

# City of Capitola Agenda

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



## CAPITOLA CITY COUNCIL REGULAR MEETING THURSDAY, FEBRUARY 28, 2013

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

*An announcement regarding the items to be discussed in Closed Session will be made in the City Hall Council Chambers prior to the Closed Session. Members of the public may, at this time, address the City Council on closed session items only.*

#### **CONFERENCE WITH LABOR NEGOTIATOR (Govt. Code §54957.6)**

Negotiator: Jamie Goldstein, City Manager  
Employee Organizations: Capitola Police Officers Association and  
Capitola Police Captains

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

City of Capitola, et al. Lexington Insurance Company [United States District Court,  
Northern District of California, Case No. 5:12-CV-03428-LHK].

#### **CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Govt. Code § 54956.8)**

Property: 401 Capitola Ave., Capitola; APN 035-13-111  
Agency Negotiator: City Manager  
Negotiating Parties: City of Capitola and property owner  
Under Negotiation: Property Negotiations

#### **CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION**

##### **Significant Exposure to litigation pursuant to subdivision (b) of Govt. Code §54956.9**

1. County of Santa Cruz regarding the Noble Gulch pipe failure;
2. County of Santa Cruz — Property Tax Administrative Fee Dispute.

**CAPITOLA CITY COUNCIL – Thursday, February 28, 2013**

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

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

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

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

**2. PRESENTATIONS**

A. Certificate of appreciation to Karl Forest who served on the Commission on the Environment.

B. Certificate of appreciation to Anne Nicol and Peter Roddy who served on the Traffic & Parking Commission.

**3. REPORT ON CLOSED SESSION**

**4. ADDITIONS AND DELETIONS TO AGENDA**

**5. PUBLIC COMMENTS**

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

**6. COUNCIL/STAFF ANNOUNCEMENTS**

**7. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS**

A. Consideration of appointment to the Advisory Council on the Area on Aging.

**8. CONSENT CALENDAR**

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

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

A. Approval of City Check Register Reports dated January 18, 2013; January 25, 2013; February 1, 2013; February 8, 2013; and February 15, 2013.

**RECOMMENDED ACTION:**

Approve the City Check Register Reports.

B. Consideration of an Ordinance amending Municipal Code Sections 8.38 of the Capitola Municipal Code Pertaining to Smoking Regulations [2nd Reading].

**RECOMMENDED ACTION:**

Adopt Ordinance.

## CAPITOLA CITY COUNCIL – Thursday, February 28, 2013

- C. Consideration of City Hall tree replacement.  
RECOMMENDED ACTION:  
Approval removal and replacement of trees.
- D. Authorize the City Manager to recruit for the position of Senior Planner.  
RECOMMENDED ACTION:  
Authorize the City Manager to initiate the recruitment process.

### 9. GENERAL GOVERNMENT/PUBLIC HEARINGS

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

- A. Update on Lower Pacific Cove Parking Lot Project.  
RECOMMENDED ACTION:  
Discuss and provide direction.
- B. Consideration of an Urgency Ordinance revising and supplementing current Capitola Municipal Code Chapter 5.32 – Firearms and Ammunition Regulations, and adopting Regulations pertaining to the possession of firearms on City property and public property in the vicinity of schools.  
RECOMMENDED ACTION:  
Adopt Urgency Ordinance.
- C. Consideration of approving the revised Board, Commission and Committee Guide Procedures, the City Manager Memorandum regarding public meeting teleconferencing procedures, and the Teleconferencing Requests Form.  
RECOMMENDED ACTION:  
Approve the Board, Commission and Committee Guide Procedures, the City Manager Memorandum, and the Teleconferencing Requests Form.

### 10. COUNCIL/STAFF COMMUNICATIONS

### 11. CITY COUNCIL/TREASURER COMMENTS/COMMITTEE REPORTS

*City Council Members/City Treasurer may comment on matters of a general nature or identify issues for staff response or future council consideration. Council Members/Committee Representatives may present oral updates from standing committees at this time.*

### 12. ADDITIONAL MATERIALS

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

### 13. ADJOURNMENT

Adjourn to the next Regular Meeting of the City Council on Thursday, March 14, 2013, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

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

## **CAPITOLA CITY COUNCIL – Thursday, February 28, 2013**

of the public hearing. Failure to comply with this 90-day rule will preclude any person from challenging the City Council decision in court.

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

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

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

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

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

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



## CITY COUNCIL AGENDA REPORT

### MEETING OF FEBRUARY 28, 2013

FROM: FINANCE DEPARTMENT  
SUBJECT: CITY CHECK REGISTER REPORT

**RECOMMENDED ACTION:** Approve the attached Check Register Reports for Jan 18, Jan 25, Feb 1, Feb 8 and Feb 15, 2013

**DISCUSSION:** Check Registers are attached for:

Date	Starting Check #	Ending Check #	Total Checks/EFT	Amount
1/18/13	71918	71976	59	\$88,126.18
1/25/13	71977	72023	47	\$538,140.18
2/1/13	72024	72061	38	\$187,334.72
2/8/13	72062	72158	98	\$144,709.90
2/15/13	72159	72204	46	\$34,442.58

The check register of Jan 11, 2013 ended with check #71917.

Following is a list of checks issued for more than \$10,000.00, and a brief description of the expenditure:

Check	Issued to:	Dept.	Purpose	Amount
71958	PG&E	PW	Monthly Electric-Dec2012	\$13,264.16
71960	PG&E	PW	Monthly Electric-Jan2013	\$14,893.65
71965	Rogers, Anderson et al	FIN	Financial Audit	\$12,000.00
70978	Atchison, Barisone, et al	CM	Dec 2012 Legal Services	\$15,302.54
71980	Bowman & Williams	PW	Dec Prof Services-Pac Cove	\$18,510.00
71997	Mont Bay Self Ins Liab	CM	Worker Comp & Liability Ins	\$348,796.00
72005	SCC Conf & Visitor Counc	CM	Q2 Transient Marketing Distr.	\$22,688.33
72007	SC Regional 911	PD	Dispatch Center	\$99,119.00
72039	Design, Comm & Environ	CDD	Gen Plan Update	\$31,361.15
72043	Gumbiner & Eskridge	CM	Legal Svcs, Flood Litigation	\$18,795.67
72046	J W Ebert	PW	Noble Gulch Pipe Repair	\$70,300.00
72050	Montano Plumbing	PW	Wharf Pipeline Relocation	\$23,259.24
72072	Cap-Soq Chamber	CM	Contract Svcs	\$14,250.00
72150	TLC Administrators	CM	Dental&Vision, Employee funded	\$13,272.68
201302	CalPERS Health	CM	Health Ins, Employee funded	\$50,059.48

