

City of Capitola Council Meeting Agenda



Mayor: Yvette Brooks
Vice Mayor: Sam Storey
Council Members: Jacques Bertrand
Margaux Keiser
Kristen Petersen

THURSDAY, DECEMBER 9, 2021

REGULAR MEETING - 6 PM

CLOSED SESSION – 5 PM

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

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to § 54956.9(d)(2)
(one potential case)

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL - 6 PM

All correspondences received prior to 5:00 p.m. on the Wednesday preceding a Council Meeting will be distributed to Councilmembers to review prior to the meeting. Information submitted after 5 p.m. on that Wednesday may not have time to reach Councilmembers, nor be read by them prior to consideration of an item. All matters listed on the Regular Meeting of the Capitola City Council Agenda shall be considered as Public Hearings.

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Kristen Petersen, Jacques Bertrand, Margaux Keiser, Sam Storey, and Mayor Yvette Brooks

2. REPORT ON CLOSED SESSION

3. ADDITIONAL MATERIALS

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

4. ADDITIONS AND DELETIONS TO AGENDA

5. ORAL COMMUNICATIONS

*Please review the Notice of Remote Access for instructions.
Oral Communications allows time for members of the Public to address the City Council on*

any "Consent Item" on tonight's agenda, or on any topic within the jurisdiction of the City that is not on the "General Government/Public Hearings" section of the Agenda. Members of the public may speak for up to three minutes, unless otherwise specified by the Mayor. Individuals may not speak more than once during Oral Communications. All speakers must address the entire legislative body and will not be permitted to engage in dialogue. A MAXIMUM of 30 MINUTES is set aside for Oral Communications.

6. STAFF / CITY COUNCIL COMMENTS

City Council Members/Staff may comment on matters of a general nature or identify issues for staff response or future council consideration. No individual shall speak for more than two minutes.

7. CONSENT ITEMS

All items listed as "Consent Items" will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time the Council votes on the action unless members of the City Council request specific items to be discussed for separate review. Items pulled for separate discussion will be considered following General Government. Note that all Ordinances which appear on the public agenda shall be determined to have been read by title and further reading waived.

- A. Consider the Minutes from the November 23 Regular City Council Meeting
RECOMMENDED ACTION: Approve the minutes.
- B. Adopt a Resolution Setting the Interest Rate for Tenants' Security Deposits for 2022 at Zero Percent (0.00%)
RECOMMENDED ACTION: Adopt proposed resolution.
- C. Update Hourly and Seasonal Salary Schedule
RECOMMENDED ACTION: Adopt the proposed resolution amending the hourly and seasonal Pay Schedule.
- D. Mandatory Organics Waste Disposal Reduction Ordinance
RECOMMENDED ACTION: Pass ordinance repealing Capitola Municipal Code Chapter 8.04: Garbage and enacting Chapter 8.04: Solid Waste and Edible Food Recovery.
- E. Consider an Outdoor Dining Ordinance, a Resolution for Coastal Commission Certification, and Update Administrative Policy I-36
RECOMMENDED ACTION:
 - 1. Pass an ordinance of the City of Capitola repealing and replacing Municipal Code Sections 17.96.170 and amending Municipal Code Section 17.120.030, related to outdoor dining in the public right of way.
 - 2. Adopt the proposed resolution authorizing staff to submit the Zoning Code Update/Local Coastal Plan Update to the Coastal Commission for Certification.
 - 3. Approve the updated Administrative Policy I-36 for the Village Outdoor Dining Program.
- F. Receive Update on Pandemic Response and Consider Adopting Proposed Resolution Allowing for the Continuation of Teleconferencing
RECOMMENDED ACTION: 1) Make the determination that all hazards related to the

CAPITOLA CITY COUNCIL REGULAR MEETING AGENDA
December 9, 2021

worldwide spread of the coronavirus (COVID-19) as detailed in Resolution No. 4168 adopted by the City Council on March 12, 2020, still exist and that there is a need to continue action; and 2) Adopt the proposed resolution authorizing the Capitola City Council (along with the Planning Commission and all advisory bodies) to continue to conduct teleconferencing meetings.

8. GENERAL GOVERNMENT / PUBLIC HEARINGS

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

A. Council Reorganization for 2022

RECOMMENDED ACTION: Select and vote to approve a new Mayor and Vice-Mayor.

B. Receive a Report on Bids Received for the 2021 Road Repair Project and Consider Awarding a Contract

RECOMMENDED ACTION: Receive a report on construction bids received on Wednesday December 8, 2021, for the 2021 Road Repair Project and consider award of contract.

9. ADJOURNMENT

NOTICE OF REMOTE ACCESS

In accordance with California Senate Bill 361, the City Council meeting is not physically open to the public and in person attendance cannot be accommodated.

To watch:

- Online <http://capitolaca.igm2.com/Citizens/Default.aspx>
- Spectrum Cable Television channel 8

To join Zoom:

- Join the Zoom Meeting by clicking the following link:

<https://us02web.zoom.us/j/81111532080?pwd=eGMrWFFzMWN0M3dGS1UzQXRVTXoxZz09>

If prompted for a passcode, enter **243351**

- **-OR-** With a landline or mobile phone, call one of the following numbers:
 - **1 669 900 6833**
 - 1 408 638 0968**
 - 1 346 248 7799**
- Enter the meeting ID number: **811 1153 2080**
- When prompted for a Participant ID, press #

To submit public comment:

When submitting public comment, one comment (via phone **or** email, not both), per person, per item is allowed. If you send more than one email about the same item, the last received will be read.

- Zoom Meeting (Via Computer or Phone) Link:
 - IF USING COMPUTER:
 - § 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

CAPITOLA CITY COUNCIL REGULAR MEETING AGENDA
December 9, 2021

- IF CALLED IN OVER THE PHONE:
 - § Press *9 on your phone to “raise your hand” when the mayor calls for public comment. Once unmuted, you will have up to 3 minutes to speak
- Send Email:
 - During the meeting, send comments via email to publiccomment@ci.capitola.ca.us
 - § Emailed comments on items will be accepted after the start of the meeting until the Mayor 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 outside of the comment period outlined above will not be included in the record.

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

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

Agenda and Agenda Packet Materials: The City Council Agenda and the complete Agenda Packet are available for review on the City’s website: www.cityofcapitola.org and at Capitola City Hall prior to the meeting. Agendas are also available at the Capitola Post Office located at 826 Bay Avenue, Capitola. Need more information? Contact the City Clerk’s office at 831-475-7300.

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

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

Televised Meetings: City Council meetings are cablecast “Live” on Charter Communications Cable TV Channel 8 and are recorded to be rebroadcasted at 8:00 a.m. on the Wednesday following the meetings and at 1:00 p.m. on Saturday following the first rebroadcast on Community Television of Santa Cruz County (Charter Channel 71 and Comcast Channel 25). Meetings are streamed “Live” on the City’s website at www.cityofcapitola.org by clicking on the Home Page link “**Meeting Agendas/Videos.**” Archived meetings can be viewed from the website at any time.



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF DECEMBER 9, 2021

FROM: City Manager Department

SUBJECT: Consider the Minutes from the November 23 Regular City Council Meeting

RECOMMENDED ACTION: Approve the minutes.

DISCUSSION: Attached for Council review and approval are the minutes from the regular City Council meeting held on November 23, 2021.

ATTACHMENTS:

1. 11-23-21 draft

Report Prepared By: Chloe Woodmansee
City Clerk

Reviewed and Forwarded by:

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

Jamie Goldstein, City Manager

12/3/2021

**CAPITOLA CITY COUNCIL
DRAFT REGULAR MEETING MINUTES
TUESDAY, NOVEMBER 23, 2021 - 7 PM**

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Initiation of litigation pursuant to Gov't Code § 54956.9(d)(4).
Two potential cases

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL - 7 PM

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Member Jacques Bertrand: Remote, Council Member Kristen Petersen: Remote, Vice Mayor Sam Storey: Remote, Mayor Yvette Brooks: Remote, Council Member Margaux Keiser: Remote.

2. PRESENTATIONS

A. Police Policy Review Presentation

Chief Dally presented on the recent activities of the Criminal Justice Council in the County and introduced the new Capitola Police Department Chief's Advisory Committee.

3. REPORT ON CLOSED SESSION

City Attorney Zutler said that Council made recommendations to staff.

