft requires outdoor dining to be open for use a minimum of five days a week, except in cases of inclement weather.
- The original draft did not include objective standards for permissible materials. The updated draft specifies that “allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are not allowed.”

**Request for Direction:**

5. Should the draft ordinance prohibit all signs, allow for one informational sign as drafted, or be modified to allow a business identification sign or other type of sign?
6. Does the Planning Commission support the alternative for applicants to pay an in-lieu fee towards a central bicycle parking location in the village?
7. The ordinance has been modified to required outdoor dining to be open for use a minimum of five days per week. Does the Planning Commission support the new standard?

Enforcement: The original draft included multiple standards for enforcement. Since the property is being leased from the City, the most practical and expedient way to enforce compliance is through the administrative policy relative to the lease and revokable encroachment permit. The section on enforcement has been modified to reference applicable sections of code and the administrative policy.

Coastal Commission Review and Consistency with the Local Coastal Program (LCP)

The Coastal Commission must certify the outdoor dining ordinance prior to it taking effect in the Coastal Zone. In June, staff began working with Coastal Commission staff to receive early feedback on a future program. The Coastal Commission staff expressed concerns with outdoor dining related to the Coastal Act’s goal of maximizing public access and public recreation. In their opinion, the outdoor dining essentially converts public space which would otherwise be used to access the coast, to private space.

To receive Coastal Commission certification, mitigation for public access concerns raised by Coastal staff should be incorporated into the outdoor dining program. Coastal staff suggested the following measures to help minimize and mitigate the impacts to public access/recreation to the maximum extent feasible:

1. Reduce the overall amount of displaced parking spaces from what was originally permitted under the COVID-19 temporary use permit program.
2. Initiate the program with temporary (i.e., 1-5 year) authorization that requires a Coastal Development Permit (CDP) extension, thereby building in the opportunity to re-evaluate the program once it has been operating, making any changes desired or necessary, and ensuring LCP/Coastal Act consistency.
  - a. Issue one CDP for the entire outdoor dining program as opposed to individual CDPs for each business.
3. Use funds from outdoor dining to reinvest in coastal access including the shuttle program, coastal park beautification, coastal access signage, new bike racks, sidewalk improvements, maintenance of existing parking, etc.



The draft ordinance incorporates elements that address all Coastal Commission staff suggestions to mitigate impacts to public access and recreation and ensure the ordinance is consistent with the City’s LCP. The number of outdoor dining spaces is capped at 25, which is less than half the number of spaces allowed under the COVID-19 temporary use permit program. As directed by City Council, the maximum lease term is three years. This will allow enough time to see how the program is operating and adjust as necessary. The ordinance includes a requirement that no less than 50 percent of revenues received from outdoor dining be utilized for coastal access programs, maintenance, and improvements. The City currently allocates more than \$800,000 per year for coastal access-related programs. If all 25 spaces are ultimately leased, the parklet program would generate \$85,000 per year, and could be used to fund roughly 11% of the City’s annual coastal access-related expenditures.

Outdoor Dining Draft Policy

The outdoor dining will be located within the public right-of-way, an area owned and maintained by the City. The ordinance is accompanied by an administrative policy to provide guidance on how the City will lease the right-of-way in the Village for outdoor dining, allocate parking spaces, and charge fees. The policy also outlines required permits, and the minimal lease terms for a revokable encroachment permit, including enforcement for violations. There is some overlap between the policy and the ordinance, as the policy will be provided to applicants as an overview of the City’s outdoor dining program. The administrative policy for the Village Outdoor Dining Program is included as Attachment 1.

The following table includes the City Council direction on key program elements which are included in the policy. An explanation of the lottery system is included as Attachment 2.

	<b>City Council Direction on Key Program Elements</b>
<b>Overall Cap</b>	<ul style="list-style-type: none"> <li>• Limit number of on street parking spaces allocated to the program to 25 (~50% of existing)</li> <li>• Limit businesses to parking spaces fronting their businesses</li> </ul>
<b>Allocation of Parking Spaces</b>	<ul style="list-style-type: none"> <li>• Lottery System for 25 parking spaces. The details of a lottery system would be drafted into a future policy, but at a minimum would include the following steps:  <u>Step 1.</u> Open application period for 45 days, with a required \$500 deposit per space (credited towards maintenance deposit).  <u>Step 2.</u> If the total requested parking spaces are less than 25, award the spaces to the applicants.  <u>Step 3.</u> If the total requests exceed 25, a lottery will take place. First round assign one or two spaces to each applicant. Second round, hold a lottery for the remainder of the spaces for those requesting additional spaces.</li> </ul>
<b>Fees</b>	<ul style="list-style-type: none"> <li>• Set City permit fees at zero</li> <li>• Provide no construction assistance to businesses</li> <li>• Charge rent space of \$3,400/parking space per year with annual CPI adjustment</li> </ul>

<b>Lease Term</b>	<ul style="list-style-type: none"> <li>• 3 years</li> </ul>
<b>Maintenance</b>	<ul style="list-style-type: none"> <li>• Subject to a lease agreement and deposit with City.</li> <li>• Provisions requiring the outdoor dining decks be maintained and kept clean.</li> <li>• Unmaintained dining decks would first receive courtesy noticing with elevate enforcement, including fines and removal. Cost of removal will be covered with the deposit.</li> </ul>
<b>Safety</b>	<ul style="list-style-type: none"> <li>• Engineered safety measures will be incorporated into the prototype designs and be a requirement of any custom design developed.</li> </ul>

Next Steps: The Planning Commission recommendation will be reviewed by the City Council on November 23, 2021, unless the ordinance is continued. All recommendations provided by the Planning Commission on November 4, 2020, will be incorporated into the draft ordinance through redlines and strikeout for City Council review.

The City Council will review the ordinance at two hearings for the first and second readings. The dates of the hearings are tentatively scheduled for November 23, 2021, and December 9, 2021. Upon adoption, the ordinance will be submitted to the Coastal Commission for certification. The Coastal Commission has 60 working days from the time a complete application is submitted to take final action on an LCP amendment. Staff anticipates adoption in March of 2022.

While the ordinance is under review by the Coastal Commission, staff will begin work on the prototype design. Staff anticipates bringing drafts of the prototype design before Planning Commission in February and March of 2022. Upon adoption of the LCP amendment, the Planning Commission will review an application for a blanket coastal development permit and design permit for the outdoor dining prototype design. This will likely occur in early April of 2022, providing restaurants with adequate time to construct a prototype design prior to peak season.

**CEQA**

The project qualifies for the Categorical Exemption found at CEQA Guidelines pursuant to Section 15305 (Class 5) and 15311 (Class 11) of the California Environmental Quality Act (CEQA). The Class 5 categorical exemption (Minor Alterations in Land Use Limitations) covers projects that consist of minor alterations in land use limitation in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The Class 11 categorical exemption (Accessory Structures) covers projects that consist of construction or placement of minor structures that are accessory to existing commercial, industrial, or institutional facilities. The proposed project is consistent with these two exemptions, because the requested action will not result in a direct or reasonably foreseeable change in the environment and because there is no possibility that the activity in question may have a significant effect on the environment.

**RECOMMENDATION**

Staff recommends the Planning Commission review the draft ordinance and recommend approval to the City Council.

**DRAFT ORDINANCE**

Note, all staff modifications and Planning Commission recommended edits from the October 7, 2021 meeting are in red.

**ORDINANCE NO. XXXX**

**AN ORDINANCE OF THE CITY OF CAPITOLA  
REPEALING AND REPLACING MUNICIPAL CODE SECTIONS 17.96.170, AMENDING  
MUNICIPAL CODE SECTION 17.120.030,  
AND ADOPTING SECTION 17.96.175 RELATED TO  
OUTDOOR DINING IN THE PUBLIC RIGHT OF WAY**

**WHEREAS**, the State of California and Santa Cruz County established social distancing requirements in response to the COVID-19 pandemic that prohibited indoor dining at restaurants in Capitola; and

**WHEREAS**, in response to the pandemic and social distancing orders, the City issued temporary use permits to local restaurants to provide outdoor dining; and

**WHEREAS**, in 2020 and 2021 approximately 24 restaurants in Capitola were granted temporary use permits under this program to provide outdoor dining; and

**WHEREAS**, on April 22, 2021, the City Council directed staff to develop a program for permanent outdoor dining and to bring the program back to the Council for review and possible adoption;

**WHEREAS**, Municipal Code Section 17.96.170 contains existing requirements for temporary sidewalk dining in the public right-of-way; and

**WHEREAS**, the proposed program for permanent outdoor dining would replace existing Municipal Code Section 17.96.170 with new standards to allow for street dining decks in addition to sidewalk dining;

**WHEREAS**, the City aims to allow for streamlined approval of prototype street dining decks utilizing a design that has been preauthorized by the Planning Commission.

**WHEREAS**, the City aims to balance the desire for permanent outdoor dining in the public right-of-way with adequate public parking and coastal access;

**WHEREAS**, City staff consulted with Coastal Commission staff in the preparation of the Zoning Ordinance amendments to ensure that the proposed program and ordinance would comply with the California Coastal Act and Capitola's Local Coastal Program; and

**WHEREAS**, pursuant to Vehicle Code section 22507(a), cities may, by ordinance or resolution restrict or otherwise remove parking from City streets during all or certain hours of the day; and

**WHEREAS**, the proposed Zoning Ordinance amendments to allow for permanent outdoor dining in the public right-of-way qualify for the Exemption found at CEQA Guidelines Section 15305 and 15311; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on October 7, 2021, at which time it reviewed the proposed amendments, considered all public comments on the revisions and related CEQA exemption, and provided a unanimous positive recommendation on the proposed ordinance; and

**WHEREAS**, based upon the Planning Commission recommendation, the City Council determined that the amendments are consistent with the General Plan and that the revisions would be internally consistent with all other provisions of the Municipal Code.

**WHEREAS**, the amendments would become a component of Implementation Plan of the City's Local Coastal Program and is intended to be implemented in a manner that is in full conformance with the California Coastal Act.