**ATTACHMENTS:**

1. Check Register for Jan 18, 2013
2. Check Register for Jan 25, 2013
3. Check Register for Feb 1, 2013
4. Check Register for Feb 8, 2013
5. Check Register for Feb 15, 2013

**Report Prepared By: Linda Benko  
AP Clerk**

**Reviewed and Forwarded  
by City Manager: \_\_\_\_\_**

Checks dated 1/18/13 numbered 71918 to 71976 for a total of \$88,126.18 have been reviewed and authorized for distribution by the City Manager and City Treasurer.

As of 1/18/13 the unaudited cash balance is \$3,292,631

**CASH POSITION - CITY OF CAPITOLA 1/18/13**

	<u>Net Balance</u>
General Fund	1,179,801
Contingency Reserve Fund	671,646
Worker's Comp. Ins. Fund	339,185
Self Insurance Liability Fund	218,465
Stores Fund	2,755
Information Technology Fund	81,942
Equipment Replacement	142,200
Compensated Absences Fund	(1,010)
Public Employee Retirement - PERS	206,254
Open Space Fund	256
Capital Improvement Projects	451,137
TOTAL GENERAL FUND & COUNCIL DESIGNATED FUNDS	<u><u>3,292,631</u></u>

The Emergency Reserve Fund balance is \$289,295.54 and is not included above.

  
 \_\_\_\_\_  
 Tori Hannah, for City Manager

1/18/2013  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Kimberly V. DeWitt, City Treasurer

\_\_\_\_\_  
 Date

## City Checks Issued 1/18/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
71918	01/14/2013 Invoice NOD Filing	Open	Date 01/11/2013	Description Capitola Bag Ordinance	SCC-CLERK OF THE BOARD	\$2,156.25 \$2,156.25
71919	01/14/2013 Invoice NOD Fee	Open	Date 01/11/2013	Description Capitola Bag Ordinance Processing Fee	SCC-CLERK OF THE BOARD	\$50.00 \$50.00
71920	01/14/2013 Invoice Jan2013	Open	Date 01/14/2013	Description Replenish Flex Cash	TLC ADMINISTRATORS, INC.	\$6,000.00 \$6,000.00
71921	01/18/2013 Licensee Type Business License Refund	Open	1/15/2013	Licensee Numbe 1368	AEROPOSTALE WEST #855 Transaction Date 01/17/2013 Transaction Type Over-Payment	\$50.00
71922	01/18/2013 Licensee Type Business License Refund	Open	1/15/2013	Licensee Numbe 2247	EPIC VENTURES INC. dba EPIC WINE Transaction Date 01/17/2013 Transaction Type Over-Payment	\$250.00
71923	01/18/2013 Licensee Type Business License Refund	Open	1/15/2013	Licensee Numbe 1899	FAIRFIELD INN & SUITES Transaction Date 01/15/2013 Transaction Type Over-Payment	\$250.00
71924	01/18/2013 Licensee Type Business License Refund	Open	1/15/2013	Licensee Numbe 1328	LENSCRAFTERS 5778 Transaction Date 01/15/2013 Transaction Type Over-Payment	\$250.00
71925	01/18/2013 Licensee Type Business License Refund	Open	1/15/2013	Licensee Numbe 1813	N2YL INC. dba YOGURTLAND Transaction Date 01/15/2013 Transaction Type Over-Payment	\$250.00
71926	01/18/2013 Licensee Type Business License Refund	Open	1/15/2013	Licensee Numbe 1226	TINO'S PLUMBING Transaction Date 01/15/2013 Transaction Type Over-Payment	\$35.00
71927	01/18/2013 Invoice 32823	Open	Date 01/09/2013	Description Rubber stamp for front office #585	ACCURATE RUBBER STAMP	\$20.46 \$20.46
71928	01/18/2013 Invoice 14331	Open	Date 11/09/2012	Description Animal Control Supplies, PD	ANIMAL CARE EQUIPMENT & SERVICE	\$394.96 \$394.96
71929	01/18/2013 Invoice 674-Jan13 624-Jan2013	Open	Date 01/01/2013 01/01/2013	Description Long Distance Service, Jan 2013 Long Distance Service, Jan 2013	AT&T	\$5.14 \$2.53 \$2.61



## City Checks Issued 1/18/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
71930	01/18/2013 Invoice Dec-Jan13	Open	Date 01/06/2013	Description Dec12-Jan13 Credit Card Charges Fund 1000, General Fund=\$2747.95 Fund 1310, Gas Tax=\$971.65 Fund 2211, Info Tech=\$463.73	BANK OF AMERICA	\$4,183.33
71931	01/18/2013 Invoice 2141	Open	Date 01/07/2013	Description Museum website update	BANKS, LIN	\$500.00
71932	01/18/2013 Invoice 2013-00000457	Open	Date 01/14/2013	Description 2013 Field Owner's Insurance-Rec	BOLLINGER INSURANCE	\$300.00
71933	01/18/2013 Invoice 0207724102 0207724102-a	Open	Date 11/16/2012 11/16/2012	Description Wharf Lumber Wharf Lumber Fund 1311, Wharf Fund	BRIDGEWELL RESOURCES	\$9,180.35
71934	01/18/2013 Invoice 958	Open	Date 12/12/2012	Description Uniform Exp-Sloma	CALIFORNIA COAST UNIFORM CO.	\$143.59
71935	01/18/2013 Invoice Oct12	Open	Date 01/11/2013	Description CSMFO Luncheon, Jacques	CSMFO	\$25.00
71936	01/18/2013 Invoice V835779	Open	Date 12/28/2012	Description Anti-Virus Renewal Fund 2211, Info Tech	CDW GOVERNMENT INC.	\$2,692.00
71937	01/18/2013 Invoice 14977-Dec12	Open	Date 12/01/2012	Description Animal Control Expense, PD	CHANTICLEER VET HOSPITAL	\$1,421.75
71938	01/18/2013 Invoice 121210-25A	Open	Date 01/13/2013	Description Village Holiday Music-BIA Funded Fund 1321, BIA	CLASSIFIED SOUND	\$1,500.00
71939	01/18/2013 Invoice 463	Open	Date 01/11/2013	Description Modify 24" catch basin on Riverside Drive Fund 1310, Gas Tax	EARTHWORKS PAVING CONTRACTOI	\$3,880.00
71940	01/18/2013 Invoice 85934-in	Open	Date 12/21/2012	Description 585 badge	ENTENMANN-ROVIN	\$55.74