4. ADDITIONAL MATERIALS

A. Item 9.A – three public comment emails

5. ADDITIONS AND DELETIONS TO AGENDA – NONE

6. ORAL COMMUNICATIONS – NONE

7. STAFF / CITY COUNCIL COMMENTS – NONE

8. CONSENT ITEMS

MOTION:	APPROVE, DIRECT, ADOPT, AUTHORIZE, AND DETERMINE
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Margaux Keiser
SECONDER:	Sam Storey
AYES:	Bertrand, Petersen, Storey, Brooks, Keiser

A. Consider the November 10 and November 18 City Council Meeting Minutes
RECOMMENDED ACTION: Approve minutes.

Attachment: 11-23-21 draft (minutes approval)

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES
November 23, 2021

- B. Approval of City Check Registers Dated October 15, October 22, October 29, November 5 and November 12.
RECOMMENDED ACTION: Approve check registers.
- C. Settlement Agreement with Noll and Tam Architects and Pacific Gas and Electric
RECOMMENDED ACTION: Direct the City Manager to sign a settlement agreement between the City of Capitola, Noll and Tam Architects, and Pacific Gas and Electric Company (PG&E).
- D. Consider an Ordinance Adding Chapter 9.62 Film Permits to Capitola Municipal Code
RECOMMENDED ACTION: Consider adoption, by title only, waiving further reading of the text, an ordinance adding Chapter 9.62: Film Permits.
- E. Consider Side Letter to Existing Memoranda of Understanding with Association of Capitola Employees Regarding Vacation Cash-Out Provisions
RECOMMENDED ACTION: Authorize the City Manager to execute a side letter agreement to existing Memoranda of Understanding (MOU) with the Association of Capitola Employees (ACE).
- F. Receive Update on Pandemic Response
RECOMMENDED ACTION: Make the determination that all hazards related to the worldwide spread of the coronavirus (COVID-19) as detailed in Resolution No. 4168 adopted by the City Council on March 12, 2020, still exist and that there is a need to continue action.

9. GENERAL GOVERNMENT / PUBLIC HEARINGS

- A. Outdoor Dining Ordinance
RECOMMENDED ACTION:
1. Consider Planning Commission recommendations regarding the draft outdoor dining ordinance and either:
 - a. Provide direction on the draft ordinance and consider a schedule for a first reading and adoption, or
 - b. Introduce by title only, waiving further reading of the text, an ordinance of the City Council of the City of Capitola repealing and replacing Municipal Code Sections 17.96.170 and amending Municipal Code Section 17.120.030, related to outdoor dining in the public right of way; or
 2. Consider options to extend, terminate, or modify the temporary outdoor dining program, currently scheduled to end on January 3, 2022.

Council Member Keiser recused herself.

Community Development Director Herlihy presented a staff report, which was interrupted by technical connectivity issues at around 7:45PM. After attempts to fix connectivity and allow staff and the public to rejoin the Zoom meeting, Staff and Council agreed to adjourn the meeting with no further reports or action.

Both item 9.A: Outdoor Dining Ordinance, and Items 9.B and 9.C, will be heard in a special meeting to be scheduled and noticed as required by the Brown Act.

Attachment: 11-23-21 draft (minutes approval)

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES
November 23, 2021

- B. Mandatory Organics Waste Disposal Reduction Ordinance
RECOMMENDED ACTION: Introduce for first reading, by title only, waiving further reading of the text, an ordinance repealing Capitola Municipal Code Chapter 8.04: Garbage and enacting Chapter 8.04: Solid Waste and Edible Food Recovery.

This item was not presented, heard, or acted on by Staff or Council.

- C. New State of California Housing Legislation and Community Development Department Housing Workplan
RECOMMENDED ACTION: Accept staff presentation on recent housing legislation and the Community Development Department's workplan.

This item was not presented, heard, or acted on by Staff or Council.

10. ADJOURNMENT

The meeting was closed at 8:13 PM to a yet to be scheduled Special City Council meeting and the next regular Council meeting on December 9, 2021.

Yvette Brooks, Mayor

ATTEST:

Chloé Woodmansee, City Clerk

Attachment: 11-23-21 draft (minutes approval)



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF DECEMBER 9, 2021

FROM: City Manager Department

SUBJECT: Adopt a Resolution Setting the Interest Rate for Tenants' Security Deposits for 2022 at Zero Percent (0.00%)

RECOMMENDED ACTION: Adopt proposed resolution.

BACKGROUND: The City Council adopted Ordinance No. 804 on February 12, 1998, adding Chapter 5.48 to the Municipal Code requiring interest on security deposits for residential rental properties. It requires the City Council to review the interest rate and adopt a Resolution setting the rate for the next year.

For many years the City Council's practice was to set its interest rate for tenant security deposits consistent with the percent set by the Board of Supervisors of Santa Cruz County. However, in recent years the passbook savings rate has hovered near zero and the City has set the tenant security deposit rate at zero to simplify the process. A history of interest rates since adoption of the implementing Ordinance is Attachment 1. In late 2020, all six banks surveyed in Santa Cruz County reported a rate on passbook savings account of 0.01%. A Santa Cruz County survey of major banks, listing the individual interest rate currently paid on savings passbook accounts for 2021, has yet to be published.

DISCUSSION: Based on past Council action, staff has prepared a resolution setting the City's 2021 tenant interest rate at zero percent (0.00%) given the continuing very low passbook savings rate.

FISCAL IMPACT: None

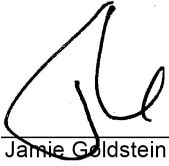
ATTACHMENTS:

1. Tenant Security Deposit History (PDF)

Report Prepared By: Chloe Woodmansee
City Clerk

Tenants' Security Deposits
December 9, 2021

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

12/3/2021

Tenants' Security Deposits
December 9, 2021

RESOLUTION NO. ____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
SETTING INTEREST RATE FOR TENANT SECURITY DEPOSITS FOR 2022
AT ZERO PERCENT (0.00 %) IN THE CITY OF CAPITOLA**

WHEREAS, Municipal Code Section 5.48.025 directs the City Council to set the minimum annual interest rate for tenant security deposits at a rate that approximates the current passbook savings account interest rates; and

WHEREAS, the current passbook savings account interest rate for residential rental security deposits is approximately zero percent (0.01%);

WHEREAS, based on the City Council's action to set the interest rate at zero percent (0.00%) in previous years with similar situations;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Capitola that the rate of simple interest payable annually on residential rental security deposits by landlords shall be zero percent (0.00%) effective January 1, 2022.

I HEREBY CERTIFY that the above and foregoing Resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 9th day of December, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

Chloé Woodmansee, City Clerk



420 Capitola Avenue
 Capitola, California 95010
 Telephone: (831) 475-7300
 Website: CityofCapitola.org

HISTORY INFORMATION REGARDING TENANTS' INTEREST ON SECURITY DEPOSITS FOR RESIDENTIAL RENTAL PROPERTIES

ORDINANCES ADOPTED

Ordinance No. 804, Ordinance adding Chapter 5.48 to the Municipal Code requiring interest on security deposits for residential rental properties, adopted February 12, 1998, effective March 14, 1998.

Ordinance No. 813, Ordinance Amending Section 5.48.040 of the Municipal Code regarding Payment of Tenant's Interest, adopted December 19, 1999, effective January 18, 2000.

RESOLUTIONS ADOPTED

Resolution No. 2948	Two Percent	(2.00%)	Effective March 14, 1998
Resolution No. 3007	Two Percent	(2.00%)	January 1, 1999
Resolution No. 3067	Two Percent	(2.00%)	January 1, 2000
Resolution No. 3107	Two Percent	(2.00%)	January 1, 2001
Resolution No. 3180	One Percent	(1.00%)	January 1, 2002
Resolution No. 3258	.58 Percent	(0.58%)	January 1, 2003
Resolution No. 3322	.32 Percent	(0.32%)	January 1, 2004
Resolution No. 3416	.32 Percent	(0.32%)	January 1, 2005
Resolution No. 3510	.43 Percent	(0.43%)	January 1, 2006
Resolution No. 3594	.34 Percent	(0.34%)	January 1, 2007
Resolution No. 3671	.31 Percent	(0.31%)	January 1, 2008
Resolution No. 3731	.23 Percent	(0.23%)	January 1, 2009
Resolution No. 3791	.10 Percent	(0.10%)	January 1, 2010
Resolution No. 3849	Zero Percent	(0.00%)	January 1, 2011
Resolution No. 3898	Zero Percent	(0.00%)	January 1, 2012
Resolution No. 3945	Zero Percent	(0.00%)	January 1, 2013
Resolution No. 3973	Zero Percent	(0.00%)	January 1, 2014
Resolution No. 4009	Zero Percent	(0.00%)	January 1, 2015
Resolution No. 4040	Zero Percent	(0.00%)	January 1, 2016
Resolution No. 4070	Zero Percent	(0.00%)	January 1, 2017
Resolution No. 4094	Zero Percent	(0.00%)	January 1, 2018
Resolution No. 4133	Zero Percent	(0.00%)	January 1, 2019
Resolution No. 4165	Zero Percent	(0.00%)	January 1, 2020
Resolution No. 4206	Zero Percent	(0.00%)	January 1, 2021



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF DECEMBER 9, 2021

FROM: City Manager Department

SUBJECT: Update Hourly and Seasonal Salary Schedule

RECOMMENDED ACTION: Adopt the proposed resolution amending the hourly and seasonal Pay Schedule.

BACKGROUND: The City's hourly and seasonal employees work primarily in the Recreation Division. But the City also has part-time positions such as interns, reserve officers, and annuitant officers who are employed by other departments. Hourly and seasonal employees work either part-time or on a seasonal basis and are not considered regular employees. Hourly and seasonal positions are not represented by any labor union and are not subject to any existing memorandum of understanding. For this reason, any wage increases are enacted by City Council action separate from adoption of MOUs for other City bargaining groups.