**BE IT ORDAINED** By the City of Capitola as follows:

**Section 1.** The above findings are adopted and incorporated herein.

**Section 2.** Section 17.96.170 (Temporary Outdoor Dining) of the Capitola Municipal Code is hereby repealed in its entirety and replaced with Outdoor Dining in Public Right of Way with additions shown as underline and deletions shown with ~~strikethrough~~ to read as follows:

~~17.96.170 Temporary Outdoor Dining~~

~~This section establishes requirements for temporary outdoor dining areas located on a public sidewalk or other area within the public right of way.~~

- A. ~~Required Permits.~~** ~~Temporary outdoor dining within the public right of way requires an Administrative Permit and an Encroachment Permit. Temporary outdoor dining may require a Coastal Development Permit as specified by Chapter 17.44 (Coastal Overlay Zone) if any part of the site is located in the coastal zone and the proposed development shall conform with the CDP findings for approval as specified in 17.44.130 (Findings for Approval).~~
- B. ~~Permitted Zoning Districts.~~** ~~Temporary outdoor dining within the public right of way is allowed in the Commercial Community (C-C), Commercial Regional (C-R), and Mixed Use, Neighborhood (MU-N) zoning districts. Temporary outdoor dining within the public right of way is not permitted in the Mixed Use Village (MU-V) zoning district.~~
- C. ~~Standards.~~** ~~Temporary sidewalk dining shall comply with the following standards.~~
1. **~~Location.~~** ~~Outside dining is permitted on the public sidewalk:~~
    - a. ~~When incidental to and part of a restaurant; and~~
    - b. ~~Along the restaurant's frontage.~~
  2. **~~Number of Dining Areas.~~** ~~An indoor restaurant may operate only one outside dining area confined to a single location.~~
  3. **~~Safe Passage.~~**
    - a. ~~Temporary sidewalk dining is permitted only where the sidewalk is wide enough to adequately accommodate both the usual pedestrian traffic in the area and the operation of the outside dining area.~~

~~b. The sidewalk immediately adjacent to the restaurant shall have adequate space to accommodate tables and chairs and shall provide adequate safe passage along the sidewalk for pedestrian and wheelchair users of the sidewalk. Safe and adequate passage of at least 4 feet in width shall be provided along the sidewalk and from the curb to the sidewalk. No tables or chairs or any other objects shall be placed or allowed to remain on any sidewalk that inhibit such passage.~~

~~4. Furniture and Signage Location.~~

~~a. Tables and chairs in a sidewalk dining area shall be set back at least 2 feet from any curb and from any sidewalk or street barrier, including a bollard, and at least 8 feet from a bus stop.~~

~~b. All outdoor dining furniture, including tables, chairs, umbrellas, and planters, shall be movable.~~

~~c. All temporary improvements to separate the outdoor dining area from the sidewalk, such as a railing, shall relate to the architectural design of the primary restaurant structure in color, materials, and scale.~~

~~d. Umbrellas shall be secured with a minimum base of not less than 60 pounds.~~

~~e. All signs are subject to Chapter 17.80.~~

~~5. Food and Beverages. The service of alcoholic beverages within the sidewalk dining area requires a Conditional Use Permit, and shall comply with the following requirements:~~

~~a. The outside dining area shall be situated immediately adjacent to and abutting the indoor restaurant which provides it with food and beverage service.~~

~~b. The outside dining area shall be clearly separate and delineated from the areas of the sidewalk which remains open to pedestrian traffic.~~

~~c. One or more signs shall be posted during hours of operation stating that alcohol is prohibited outside of the dining area.~~

~~d. The outside dining area shall receive all licenses required for on-site consumption of alcoholic beverages from State authorities.~~

~~6. Trash and Maintenance.~~

~~a. Storage of trash is prohibited within or adjacent to the sidewalk dining area. All trash and litter shall be removed as it accumulates or otherwise becomes a public nuisance.~~

~~b. The sidewalk dining area, including the sidewalk surface and furniture, shall be maintained in a clean and safe condition.~~

~~7. Hours of Operation. Sidewalk dining may occur between 7 a.m. and 10 p.m. seven days a week. Tables, chairs, other outdoor dining furniture, and all other structures and materials associated with the outdoor dining area shall be removed from the sidewalk and stored indoors at night and when the sidewalk dining area is not in operation.~~

### 17.96.170 Outdoor Dining in Public Right of Way

**A. Purpose.** This section establishes standards and permit requirements for outdoor dining in the public right-of-way.

**B. Definitions.**

1. **Outdoor Dining.** “Outdoor dining” means and includes both sidewalk dining and street dining decks.
2. **Sidewalk Dining.** “Sidewalk dining” means the use of an outdoor sidewalk area within the public-right-of-way, by a private business that is an eating and drinking establishment, for eating and drinking activities.
3. **Street Dining Deck.** A street dining deck means a platform or similar level surface within the public right-of-way and extending beyond the curb and into a roadway or on-street parking area for use by a private business that is an eating or drinking establishment.
  - a. **Custom Street Dining Deck.** A custom street dining deck is a street dining deck designed by the applicant.
  - b. **Prototype Street Dining Deck.** A prototype street dining deck is a street dining deck utilizing a design that has been preauthorized by the Planning Commission.

**C. Where Allowed.**

1. **Sidewalk Dining.**
  - a. Sidewalk dining is allowed in the MU-N, MU-V, C-C, and C-R zoning districts.
  - b. In the MU-V zoning district, sidewalk dining is allowed only on Monterey Avenue and on the Capitola Wharf **immediately adjacent to the restaurant it serves.**
2. **Street Dining Decks.** Street dining decks are allowed only in the MU-V zoning district **and only on the Esplanade, Monterey Avenue, ~~Capitola Avenue~~, and San Jose Avenue.**

**D. Maximum Number of On-Street Parking Spaces.** A maximum of 25 total on-street parking spaces may be used for street dining decks. Spaces shall be allocated by the City Manager in accordance with administrative policies issued pursuant to this section.

**E. Permits and Approvals.**

1. **Required Permits.** Table 17.96-2 shows permits required for sidewalk dining and street dining decks.

**Table 17.96-2: Permits Required for Outdoor Dining in Public Right-of-way**

Type of Outdoor Dining	Permit Required [2] [3]	Zoning Code Chapter
Sidewalk Dining	<del>Administrative</del> Design Permit	17.116
Street Dining Decks		
Prototype Street Dining Deck [1]	Administrative Permit	17.116

Custom Street Dining Deck	Design Permit	17.120
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[1] Prototype dining deck designs are identified in the adopted Village Outdoor Dining Program Administrative Policy No. I-36.

[2] Outdoor dining in the public right-of-way also requires an encroachment permit pursuant to Municipal Code Chapter 12.56. Minor encroachment permits for applications for prototype street dining decks may be issued by the Public Works Director and major encroachment permits for custom street dining decks may be issued by the Planning Commission.

[3] A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone).

2. **Administrative Permit Standards.** All applications for an Administrative Permit are reviewed and acted on by the Community Development Director and must comply with the following standards:

- a. ~~Any included~~The street dining deck must be designed consistent with a prototype design approved by the Planning Commission.
- b. ~~The sidewalk dining area or~~The street dining deck must comply with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.
- c. If located in the coastal zone, the ~~sidewalk dining area or~~ street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.
- d. The street dining deck ~~or sidewalk dining area~~ must utilize high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
- e. ~~A prototype~~The street dining decks must use a design authorized by a valid coastal development permit.

3. **Design Permit Findings.** All applications for a Design Permit are viewed and acted on by the Planning Commission. Notwithstanding Municipal Code Section 17.120.080 (Findings for Approval), ~~for Design Permits issued pursuant to this section, the Planning Commission shall make the following findings and need not make those findings set forth in section 17.120.080~~~~the Planning Commission shall not make the Design Permit findings in Section 17.120.080, and instead shall make the following findings:~~

- a. The ~~sidewalk dining area or~~ street dining deck complies with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.
- b. If located in the coastal zone, the ~~sidewalk dining area or~~ street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.
- c. The design of the ~~sidewalk dining area or~~ street dining deck supports a safe, inviting, and lively public realm consistent with the purpose of the MU-V zoning district as provided in Section 17.20.040 (Purpose of the Mixed Use Zoning Districts).

- d. The sidewalk dining area or street dining deck materials include high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
4. **Good Standing.** An applicant must be in good standing to apply for a permit for outdoor dining. For purposes of this section, “good standing” shall mean that within the twenty-four months directly preceding submission of a complete application for an Administrative Permit or Design Permit, the applicant has not been issued a notice of abatement, violation, or been subject to any code enforcement proceedings related to an ABC license, entertainment permit, or use permit by the City or any other regulatory or permitting agency. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice.
5. **Other Permits and Approvals.**
  - a. Sidewalk and street dining decks are subject to all other applicable permits, licenses and/ or entitlements required by State or local law.
  - b. A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone). Approval of a CDP requires conformance with the CDP findings for approval as specified in Section 17.44.130 (Findings for approval).
6. **Use of Permit Fees in Coastal Zone.** For sidewalk dining and street dining decks in the coastal zone, the City shall utilize no less that 50 percent of permit fees received for coastal access programs, maintenance, and improvements.

#### F. Administrative Policies.

1. The City Council Manager is authorized to issue administrative policies regarding the administration and leasing of the public right-of-way for sidewalk dining and street dining decks, including but not limited to the application and selection process for applicants, maintenance requirements, and other related policies.
2. In the event of any conflict between the provisions of this chapter and the administrative policy, the more restrictive requirement shall control.

#### G. Operating and Development Standards. All Sidewalk Dining and Street Dining Decks shall comply with the following standards:

1. **Must Serve Eating and Drinking Establishment.** Outdoor dining in the public right-of-way is allowed only when incidental to and a part of an “eating and drinking establishment” as defined in Chapter 17.160 (Glossary).
2. **One Facility Only.** An eating establishment may have either sidewalk dining or a street dining deck. An eating establishment may not have both sidewalk dining and a street dining deck.
3. **Limited to Eating Establishment Frontage.**
  - a. Sidewalk dining is allowed on the sidewalk directly adjacent to the eating establishment street frontage.



- b. Street dining decks in the public right-of-way are only allowed on parking spaces that are:
    - (1) Wholly or partially located in the right-of-way; and
    - (2) Directly adjacent to the eating establishment street frontage unless authorized by paragraph (b) below.
  - c. The City may allow an outdoor dining area to extend beyond the eating and drinking establishment frontage if:
    - (1) Due to the road and parking space layout, the outdoor dining ~~eating~~ area cannot be designed without extending the area beyond immediately adjacent parking spaces;
    - (2) Extending the outdoor dining area will not have significant impact on adjoining businesses as determined by the permit review authority; and
    - (3) Extending the outdoor dining area will not adversely impact coastal access.
4. **Sidewalk Width.** Outdoor dining areas in the public right-of-way shall provide a minimum clear width within the sidewalk of at least:
- a. 5 feet in the MU-V zoning district; and
  - b. 4 feet in all other zoning districts.
5. **Sidewalk Dining Areas.** Sidewalk dining areas shall be limited to the placement of tables and chairs. In addition, design elements required for ABC permit compliance for separation (fences, ropes, planters, etc.), may be included in the design but shall not exceed 36-inches in height.
6. **Signs.**
- a. Commercial signs, including business identification signs are not permitted in or on any portion of the improvements of a sidewalk dining area or street dining deck.
  - b. One informational sign not to exceed two square feet providing information such as “watch your step” or “for paying customers only” is allowed.
- ~~All signs associated with an outdoor dining area in the public right-of-way must comply with Zoning Code Chapter 17.80 (Signs).~~
7. **Stormwater Drainage.** All street dining decks must allow for adequate stormwater drainage.
- a. Dining decks shall not block the drainage flow along the gutter line.
  - b. Dining decks shall not block access into any drain inlet or other drainage/stormwater facility.
8. **Utilities.** All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.
9. **Trash and Maintenance.** An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City, including as follows:
- a. All trash must be picked up and properly disposed of.