## City Checks Issued 1/18/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
71941	01/18/2013 Invoice 2-120-23311	Open	Date 01/04/2013	Description Dec Shipping Fund 1000, General Fund=\$47.32 Fund 1420, Pac Cove Bond=\$23.27	FEDERAL EXPRESS	\$70.59
71942	01/18/2013 Invoice 18	Open	Date 01/04/2013	Description Dec 2012 Professional Services-BIA Fund 1321, BIA	FERRASCI-HARP, AMY	\$525.00
71943	01/18/2013 Invoice 13-808014 13-808015	Open	Date 01/04/2013 01/04/2013	Description 496 Gal Ethanol 100 Gal Diesel	FLYERS ENERGY, LLC	\$2,243.43
71944	01/18/2013 Invoice Dec2012	Open	Date 01/11/2013	Description Reimb Holiday Expenditures-BIA Fund 1321, BIA	HANNA, CARIN	\$415.38
71945	01/18/2013 Invoice Jan2013	Open	Date 01/11/2013	Description Quarterly Comm Grant (Q1 & Q2)	HOSPICE of SANTA CRUZ COUNTY	\$655.00
71946	01/18/2013 Invoice 1303927	Open	Date 01/06/2013	Description Maint Agreement, Service Fund 2211, Info Tech	IBM Corporation	\$1,488.18
71947	01/18/2013 Invoice Sneddon2013	Open	Date 12/13/2012	Description Membership Renewal, Sneddon, #16099	INTERNAT'L INSTITUTE OF MUNICIPAL CLERK:	\$170.00
71948	01/18/2013 Invoice 160869	Open	Date 11/19/2012	Description Photocopy Expense Fund 2211, Info Tech	KBA Docusys	\$83.34
71949	01/18/2013 Invoice 240070 240217	Open	Date 01/09/2013 01/11/2013	Description auto parts-PD Impala auto parts-fleet	LLOYD'S TIRE SERVICE INC.	\$429.31
71950	01/18/2013 Invoice Dec2012	Open	Date 12/31/2012	Description Advertising, Dec 2012, BIA Fund 1321, BIA	Mainstreet Media dba GOODTIMES	\$850.00
71951	01/18/2013 Invoice 48297476	Open	Date 12/28/2012	Description Internet Access Fund 2211, Info Tech	MEGAPATH COVAD COMMUNICATION	\$646.51

## City Checks Issued 1/18/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
71952	01/18/2013	Open			MID-COUNTY AUTO SUPPLY	\$274.65
	Invoice		Date	Description		Amount
	327759		01/10/2013	auto parts-PD091		\$13.12
	327733		01/10/2013	auto parts-PD091		\$122.92
	327468		01/08/2013	auto parts-PW F-800		\$21.29
	326888		01/02/2013	auto parts-Fleet		\$42.17
	327041		01/03/2013	auto parts-PW F-800		\$63.15
	326881		01/02/2013	auto parts-PW F-800		\$131.33
	327042		01/03/2013	refund auto parts		(\$119.33)
71953	01/18/2013	Open			MILLER'S TRANSFER & STORAGE CO	\$179.20
	Invoice		Date	Description		Amount
	84043		01/03/2013	Jan 2013 Storage, Dec 2012 Handling		\$179.20
71954	01/18/2013	Open			MISSION LINEN SUPPLY	\$827.72
	Invoice		Date	Description		Amount
	Dec2012		01/02/2013	Dec Uniform & Mat Cleaning		\$827.72
71955	01/18/2013	Open			MONTEREY BAY SYSTEMS	\$403.15
	Invoice		Date	Description		Amount
	159431		01/02/2013	Acct 4754242, PD Copier SC400DN		\$403.15
71956	01/18/2013	Open			NATIONAL CHILD SAFETY COUNCIL	\$500.00
	Invoice		Date	Description		Amount
	284778		01/09/2013	National safety books-PD		\$500.00
71957	01/18/2013	Open			NORTH BAY FORD	\$23.64
	Invoice		Date	Description		Amount
	2324501		12/27/2012	auto parts-Crown Vic units		\$23.64
71958	01/18/2013	Open			PACIFIC GAS & ELECTRIC	\$13,264.16
	Invoice		Date	Description		Amount
	2232013-00000466		12/11/2012	Monthly Elec-Dec 2012		\$13,264.16
				Fund 1000, General Fund=\$4604.90		
				Fund 1300, SLESF=\$85.78		
				Fund 1310, Gas Tax=\$6991.03		
				Fund 1311, Wharf Fund=\$1582.45		
71959	01/18/2013	Open			PACIFIC GAS & ELECTRIC	\$56.52
	Invoice		Date	Description		Amount
	2013-00000467		12/11/2012	Pac Cove MHP Elec and Gas		\$56.52
71960	01/18/2013	Open			PACIFIC GAS & ELECTRIC	\$14,893.65
	Invoice		Date	Description		Amount
	2013-00000468		01/11/2013	Monthly Elec-Jan 2013		\$14,893.65
				Fund 1000, General Fund=\$6024.38		
				Fund 1300, SLESF=\$139.68		
				Fund 1310, Gas Tax=\$7189.32		
				Fund 1311, Wharf Fund=\$1540.27		
71961	01/18/2013	Open			PALACE ART & OFFICE SUPPLIES	\$420.36
	Invoice		Date	Description		Amount
	991928		01/04/2013	office supplies-PD		\$420.36