DISCUSSION: Council last adjusted the hourly and seasonal employees pay schedule in August 2021 to add an hourly Police Records Technician.

The California State minimum wage is scheduled to increase on January 1, 2022, to \$15.00 an hour. The City's only position currently being paid less than \$15.00 per hour is the Recreation Facility Assistant. The compensation for this classification will be increased to comply with the minimum wage requirements.

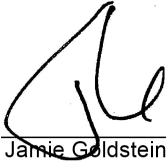
In addition, staff proposes adjustments to some of the other Recreation classifications to reduce compaction and to better reflect the differences in duties between classifications. There are no classifications being added to the schedule.

FISCAL IMPACT: The anticipated financial impact in Fiscal Year 2021/2022 is \$15,000, which is incorporated in the budget.

Report Prepared By: Larry Laurent
Assistant to the City Manager

Hourly and Seasonal Salary Schedule
December 9, 2021

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

12/3/2021

Hourly and Seasonal Salary Schedule
December 9, 2021

RESOLUTION NO. ____
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING THE HOURLY/SEASONAL EMPLOYEE PAY SCHEDULES EFFECTIVE
January 1, 2022

WHEREAS, the City Council sets the compensation rates for hourly and seasonal employment positions; and

WHEREAS, the City Council last amended the Seasonal/Hourly Pay Schedule (Pay Schedule, attached as Exhibit "A") by Resolution No. 4234 on August 26, 2021. That amended Pay Schedule included changes to comply with California minimum wage requirements.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of Capitola approves as follows:

The Hourly/Seasonal Pay Schedule attached hereto as Exhibit "A," is amended as shown in the Exhibit.

BE IT FURTHER RESOLVED that this Resolution becomes effective on January 1, 2022.

I HEREBY CERTIFY that the foregoing Resolution was passed and adopted by the City Council of the City of Capitola on the 9th day of December 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Yvette Brooks, Mayor

ATTEST:

Chloé Woodmansee, City Clerk

Hourly and Seasonal Salary Schedule
December 9, 2021

EXHIBIT A

Updated January 1, 2022 (Minimum wage \$15.00/hour)				
POSITION	0	1	2	3
Intern	\$ 16.54	\$ 17.36	\$ 18.23	\$ 19.14
Junior Lifeguard Instructor	\$ 16.54	\$ 17.36	\$ 18.23	\$ 19.14
Junior Lifeguard Assistant Coordinator	\$ 20.10	\$ 21.11	\$ 22.16	\$ 23.27
Junior Lifeguard Coordinator	\$ 24.43	\$ 25.66	\$ 26.94	\$ 28.28
Recreation Leader I	\$ 15.75	\$ 16.54	\$ 17.36	\$ 18.23
Recreation Leader II	\$ 19.14	\$ 20.10	\$ 21.11	\$ 22.16
Recreation Program Assistant Coordinator	\$ 21.11	\$ 22.16	\$ 23.27	\$ 24.43
Recreation Program Coordinator	\$ 23.27	\$ 24.43	\$ 25.66	\$ 26.94
Recreation Facility Assistant	\$ 15.00	\$ 15.75	\$ 16.54	\$ 17.36
POSITION				
Retired Annuitant Officer	Salary will be equivalent to the position for which the individual is working in as pe However, retired Capitola Police Officers who apply and are accepted as Annuitant will be paid an hourly wage consistent with Step F of the Police Officer salary range			
Reserve Officer Level I	Automatically adjusts to 20% below the Police Officer Pay Scale			
Reserve Officer Level II	Automatically adjusts to 20% below the Level I Reserve Officer Pay Scale			
Seasonal Recreation Assistant	Salary will be equivalent to the position of Recreation Assistant			
Part-Time Parking Enforcement Officer	Salary will be equivalent to the position of Parking Enforcement Officer			
Art and Cultural Assistant	Salary will be equivalent to the position of Administrative Assistant			
Police Records Technician	Salary will be equivalent to the position of Police Records Technician			



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF DECEMBER 9, 2021

FROM: City Manager Department

SUBJECT: Mandatory Organics Waste Disposal Reduction Ordinance

RECOMMENDED ACTION: Pass ordinance repealing Capitola Municipal Code Chapter 8.04: Garbage and enacting Chapter 8.04: Solid Waste and Edible Food Recovery.

BACKGROUND: At the December 1, 2021, City Council Special Meeting, the City Council introduced for first reading and waived reading of the text of an ordinance repealing Capitola Municipal Code Chapter 8.04: Garbage and enacting Chapter 8.04: Solid Waste and Edible Food Recovery.

DISCUSSION: Adoption or amendments of ordinances require two Council actions, a first reading when an ordinance is introduced, and a second reading when an ordinance is adopted.

This item is the adoption of the proposed ordinance, which will require that organic waste generators, haulers, and other entities subject to the requirements of SB 1383 regulations and subject to the jurisdiction's authority, comply with SB 1383 regulatory requirements.

City Council introduced the proposed ordinance meeting the requirements of SB 1383 at the December 1, 2021, Special Meeting. If adopted, the ordinance will become effective on January 9, 2022. The ordinance is attached to this report.

FISCAL IMPACT: The Fiscal Year fiscal impacts of the new ordinance should be limited to staff time. As the City and its franchise waste hauler further develop the compliance programs, additional costs will be included in future budgets.

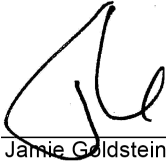
ATTACHMENTS:

1. Capitola Ordinance Chapter 8.04 (PDF)

Report Prepared By: Larry Laurent
Assistant to the City Manager

Mandatory Organics Waste Disposal Reduction Ordinance
December 9, 2021

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

12/3/2021

ORDINANCE NO. ____
**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA REPEALING
 CHAPTER 8.04 (GARBAGE) AND ENACTING CHAPTER 8.04 (SOLID WASTE AND
 EDIBLE FOOD RECOVERY) OF THE CAPITOLA MUNICIPAL CODE TO ADDRESS
 ORGANIC WASTE DISPOSAL REDUCTION**

WHEREAS, the California Integrated Waste Management Act of 1989, requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, in order to conserve water, energy, and other natural resources, and to protect the environment, and

WHEREAS, Assembly Bill 341 of 2011 placed requirements on businesses and multi-family property owners that generate a specified threshold amounts of solid waste to arrange for recycling services and required jurisdictions to implement commercial recycling programs, and

WHEREAS, Assembly Bill 1826 of 2014 required businesses and multi-family property owners that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for that waste, required jurisdictions to implement recycling programs to divert organic waste from businesses subject to the law, and required jurisdictions to implement a commercial organics recycling program, and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, required CalRecycle to develop regulations to reduce organics in landfills as a source of methane. CalRecycle's regulations place requirements on multiple entities including local jurisdictions, residential households, commercial businesses, commercial edible food generators, haulers, and others in order to support achievement of organic waste disposal reduction targets, reduce greenhouse gas emissions, and reduce food insecurity by requiring commercial edible food generators to arrange to have edible food be recovered for human consumption, and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires jurisdictions to adopt an ordinance and other enforceable mechanisms to implement relevant provisions of CalRecycle's SB 1383 regulations, and

WHEREAS, CalRecycle's SB1383 regulations specifically mandate that the City adopt an ordinance for enforcement of provisions of section 492.6 of the Department of Water Resource's Model Water Efficient Landscape Ordinance, Title 23 California Code of Regulations Chapter 2.7, related to composting, notwithstanding that the entirety of the Model Water Efficient Landscape Ordinance applies in Capitola pursuant to Government Code section 65595(d),

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

SECTION 1. Repeal and Replacement. Chapter 8.04 (Garbage) of the Capitola Municipal Code is hereby repealed and Chapter 8.04 (Solid Waste and Edible Food Recovery) is enacted, set forth in its entirety as follows:

Chapter 8.04
SOLID WASTE AND EDIBLE FOOD RECOVERY

- 8.04.010 Definitions.
- 8.04.020 Accumulation of Solid Waste.
- 8.04.030 Prohibited Disposal.
- 8.04.040 Collection – Exclusive right.
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- 8.04.120 Commercial edible food generator requirements.
- 8.04.130 Food Recovery Organization and Food Recovery Services requirements.
- 8.04.140 Enforcement and Penalties.

8.04.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings set forth herein:

- A. “Authorized collector” means such persons, firms or corporations collecting and delivering for disposal, recycling or processing solid waste (other than solid waste generated by a permitted building project) originating in the City and doing so under a contract or franchise agreement with the City.
- B. “Back-haul” means generating and transporting organic materials to a destination owned and operated by the generator using the generator’s own employees and equipment, as defined in 14 CCR section 189881(a)(66)(A).
- C. “CCR” means the California Code of Regulations.
- D. “City Manager” means the City Manager of the City of City of Capitola, or their designee.
- E. “Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily dwelling consisting of five or more units, or as further defined in 14 CCR Section 18982(a)(6). A multi-family dwelling that consists of fewer than five (5) units is not a commercial business for purposes of implementing this chapter.