- b. All flower boxes and planters must contain live, healthy vegetation.
  - c. All tables, chairs, equipment, and structures must be kept clean and operational.
10. ~~Amplified Sound.~~ Music and amplified sound ~~are is~~ not allowed in an outdoor dining area.
11. **Bicycle Parking for Street Dining Decks.**
- a. A street dining deck that eliminates an on-street parking space must include a bicycle parking rack integrated in the street dining deck design or within the private property of the eating or drinking establishment.
  - b. The bicycle parking rack must provide a minimum of two bicycle parking spaces for each eliminated vehicle parking space.
  - c. ~~As an alternative to providing the bicycle parking rack, the City may allow an applicant to pay an in-lieu fee which fee shall be deposited into the City's in-lieu bike fund. to create a central bicycle parking location.~~
12. **Hours of Operation.**
- a. Outdoor dining in the public right-of-way may occur between 7 a.m. and 10 p.m. seven days a week.
  - b. The City may allow extended hours for street dining decks for special events and holidays.
13. **Open for Use.** All outdoor dining in the public right-of-way must be open for use a minimum of five days per week, except in cases of inclement weather. "Open for use" means that the eating or drinking establishment must allow customers to use the outdoor dining area when the establishment is open for business.
14. **Materials.** Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are not allowed.

## H. Enforcement.

1. **General.**
- a. The City shall have all enforcement remedies permitted by law, including but not limited to those in Municipal Code Title 4 (General Municipal Code Enforcement).
  - b. Any outdoor dining facility may be subject to inspection by the City on an annual basis or as needed to ensure compliance with this section, conditions of approval, and administrative procedures.
  - ~~c. The Community Development Director is authorized to issue administrative citations pursuant to Municipal Code Chapter 4.14 (Administrative Citations), in amounts set forth by separate resolution of the City Council.~~
2. ~~Revocation of Administrative and Design Permits.~~

- ~~a. After a permit holder is issued a fourth administrative citation, the Community Development Director or Public Works Director may revoke any Administrative Permit and the Planning Commission may revoke any Design Permit.~~
- ~~b. Grounds for revocation shall be the permit holder's lack of compliance with the requirements in this section or any permit issued pursuant to this section.~~
- ~~c. The decision regarding revocation is appealable pursuant to the procedures in Chapter 2.52 (Appeals to City Council).~~

**Section 3.** Section 17.196.175: Outdoor Dining on Private Property within Chapter 17.96 of the Capitola Municipal Code is hereby adopted to read as follows:

**17.96.175 Outdoor Dining on Private Property**

- A. Conditional Use Permit.** An eating establishment may provide outdoor dining on private property with a Conditional Use Permit and consent of private property owner that such use is permitted on the property.
- B. Coastal Development Permit.** Outdoor dining on private property in the coastal zone may require a Coastal Development Permit pursuant to Chapter 17.44 (Coastal Overlay Zone) independent of and in addition to any other required permit or approval.

**Section 4.** Section 17.120.030 (Design Permits – When Required) of Chapter 17.120 of the Capitola Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~):

**Chapter 17.120 Design Permits**

**17.120.030 When Required**

- C. Types of Projects.** The types of projects that require a Design Permit, and the type of Design Permit for each project, are listed in Table 17.120-1. If a type of development project or activity is not specifically listed in Table 17.120-1, a Design Permit is not required.

**TABLE 17.120-1: PROJECTS REQUIRING DESIGN PERMITS**

Type of Project	Type of Permit
<b>Single-Family Residential Projects</b>	
Ground floor additions to existing single-family homes where the addition is visible from a public street and does not exceed 15 ft. in height, except for exempt additions (Section 17.120.030.B)	Minor Design Permit
Accessory structures greater than 10 ft. in height and/or 120 sq. ft. to 300 sq. ft.	Minor Design Permit
Accessory structures greater than 300 sq. ft.	Design Permit
Upper floor decks and balconies on the side or rear of a home that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Upper floor additions to an existing single-family homes	Design Permit
New single-family homes	Design Permit
<b>Multifamily Residential Projects</b>	
Ground-floor additions less than 15% of total floor area of an existing multifamily structure	Minor Design Permit
Upper floor decks and balconies on the side or rear of a structure that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Accessory structures including garbage and recycling enclosures	Minor Design Permit
Ground-floor additions 15% of total floor area or more to an existing multifamily structure	Design Permit
Upper floor additions to an existing multifamily structure	Design Permit
New multifamily residential structures	Design Permit
<b>Non-Residential Projects (Including Mixed-Use)</b>	
Exterior modifications to an existing structure that do not increase the floor area of the structure	Minor Design Permit
Accessory structures 120 sq. ft. to 300 sq. ft. including garbage and recycling enclosures	Minor Design Permit
Accessory structures greater than 300 sq. ft. including garbage and recycling enclosures	Design Permit
Additions less than 15% of the floor area of an existing non-residential structure where the addition is not visible from the primary street frontage	Minor Design Permit
Additions 15% or more of the floor area of an existing non-residential structure where the addition is visible from the primary street frontage	Design Permit
Additions to an existing non-residential structure of 3,000 sq. ft. or more	Design Permit
New non-residential structures	Design Permit
<u>Custom outdoor dining decks and sidewalk dining areas in the public right-of-way</u>	<u>Design Permit</u>

**D. Single-Family Exemptions.** The following additions to a single-family dwelling are exempt from the Design Permit requirement:

1. Ground-floor single-story additions up to 400 square feet at the rear of the home.
2. Enclosure of an existing recessed entrance up to 25 square feet.
3. Enclosure of an existing open porch up to 50 square feet.
4. Installation of bay windows.
5. A single accessory structures that does not exceed 120 square feet in floor area and 10 feet in height with no connection to water or sewer.
6. Minor exterior modification or replacement of materials on an existing structure including siding, windows, doors, and roof.
7. Other similar minor additions to a single-family dwelling as determined by the Community Development Director.
8. Upper floor decks and balconies immediately adjacent to a street or public open space.

**E. Non-Residential Exemptions.**

1. Prototype outdoor dining decks that comply with Section 17.96.170 (Outdoor Dining in Public Right of Way) are exempt from the Design Permit requirement.

**Section 6:** Compliance with California Environmental Quality Act (CEQA)

The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15305 (Class 5) and 15311 (Class 11) of the California Environmental Quality Act (CEQA). The Class 5 categorical exemption (Minor Alterations in Land Use Limitations) covers projects that consist of minor alterations in land use limitation in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The Class 11 categorical exemption (Accessory Structures) covers projects that consist of construction or placement of minor structures that are accessory to existing commercial, industrial, or institutional facilities. The proposed project is consistent with these two exemptions, because the requested action will not result in a direct or reasonably foreseeable change in the environment and because there is no possibility that the activity in question may have a significant effect on the environment.

**Section 7:** Severability

The City Council hereby declares every section, paragraph, sentence, cause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

**Section 8:** Effective Date

This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption except that it will not take effect within the coastal zone until certified by the California Coastal

Commission. This Ordinance shall be transmitted to the California Coastal Commission and shall take effect in the coastal zone immediately upon certification by the California Coastal Commission or upon the concurrence of the Commission with a determination by the Executive Director that the Ordinance adopted by the City is legally adequate.

This ordinance was introduced on the \_\_\_ day of \_\_\_, 2021, and passed first reading on the \_\_\_ day of \_\_\_, 2021, and was adopted by the City Council of the City of Capitola on the \_\_\_ day of \_\_\_, 2021, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

APPROVED:

\_\_\_\_\_  
Yvette Brooks, Mayor

ATTEST:

\_\_\_\_\_  
Chloe Woodmansee, City Clerk

**ATTACHMENTS:**

- 1. Capitola Street Frontage Dining Ordinance Noise Memo

Prepared By: Katie Herlihy  
Community Development Dire

**ATTACHMENTS:**

- 2. Outdoor Dining in Capitola Village Policy
- 3. Capitola Street Frontage Dining Ordinance Noise Memo
- 4. Outdoor Dining Public Survey Results
- 5. Outdoor Dining Restaurant Survey Summary
- 6. Zoning Code Certification Process Flowchart
- 7. Letter from English Ales

Prepared By: Katie Herlihy  
Community Development Director



## DRAFT ADMINISTRATIVE POLICY

Number: I-36  
 Issued:  
 Jurisdiction: City Council

### VILLAGE OUTDOOR DINING PROGRAM

#### I. PURPOSE

The purpose of this policy is to define the rules, regulations and conditions of an outdoor dining program on City right of way in the Central Village (MU-V Zoning District). The program allows eligible Village eating and drinking establishments to construct, operate, and maintain outdoor dining areas within on-street parking spaces, designated sidewalk areas, and specific areas on the Capitola Wharf.

This Administrative Policy is authorized under Capitola Municipal Code Section 17.96.170.F

#### II. POLICY

**General Requirements.** All outdoor dining areas shall be operated in conformance with the regulatory requirements of the Americans with Disability Act (ADA), California Building Code, California Department of Alcoholic Beverage Control, Santa Cruz County Environmental Health Department and all other applicable City, County, State and Federal laws. Capitola Municipal Code Section 17.96.170 Outdoor Dining in the Public Right of Way establishes the standards and permit requirements for outdoor dining within the public right of way. Section III of this policy is an overview of the municipal code requirements.

**Authorized Streets & Sidewalk Areas.** In Capitola Village (MU-V Zoning District), outdoor dining in the public right of way is permitted in the following areas:

Public Parking Spaces: Esplanade, Monterey Avenue, Capitola Avenue, San Jose Avenue

Sidewalk Areas: Monterey Avenue

Capitola Wharf: Immediately adjacent to the restaurant (Code section 17.96.170.C)

**Maximum Number of On-Street Parking Space.** The maximum number of public parking spaces that can be utilized for outdoor dining is 25. (Code section 17.96.170.D)

**Size Limitation of Individual Outdoor Dining Areas.** No outdoor dining area shall occupy more than five public parking spaces or 900 square feet of street, sidewalk, or area on Capitola Wharf.

**Good Standing.** An applicant must be in good standing to apply for a permit for outdoor dining. For purposes of this section, "good standing" shall mean that within the twenty-four months directly preceding submission of a complete application for an Administrative Permit or Design Permit, the applicant has not been issued a notice of abatement, violation, or been subject to any code enforcement proceedings related to an ABC license, entertainment permit, or use

permit by the City or any other regulatory or permitting agency. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice. (Code section 17.96.170.E.4)

**Space Allocation Lottery.** If applications for outdoor dining located in public parking spaces exceeds the 25 maximum allocation, the City will hold a lottery to allocate the spaces, using the following procedures.

- Step 1. Open application period for 45 days, with a required \$500 deposit per space (credited towards maintenance deposit).
- Step 2. If the total requests are less than 25, award the spaces to the applicants.
- Step 3. If the total requests exceed 25, evenly distribute one to two spaces per business.
  - If there are less than twelve applicants, assign up to two spaces to each applicant, then proceed to step 4.
  - If there are more than twelve applicants, hold a lottery assigning up to two spaces to each applicant until all 25 spaces have been allocated.
- Step 4. Hold a lottery for the remainder of the spaces for those requesting additional spaces. All applicants that are not allocated their requested number of spaces in Step 3 above, will be given one ticket in the lottery.
- Step 5. The lottery will be held in rounds. If an applicant's ticket is chosen and they receive their requested number of spaces, their ticket will be removed prior to the next round. If the applicant has not reached their requested number of parking spaces, their ticket will be replaced into the hopper for the next round.
- Step 6. Rounds will continue until 25 parking spaces have been allocated.

**Permits.** Applicants must obtain all necessary permits to construct and operate an outdoor dining area. Necessary permits include but are not limited to:

1. A revokable encroachment permit;
2. An administrative permit or design permit pursuant to Capitola Municipal Code Section 17.96.170;
3. A coastal development permit; and
4. A building permit.