## City Checks Issued 1/18/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
71962	01/18/2013 Invoice Feb2013	Open	Date 01/11/2013	Description Registration, Feb 21 class, 4 PW	PESTICIDE APPLICATORS PROF ASSOC.	\$320.00 \$320.00
71963	01/18/2013 Invoice 20121212	Open	Date 01/14/2013	Description Postage for Postage Machine-Rec	PITNEY BOWES INC.	\$207.99 \$207.99
71964	01/18/2013 Invoice 8318550	Open	Date 12/31/2012	Description Moreno name plate	QUILL CORPORATION	\$15.18 \$15.18
71965	01/18/2013 Invoice 37250	Open	Date 12/31/2012	Description Invoice, Due Diligence Reviews, Audit	ROGERS, ANDERSON, MALODY & SCOTT, LLP	\$12,000.00 \$12,000.00
71966	01/18/2013 Invoice 294239	Open	Date 12/21/2012	Description Business Cards, Council members	SENTINEL PRINTERS, INC.	\$429.66 \$429.66
71967	01/18/2013 Invoice 3917-16037	Open	Date 12/31/2012	Description Jan2013 Website Hosting	THE INTERNET CONNECTION INC.	\$150.00 \$150.00
71968	01/18/2013 Invoice 17557	Open	Date 01/08/2013	Description Jan 2013 Admin Fee, Flex Benefit Plan	TLC ADMINISTRATORS, INC.	\$352.00 \$352.00
71969	01/18/2013 Invoice 219614732 219614807	Open	Date 01/04/2013 01/04/2013	Description Contract Maint, Canon IR2525 Copier Maint, Minolta Copier C452	US BANCORP EQUIPMENT FINANCE	\$339.56 \$80.30 \$259.26
71970	01/18/2013 Invoice T9539	Open	Date 12/01/2012	Description Nov 2012 K9 training-PD	WITMER-TYSON IMPORTS INC.	\$500.00 \$500.00
71971	01/18/2013 Invoice 1036	Open	Date 01/09/2013	Description refund permit #1036	Bohl, Eric	\$25.00 \$25.00
71972	01/18/2013 Invoice 036	Open	Date 01/10/2013	Description Refund permit #036	Bonnifield, Jamie	\$50.00 \$50.00
71973	01/18/2013 Invoice 2013-00000462	Open	Date 01/14/2013	Description Tree Permit Deposit Refund #12-059	California Construction Management	\$500.00 \$500.00

**City Checks Issued 1/18/2013**

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount	
71974	01/18/2013 Invoice 2013-00000463	Open	Date 01/14/2013	Description Tree Permit Deposit Refund #12-130	California Construction Management	\$500.00 \$500.00	
71975	01/18/2013 Invoice 2013-00000464	Open	Date 12/13/2012	Description Laser for the AR- guns	Winchester Auto	\$97.43 \$97.43	
71976	01/18/2013 Invoice 2013-00000458	Open	Date 01/11/2013	Description Application Withdrawn. No permit requirec	Woods, Ted	\$626.00 \$626.00	
Check Totals:				Count	59	Total	\$88,126.18

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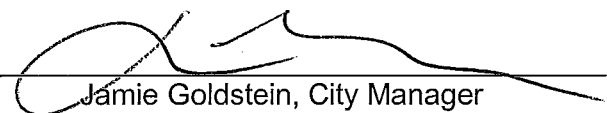
Checks dated 1/25/13 numbered 71977 to 72023 for a total of \$538,140.18 have been reviewed and authorized for distribution by the City Manager and City Treasurer.

As of 1/25/13 the unaudited cash balance is \$2,654,898

**CASH POSITION - CITY OF CAPITOLA 1/25/13**

	<u>Net Balance</u>
General Fund	921,077
Contingency Reserve Fund	671,646
Worker's Comp. Ins. Fund	31,225
Self Insurance Liability Fund	177,629
Stores Fund	1,399
Information Technology Fund	81,732
Equipment Replacement	142,200
Compensated Absences Fund	(11,146)
Public Employee Retirement - PERS	206,254
Open Space Fund	256
Capital Improvement Projects	432,627
TOTAL GENERAL FUND & COUNCIL DESIGNATED FUNDS	<u><u>2,654,898</u></u>

The Emergency Reserve Fund balance is \$289,295.54 and is not included above.

  
 \_\_\_\_\_  
 Jamie Goldstein, City Manager

\_\_\_\_\_  
 1/25/2013  
 Date

\_\_\_\_\_  
 Kymberly V. DeWitt, City Treasurer

\_\_\_\_\_  
 Date

## City Checks Issued 1/25/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
71977	01/25/2013 Invoice 691175	Open	Date 12/15/2012	Description Dec 2012 Insurance, Employee Funded	AFLAC	\$486.76
71978	01/25/2013 Invoice Dec2012	Open	Date 12/31/2012	Description Legal Services, Dec 2012	ATCHISON, BARISONE, & CONDOTTI	\$15,302.54
71979	01/25/2013 Invoice 2068	Open	Date 12/31/2012	Description Pacific Cove MHP Relocation Services Fund 1420, Pac Cove Bond	AUTOTEMP INC.	\$2,640.00
71980	01/25/2013 Invoice 7393	Open	Date 01/04/2013	Description Pac Cove Survey Fund 1200, CIP	BOWMAN & WILLIAMS, INC.	\$18,510.00
71981	01/25/2013 Invoice CR446 128298	Open	Date 12/17/2012 12/28/2012	Description Credit for exchanged equipment Dec 2012 active meters	CALE AMERICA INC.	\$290.90
71982	01/25/2013 Invoice 2013	Open	Date 01/17/2013	Description Garrett, Hernandez, Gonzalez membership	CALIF. ASSOC. FOR PROPERTY & EVIDENCE	\$135.00
71983	01/25/2013 Invoice 984	Open	Date 12/31/2012	Description Uniform Expense-Sloma	CALIFORNIA COAST UNIFORM CO.	\$53.85
71984	01/25/2013 Invoice 10637	Open	Date 12/31/2012	Description Dec 2012 Facility Cleaning Services Fund 1000, Gen Fund=\$3764.46 Fund 1311, Wharf Fund=\$217.50	CLEAN BUILDING MAINTENANCE	\$3,981.96
71985	01/25/2013 Invoice 31611686	Open	Date 12/31/2012	Description Fuel-PD	CONOCO-PHILLIPS FLEET SERVICES	\$39.06
71986	01/25/2013 Invoice Dec2012	Open	Date 12/31/2012	Description Dec Drinking Water	CRYSTAL SPRINGS WATER CO.	\$124.50
71987	01/25/2013 Invoice 1/8/13 1/8/13 A 1/15/13	Open	Date 01/08/2013 01/08/2013 01/15/2013	Description supplies-PD office supplies-PD supplies-PD	CVS PHARMACY INC.	\$154.55