- F. "Commercial Edible Food Generator" means a tier one or tier two commercial edible food generator as defined in 14 CCR Section 18982(a)(73) and (a)(74). Food recovery organizations and food recovery services are not commercial edible food generators.
- G. "Community Composting" means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4).
- H. "Compost" means the product resulting from the controlled biological decomposition of organic waste.
- I. "Construction and demolition debris" or "C&D" means used or discarded materials resulting from construction, renovation, remodeling, repair, demolition, excavation or construction clean-up operations on any pavement or structure.
- J. "Disposal" means the final disposition of solid waste at a solid waste facility permitted for disposal.
- K. "Diversion" means activities reducing or eliminating the amount of solid waste from solid waste disposal, and which return these materials to use in the form of raw materials for new, reused, or reconstituted products, which meet the quality standards necessary for commercial use, or for other purposes of reuse.
- L. "Dwelling unit" means one (1) or more rooms with internal access between all rooms, which provide complete independent living facilities for at least one (1) family, including provisions for living, sleeping, eating, cooking, bathing, and sanitary facilities.
 "Edible food" means food intended for human consumption, as further defined in 14 CCR section 18982(a)(18). For the purposes of this chapter, edible food is not solid waste if it is recovered and not discarded. Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code.
- M. "Excluded Waste" means biohazardous or biomedical waste, hazardous waste, medical waste, regulated radioactive waste, waste that is volatile, corrosive, or infectious, waste treatment or processing sludge, contaminated soil and dirt, contaminated concrete, contaminated asphalt, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, any matter or materials which are not acceptable for disposal at a solid waste landfill as defined in California Integrated Waste Management Act as may be amended, and those wastes under the regulatory control of the Nuclear Regulatory Commission.
- N. "Food recovery organization" means an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food as part of food recovery either directly or through other entities as further defined in 14 CCR section 18982(a)(25), including, but not limited to:
1. A food bank as defined in Section 113783 of the Health and Safety Code;
 2. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
 3. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.
- O. "Food recovery service" means a person or entity that collects and transports edible food from a commercial edible food generator to a food recovery organization or other entities for food

recovery, as further defined in 14 CCR section 18982(a)(26). A food recovery service is not a commercial edible food generator for the purposes of this chapter.

- P. "Food scraps" means food scraps and trimmings and other putrescible waste that result from food production, preparation, cooking, storage, consumption or handling. Food scraps includes but is not limited to meat, fish and dairy waste, fruit and vegetable waste and grain waste. Food scraps does not include excluded waste.
- Q. "Garbage" means all solid waste attributed to normal activities of a dwelling unit or commercial business. Garbage does not include recyclable materials, organic materials, debris from construction and demolition, e-waste, universal waste, hazardous waste, household hazardous waste or excluded waste.
- R. "Generators," for the purpose of this chapter, means a person or entity, including commercial generators and residential generators, that is responsible for the initial creation of solid waste or organic materials at any premises, and includes "organic waste generator" as defined in 14 CCR Section 18982(a)(48).
- S. "Organic materials" or "organic waste" means solid waste containing material originated from living organisms and their metabolic waste products, including but not limited to food scraps, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, as further defined in 14 CCR section 18982(a)(46).
- T. "Prohibited container contaminants" means (1) discarded materials placed in the designated Recyclables container that are not identified as acceptable source separated recyclables for the authorized collector's designated recyclables collection container; (2) discarded materials placed in the designated organic materials collection container that are not identified as acceptable source separated organic materials for the authorized collector's designated organic materials collection container; and (3) discarded materials placed in the garbage container that are acceptable source separated recyclables and/or source separated organic materials to be placed in authorized collector's designated organic materials collection container and/or designated recyclables collection container, and (4) excluded waste placed in any container.
- U. "Recyclable materials" and "Recyclables" means any material designated to be separated from the waste stream for purposes of recycling by the authorized collector in accordance with applicable law.
- V. "Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become garbage and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the marketplace. Recycling does not include transformation as defined in Public Resources Code § 40201.
- W. "Residential" means, for the purposes of this chapter, any premises consisting of between one (1) and four (4) dwelling units, and onsite domestic uses accessory to these dwelling units. A multi-family dwelling that consists of fewer than (5) dwelling units is a residential premises, for the purposes of this chapter.
- X. "Self-haul" means the act of hauling solid waste, organic waste or recovered materials that a person has themselves generated to another person for purposes of recovery or disposal. A "self-hauler" is any person who self-hauls waste that they have generated to another person for disposal or recovery, and also includes a person who back-hauls waste.

- Y. "Solid waste" has the same meaning as defined in Public Resources Code Section 40191, which defines solid waste as all putrescible and nonputrescible solid and semisolid wastes, including garbage, recyclable materials, organic materials, construction and demolition wastes, bulky waste, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other discarded solid and semisolid wastes with the exception that solid waste does not include any of the following wastes: (1) hazardous waste, as defined in the Public Resources Code Section 40141, (2) radioactive waste regulated pursuant to the State Radiation Control Law and (3) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code).
- Z. "Source separate" means the process of removing recyclable materials and organic materials from solid waste at the place of generation, prior to collection or self-hauling, as further defined in 14 CCR section 17402.5(b)(4).
- AA. "Tier one commercial edible food generator" means a commercial edible food generator that is one of the following as defined in 14 CCR section 18982(a):
1. Supermarkets with gross annual sales of \$2,000,000 or more
 2. Grocery store with a total facility size equal to or greater than 10,000 square feet.
 3. Food service provider, which means an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations.
 4. Wholesale food vendor, which means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination.
 5. Food distributor, which means a company that distributes food to entities including, but not limited to, supermarkets and grocery stores.
- BB. "Tier two commercial edible food generator" means a commercial edible food generator that is one of the following as defined in 14 CCR section 18982(a):
1. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
 2. Hotel with an on-site food facility and 200 or more rooms.
 3. Health facility with an on-site food facility and 100 or more beds.
 4. Large venue, which means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this ordinance, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one large venue that is contiguous with other large venues in the site, is a single large venue.
 5. Large event, which means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park,

parking lot, golf course, street system, or other open space when being used for an event.

8.04.020 Accumulation of Solid Waste.

A. It is unlawful for any person to deposit, keep or accumulate, or permit, cause or suffer, any solid waste to be deposited, kept or accumulated upon any lot or parcel of land, or public or private place, street, lane, alley or drive, unless the same is kept, deposited or allowed to accumulate as provided for in this chapter.

B. It is unlawful for the owner, occupant or person in charge of any premises to suffer, permit or allow any solid waste to remain in, on, or under such premises for a period of more than seven days, except as expressly provided for in this chapter.

C. It is unlawful for any person owning or controlling any dwelling, flat, boardinghouse, lodginghouse, restaurant, hotel, apartment or eating house, store, shop, office or office buildings to keep, accumulate, or permit to be kept or accumulated, any solid waste on or upon any lot or parcel of land, or upon any public or private place, street, lane, alley, or drive, unless the same is kept in watertight containers or receptacles constructed and maintained in a manner as provided in this chapter. Such containers shall either be provided by the authorized collector or commercially manufactured for such purpose.

D. It shall be the duty of every person in possession, charge or control of any premises upon which solid waste is produced to provide one or more containers of sufficient capacity to hold the accumulation of solid waste between the times for the collection of garbage and rubbish or self-hauling of such solid waste for disposal.

8.04.030 Prohibited Disposal.

A. It is unlawful for any person to place, deposit, keep or bury any solid waste on, in, or under any premises, except in containers as provided in this chapter.

B. It is unlawful for any person to take any solid waste generated from a residence or commercial establishment and deposit such solid waste in any public refuse container, or in any privately owned container for collection of solid waste without the express consent of the person who owns the container or is paying for collection service pertaining to such container. A public refuse can is any container authorized or maintained by the city for the use of the general public and located upon any street, sidewalk, park or right-of-way within the city.

C. No person may dispose of waste matter in any dumpster without the express permission of the person or entity responsible for paying the charges for disposal of the contents of the dumpster. For purposes of this section: "waste matter," is defined in Penal Code Section 374(b); "dumpster" means any container, primarily made of metal, with a capacity of one cubic yard or greater and designed or used as a receptacle for the disposal of waste.

D. It is unlawful to burn any solid waste on any sidewalk, street, alley, public way or public property.

E. No person shall kindle or maintain any bonfire or garbage fire and no person in possession, charge or control of any premises shall authorize or permit any such fire to be kindled or maintained on said

premises unless such fire is contained in a waste burner approved by the state and county air pollution control board.

8.04.040 Collection – Exclusive right.

A. Except as set forth elsewhere in this chapter, the city, in order to more effectually promote and protect the public health and safety and reduce the danger and hazards of fire and conflagrations, reserves unto itself the right to collect, transport, haul and dispose of or cause to be collected, transported, hauled and disposed of, all solid waste produced or found within the corporate limits of the city. The city may, upon terms and conditions deemed to be in the public interest, authorize the award of a contract for collection and disposal of solid waste within the city. At all times where such contract is in force, it shall be unlawful for any person, firm or corporation, other than the authorized collector, to collect, transport, haul or dispose of any solid waste within or from the city except as expressly set forth elsewhere in this chapter.