**Revokable Encroachment Permit.** Per Capitola Municipal Code 12.56, applicants must receive a revokable encroachment permit from the City of Capitola prior to construction of an outdoor dining area. The revokable encroachment will include, but not limited to, the following terms and conditions:

- 3-year term
- Inspection - City staff shall have the authority to enter the outdoor dining area for any purposes, including to inspect the condition, safety, and compliance with all City issued permits.
- Deposit - Each applicant shall pay a deposit to ensure the dining area is maintained as follows
  - Sidewalk dining - \$500 deposit
  - 1-2 spaces - \$1000 deposit
  - 3-5 spaces - \$1,500 deposit
- Maintenance Standards - All dining areas shall be maintained, including but not limited to the following:
  - All trash must be picked up and properly disposed.



- All flower boxes or planter must contain live, healthy vegetation.
- All tables, chairs, equipment, and structures must be kept clean and operational.
- Applicants shall provide proof of insurance as specified by the City application form.
- Parking space payment – All tenants must pay \$3,400 per parking space, which is approximately \$18 per square foot, per year. This amount shall be adjusted upward annually by increases of the CPI. All rent must be paid in advance. Initial rents must be paid prior to the beginning of construction. The rent in subsequent years is due by January 10<sup>th</sup> for the calendar year. Any partial years rent amounts will be prorated.
- No-subletting - Outdoor dining spaces are for the use of the permit holder only and may not be sublet to any other vendor or business.
- Violations - Violations of the revokable encroachment permit shall be enforced as follows:
  - Upon a first violation by a permit holder, the city manager, or designee, shall mail a written warning to the eating and drinking establishment. The warning shall recite the violation, and advise that future violations may result in fines.
  - Upon a second or subsequent violation by the eating or drinking establishment, the following penalties will apply:
    - A fine not exceeding one hundred dollars for the first violation after the first warning.
    - A fine not exceeding two hundred dollars for the second violation.
    - A fine not exceeding five hundred dollars for the third violation.
    - A permit holder with more than three violations during the lease term may have their permit revoked and be required to remove any improvements associated with the outdoor dining area.
    - Permit holders whose permit is revoked may not receive another encroachment permit for outdoor dining for a period of two years, and only if there are available parking spaces under the 25 space cap. The revoked spaces will be placed back in the lottery system and available for allocation.

**Revokable Encroachment Permit Term Expiration.** All revokable encroachment permits issued for outdoor dining will have a term of three years. Six months prior to expiration the City and permit holder shall review past performance and use of the outdoor dining area. Upon review, either extension or termination may be possible. Extension of the program and any lease shall be at the sole discretion of the Capitola City Council.

**Authorization to Proceed.** Construction of an outdoor dining area may not begin until all required permits have been issued. Starting construction prior to receiving all permits may result in revocation of any applicable permits.

**Construction Timing.** Applicants with assigned parking spaces through the lottery, are required to acquire City permits and complete construction of their street dining deck within six months of the award. After six month, the spaces will be placed back in the lottery system and available for allocation.

III. ADMINISTRATIVE POLICY RELATIVE TO CAPITOLA MUNICIPAL CODE SECTION 17.96.170 OUTDOOR DINING IN THE PUBLIC RIGHT OF WAY

Capitola Municipal Code Section 17.96.170 establishes the standards and permit requirements for outdoor dining within the public right of way. The following is an overview of the municipal code requirements:

**A. Permits and Approvals.**

The following table shows permits required for sidewalk dining and street dining decks.

Type of Outdoor Dining	Permit Required	Zoning Code Chapter
Sidewalk Dining	Design Permit	17.120
Street Dining Decks		
Prototype Street Dining Deck	Administrative Permit	17.116
Custom Street Dining Deck	Design Permit	17.120

**B. Operating and Development Standards.** All Sidewalk Dining and Street Dining Decks shall comply with the following standards:

1. **Must Serve Eating and Drinking Establishment.** Outdoor dining in the public right-of-way is allowed only when incidental to and a part of an “eating and drinking establishment” as defined in Chapter 17.160 (Glossary).
2. **One Facility Only.** An eating establishment may have either sidewalk dining or a street dining deck. An eating establishment may not have both sidewalk dining and a street dining deck.
3. **Limited to Eating Establishment Frontage.**
  - a. Sidewalk dining is allowed on the sidewalk directly adjacent to the eating establishment street frontage.
  - b. Street dining decks in the public right-of-way are only allowed on parking spaces that are:
    - (1) Wholly or partially located in the right-of-way; and
    - (2) Directly adjacent to the eating establishment street frontage unless authorized by paragraph (b) below.
  - c. The City may allow an outdoor dining area to extend beyond the eating and drinking establishment frontage if:
    - (1) Due to the road and parking space layout, the outdoor dining area cannot be designed without extending the area beyond immediately adjacent parking spaces;
    - (2) Extending the outdoor dining area will not have significant impact on adjoining businesses as determined by the permit review authority; and
    - (3) Extending the outdoor dining area will not adversely impact coastal access.
4. **Sidewalk Width.** Outdoor dining areas in the public right-of-way shall provide a minimum clear width within the sidewalk of at least:
  - a. 5 feet in the MU-V zoning district; and
5. **Sidewalk Dining Areas.** Sidewalk dining areas shall be limited to the placement of tables and chairs. In addition, design elements required for ABC permit compliance for separation

(fences, ropes, planters, etc.), may be included in the design but shall not exceed 36-inches in height.

6. **Signs.**

- a. Commercial signs, including business identification signs are not permitted in or on any portion of the improvements of a sidewalk dining area or street dining deck.
- b. One informational sign not to exceed two square feet providing information such as “watch your step” or “for paying customers only” is allowed.

7. **Stormwater Drainage.** All street dining decks must allow for adequate stormwater drainage.

- a. Dining decks shall not block the drainage flow along the gutter line.
- b. Dining decks shall not block access into any drain inlet or other drainage/stormwater facility.

8. **Utilities.** All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.

9. **Trash and Maintenance.** An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City, including as follows:

- a. All trash must be picked up and properly disposed of.
- b. All flower boxes and planters must contain live, healthy vegetation.
- c. All tables, chairs, equipment, and structures must be kept clean and operational.

10. **Sound.** Music and amplified sound are not allowed in an outdoor dining area.

11. **Bicycle Parking for Street Dining Decks.**

- a. A street dining deck that eliminates an on-street parking space must include a bicycle parking rack integrated in the street dining deck design or within the private property of the eating or drinking establishment.
- b. The bicycle parking rack must provide a minimum of two bicycle parking spaces for each eliminated vehicle parking space.
- c. As an alternative to providing the bicycle parking rack, the City may allow an applicant to pay an in-lieu fee which fee shall be deposited into the City’s in-lieu bike fund. to create a central bicycle parking location.

12. **Hours of Operation.**

- a. Outdoor dining in the public right-of-way may occur between 7 a.m. and 10 p.m. seven days a week.
- b. The City may allow extended hours for street dining decks for special events and holidays.

13. **Open for Use.** All outdoor dining in the public right-of-way must be open for use a minimum of five days per week, except in cases of inclement weather. “Open for use” means that the eating or drinking establishment must allow customers to use the outdoor dining area when the establishment is open for business.

14. **Materials.** Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are not allowed.



## MEMORANDUM

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**To:** Ms. Katie Herlihy, City of Capitola

**From:** Jonathan V. Leech, INCE

**Subject:** Noise Assessment  
Proposed Outdoor Dining in Public Right of Way  
New Municipal Code Section 17.96.170

**Date:** September 22, 2021

**cc:** Stephanie Strelow, Dudek

**Attachment(s):** DRAFT Municipal Code Section 17.96.170

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### Introduction

This memorandum presents the results of an assessment regarding the potential for impacts to existing noise-sensitive land uses from the proposed allowance of outdoor dining areas associated with restaurant uses in the MU-N, MU-V, C-C, and C-R zoning districts of Capitola.

### Ordinance Overview

The ordinance would allow a restaurant or café to offer an outdoor dining space to customers that would be located within the sidewalk area in front of the building or on a deck constructed to occupy the on-street parking spaces in front of the building. Such outdoor dining area may not extend beyond the street frontage of the restaurant building, and a maximum of one option would be allowed per restaurant (i.e., either sidewalk area or parking space dining deck). With respect to dining decks, an applicant would have the option to propose a custom design or to employ a prototype design that has been preauthorized by the Planning Commission.

Outdoor dining as described above would only be allowed in the MU-N, MU-V, C-C, and C-R zoning districts of the City of Capitola. Further, a maximum of 25 on-street parking spaces would be permitted in the City for conversion to restaurant dining decks. The permit process for a dining deck of custom design would require approval by the Planning Commission, whereas a proposal employing a prototype dining deck could be approved administratively.

Under the proposed ordinance, outdoor dining in the public right of way would be limited to the hours between 7 a.m. and 10 p.m.; extended hours may be allowed by the City for occasional special events and during holidays. Amplified sound would be prohibited in public right of way dining areas, including amplified music.

Please refer to the complete draft version of Municipal Code Section 17.96.170 for additional details regarding the proposed outdoor dining allowance in the public right of way.

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## Fundamentals of Sound

Although the terms may be used interchangeably in the right context, “sound” is defined as any gas or fluid pressure variation detected by the human ear, and “noise” is unwanted sound. A sound source generates an increase in the air pressure adjacent to the source, and the pressure travels through the air in all directions from the source as a wave; the ear then detects the pressure of the arriving wave, and this pressure is experienced as a sound level. The preferred unit for measuring sound is the decibel (dB), which by way of expressing the ratio of sound pressures to a reference value logarithmically enables a wide range of audible sound to be evaluated and discussed conveniently. On the low end of this range, zero dB is not the absence of sound energy, but instead corresponds approximately to the threshold of average healthy human hearing; and, on the upper end, 120–140 dB corresponds to an average person’s threshold of pain.

The human ear is not equally responsive to all frequencies of the audible sound spectrum. An electronic filter is normally used when taking noise measurements that de-emphasizes certain frequencies in a manner that mimics the human ear’s response to sound; this method is referred to as A-weighting. Sound levels expressed under the A-weighted system are sometimes designated dBA. All sound levels discussed in this report are A-weighted.

The equivalent continuous sound level ( $L_{eq}$ ) is a single dB value which, if held constant during the specified time period, would represent the same total acoustical energy of a fluctuating noise level over that same time period.  $L_{eq}$  values are commonly expressed for periods of one hour, but longer or shorter time periods may be specified. Another descriptor is the Day Night Average Noise Level ( $L_{dn}$ ), which is a 24-hour weighted average often referenced for community noise management. The  $L_{dn}$  average is based upon the measured hourly  $L_{eq}$  values for each hour between 7 a.m. and 10 p.m., and to account for increased sensitivity to noise in the overnight period, 10 dB is added to the average hourly sound levels for each of the hours in this overnight period. CNEL is another 24-hour weighted average, which is similar to  $L_{dn}$  except that 5 dB is also added to each of the hourly average noise levels between 7 p.m. and 10 p.m. For comparison, a noise source of 58 dBA  $L_{eq}$  that is constant throughout the day and night would result in a CNEL or  $L_{dn}$  of 65 dBA.

In the outdoor environment, noise from a stationary source lessens (or attenuates) by 6 dB with each doubling of distance from the source. This occurs because the energy in the sound wave is depleted as it travels through the air. By way of example, noise measured to be 66 dBA at 5 feet from the source outdoors would reduce to 60 dBA at 10 feet from the sound source.