## City Checks Issued 1/25/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
71988	01/25/2013 Invoice 2013	Open	Date 01/17/2013	Description 2013 dues, Held	FBINAA, California Chapter	\$90.00 \$90.00
71989	01/25/2013 Invoice 2-148-17316	Open	Date 01/18/2013	Description Shipping exp	FEDERAL EXPRESS	\$32.25 \$32.25
71990	01/25/2013 Invoice 13-810288	Open	Date 01/10/2013	Description 359 Gal Ethanol	FLYERS ENERGY, LLC	\$1,321.08 \$1,321.08
71991	01/25/2013 Invoice 000102646	Open	Date 01/11/2013	Description December 2012 PD HVAC Quarterly maint	Geo. H. Wilson, Inc.	\$285.00 \$285.00
71992	01/25/2013 Invoice 01/07-01/11/13 01/14-01/18/13	Open	Date 01/21/2013 01/21/2013	Description FY 12/13 Mechanic FY 12/13 Mechanic	HOWARD, CHARLIE	\$1,410.00 \$710.00 \$700.00
71993	01/25/2013 Invoice ICMA1-25-13	Open	Date 01/23/2013	Description Retirement Plan Contr, Employee Funded	ICMA RETIREMENT TRUST 457	\$9,724.17 \$9,724.17
71994	01/25/2013 Invoice 1001056542	Open	Date 01/17/2013	Description Escalante 2013 membership	INTERNAT'L ASSOC. OF CHIEFS OF POLICE	\$120.00 \$120.00
71995	01/25/2013 Invoice 1/14/13	Open	Date 01/01/2013	Description uniform cleaning-PD	KING'S CLEANERS	\$496.75 \$496.75
71996	01/25/2013 Invoice 327586	Open	Date 01/09/2013	Description auto parts-PD111	MID-COUNTY AUTO SUPPLY	\$6.49 \$6.49
71997	01/25/2013 Invoice 12-12Premz	Open	Date 07/06/2012	Description Pymt 2, FY12/13 Work Comp & Liab Ins Fund 2213, Self-Ins Liability=\$40,836 Fund 2214, Workers Comp=\$307,960	MONTEREY BAY AREA SELF INSURANCE AUTI	\$348,796.00 \$348,796.00
71998	01/25/2013 Invoice 159832	Open	Date 12/31/2012	Description CY2012 Q4 Copier Exp Fund 2211, Info Technology	MONTEREY BAY SYSTEMS	\$144.63 \$144.63

## City Checks Issued 1/25/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
71999	01/25/2013	Open			ORCHARD SUPPLY HARDWARE	\$33.12
	Invoice		Date	Description		Amount
	6007-2544318		01/07/2013	Misc.		\$6.49
	6013-1239677		01/08/2013	Misc.		\$10.84
	6012-1026283		01/09/2013	Primer		\$10.39
	6011-4798739		01/11/2013	Scraper, bldg		\$5.40
72000	01/25/2013	Open			PACIFIC GAS & ELECTRIC	\$84.69
	Invoice		Date	Description		Amount
	2013-00000469		01/11/2013	Pac Cove MHP Elec and Gas		\$84.69
72001	01/25/2013	Open			PALACE ART & OFFICE SUPPLIES	\$349.99
	Invoice		Date	Description		Amount
	8857820		01/03/2013	Office Supplies-City Hall		\$8.06
	991976		01/07/2013	office supplies-PD		\$118.27
	992351		01/08/2013	Office Supplies, City Hall		\$34.77
	992213		01/07/2013	Office supplies-PD		\$18.04
	992343		01/11/2013	Office Supplies, City Hall		\$122.61
	993129		01/11/2013	Office Supplies, City Hall		\$11.76
	C991325		01/04/2013	Return office supplies. PD		(\$21.48)
	994146		01/16/2013	Office Supplies, City hall		\$57.96
				Fund 1000, Gen Fund=\$122.89		
				Fund 2210, Stores=\$227.10		
72002	01/25/2013	Open			PITNEY BOWES INC.	\$207.84
	Invoice		Date	Description		Amount
	369437		01/03/2013	Postal Meter Rental, Q4 CY2012		\$207.84
				Fund 2210, Stores		
72003	01/25/2013	Open			PRAXAIR DISTRIBUTION INC.	\$107.55
	Invoice		Date	Description		Amount
	45037977		01/11/2013	Gases, Corp Yd		\$107.55
72004	01/25/2013	Open			RED SHIFT INTERNET SERVICES	\$115.11
	Invoice		Date	Description		Amount
	1552254		01/01/2013	Jan 2013 DSL, Acct 34284		\$65.17
	1552255		01/01/2013	Jan 2013 DSL, Acct 34284		\$49.94
				Fund 1000, Gen Fund=\$49.94		
				Fund 2211, Info Technology=\$65.17		
72005	01/25/2013	Open			SCC CONFERENCE & VISITORS COUNCIL	\$22,688.33
	Invoice		Date	Description		Amount
	FY12-13Q2TMD		01/11/2013	2nd Qtr FY12/13 TMD		\$22,688.33
72006	01/25/2013	Open			SCC SANITATION DISTRICT	\$1,196.58
	Invoice		Date	Description		Amount
	20130107		01/04/2013	2012/2013 Sewer Service Charges		\$1,196.58
72007	01/25/2013	Open			SANTA CRUZ REGIONAL 911	\$99,119.00
	Invoice		Date	Description		Amount
	FY2013-Q3		12/15/2012	2012/2013 3rd quarter OPERATING		\$94,580.75
	FY2013-Q3a		12/26/2012	2012/2013 3rd quarter SCRMS		\$4,538.25