B. No person other than the authorized collector shall place or service drop boxes, dumpsters, or debris boxes, or containers for collection and disposal of solid waste, anywhere within the jurisdictional limits of the city. Drop boxes, dumpsters and debris boxes may only be placed or serviced in the city by the city's authorized collector.

C. The provisions of this section shall not apply to any person conveying solid waste collected outside the City nor to prohibit a person from exercising rights to self-haul solid waste to solid waste or other appropriate disposal facilities, and nor the right to divert recyclable material or organic materials so long as the diversion otherwise complies with this chapter.

8.04.050 Collection – Interference prohibited.

It is unlawful for any person, firm, or corporation, in any manner, to interfere with the collection, removal, or disposal of refuse or commercial rubbish by the authorized collector or city employees.

8.04.060 Right to Divert Recyclables and Organic Materials.

A. Nothing in this chapter limits the right of any person to donate, sell, or otherwise recover their recyclable materials so long as the removal otherwise complies with this chapter.

B. Organic materials may be fed to animals on the premises where such organic materials is produced, provided that the premises are always kept in a sanitary condition to the satisfaction of the City Manager; and provided further that the keeping and feeding of such animals shall at all times conform to the applicable regulations of those entities governing the same now in force or which thereafter may be enacted or promulgated.

C. Organic materials may be used in on-site composting or community composting, pursuant to 14 CCR Section 18984.9(c), provided that such operation conforms to the applicable regulations of those entities governing the same now in force or which thereafter may be enacted or promulgated.

8.04.070 Collection Service Requirements

A. Except for premises where the owners or occupants regularly self-haul all waste generated on the premises in accordance with section 8.04.100, each owner and tenant of any premises, including all

residential premises and commercial businesses, shall ensure that such premises is subscribed to solid waste collection service with the authorized collector as set forth herein.

B. Each person occupying any premises in the city shall arrange for a size, quantity and collection frequency of collection containers to adequately store all solid waste generated in connection with the premises between the times designated for collection service. Generators shall adjust service levels for their collection services as requested by the City in order to meet the requirements to dispose of all solid waste generated on the premises at least weekly.

C. Each occupant of each premises shall source separate the solid waste generated and shall place source separated organic materials, including food scraps, in the organic materials collection container; and shall place source separated recyclable materials, as established by the authorized collector, in the recyclable material collection container; and shall place garbage in the garbage collection container.

D. No person shall place any prohibited container contaminant into any collection container serviced by the authorized collector.

E. The authorized collector shall give written notice to the City Manager of the address of any occupied premises within the City which is not subscribing to the solid waste collection service provided by the authorized collector.

8.04.080 Commercial business requirements.

A. Each owner, operator, or manager of a commercial business shall ensure the proper separation of solid waste generated on such premises, as required by the authorized collector, by placing each type of material in designated collection containers, and ensure that employees, contractors, volunteers, customers, visitors, and other persons on-site follow source separation requirements related to solid waste as required by the authorized collector. Each owner, operator, or manager of a commercial business, except for multifamily dwellings, shall prohibit employees from placing materials in a container not designated for those materials, and shall periodically inspect containers for organic waste and inform employees of requirements to ensure such containers are only used for organic waste.

B. Each owner, operator, or manager of a commercial business shall supply an adequate number, size, and location of collection containers with sufficient labels or colors designating the appropriate material for deposit in accordance with source separation requirements of the authorized collector for the employees, contractors, tenants, and customers of the commercial business.

C. Each owner, operator, or manager of a commercial business shall annually provide information to employees, contractors, tenants, and customers about organic materials recovery requirements and about proper sorting of solid waste.

D. Each owner, operator, or manager of a commercial business shall provide educational information within fourteen (14) days of occupation of the premises to any new tenants that describes requirements to keep source separated organic materials and source separated recyclable materials separate from garbage and the location of collection containers and the rules governing their use at each property.

E. Each owner, operator, or manager of a commercial business shall cooperate with the authorized collector's monitoring program for inspection of the contents of containers for prohibited container contaminants.

F. Each owner, operator, or manager of a commercial business, except for multifamily dwellings, shall provide containers meeting the requirements of 14 CCR section 18984.9 for the collection of source separated organic materials and source separated recyclable materials in all indoor and outdoor areas where garbage disposal containers are provided for customers, for materials generated onsite. Such containers do not need to be provided in restrooms. If a commercial generator does not generate any of the materials that would be collected in one type of collection container, then it is not required to provide that type of container in all areas where disposal collection containers are provided for customers.

G. If a commercial generator self-hauls, the commercial generator shall meet the self-haul requirements in section 8.04.100.

8.04.090 Waivers for Commercial Businesses.

A. The City Manager may grant waivers to commercial business for physical space limitations and/or de minimis volumes. Commercial businesses seeking a waiver shall submit their request in a form specified by the City Manager. After reviewing the waiver request, and after an on-site review, if applicable, the City Manager may either approve or deny the following waiver requests. Anyone granted a waiver shall provide written verification of eligibility for a waiver at least every five years, and shall notify the City if circumstances change such that they are no longer eligible for such waiver, in which case waiver will be rescinded.

B. De Minimis Waivers: The City Manager may waive obligations of a commercial business to comply with the collection service and source separation requirements of section 8.04.080 if the commercial business meets the following requirements:

1. Submits an application specifying the type of waiver requested and provide documentation as described below.
2. Provides documentation that either:
 - i. The commercial business receives two or more cubic yards of weekly solid waste collection service and disposed organic materials subject to collection comprises less than 20 gallons per week of the business' total weekly solid waste collection service volume; or
 - ii. The commercial business receives less than two cubic yards of weekly solid waste collection service and disposed organic materials subject to collection comprises less than 10 gallons per week of the business' total weekly solid waste collection service volume.
3. For the purposes of subsections (i) and (ii) above, total weekly solid waste collection service shall be the sum of weekly garbage collection container volume, recyclable material collection container volume and organic materials collection container volume, measured in cubic yards.

C. Physical Space Waivers: The City may waive a property owner's obligations to comply with the collection service and source separation requirements of section 8.04.080 if presented evidence from its

own staff, authorized collector, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with collection service requirements. A property owner may request a physical space waiver through the following process:

1. Submit an application form specifying the type(s) of collection services for which they are requesting a waiver from mandatory collection service.
2. Provide documentation that the premises lacks adequate space for the recyclable materials collection containers and/or organic materials collection containers including documentation from its authorized collector, licensed architect, or licensed engineer.

8.04.100 Self-hauler requirements.

A. Any generator of solid waste may personally haul the same in a vehicle owned by, or in the lawful possession of, the generator of such solid waste, to a lawful disposal facility outside of the City limits, subject to the following requirements:

1. Self-haulers, including back-haulers, must source separate and transport organic materials to a solid waste facility, operation, activity, or property that processes or recovers source separated organic materials.
2. Self-haulers, including back-haulers, must source separate and transport recyclable materials to a solid waste facility, operation, activity, or property that processes or recovers those materials.
3. Self-haulers may avoid the obligation to source separate all organic materials and recyclables only if they haul organic waste to a high diversion organic waste processing facility as specified in 14 CCR Section 18984.3.
4. Self-haulers that are commercial businesses shall keep a record of the amount of organic materials delivered to each solid waste facility, operation, activity, or property that processes or recovers organic materials; this record shall be subject to inspection by the City. The records shall include the following information:
 - i. Delivery receipts and weight tickets from the entity accepting the waste. If the material is transported to an entity that does not have scales on-site or employs scales incapable of weighing the self-hauler's vehicle in a manner that allows it to determine the weight of materials received, the self-hauler is not required to record the weight of material but shall keep a record of the entities that received the organic materials.
 - ii. The amount of material in cubic yards or tons transported by the generator to each entity.

B. Self-haulers must complete and retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with this chapter or any other applicable law or regulation. A copy of such form shall be completed and remitted annually to the City Manager.

C. This section is permissive and does not relieve any owner or occupants of property of the requirements of compliance with regular and routine disposal of all solid waste generated on the premises at least once per week as set forth in section 8.04.020. Nothing in this chapter shall prohibit any generator from regularly disposing of garbage, recyclable material, or organic materials at an appropriate disposal or recovery facility, by self-hauling in a manner conforming to this section.

8.04.110 Franchised haulers and facility operators.

A. Any authorized collector providing residential, commercial, or industrial organic materials collection services to generators within the City's boundaries shall:

1. Provide written notice to the City annually on or before April 1 identify the facilities to which they will transport solid waste including facilities for source separated recyclable materials and source separated organic materials.
2. Transport source separated recyclable materials and source separated organic materials to a facility, operation, activity, or property that recovers organic materials as defined in 14 CCR, Division 7, Chapter 12, Article 2.
3. Obtain approval from the city to haul organic materials, unless it is transporting source separated organic materials to a community composting site or lawfully transporting construction and demolition debris in a manner that complies with 14 CCR Section 18989.1.
4. Comply with other requirements contained within its franchise agreement.

B. Owners of facilities, operations, and activities that recover organic waste, including, but not limited to, compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon the city's request, provide information within 60 days regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes.