Because sound levels are based on a logarithmic scale, the addition, subtraction, and averaging of sound levels must employ logarithmic based formulas rather than arithmetic equations. For example, 60 dBA + 60 dBA = 63 dBA (not 120 dBA). For outdoor noise levels in the community, 3 dBA is the threshold for a new source to be barely noticeable above ambient levels by a person with health hearing, while a 5 dBA increase would be clearly noticeable. For instance, a new noise source of 65 dBA would be barely noticeable where background levels are 62 dBA; a new noise source of 67 dBA would be clearly noticeable where ambient levels are only 62 dBA.

## Noise Regulation in Capitola

The City of Capitola General Plan Noise Element establishes an exterior noise exposure limit for single-family residential uses of 60 dBA  $L_{dn}$  and a limit of 65 dBA  $L_{dn}$  for multi-family residences and lodging facilities.

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The Capitola noise ordinance (Municipal Code Chapter 9.12) prohibits the generation of loud, irritating or boisterous noise within 200 feet of any residence or lodging facility; no noise level limit is identified in connection with such restrictions.

## Commercial Dining Sound Levels

The proposed allowance of outdoor dining areas would only be associated with an existing restaurant or café, as an incidental or accessory use to the main establishment. As such, cooking and food preparation activities would be restricted to the existing indoor areas of the restaurant or café associated with the outdoor dining area. In addition, amplified sound would not be permitted in the outdoor dining area. Consequently, noise generating activity in the outdoor dining areas would consist of eating and conversation between diners.

The Noise Navigator Sound Level Database (Version 1.8 2016) provides several sound level references for restaurant dining areas. Sound levels vary from 50 dBA  $L_{eq}$  for an elegant bistro, to 60 dBA  $L_{eq}$  for an average family style restaurant, to 65 dBA  $L_{eq}$  for a half-full casual dining restaurant. These measurements are indoors, and no distance is specified from the measurement point to the closest table or to the center of the dining area. One sound level reference is provided for an outdoor dining area, with 52 dBA  $L_{eq}$  identified for “people eating and talking” at 45 feet from the edge of the dining area. Using the standard formula for sound attenuation outdoors, this would equate to a sound level of approximately 76 dBA  $L_{eq}$  at 3 feet from the edge of the dining area.

A common sound level reference is 60 dBA  $L_{eq}$  for normal conversation between 2 people at a distance of 3 feet (*Physics*, Paul A. Tipler, 1976). Doubling the number of people in the conversation, the sound level would be approximately 63 dBA  $L_{eq}$  at 3 feet. Assuming 32 diners in an outdoor dining area, all engaged in conversation, the sound level would be approximately 72 dBA at 3 feet. This compares favorably to the sound level reference derived for people eating and speaking in an outdoor dining area, converted to a distance of 3 feet.

Based upon the above, this assessment uses a reference sound level of 76 dBA  $L_{eq}$  at 3 feet to represent the sound level from outdoor dining areas with a capacity of up to 32 persons.

## Potential Public Right of Way Dining Areas in C-R and C-C Zones

Within the C-R zone, there is only one area where a residential property is adjacent to a location where street frontage dining could be introduced under the proposed ordinance. This location is at the northeast corner of 41<sup>st</sup> Street and Capitola Road. The closest residence to street frontage adjacent to Whole Foods Market/Cafe on Capitola Road is at approximately 50 feet. Dining noise at this distance would be no more than 48 dBA  $L_{eq}$  compared to a traffic noise level of approximately 58 dBA  $L_{eq}$  (converted from CNEL, Capitola General Plan 2019, Figure SN-6).

Within the C-C zone south of Capitola Road, residences exist across 49<sup>th</sup> Street east of the C-C zone boundary, but there are no restaurants in this vicinity. Residences also exist on the north and south side of Reposa Avenue adjacent to the C-C zone boundary, but there are also no existing restaurants in this area. For the C-C zone centered along Bay Avenue, residences are located along the south side of Center Street, but existing commercial development extends to the north side of the right of way, and space to establish outdoor dining does not exist. Residences are also on the north and south sides of Hill Street, adjacent to the east side of the C-C zone, but there are no existing restaurants in this vicinity.

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Consequently, the potential creation and operation of sidewalk or parking area dining decks associated with restaurants in the C-C and C-R zone districts would not be anticipated to result in noticeable noise levels at existing nearby residences.

## Potential Public Right of Way Dining Areas in MU-N Zone

The MU-N zone is characterized chiefly by a single row of parcels aligned along an arterial roadway. Residences are typically located on the parcels “behind” the MU-N boundary, where the MU-N use separates the residences from the busy street frontage. Because the outdoor dining areas contemplated under the proposed ordinance would only be allowed on the sidewalk or street frontage in front of an existing restaurant building, the restaurant building would provide an effective barrier to prevent dining noise from reaching the adjacent residences.

Consequently, the potential creation and operation of sidewalk or parking area dining decks associated with restaurants in the MU-N zone district would not be anticipated to result in noticeable noise levels at existing nearby residences.

## Potential Public Right of Way Dining Areas in MU-V Zone

In the MU-V zone, there are residences both “behind” restaurants and across the street from restaurants. Residences behind an existing restaurant would be shielded from dining noise associated with an allowed outdoor dining area in the front of an existing restaurant, by virtue of the restaurant building itself providing a noise barrier. Residences located across the street from an existing restaurant would not be located closer than approximately 25 feet from the potential dining area, given the width of streets in the MU-V zone.

At a distance of 25 feet, outdoor dining noise from a group of 32 diners would be approximately 54 dBA  $L_{eq}$ . This noise level would be generally equivalent to the noise associated with traffic along Capitola Avenue, Stockton Avenue, and Monterey Avenue within the MU-V zone (interpreted to be 53 dBA  $L_{eq}$  as converted from CNEL, Capitola General Plan 2019, Figure SN-6). During periods of very light traffic on roadways in the MU-V, dining conversation noise may be audible at nearby residences, but should not constitute a loud, irritating or boisterous noise.

In addition, based upon a constant noise level of 54 dBA  $L_{eq}$  - outdoor dining noise levels at the closest residences in the MU-V zone would result in a CNEL of 54 dBA, based on the proposed operating schedule limitation to the hours between 7 a.m. to 10 p.m.

Consequently, the potential creation and operation of sidewalk or parking area dining decks associated with restaurants in the MU-V zone district would not be anticipated to result in substantial increases in noise levels at existing nearby residences.

## Conclusion Regarding Noise Impacts

While the Capitola noise ordinance (Municipal Code Chapter 9.12) prohibits the generation of loud, irritating or boisterous noise within 200 feet of any residence or lodging facility; no noise level limit is identified in connection with such restrictions. Based on the analysis discussed above, the potential creation and operation of sidewalk or parking area dining decks associated with restaurants in the C-C and C-R and MU-N zone districts would not be anticipated to result



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in noticeable noise levels at existing nearby residences or lodging facilities due to limited noise generation from dining and given existing ambient noise levels in these areas. In the MU-V zone district, the potential creation and operation of sidewalk or parking area dining decks associated with restaurants would not be anticipated to result in substantial increases in noise levels at existing nearby residences or lodging facilities (i.e., dining noise levels experienced at residences or lodging facilities would not be anticipated to exceed 3 dBA over ambient levels). Consequently noise impacts upon noise-sensitive land uses from adoption of the proposed ordinance are anticipated to be less than significant.

### 17.96.170 Outdoor Dining in Public Right of Way

- A. Purpose.** This section establishes standards and permit requirements for outdoor dining in the public right-of-way.
- B. Definitions.**
1. **Outdoor Dining.** “Outdoor dining” means and includes both sidewalk dining and street dining decks.
  2. **Sidewalk Dining.** “Sidewalk dining” means the use of an outdoor sidewalk area within the public-right-of-way, by a private business that is an eating and drinking establishment, for eating and drinking activities.
  3. **Street Dining Deck.** A street dining deck means a platform or similar level surface within the public right-of-way and extending beyond the curb and into a roadway or on-street parking area for use by a private business that is an eating or drinking establishment.
    - a. **Custom Street Dining Deck.** A custom street dining deck is a street dining deck designed by the applicant.
    - b. **Prototype Street Dining Deck.** A prototype street dining deck is a street dining deck utilizing a design that has been preauthorized by the Planning Commission.
- C. Where Allowed.**
1. **Sidewalk Dining.**
    - a. Sidewalk dining is allowed in the MU-N, MU-V, C-C, and C-R zoning districts.
    - b. In the MU-V zoning district, sidewalk dining is allowed only on Monterey Avenue and on the Capitola Wharf.
  2. **Street Dining Decks.** Street dining decks are allowed only in the MU-V zoning district.
- D. Maximum Number of On-Street Parking Spaces.** A maximum of 25 total on-street parking spaces may be used for street dining decks. Spaces shall be allocated by the City Manager in accordance with administrative policies issued pursuant to this section.
- E. Permits and Approvals.**
1. **Required Permits.** Table 17.96-2 shows permits required for sidewalk dining and street dining decks.

**Table 17.96-2: Permits Required for Outdoor Dining in Public Right-of-way**

Type of Outdoor Dining	Permit Required [2] [3]	Zoning Code Chapter
Sidewalk Dining	Administrative Permit	17.116
Street Dining Decks		
Prototype Street Dining Deck [1]	Administrative Permit	17.116
Custom Street Dining Deck	Design Permit	17.120

[1] Prototype dining deck designs are identified in the adopted Village Outdoor Dining Program Administrative Policy No. I-36.

[2] Outdoor dining in the public right-of-way also requires an encroachment permit pursuant to Municipal Code Chapter 12.56. Minor encroachment permits for applications for prototype street dining decks may be issued by the Public Works Director and major encroachment permits for custom street dining decks may be issued by the Planning Commission.

[3] A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone).

2. **Administrative Permit Standards.** All applications for an Administrative Permit are reviewed and acted on by the Community Development Director and must comply with the following standards:
  - a. Any included street dining deck must be designed consistent with a prototype design approved by the Planning Commission.
  - b. The sidewalk dining area or street dining deck must comply with all applicable requirements of this section, the Zoning Code, , and all other applicable laws, administrative policies, rules, and regulations.
  - c. If located in the coastal zone, the sidewalk dining area or street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.
  - d. The street dining deck or sidewalk dining area must utilize high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
  - e. A prototype street dining decks must use a design authorized by a valid coastal development permit.
  
3. **Design Permit Findings.** All applications for a Design Permit are viewed and acted on by the Planning Commission. Notwithstanding Municipal Code Section 17.120.080 (Findings for Approval), the Planning Commission shall not make the Design Permit findings in Section 17.120.080, and instead shall make the following findings:
  - a. The street dining deck complies with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.

- b. If located in the coastal zone, the street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.
  - c. The design of the street dining deck supports a safe, inviting, and lively public realm consistent with the purpose of the MU-V zoning district as provided in Section 17.20.040 (Purpose of the Mixed Use Zoning Districts).
  - d. The street dining deck materials include high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
4. **Good Standing.** In the past twenty-four months, the applicant has not been issued a notice of abatement, violation, or code enforcement related to an ABC license, entertainment permit, or use permit. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice.
5. **Other Permits and Approvals.**
- a. Sidewalk and street dining decks are subject to all other permits, licenses and/ or entitlements required by State or local law.
  - b. A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone). Approval of a CDP requires conformance with the CDP findings for approval as specified in Section 17.44.130 (Findings for approval).
6. **Use of Permit Fees in Coastal Zone.** For sidewalk dining and street dining decks in the coastal zone, the City shall utilize no less than 50 percent of permit fees received for coastal access programs, maintenance, and improvements.