## City Checks Issued 1/25/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72008	01/25/2013 Invoice 2040516-Dec12	Open	Date 12/31/2012	Description Dec 2012 Advertising Fund 1000, Gen Fund=\$507.24 Fund 1420, Pac Cove Bond=\$199.12	SANTA CRUZ SENTINEL	\$706.36
72009	01/25/2013 Invoice 2013-00000475	Open	Date 01/08/2013	Description Semi-Monthly Water Usage, Irrigation Fund 1000, Gen Fund=\$2149.03 Fund 1311, Wharf Fund=\$454.89	SOQUEL CREEK WATER DISTRICT	\$2,603.92
72010	01/25/2013 Invoice 49664 49666	Open	Date 12/28/2012 12/30/2012	Description Uniform Expense, Blankenship-PD Uniform Expense, Sandretti-PD	SUMMIT UNIFORM CORP	\$722.86
72011	01/25/2013 Invoice 1538134	Open	Date 12/28/2012	Description Roundup ProMax	TARGET SPECIALTY PRODUCTS	\$226.56
72012	01/25/2013 Invoice 6190393-6	Open	Date 01/17/2013	Description Feb 2012 Life & Disability Ins.	THE HARTFORD -PRIORITY ACCOUNT	\$1,639.17
72013	01/25/2013 Invoice 2013-00000471	Open	Date 01/18/2013	Description Volleyball Official Dec 29 2012 to Jan 19 2	THILL, WENDY	\$120.00
72014	01/25/2013 Invoice CNIN034057	Open	Date 01/03/2013	Description Q4 CY2012 Copier Use Fee Fund 2210, Stores	TRI-COUNTY BUSINESS SYSTEMS INC	\$921.87
72015	01/25/2013 Invoice UW-Jan2013	Open	Date 01/23/2013	Description Employee Contributions, Jan 2013	UNITED WAY OF SCC	\$60.00
72016	01/25/2013 Invoice UPEC1-25-13	Open	Date 01/23/2013	Description Union Dues, Employee Funded	UPEC LIUNA LOCAL 792	\$992.25
72017	01/25/2013 Invoice PARS1-25-13	Open	Date 01/23/2013	Description Retirement plan contribution, Employee Fu	US Bank Institutional Trust-Western Reg	\$193.99
72018	01/25/2013 Invoice stmt12-31	Open	Date 12/31/2012	Description Legal Services, Labor & Employment	WILEY, PRICE & RADULOVICH, LLP	\$108.00

**City Checks Issued 1/25/2013**

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount	
72019	01/25/2013 Invoice 2013-00000472	Open	Date 01/22/2013	Description Canceled class	Ballard, Cheryse	\$57.00	
72020	01/25/2013 Invoice 2013-00000474	Open	Date 01/17/2013	Description POST Garrett Basic records class	Hampton Inn & Suites Pittsburg	\$462.00	
72021	01/25/2013 Invoice 2013-00000476	Open	Date 01/12/2013	Description Storm water tv public service announceme	MRSWMP	\$380.00	
72022	01/25/2013 Invoice 2013-00000473	Open	Date 01/22/2013	Description Canceled class	Squires, Amy	\$142.00	
72023	01/25/2013 Invoice POA1-25-13	Open	Date 01/24/2013	Description POA Dues, Employee Funded	CAPITOLA PEACE OFFICERS ASSOC.	\$756.50	
Check Totals:				Count	47	Total	\$538,140.18

Checks dated 2/1/13 numbered 72024 to 72061 for a total of \$187,334.72 have been reviewed and authorized for distribution by the City Manager and City Treasurer.

As of 2/1/13 the unaudited cash balance is \$2,161,550

**CASH POSITION - CITY OF CAPITOLA 2/1/13**

	<u>Net Balance</u>
General Fund	710,514
Contingency Reserve Fund	671,646
Worker's Comp. Ins. Fund	31,225
Self Insurance Liability Fund	177,629
Stores Fund	1,479
Information Technology Fund	81,482
Equipment Replacement	142,200
Compensated Absences Fund	(11,146)
Public Employee Retirement - PERS	-
Open Space Fund	256
Capital Improvement Projects	356,266
<b>TOTAL GENERAL FUND &amp; COUNCIL DESIGNATED FUNDS</b>	<u><u>2,161,550</u></u>

The Emergency Reserve Fund balance is \$289,295.54 and is not included above.

  
 \_\_\_\_\_  
 Tori Hannah, Finance Director

2/1/2013  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Kymberly V. DeWitt, City Treasurer

\_\_\_\_\_  
 Date

## City Checks Issued 2/1/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72024	01/28/2013 Invoice 401CapAve	Open	Date 01/28/2013	Description Deposit, 401 Cap Ave Purchase	OLD REPUBLIC TITLE	\$1,000.00
72025	02/01/2013 Licensee Type Business	Open	Date 1/25/2013	Description Refund Overpayment	AJ's FUEL MARKET OF CAPITOLA	\$250.00
72026	02/01/2013 Licensee Type Business	Open	Date 1/25/2013	Description Refund Overpayment	DHARMAS RESTAURANT	\$249.75
72027	02/01/2013 Licensee Type Business	Open	Date 1/25/2013	Description Refund Overpayment	MATT JONES ROOFING	\$45.00
72028	02/01/2013 Licensee Type Business	Open	Date 1/25/2013	Description Refund Overpayment	QUALITY HOMES	\$250.00
72029	02/01/2013 Invoice 345572	Open	Date 01/17/2013	Description Top soil	APTOS LANDSCAPE SUPPLY, INC.	\$20.57
72030	02/01/2013 Invoice 3942422	Open	Date 01/04/2013	Description Dec 2012 Telephone & Internet Service Fund 1000, General Fund=\$1814.68 Fund 2211, Info Tech=\$249.76	AT&T/CALNET 2	\$2,064.44
72031	02/01/2013 Invoice 39479	Open	Date 01/22/2013	Description Wharf Meter Reading January 2013 Fund 1311, Wharf Fund	AUTOMATED TEST ASSOCIATES	\$25.00
72032	02/01/2013 Invoice 433	Open	Date 01/20/2013	Description Parking Enforcement Officer interview	BAY AREA POLYGRAPH	\$225.00
72033	02/01/2013 Invoice 20130117	Open	Date 01/17/2013	Description Reimb Lodging, New Council Members Con	BOTTORFF, ED	\$232.34
72034	02/01/2013 Invoice SL130466	Open	Date 01/14/2013	Description Signals & Lighting October-December 2012 Fund 1310, Gas Tax	CA DEPT OF TRANSPORTATION	\$7,621.73
72035	02/01/2013 Invoice 128338	Open	Date 01/07/2013	Description Service a meter	CALE AMERICA INC.	\$125.00