C. Any person owning, managing, or otherwise responsible for a parcel upon which there is a community composting operation, shall within 60 days of a request by the city, provide information to the city as may be deemed necessary by the city to support organic waste capacity planning, including, but not limited to, an estimate of the amount of organic waste anticipated to be handled at the community composting operation.

8.04.120 Commercial edible food generator requirements.

- A. Tier one commercial edible food generators must comply with the requirements of this section January 1, 2022, and tier two commercial edible food generators must comply commencing January 1, 2024.
- B. Large venue or large event operators not providing food services, but allowing for food to be provided by others, shall require food facilities operating at the large venue or large event to comply with the requirements of this section, commencing January 1, 2024.
- C. Commercial edible food generators shall comply with the following requirements:
 1. Arrange to recover the maximum amount of edible food that would otherwise be disposed.
 2. Contract with or enter into a written agreement with food recovery organizations or food recovery services for: (a) the collection of edible food for food recovery; or (b) acceptance of the edible food that the commercial edible food generators self-hauls to the food recovery organization for food recovery.
 3. Shall not intentionally spoil edible food that is capable of being recovered by a food recovery organization or a food recovery service.

4. Allow the City's enforcement officer to access the premises and review records required to be kept under 14 CCR Section 18991.4.
5. Keep records that include the following information as specified in 14 CCR Section 18991.4:
 - a. A list of each food recovery service or organization that collects or receives its edible food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
 - b. A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
 - c. A record of the following information for each of those food recovery services or food recovery organizations:
 - i. The name, address and contact information of the food recovery service or food recovery organization.
 - ii. The types of food that will be collected by or self-hauled to the food recovery service or food recovery organization.
 - iii. The established frequency that food will be collected or self-hauled.
 - iv. The quantity of food, measured in pounds recovered per month, collected or self-hauled to a food recovery service or food recovery organization for food recovery.
- D. Nothing in this Chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

8.04.130 Food Recovery Organization and Food Recovery Services requirements.

- A. Food recovery services collecting or receiving edible food directly from commercial edible food generators shall maintain the following records, as required by 14 CCR Section 18991.5(a)(1):
 1. The name, address, and contact information for each commercial edible food generator from which the service collects edible food.
 2. The quantity in pounds of edible food collected from each commercial edible food generator per month.
 3. The quantity in pounds of edible food transported to each food recovery organization per month.
 4. The name, address, and contact information for each food recovery organization that the food recovery service transports edible food to for food recovery.
- B. Food recovery organizations collecting or receiving edible food directly from commercial edible food generators shall maintain the following records as required by 14 CCR Section 18991.5(a)(2):

1. The name, address, and contact information for each commercial edible food generator from which the organization receives edible food.
 2. The quantity in pounds of edible food received from each commercial edible food generator per month.
 3. The name, address, and contact information for each food recovery service that the organization receives edible food from for food recovery.
- C. Food recovery organizations and food recovery services that have their primary address physically located in the City and contract with one or more commercial edible food generators pursuant to 14 CCR Section 18991.3(b) shall annually report to the city the total pounds of edible food recovered in the previous calendar year from tier one and tier two commercial edible food generators no later than April 1.

In order to support edible food recovery capacity planning assessments or other studies, food recovery services and food recovery organizations operating in the city shall provide information and consultation to the city upon request, regarding existing or proposed food recovery capacity that could be accessed by the city and its commercial edible food generators. A food recovery service or food recovery organization contacted by the city shall respond to such request for information within 60 days unless a shorter timeframe is otherwise specified by the city.

8.04.140 Enforcement and Penalties.

A. Any enforcement officer as defined in section 4.02.021 shall have the duty and authority to enforce the provisions of this chapter.

B. No person shall deny or obstruct the making of any inspection or collection or removal.

C. Any person violating the provisions of this chapter shall be deemed to be guilty of an infraction. Any violation of this chapter shall be public nuisance and may be punished or enforced in accordance with the provisions of chapter 4.16 and chapter 4.18 of this code. Three or more subsequent violations of this chapter by the same person or persons within a 12-month period may be charged and prosecuted as a misdemeanor. Any violation shall be subject to administrative citation and imposition of civil penalties under chapter 4.14 in the following amounts:

1. A fine not exceeding one hundred dollars for a first violation;
2. A fine not exceeding two hundred dollars for a second violation of the same provision of this code within any twelve consecutive month period;
3. A fine not exceeding five hundred dollars for each additional violation of the same provision of this code within any twelve consecutive-month period.

Section 2. Environmental Review. The City Council finds the adoption of this ordinance is exempt under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment. In the alternative, the City Council determines that the basic purpose of this ordinance is to strengthen requirements for the handling and disposal of solid waste generated within the City, and that the requirements in this ordinance to divert organic materials away from disposal into landfills that is likely to reduce the generation of short-term climate pollutants, and therefore the adoption of this ordinance is an action for the protection of the environment and natural resources, and is categorically exempt

pursuant to CEQA Guidelines section 15307 (actions by regulatory agencies for the protection of natural resources) and 15308 (actions by regulatory agencies for the protection of environment).

Section 5. Severability. The City Council hereby declares that every section, paragraph, sentence, clause, 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 6. Effective Date. This ordinance shall be in full force and effective 30 days after its adoption.

Section 7. Publication. The City Clerk is directed to cause this ordinance or a summary thereof to be published in the manner required by law.

This Ordinance was introduced at a regular meeting of the Capitola City Council on the 23rd day of November 2021, and was adopted at a regular meeting of the Capitola City Council on the ___ day of December 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Chloe Woodmansee, City Clerk



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF DECEMBER 9, 2021

FROM: Community Development

SUBJECT: Consider an Outdoor Dining Ordinance, a Resolution for Coastal Commission Certification, and Update Administrative Policy I-36

RECOMMENDED ACTION:

1. Pass an ordinance of the City of Capitola repealing and replacing Municipal Code Sections 17.96.170 and amending Municipal Code Section 17.120.030, related to outdoor dining in the public right of way.
2. Adopt the proposed resolution authorizing staff to submit the Zoning Code Update/Local Coastal Plan Update to the Coastal Commission for Certification.
3. Approve the updated Administrative Policy I-36 for the Village Outdoor Dining Program.

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. Over the course of the next several months, the City Council held two additional hearings regarding a permanent outdoor dining program, received results from two public surveys, and provided direction on key elements of a program to staff.

On September 30, 2021, the public review draft of the outdoor dining ordinance was published on the City website.

On October 7, 2021, the Planning Commission reviewed the draft outdoor dining ordinance, provided staff with direction, and continued the public hearing to November 4, 2021. The Planning Commission requested additional public notice beyond the required published notice in a local newspaper. The City sent postcards to all residents and businesses within the Village. The City posted public notice throughout the Village and on the existing temporary outdoor dining decks.

On November 7, 2021, the Planning Commission provided direction on the draft ordinance but ultimately recommend the Council delay adoption of the ordinance until the City has a prototype design in place.

On November 23, 2021, the City Council, due to a network issue, continued the public hearing to December 1, 2021.

In a Special Meeting on December 1, 2021, the City Council approved the first reading of the

Outdoor Dining Ordinance
December 9, 2021

draft ordinance to repeal and replace Municipal Code Sections 17.96.170 and amend Municipal Code Section 17.120.030, which included the majority of the Planning Commission recommendations but added back into the ordinance an allowance for street dining decks on Monterey Avenue and Capitola Avenue and Sidewalk Dining on Monterey Avenue, Capitola Avenue, and the Wharf within the mixed-use village. A copy of the ordinance that was introduced at the December 1 meeting is attached.

Administrative Policy I-36

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 utilize the right-of-way in the Village for outdoor dining, allocate parking spaces, and charge fees. The policy also outlines required permits, and terms for a revocable 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.

Since the December 1, 2021 meeting, the administrative policy has been updated to include:

- An annual \$300 fee for in-lieu parking. The fee is based on utilizing one vehicle parking space for twelve bike bicycle parking space, and
- Procedures for holding additional lotteries, in the event additional spaces are available.

The administrative policy for the Village Outdoor Dining Program is included as an attachment with all new changes identified in red.

CEQA: Passing the ordinance 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 passage of the ordinance 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.

FISCAL IMPACT: An annual fee of \$3,400 per parking space will be charged to the businesses that participate in this program. This fee covers the average revenue generated annually by a single parking space in the Village.

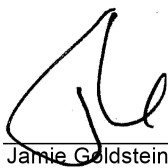
ATTACHMENTS:

1. OUTDOOR DINING ORDINANCE (DOC)
2. LCP Amendment Resolution for Outdoor Dining (DOCX)
3. Capitola_Street_Frontage_Dining_Ordinance_Noise_Memo 9-22-21 FINAL (PDF)
4. Outdoor Dining Administrative Policy (PDF)

Report Prepared By: Katie Herlihy
Community Development Director

Outdoor Dining Ordinance
December 9, 2021

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

12/3/2021

ORDINANCE NO. XXXX

**AN ORDINANCE OF THE CITY OF CAPITOLA
REPEALING AND REPLACING MUNICIPAL CODE SECTIONS 17.96.170, AND
AMENDING MUNICIPAL CODE SECTION 17.120.030,
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, Capitola 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. On-street parking spaces utilized for in-lieu bicycle parking shall count toward the maximum 25 spaces.