#### F. Administrative Policies.

- 1. The City Manager is authorized to issue administrative policies regarding the administration and leasing of the public right-of-way for sidewalk dining and street dining decks, including but not limited to the application and selection process for applicants, maintenance requirements, and other related policies.
- 2. In the event of any conflict between the provisions of this chapter and the administrative policy, the more restrictive requirement shall control.

#### G. Operating and Development Standards.

- 1. **Must Serve Eating and Drinking Establishment.** Outdoor dining in the public right-of-way is allowed only when incidental to and a part of an “eating and drinking establishment” as defined in Chapter 17.160 (Glossary).
- 2. **One Facility Only.** An eating establishment may have either sidewalk dining or a street dining deck. An eating establishment may not have both sidewalk dining and a street dining deck.
- 3. **Limited to Eating Establishment Frontage.**

- a. Sidewalk dining is allowed on the sidewalk directly adjacent to the eating establishment street frontage.
  - b. Street dining decks in the public right-of-way are only allowed on parking spaces that are:
    - (1) Wholly or partially located in the right-of-way; and
    - (2) Directly adjacent to the eating establishment street frontage unless authorized by paragraph (b) below.
  - c. The City may allow an outdoor dining area to extend beyond the eating and drinking establishment frontage if:
    - (1) Due to the road and parking space layout, the outdoor eating area cannot be designed without extending the area beyond immediately adjacent parking spaces;
    - (2) Extending the outdoor dining area will not have significant impact on adjoining businesses as determined by the permit review authority; and
    - (3) Extending the outdoor dining area will not adversely impact coastal access.
4. **Sidewalk Width.** Outdoor dining areas in the public right-of-way shall provide a minimum clear width within the sidewalk of at least:
- a. 5 feet in the MU-V zoning district; and
  - b. 4 feet in all other zoning districts.
5. **Signs.** All signs associated with an outdoor dining area in the public right-of-way must comply with Zoning Code Chapter 17.80 (Signs).
6. **Trash and Maintenance.** An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City.
7. **Amplified Sound.** Amplified sound, including amplified music, is not allowed in an outdoor dining area.
8. **Bicycle Parking for Street Dining Decks.**
- a. A street dining deck that eliminates an on-street parking space must include a bicycle parking rack integrated in the street dining deck design or within the private property of the eating or drinking establishment.
  - b. The bicycle parking rack must provide a minimum of two bicycle parking spaces for each eliminated vehicle parking space.
9. **Hours of Operation.**
- a. Outdoor dining in the public right-of-way may occur between 7 a.m. and 10 p.m. seven days a week.
  - b. The City may allow extended hours for street dining decks for special events and holidays.

## H. Enforcement.

1. **General.**

- a. The City shall have all enforcement remedies permitted by law, including but not limited to those in Municipal Code Title 4 (General Municipal Code Enforcement).
  - b. Any outdoor dining facility may be subject to inspection by the City on an annual basis or as needed to ensure compliance with this section, conditions of approval, and administrative procedures.
  - c. The Community Development Director is authorized to issue administrative citations pursuant to Municipal Code Chapter 4.14 (Administrative Citations), in amounts set forth by separate resolution of the City Council.
2. **Revocation of Permit.** After a permit holder is issued a fourth administrative citation, the Community Development Director or Public Works Director may revoke any Administrative Permit and the Planning Commission may revoke any Design Permit. Grounds for revocation shall be the permit-holder’s lack of compliance with the requirements in this section or any permit issued pursuant to this section. The decision regarding revocation is appealable pursuant to the procedures in Chapter 2.52 (Appeals to City Council).

**17.96.175 Outdoor Dining on Private Property**

- A. **Conditional Use Permit.** An eating establishment may provide outdoor dining on private property with a Conditional Use Permit and consent of private property owner that such use is permitted on the property.
- B. **Coastal Development Permit.** Outdoor dining on private property in the coastal zone may require a Coastal Development Permit pursuant to Chapter 17.44 (Coastal Overlay Zone) independent of and in addition to any other required permit or approval.

**Chapter 17.120 Design Permits**

**17.120.030 When Required**

- C. **Types of Projects.** The types of projects that require a Design Permit, and the type of Design Permit for each project, are listed in Table 17.120-1. If a type of development project or activity is not specifically listed in Table 17.120-1, a Design Permit is not required.

**TABLE 17.120-1: PROJECTS REQUIRING DESIGN PERMITS**

Type of Project	Type of Permit
<b>Single-Family Residential Projects</b>	
Ground floor additions to existing single-family homes where the addition is visible from a public street and does not exceed 15 ft. in height, except for exempt additions (Section 17.120.030.B)	Minor Design Permit
Accessory structures greater than 10 ft. in height and/or 120 sq. ft. to 300 sq. ft.	Minor Design Permit
Accessory structures greater than 300 sq. ft.	Design Permit
Upper floor decks and balconies on the side or rear of a home that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Upper floor additions to an existing single-family homes	Design Permit
New single-family homes	Design Permit
<b>Multifamily Residential Projects</b>	
Ground-floor additions less than 15% of total floor area of an existing multifamily structure	Minor Design Permit
Upper floor decks and balconies on the side or rear of a structure that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Accessory structures including garbage and recycling enclosures	Minor Design Permit
Ground-floor additions 15% of total floor area or more to an existing multifamily structure	Design Permit
Upper floor additions to an existing multifamily structure	Design Permit
New multifamily residential structures	Design Permit
<b>Non-Residential Projects (Including Mixed-Use)</b>	
Exterior modifications to an existing structure that do not increase the floor area of the structure	Minor Design Permit
Accessory structures 120 sq. ft. to 300 sq. ft. including garbage and recycling enclosures	Minor Design Permit
Accessory structures greater than 300 sq. ft. including garbage and recycling enclosures	Design Permit
Additions less than 15% of the floor area of an existing non-residential structure where the addition is not visible from the primary street frontage	Minor Design Permit
Additions 15% or more of the floor area of an existing non-residential structure where the addition is visible from the primary street frontage	Design Permit
Additions to an existing non-residential structure of 3,000 sq. ft. or more	Design Permit
New non-residential structures	Design Permit
Custom outdoor dining decks	Design Permit

**D. Single-Family Exemptions.** The following additions to a single-family dwelling are exempt from the Design Permit requirement:

1. Ground-floor single-story additions up to 400 square feet at the rear of the home.
2. Enclosure of an existing recessed entrance up to 25 square feet.
3. Enclosure of an existing open porch up to 50 square feet.
4. Installation of bay windows.
5. A single accessory structures that does not exceed 120 square feet in floor area and 10 feet in height with no connection to water or sewer.
6. Minor exterior modification or replacement of materials on an existing structure including siding, windows, doors, and roof.
7. Other similar minor additions to a single-family dwelling as determined by the Community Development Director.
8. Upper floor decks and balconies immediately adjacent to a street or public open space.

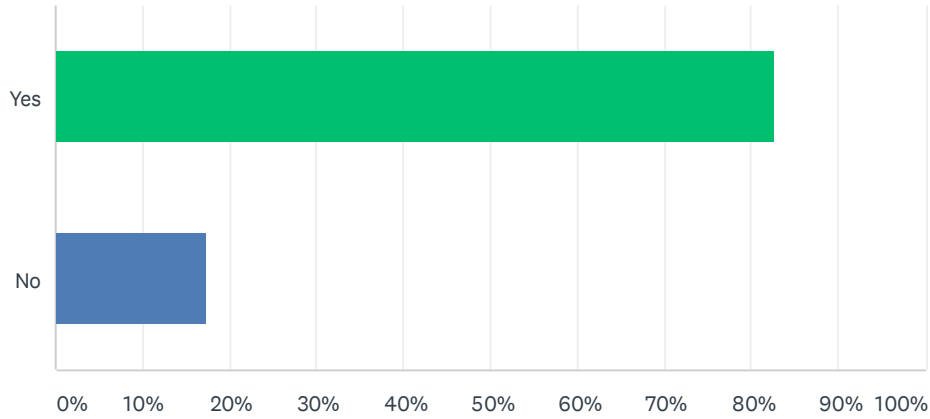
**E. Non-Residential Exemptions.**

1. Prototype outdoor dining decks that comply with Section 17.96.170 (Outdoor Dining in Public Right of Way) are exempt from the Design Permit requirement.



# Q1 In general, do you support the installation of semi-permanent outdoor dining decks in the streets of the Village

Answered: 196 Skipped: 0

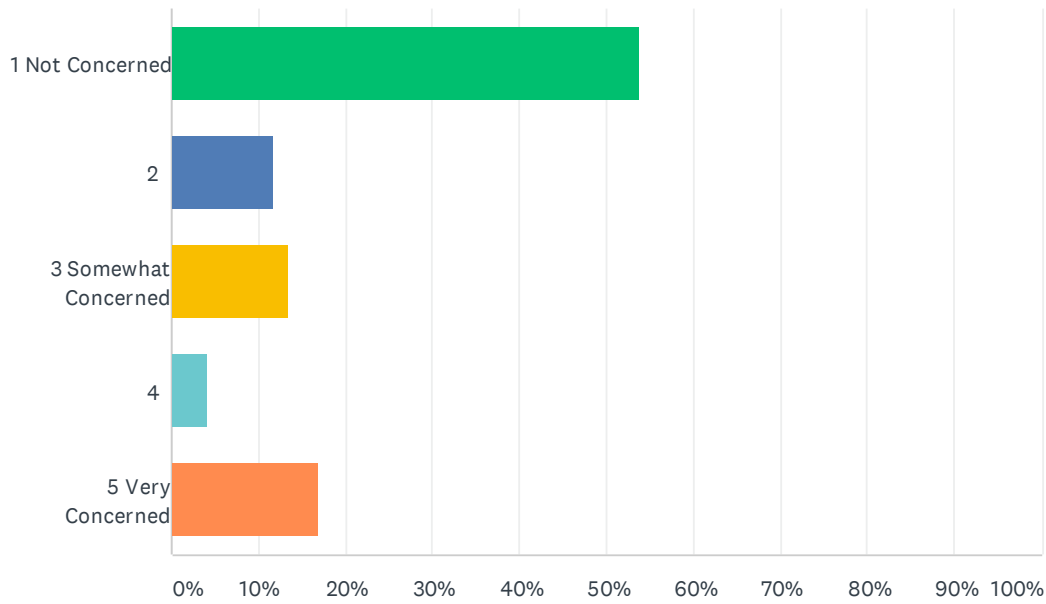


ANSWER CHOICES	RESPONSES	
Yes	82.65%	162
No	17.35%	34
TOTAL		196

Attachment: Outdoor Dining Public Survey Results (Draft Ordinance for Outdoor Dining and Design Permit Ordinance)