# City Checks Issued 2/1/2013

Invoice #	Date	Description	Amount	
72036	02/01/2013	Open	CALIFORNIA COAST UNIFORM CO	\$746.59
Invoice	Date	Description	Amount	
989	01/04/2013	Uniform Expense-Booth	\$43.40	
997	01/07/2013	Uniform Expense-E. Gonzalez	\$28.16	
994	01/05/2013	Uniform Expense-Zamora	\$140.94	
991	01/04/2013	Uniform Expense-Zamora	\$166.98	
996	01/05/2013	Uniform Expense, PEO Dane Rannals	\$367.11	
72037	02/01/2013	Open	CALIF LAW ENFORCEMENT ASSOC	\$514.50
Invoice	Date	Description	Amount	
Feb2013	01/21/2013	Long Term Disability Ins, PD	\$514.50	
72038	02/01/2013	Open	CRESTOR INC.	\$462.23
Invoice	Date	Description	Amount	
R213685	01/25/2013	3 bronze plaques	\$462.23	
72039	02/01/2013	Open	DESIGN, COMMUNITY & ENVIRONMEN	\$31,360.15
Invoice	Date	Description	Amount	
50374A	10/31/2012	Professional Services 10/1-10/31/12 DRI	\$9,155.13	
50374B	10/31/2012	Professional Services 10/1-10/31/12	\$22,205.02	
		Fund 1313, Gen Plan Update=\$22205.02		
		Fund 1350, CDBG Grants=\$9155.13		
72040	02/01/2013	Open	DOGHERRA'S INC.	\$65.00
Invoice	Date	Description	Amount	
310290	01/24/2013	Towed Ford F-250 to yard	\$65.00	
72041	02/01/2013	Open	FLYERS ENERGY, LLC	\$2,230.79
Invoice	Date	Description	Amount	
13-811604	01/18/2013	442 Gal Ethanol	\$1,608.30	
13-811605	01/18/2013	160 Gal Diesel	\$622.49	
72042	02/01/2013	Open	FLYNN, CAROLYN	\$1,580.00
Invoice	Date	Description	Amount	
CBF-12-2012	01/31/2013	Professional Services Dec 2012	\$1,580.00	
		Fund 1313, Gen Plan Update=\$660.00		
		Fund 1350, CDBG Grants=\$700.00		
		Fund 1351, CDBG Prog=\$100.00		
		Fund 1372, Housing Trust=\$120.00		
72043	02/01/2013	Open	GUMBINER & ESKRIDGE LLP	\$18,795.67
Invoice	Date	Description	Amount	
11299	01/17/2013	Dec Legal Services, Insurance Loss	\$18,795.67	
72044	02/01/2013	Open	HERNANDEZ, TRACIE	\$73.45
Invoice	Date	Description	Amount	
20130122	01/22/2013	Reimburse DOJ CSAR Tng	\$73.45	
72045	02/01/2013	Open	INTERNAT'L ASSOC. OF CHIEFS OF POLICE	\$120.00
Invoice	Date	Description	Amount	
1001046075	01/09/2013	Held membership	\$120.00	

## City Checks Issued 2/1/2013

Invoice #	Date	Status	Description	Amount
72046	02/01/2013	Open	J W EBERT CORP	\$70,300.00
Invoice	Date		Description	Amount
12-159-02	01/21/2013		Noble Gulch Pipeline Repair Project	\$70,300.00
			Fund 1200, CIP	
72047	02/01/2013	Open	LEAGUE OF CALIFORNIA CITIES	\$150.00
Invoice	Date		Description	Amount
8041	01/15/2013		Membership, Sneddon	\$150.00
72048	02/01/2013	Open	METRO MOBILE COMMUNICATIONS	\$1,100.93
Invoice	Date		Description	Amount
34491	01/04/2013		2 helmets and kits-PD	\$1,100.93
			Fund 1300, SLESF	
72049	02/01/2013	Open	MICROFLEX CORP #774353	\$388.20
Invoice	Date		Description	Amount
in1325415	01/08/2013		Gloves-PD	\$388.20
72050	02/01/2013	Open	Montano Plumbing, Inc.	\$23,259.24
Invoice	Date		Description	Amount
23276	01/16/2013		Emergency Gas Piping Relocation	\$23,259.24
			Fund 1311, Wharf Fund	
72051	02/01/2013	Open	MONTEREY BAY UNIFIED AIR POLLUTION CON	\$341.00
Invoice	Date		Description	Amount
33300-001	12/28/2012		Permit fees	\$341.00
72052	02/01/2013	Open	ORCHARD SUPPLY HARDWARE	\$438.67
Invoice	Date		Description	Amount
2294417	01/11/2013		Pliers & batteries - Cary	\$57.02
3525249	01/15/2013		Dust bags - grinder vacuum	\$26.02
1230489	01/16/2013		Concrete patch	\$17.89
1230490	01/16/2013		Batteries	\$15.18
3520515	01/16/2013		Cable ties	\$14.09
3520531	01/16/2013		Banner pole supplies	\$11.89
4245361	01/16/2013		Banner supplies	\$30.36
3520540	01/16/2013		Locks	\$66.10
7820578	01/17/2013		Light fixture	\$52.06
3039673	01/17/2013		Plants	\$71.49
1028843	01/17/2013		Light bulbs	\$15.17
2435612	01/17/2013		Plants	\$6.50
3526499	01/23/2013		Plumbing supplies	\$10.61
9879442	01/24/2013		Misc.	\$44.29
72053	02/01/2013	Open	PALACE ART & OFFICE SUPPLIES	\$93.70
Invoice	Date		Description	Amount
993113	01/11/2013		Paper-PD	\$46.55
993623	01/14/2013		Office supplies	\$77.86
993130	01/11/2013		Office Supplies, City Hall	\$14.32
C979494	01/15/2013		Return office supplies, City Hall	(\$17.36)
C979547	01/15/2013		Return office Supplies, City Hall	(\$15.91)
C980419	01/15/2013		Return Office Supplies, City Hall	(\$11.76)
72054	02/01/2013	Open	PHANTON, FRANK	\$2,199.00
Invoice	Date		Description	Amount
20130124	01/24/2013		Remodel Design of Pac Cove Public Restro	\$2,199.00