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	Design 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. **The** street dining deck must be designed consistent with a prototype design approved by the Planning Commission.
- b. **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 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 must utilize high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
- e. **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**

- 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 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 are not permitted in or on any portion of the improvements of a sidewalk dining area or street dining deck, except as specified in section b.
 - b. One business identification sign and one menu sign each not to exceed two square feet are 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 shall be picked up and properly disposed of.
 - b. All flower boxes and planters shall 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 discouraged.

H. Enforcement.

1. **General.**
 - a. The City shall have all enforcement remedies permitted by law, including but not limited to those in **Administrative Policy I-36** 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.

Section 3. 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 ~~striethrough~~):

Chapter 17.120 Design Permits

17.120.030 When Required

- A. 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
Single-Family Residential Projects	
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
Multifamily Residential Projects	
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
Non-Residential Projects (Including Mixed-Use)	
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>

B. 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.

C. 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 4: 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 5: 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 6: 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

Attachment: OUTDOOR DINING ORDINANCE (Outdoor Dining Ordinance)

RESOLUTION NO.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA AUTHORIZING SUBMITTAL TO THE CALIFORNIA COASTAL COMMISSION FOR THE CERTIFICATION OF AN AMENDMENT TO THE LOCAL COASTAL PROGRAM REPEALING AND REPLACING MUNICIPAL CODE SECTIONS 17.96.170, AND AMENDING MUNICIPAL CODE SECTION 17.120.030.

WHEREAS, the City of Capitola's Local Coastal Program (LCP) was certified by the California Coastal Commission in December of 1981 and has since been amended from time to time; and

WHEREAS, the City Council adopted the General Plan Update on June 26, 2014; and

WHEREAS, the Local Coastal Program Land Use Plan is a comprehensive long-term plan for land use and physical development within the City's coastal zone and includes the Coastal Land Use Plan Map; and

WHEREAS, the Capitola City Council adopted the most recent comprehensive update to the City of Capitola Zoning Code (Title 17 of the Capitola Municipal Code) in 2021; and

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 will be preauthorized by the Planning Commission through a blanket Coastal Development Permit.

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, 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

RESOLUTION NO.
and 15311; and

WHEREAS, the draft ordinance was then circulated for a 60-day public review period on October 1, 2021; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 7, 2021 and November 4, 2021, at which time it reviewed the proposed amendments, considered all public comments on the revisions and related CEQA exemption, and provided input on the draft ordinance, and a recommendation to delay the proposed ordinance; and

WHEREAS, the Capitola City Council conducted duly noticed public hearings on November 23, 2021 and December 1, 2021, at which the City Council introduced and performed a first reading of the revised municipal code sections. On December 9, 2021, the City Council adopted the ordinance, which repealed and replaced Section 17.96.170, and amended section 17.120.030 of the Capitola Municipal Code; and

WHEREAS, 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.

WHEREAS, following the City Council's adoption, Capitola staff submitted the Zoning Code update to the Californian Coastal Commission staff for preliminary review in preparation for Local Coastal Plan (LCP) certification; and

WHEREAS, the Local Coastal Program Implementation Plan establishes specific land use and development regulations to implement the Local Coastal Program Land Use Plan, and Chapter 17 (Zoning) and the Zoning Map are part of Capitola's Local Coastal Program Implementation Plan; and

WHEREAS, the City provided Public Notice, as required under Coastal Act 30514 et seq., for Certification of the LCP Implementation Plan and Corresponding Maps.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Capitola, that this Resolution declares and reflects the City's intent to amend the LCP Implementation Plan as it pertains to Chapter 17 (Zoning) Section 17.96.170 and Section 17.120.030, as drafted, if certified by the California Coastal Commission, in full conformity with the City of Capitola LCP and provisions of the California Coastal Act.

BE IT FURTHER RESOLVED, that the City Manager or his designee is directed to submit the said Coastal Commission LCP Amendments to the California Coastal Commission for its review and certification. If the Coastal Commission approves the amendment package, it will take

RESOLUTION NO.

effect automatically upon Coastal Commission approval. If the Coastal Commission modifies the amendment package, only the modifications will require formal action by the City of Capitola.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola on the 9th day of December, 2021, by the following vote:

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

Yvette Brooks, Mayor

ATTEST: _____
Chloé Woodmansee, City Clerk

Attachment: LCP Amendment Resolution for Outdoor Dining (Outdoor Dining Ordinance)

MEMORANDUM

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

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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Noise Assessment of Proposed Municipal Code Section 17.170.19 - Outdoor Dining in Public Right of Way

September 22, 2021

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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.

MEMORANDUM

Noise Assessment of Proposed Municipal Code Section 17.170.19 - Outdoor Dining in Public Right of Way

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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 41st 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 49th 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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Noise Assessment of Proposed Municipal Code Section 17.170.19 - Outdoor Dining in Public Right of Way

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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
Single-Family Residential Projects	
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
Multifamily Residential Projects	
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
Non-Residential Projects (Including Mixed-Use)	
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.



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)

Public parking spaces utilized for the in-lieu bicycle parking shall count toward the maximum of 25 spaces.

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.
- Step 7. If there are additional spaces available six months after the initial award, a second lottery will be held.
- Step 8. Thereafter, any available spaces will be allocated through a lottery. The lease will expire three and a half years from the first lottery.

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 revocable 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.

Revocable Encroachment Permit. Per Capitola Municipal Code 12.56, applicants must receive a revocable encroachment permit from the City of Capitola prior to construction of an outdoor dining area. The revocable 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 10th 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 revocable 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.

Revocable Encroachment Permit Term Expiration. All revocable encroachment permits issued for outdoor dining will have a term of three years **or less**. 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 annual in-lieu fee of \$300 per year per bicycle parking space. Fee shall be deposited into the City’s in-lieu bike fund to create a central bicycle parking location. Also, a one-time fee of \$200 will be charged per bicycle parking space for materials and installation.**
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.



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF DECEMBER 9, 2021

FROM: City Manager Department

SUBJECT: Receive Update on Pandemic Response and Consider Adopting Proposed Resolution Allowing for the Continuation of Teleconferencing

RECOMMENDED ACTION: 1) Make the determination that all hazards related to the worldwide spread of the coronavirus (COVID-19) as detailed in Resolution No. 4168 adopted by the City Council on March 12, 2020, still exist and that there is a need to continue action; and 2) Adopt the proposed resolution authorizing the Capitola City Council (along with the Planning Commission and all advisory bodies) to continue to conduct teleconferencing meetings.

BACKGROUND: In December 2019, an outbreak of a respiratory illness linked to the novel coronavirus (COVID-19) was first identified. In March 2020, the State of California, the County of Santa Cruz, and the City of Capitola each declared a state of emergency due to the virus. Also in March 2020, the World Health Organization declared COVID-19 a pandemic.

State and local health officers issued health orders to stop the spread of COVID-19; in Santa Cruz County this included March, April, and May 2020 Shelter-In-Place orders that were more restrictive than statewide guidance. Since then, the County Health Officer has incorporated all Orders of the State Public Health Officer, which set baseline statewide restrictions on travel and business activities.

In early-November 2021 the world reached a sobering milestone; more than 5 million people worldwide have died of COVID-19. This is likely an undercount of all those that have died from the virus. There have been 261 million cases reported worldwide.

Since the beginning of the pandemic in the United States more than 782,826 people have died from the virus and more than 48 million COVID-19 cases have been reported.

In California, 73,919 deaths have been reported; there is a daily average of 54 deaths a day due to COVID-19. According to data from December 1, the average new COVID-19 case count per 100k was 9.2.

Boosters

Recently, the State of California announced that nearly everyone is now eligible for a booster shot and is (along with Santa Cruz County Health Department) encouraging all to get a booster shot as soon as possible. You are eligible if:

- 1) You got a Pfizer or Moderna vaccine and feel you're at risk, at least 6 months ago
- 2) If you got a Johnson & Johnson vaccine at least 2 months ago.

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Booster shots can be a different vaccine brand than you received before, as long as you completed your original vaccine series (one dose of Johnson & Johnson or two doses of Pfizer or Moderna).

As of December 2, the total number of vaccinations administered in Santa Cruz County is 431,494. In the County, there are 203,962 (74.65%) people vaccinated with at least one dose, and 186,784 (68.37%) are fully vaccinated.

Omicron Variant

As stated by the World Health Organization (WHO), “all viruses, including SARS-CoV-2, the virus that causes COVID-19, change over time. Most changes have little to no impact on the virus’ properties. However, some changes may affect the virus’s properties, such as how easily it spreads, the associated disease severity, or the performance of vaccines, therapeutic medicines, diagnostic tools, or other public health and social measures”.

On November 26, the WHO designated a new variant, B.1.1.529, as a Variant of Concern (VOC) and named it Omicron. The WHO has reported that “preliminary evidence suggests an increased risk of reinfection with this variant, as compared to other VOCs.