## Q2 On a scale of 1-5 how concerned are you about the loss of parking in the Village due to outdoor dining

Answered: 195 Skipped: 1

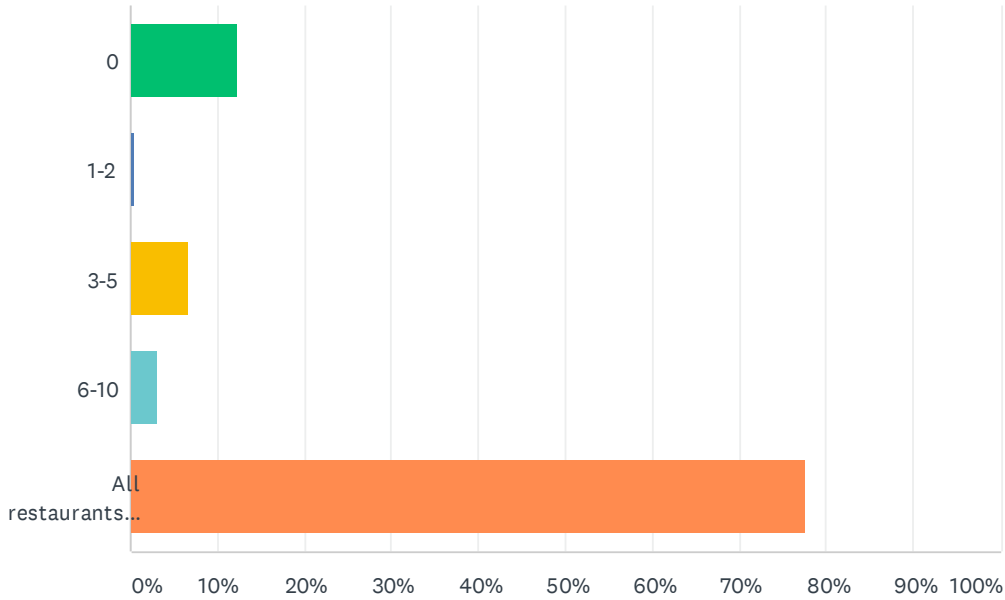


ANSWER CHOICES	RESPONSES	
1 Not Concerned	53.85%	105
2	11.79%	23
3 Somewhat Concerned	13.33%	26
4	4.10%	8
5 Very Concerned	16.92%	33
TOTAL		195

Attachment: Outdoor Dining Public Survey Results (Draft Ordinance for Outdoor Dining and Design Permit Ordinance)

Q3 If outdoor dining is permitted, should the number of permits issued be limited? Please indicate the number of permits you think should be issued below.

Answered: 196 Skipped: 0

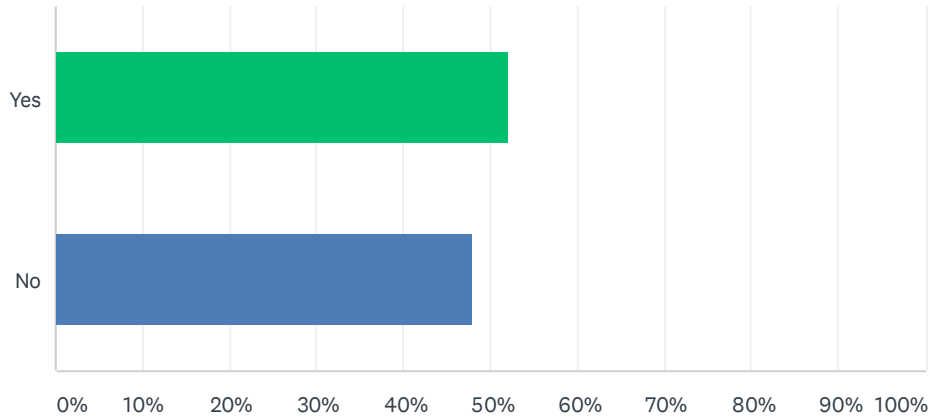


ANSWER CHOICES	RESPONSES	
0	12.24%	24
1-2	0.51%	1
3-5	6.63%	13
6-10	3.06%	6
All restaurants should have the opportunity to participate in the program	77.55%	152
<b>TOTAL</b>		<b>196</b>

Attachment: Outdoor Dining Public Survey Results (Draft Ordinance for Outdoor Dining and Design Permit Ordinance)

**Q4 Currently the average parking space in the Village generates approximately \$3,200-3,500 per year that is used to fund city services. Should the outdoor dining program recapture this revenue as part of lease agreement?**

Answered: 192 Skipped: 4

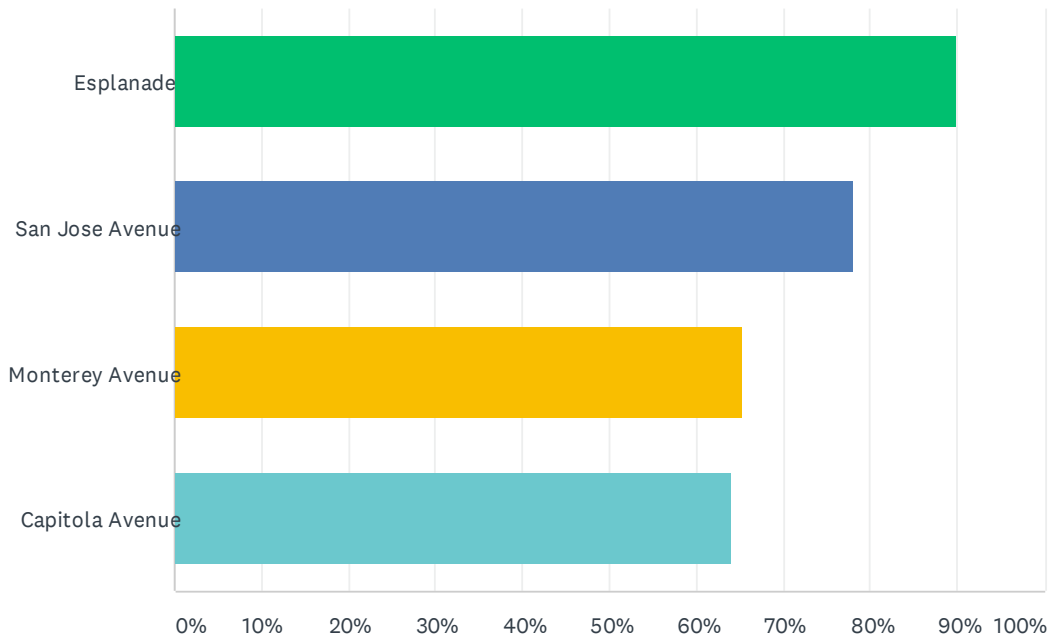


ANSWER CHOICES	RESPONSES	
Yes	52.08%	100
No	47.92%	92
<b>TOTAL</b>		<b>192</b>

Attachment: Outdoor Dining Public Survey Results (Draft Ordinance for Outdoor Dining and Design Permit Ordinance)

### Q5 Looking at specific streets in the Village do you support outdoor dining on the following streets

Answered: 178 Skipped: 18

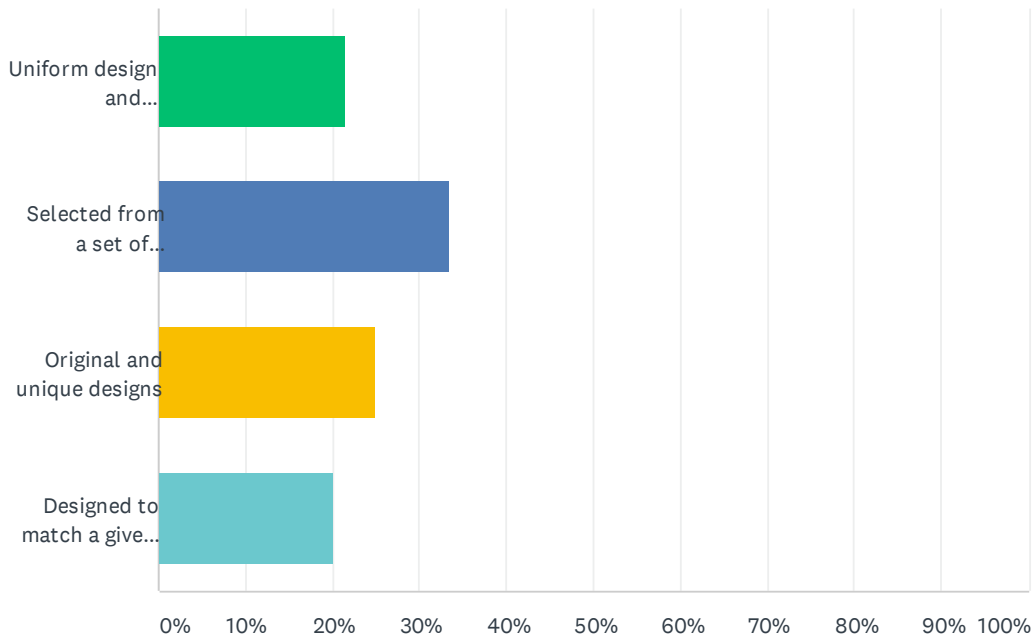


ANSWER CHOICES	RESPONSES	
Esplanade	89.89%	160
San Jose Avenue	78.09%	139
Monterey Avenue	65.17%	116
Capitola Avenue	64.04%	114
Total Respondents: 178		

Attachment: Outdoor Dining Public Survey Results (Draft Ordinance for Outdoor Dining and Design Permit Ordinance)

### Q6 Should the outdoor dining decks be designed and constructed to appear similar or should each be an original design?

Answered: 185 Skipped: 11

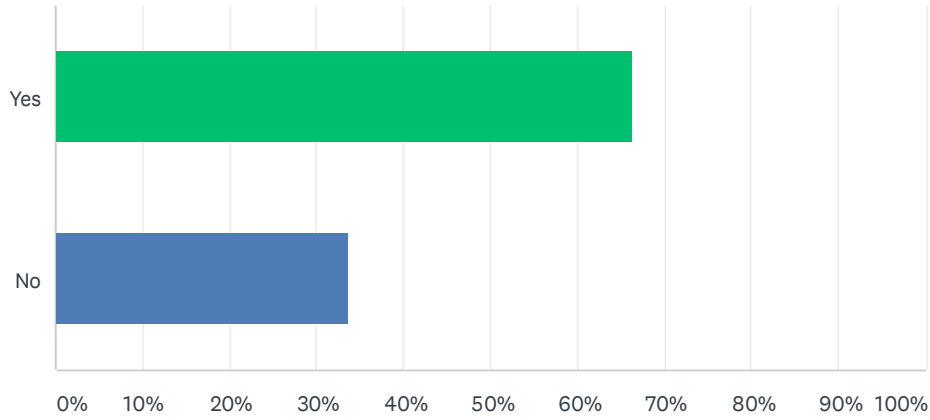


ANSWER CHOICES	RESPONSES	
Uniform design and construction	21.62%	40
Selected from a set of preapproved high-quality designs	33.51%	62
Original and unique designs	24.86%	46
Designed to match a given restaurant's exterior	20.00%	37
<b>TOTAL</b>		<b>185</b>

Attachment: Outdoor Dining Public Survey Results (Draft Ordinance for Outdoor Dining and Design Permit Ordinance)

### Q7 Should the outdoor dining program establish a curfew or closing time?

Answered: 187 Skipped: 9

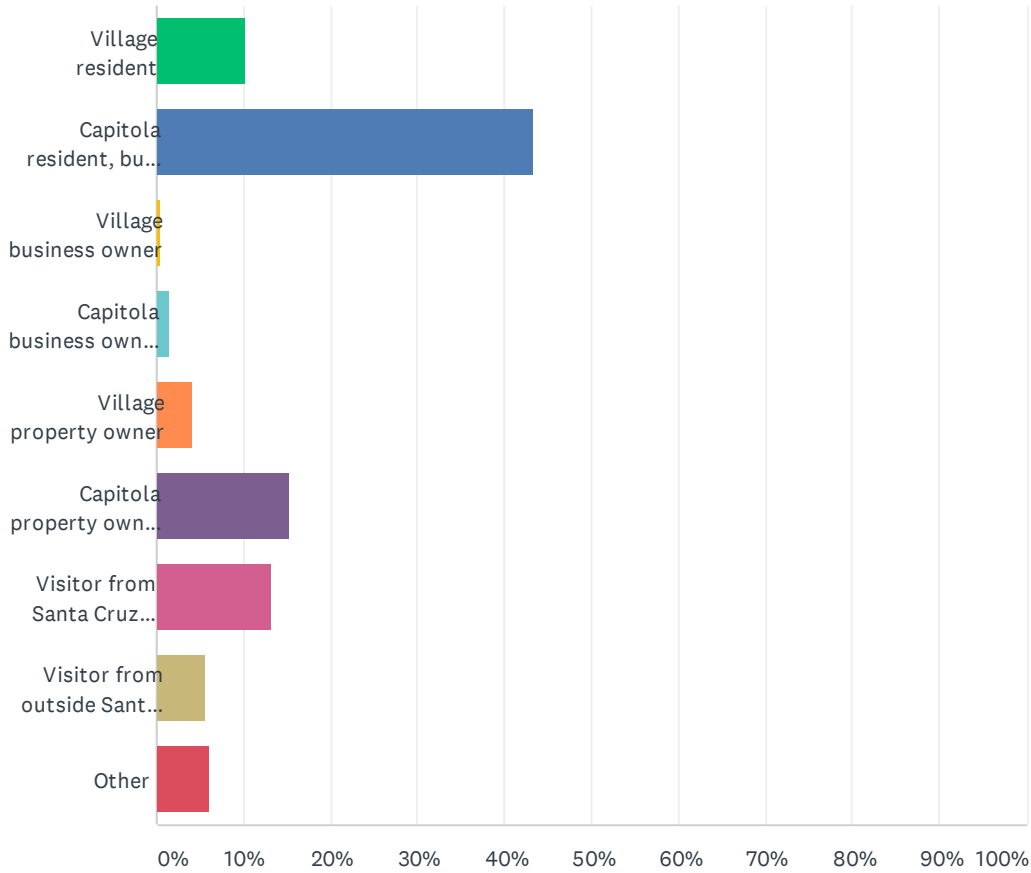


ANSWER CHOICES	RESPONSES	
Yes	66.31%	124
No	33.69%	63
TOTAL		187

Attachment: Outdoor Dining Public Survey Results (Draft Ordinance for Outdoor Dining and Design Permit Ordinance)

### Q8 Please provide your affiliation with the Village.

Answered: 196 Skipped: 0



ANSWER CHOICES	RESPONSES	
Village resident	10.20%	20
Capitola resident, but not in the Village	43.37%	85
Village business owner	0.51%	1
Capitola business owner, but not in the village	1.53%	3
Village property owner	4.08%	8
Capitola property owner, but not in the village	15.31%	30
Visitor from Santa Cruz County	13.27%	26
Visitor from outside Santa Cruz County	5.61%	11
Other	6.12%	12
<b>TOTAL</b>		<b>196</b>

Attachment: Outdoor Dining Public Survey Results (Draft Ordinance for Outdoor Dining and Design Permit Ordinance)



### Village Restaurant Questionnaire Results Table

Restaurant No.	Interested in continuing			Area Currently Used sq ft	Area wanted sq ft	Number of Summer Employees	Number of additional employees	Willingness to pay fees 1 - no problem 5 - difficult			Lease Term Scale 1-5 (1 no, 5 yes)			Comments
	Yes	No	Maybe					\$4000 permit fees	\$15k - \$20k Construction Costs	Rent \$18/sf	3 year term	5 year term	7 year term	
<b>Village Restaurants</b>														
1	1			900	900	16	5	1	3	5	5	5	5	
2			1	720	360	6	2	3	1	2	1	1	2	
3	1			540	540	7	1	4	4	3	1	1	5	
4	1			320	320	3		1	1	1	5	5	5	
5	1			192	192	1	5	3	3	4	5	5	5	recommends reducing city fees to \$3k
6			1	1500	1500	110	10	1	1	5	5	5	5	\$18 per square foot is crazy
7	1			244	244	8	0	5	5	5	5	5	5	Too costly for small business
8	1			1000	1500	55	13	3	2	2	5	5	5	very supportive
9	1			500	500	14	2	4	2	5	2	3	4	
10														Wants parking back along the Esplanade
11			1	720	720	100	2	1	1	1	5	5	5	Wants parking back but will play along if the program goes forward
<b>Non-street Restaurants</b>														
12			1	100	180	7	2	5	5	5	3	3	3	Uses Sidewalk
13	1			300	300	12	2	5	3	5			5	Space is on the wharf
14	1			300	500	8		5	5	5	3	3	3	Uses Lawn Way
				7336	7756									
				9	0	4								
							40							
							New Jobs	Average			Average			
								3.2	2.8	3.7	3.8	3.8	4.4	

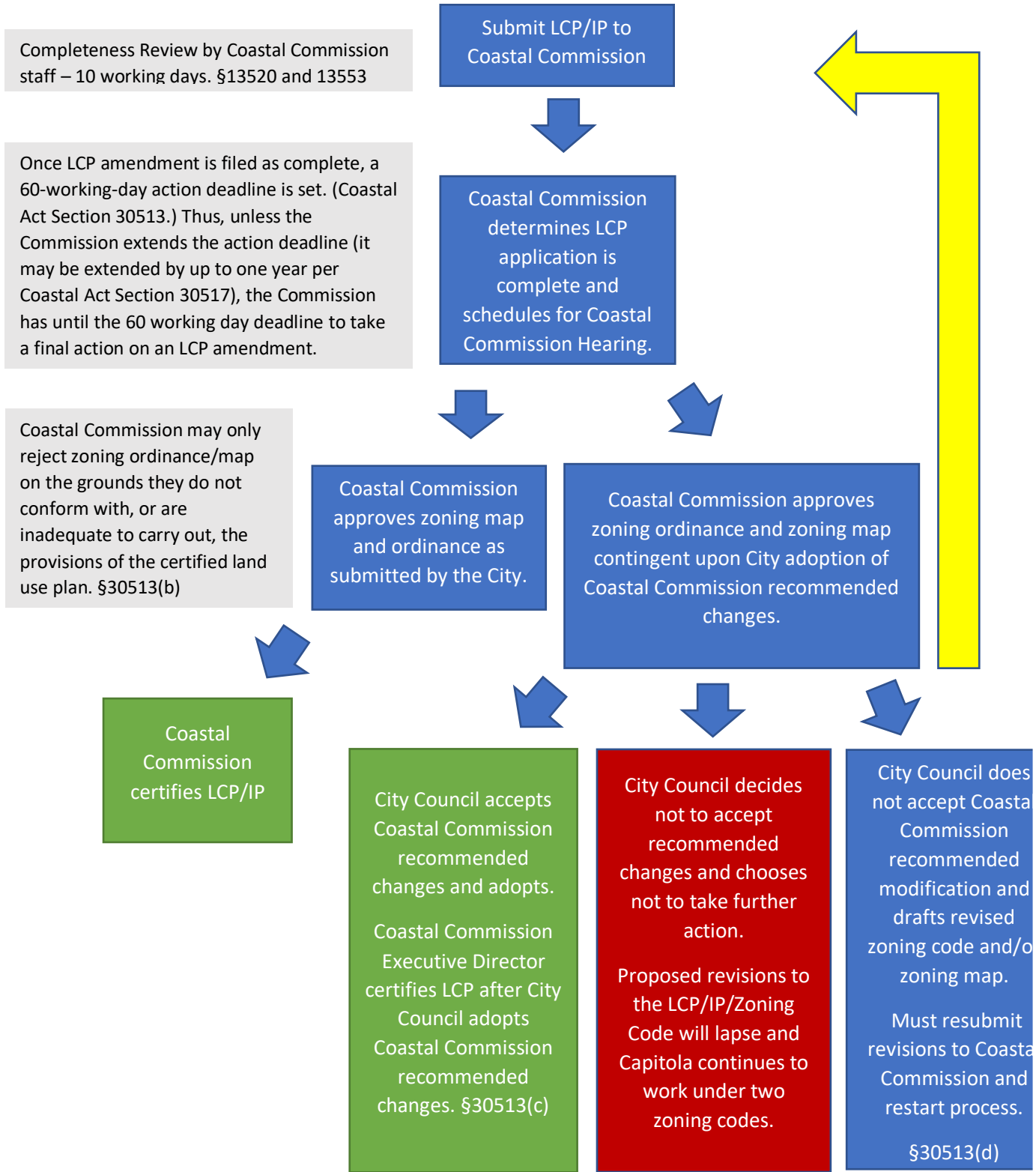
Attachment: Outdoor Dining Restaurant Survey Summary (Draft Ordinance for Outdoor Dining and

### City of Capitola Zoning Code Update Process



Attachment: Zoning Code Certification Process Flowchart (Draft Ordinance for Outdoor Dining and Design Permit Ordinance)

### Coastal Commission Zoning Code (LCP-IP) Certification Process



Attachment: Zoning Code Certification Process Flowchart (Draft Ordinance for Outdoor Dining and Design Permit Ordinance)



223 A. Reindollar Avenue  
 Marina, Ca. 93933  
 831 384 1253  
 englishales@sbcglobal.net

The City of Capitola  
 Planning Commission  
 October, 20th. 2021  
 Dear Commissioners,

As you consider the continuation of the parklet program, please consider allowing our business to continue to operate our parklet, as we have done, without incident, for the past 16 months or so.

We have owned and operated several hospitality facilities over the past 37 years, and we have witnessed many changes to the manner in which the industry functions, but perhaps none have had such profound influences as has the Covid 19 pandemic, and maybe the most profound change has been to the emphasis now placed upon outdoor seating. There are still many citizens who are very wary of any indoor activities and so parklets are the ideal solution.

Governor Newsome has recognized the damage which our industry has suffered to date, and he has extended the parklet program for several years, as a means to help the industry recover. To exclude our business from the program, would be to place us at a significant disadvantage to similar businesses, making an already difficult situation, more difficult.

As to traffic , we are on one side of Capitola Avenue and we do not think that there is any great difference in the numbers of vehicles which pass us than those which pass through the esplanade corridor. In addition, as we have parallel parking outside of our business, the reduction of parking spaces is much less than is true with all other parklets, where the parking is diagonal. Also, we are no more exposed than any other parklet.

In previous letters to The City of Capitola, we have been fully supportive of the program in general and specifically with regard to the costs. We originally suggested that the fees for the parking spaces be equal to the lost parking revenue and that the business owners should be responsible for all construction costs.

In closing, we respectfully ask for a fair consideration of our request.

Sincerely

Peter and Rosemary Blackwell.