On December 1, California reported the first omicron case in the United States. On December 2, Minnesota announced they have identified an omicron COVID-19 case in the state.

Local Case Numbers and Statistics in Santa Cruz County

As of December 2, there were 21,124 total known COVID-19 cases in Santa Cruz County. Rather than the total number of all COVID-19 cases since March 2020, it is helpful to compare the currently active known case count to identify trends and/or a surge. On November 18 there were 455 active cases; on November 29 that number was 517 and on December 2 that number was 540.

As of November 29, COVID-19 has claimed 222 people’s lives in the County; as of December 2, two more deaths have been reported and that number is now 224.

DISCUSSION: City Hall has been open to the public since June 2020 in one configuration or another, dependent upon applicable health guidance and local COVID-19 case levels. Current City Hall operations are business as usual, with masking required of all regardless of vaccination status when in public spaces (not in private, individual office spaces). Members of the public are helped one-at-a-time at the front counter and masks are required to enter City Hall.

New Mask Mandate

On November 19, the Santa Cruz County Health Officer issued a new Order requiring the use of face coverings indoors, regardless of vaccination status. The new Order is effective at midnight November 21, 2021, and states that masks must be worn in private settings when non-household members are present.

Health Officer Newell stated that “a potential winter surge appears to be a significant threat to the health and safety of our community”. The Order will remain in effect until it is rescinded, superseded, or amended in writing by the Health Officers, considering hospitalizations, variants of concern, and case and vaccination rates.

If major changes occur between the date of agenda publication and the City Council meeting, further updates on the regional and local coronavirus response will be provided in a verbal report at the meeting.

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Continuing Virtual/Teleconferencing Meetings

The Governor signed Assembly Bill 361 on September 16, 2021. The Bill allows cities to continue virtual meetings (much as Capitola City Council Meetings function now) as long as the state is under a proclaimed state of emergency; through 2024 when the bill will sunset. The Bill requires legislative bodies to comply with the requirements set forth in Government Code section 54953(e)(2) to ensure the public can safely participate and observe local government meetings. One of the requirements is for Council to adopt findings every thirty days. Attached is a resolution that makes the following findings:

- 1) Find that current conditions authorize teleconference public meetings, based on the Governor's state of emergency regarding the COVID-19 Pandemic
- 2) Authorize legislative bodies to conduct teleconference meetings, allowing Capitola City Council, Planning Commission, and other advisory bodies to continue to meet using Zoom.

FISCAL IMPACT: Fiscal impacts are continually reviewed by Staff as business restrictions and consumer behaviors change in our community. In addition, the City Council has set aside \$600,000 to help ensure the City has available resources should the pandemic result in further unforeseen impacts, which remains in the approved FY 2021/22 Budget.

ATTACHMENTS:

1. Teleconferencing AB 361_Dec9 Meeting

Report Prepared By: Chloe Woodmansee
City Clerk

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

12/3/2021

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA AND ON BEHALF OF COMMISSIONS AND COMMITTEES CREATED BY THE CITY COUNCIL PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 54952(b) AUTHORIZING TELECONFERENCE MEETINGS IN COMPLIANCE WITH AB 361 (GOVERNMENT CODE SECTION 54953(e)) TO CONTINUE TO ALLOW MEMBERS OF THE PUBLIC TO SAFELY PARTICIPATE IN LOCAL GOVERNMENT MEETINGS

WHEREAS, the City Council is committed to ensuring public access to observe and participate in local government meetings; and

WHEREAS, all meetings of the City Council and other legislative bodies created pursuant to Government Code Section 54952(b) are open and public, as required by the Ralph M. Brown Act, so that any member of the public may participate in local government meetings; and

WHEREAS, the recently adopted AB 361, codified at Government Code section 54953(e), makes provisions for remote teleconferencing participation in local government meetings, without compliance with the requirements of 54953(b)(3), during a Governor-proclaimed state of emergency and if the local legislative body determines, by majority vote, that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, and

WHEREAS, on March 4, 2020, Governor Newsom proclaimed a State of Emergency due to the outbreak of respiratory illness due to a novel coronavirus (now known as COVID-19) and that State of Emergency is still in effect in the State of California; and

WHEREAS, on March 12, 2020, the Capitola City Council proclaimed the existence of a local emergency due to the worldwide spread of the coronavirus with Resolution No. 4168, pursuant to Section 8.08.020 of the Capitola Municipal Code and Section 8625 of the California Emergency Services Act in response to the COVID-19 pandemic; and

WHEREAS, COVID-19 continues to threaten the health and lives of City residents; and

WHEREAS, the SARS-CoV-2 Delta Variant (Delta Variant) is highly transmissible in indoor settings; and

WHEREAS, on July 28, 2021, the California Department of Public Health issued guidance calling for the use of face coverings and stating that the Delta Variant is two times as contagious as early COVID-19 variants, leading to increasing infections, the Delta Variant accounts for over 80% of cases sequenced, and cases and hospitalizations of COVID-19 are rising throughout the state; and

WHEREAS, the Delta Variant has caused, and will continue to cause, conditions of imminent peril to the health safety of persons within the City; and

WHEREAS, on both October 14 and November 10, 2021, the City Council adopted resolutions proclaiming the need to meet by teleconference pursuant to Government Code Section 54953; and

WHEREAS, the City Council, acting as a legislative body pursuant to Government Code section 54952(a) and for the benefit of the commissions, committees and other bodies that were created by the City Council pursuant to Government Code section 54952(b) (collectively referred to as "Legislative Bodies"), finds that the current conditions meet the circumstances set forth in Government Code section 54953(e)(3) to allow Legislative Bodies to continue to use

teleconferencing to hold open and public meetings if the Legislative Bodies comply with the requirements set forth in Government Code section 54953(e)(2) to ensure the public can safely participate in and observe local government meetings.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Capitola that the City Council does hereby:

1. Recitals. The Recitals set forth above are true and correct and are hereby incorporated by this reference.

2. Find that Current Conditions Authorize Teleconference Public Meetings of Legislative Bodies. The City Council has reconsidered the circumstances of the state of emergency and finds that based on the California Governor’s continued declaration of a State of Emergency and current conditions, meeting in person would present imminent risks to the health or safety of attendees, such that the conditions continue to exist pursuant to Government Code section 54953(e)(3) to allow Legislative Bodies to use teleconferencing to hold public meetings in accordance with Government Code section 54953(e)(2) to ensure members of the public have continued access to safely observe and participate in local government meetings.

3. Authorize Legislative Bodies to Conduct Teleconference Meetings. The Legislative Bodies are hereby authorized to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e)(2) and other applicable provisions of the Brown Act.

I HEREBY CERTIFY that the foregoing resolution was PASSED and ADOPTED by the City Council of the City of Capitola on the 9 day of December, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Yvette Brooks, Mayor

ATTEST: _____
Chloé Woodmansee, City Clerk

Attachment: Teleconferencing AB 361_Dec9 Meeting (COVID-19 Emergency- Update 37)



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF DECEMBER 9, 2021

FROM: City Manager Department

SUBJECT: Council Reorganization for 2022

RECOMMENDED ACTION: Select and vote to approve a new Mayor and Vice-Mayor.

BACKGROUND/DISCUSSION: Capitola Municipal Code requires that "each year the city council shall select a mayor and mayor pro tempore" (vice-mayor). The Council should select a mayor and vice-mayor by motion and approve by roll call vote; the newly selected mayor will then preside over the remainder of the meeting.

FISCAL IMPACT: None.

Report Prepared By: Chloe Woodmansee
City Clerk

Reviewed and Forwarded by:

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

Jamie Goldstein, City Manager

12/3/2021



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF DECEMBER 9, 2021

FROM: Public Works Department

SUBJECT: Receive a Report on Bids Received for the 2021 Road Repair Project and Consider Awarding a Contract

RECOMMENDED ACTION: Receive a report on construction bids received on Wednesday December 8, 2021, for the 2021 Road Repair Project and consider award of contract.

BACKGROUND: On October 14, 2021, the City Council approved the plans, specifications, and construction estimate for the 2021 Road Repair Project and authorized advertising for construction bids.

DISCUSSION: The bids will be received on Wednesday December 8, 2021. Staff will then prepare a report on the bids received which will be distributed as additional material for this item.

If the low bid is under the construction estimate of \$135,380 no action is required of the Council as staff has the authority to issue a contract if the value is less than the approved budget estimate. If the low bid exceeds this estimate, Council may either award the contract in the amount of the low bid or reject all bids. Staff's recommendation will be based on available funding identified for this project.

FISCAL IMPACT: The 2021 Road Repair Project is the first phase of two resurfacing projects for several streets in the City; the second phase of resurfacing will be completed as part of a joint project with Santa Cruz County next spring.

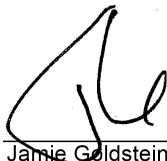
The cost estimates for both project phases is \$520,380, as outlined below:

Phase 1: Street resurfacing	\$135,380
Phase 2: Cape Seal	<u>\$385,000</u>
Total project	\$520,380

Report Prepared By: Steve Jesberg
Public Works Director

Dig out project report on bids
December 9, 2021

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

12/3/2021