**City Checks Issued 2/1/2013**

Invoice #	Date	Description	Amount
72055	02/01/2013	Open	
Invoice	Date	Description	Amount
150424	10/31/2012	Sandbags	\$666.38
SACRAMENTO BAG CO. \$666.38			
72056	02/01/2013	Open	
Invoice	Date	Description	Amount
Cites-Dec12	01/25/2013	Citation Surcharges, Dec 2012	\$5,245.50
SCC AUDITOR-CONTROLLER \$5,245.50			
72057	02/01/2013	Open	
Invoice	Date	Description	Amount
Nov12-Jan13	01/16/2013	Semi-monthly irrigation water use	\$645.95
SOQUEL CREEK WATER DISTRICT \$645.95			
72058	02/01/2013	Open	
Invoice	Date	Description	Amount
011303	01/16/2013	Lower Pacific Cove Environmental Review Fund 1200, CIP	\$6,060.85
STRELOW CONSULTING \$6,060.85			
72059	02/01/2013	Open	
Invoice	Date	Description	Amount
954791033	01/19/2013	Shipping-PD	\$16.09
UNITED PARCEL SERVICE \$16.09			
72060	02/01/2013	Open	
Invoice	Date	Description	Amount
20130125	01/25/2013	Contract Services, CDD Jan2013	\$7,872.00
WESTMAN, SUSAN \$7,872.00			
72061	02/01/2013	Open	
Invoice	Date	Description	Amount
T9581	01/02/2013	K-9 December 2012 training	\$500.00
WITMER-TYSON IMPORTS INC. \$500.00			
<b>Check Totals:</b>			<b>Count 38 \$187,334.72</b>

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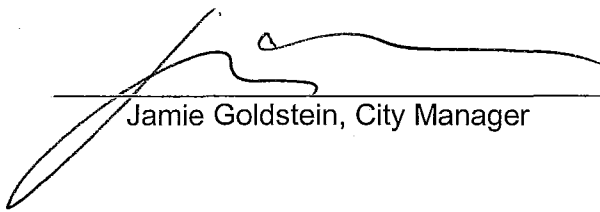
Checks dated 2/8/13 numbered 72062 to 72158 plus one EFT for a total of \$144,709.90 have been reviewed and authorized for distribution by the City Manager and City Treasurer.

As of 2/8/13 the unaudited cash balance is \$1,876,250

**CASH POSITION - CITY OF CAPITOLA 2/8/13**

	<u>Net Balance</u>
General Fund	399,640
Contingency Reserve Fund	671,646
Worker's Comp. Ins. Fund	31,225
Self Insurance Liability Fund	177,629
Stores Fund	(1,136)
Information Technology Fund	79,865
Equipment Replacement	142,200
Compensated Absences Fund	21,954
Public Employee Retirement - PERS	-
Open Space Fund	256
Capital Improvement Projects	352,971
TOTAL GENERAL FUND & COUNCIL DESIGNATED FUNDS	<u>1,876,250</u>

The Emergency Reserve Fund balance is \$289,295.54 and is not included above.

  
 \_\_\_\_\_  
 Jamie Goldstein, City Manager

2/8/2013  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Kymberly V. DeWitt, City Treasurer

\_\_\_\_\_  
 Date

## City Checks Issued 2/8/2013

From Payment Date: 2/4/2013 - To Payment Date: 2/8/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72062	02/08/2013	Open			A TOOL SHED	\$140.00
	Invoice		Date	Description		Amount
	880381-5		01/29/2013	19' lift		\$140.00
72063	02/08/2013	Open			ADAMS, BECKY	\$339.30
	Invoice		Date	Description		Amount
	2013-00000481		02/05/2013	Winter 2013 Inst.Payments		\$339.30
72064	02/08/2013	Open			AFLAC	\$466.76
	Invoice		Date	Description		Amount
	AFLAC-Jan2013		02/05/2013	Supple Health Ins, Employee Funded		\$466.76
72065	02/08/2013	Open			AT&T/CALNET 2	\$1,984.47
	Invoice		Date	Description		Amount
	4026911		01/13/2013	Monthly Phone Service		\$1,984.47
				Fund 1000, Gen Fund=\$1699.46		
				Fund 2211, Info Tech=\$285.01		
72066	02/08/2013	Open			AUTOTEMP INC.	\$180.00
	Invoice		Date	Description		Amount
	2088		01/31/2013	Pacific Cove MHP Relocation Services		\$180.00
				Fund 1420, Pac Cove Bond		
72067	02/08/2013	Open			BARRETT, SHARON	\$84.50
	Invoice		Date	Description		Amount
	2013-00000482		02/05/2013	Winter 2013 Inst.Payments		\$84.50
72068	02/08/2013	Open			BAY PLUMBING SUPPLY INC.	\$181.32
	Invoice		Date	Description		Amount
	S1270281		01/29/2013	Toilet bowl		\$181.32
72069	02/08/2013	Open			BETZ, SHERRI	\$3,796.00
	Invoice		Date	Description		Amount
	2013-00000483		02/05/2013	Winter 2013 Inst.Payments		\$3,796.00
72070	02/08/2013	Open			BIG CREEK LUMBER	\$71.03
	Invoice		Date	Description		Amount
	2987735		01/14/2013	Wood		\$71.03
				Fund 1311, Wharf Fund		
72071	02/08/2013	Open			CAPITOLA PEACE OFFICERS ASSOC	\$954.50
	Invoice		Date	Description		Amount
	POA2-8-13		02/05/2013	POA Dues, Employee Funded		\$954.50
72072	02/08/2013	Open			CAPITOLA-SOQUEL CHAMBER OF COMMERCE	\$14,250.00
	Invoice		Date	Description		Amount
	20130125		01/25/2013	BIA Payment to Chamber		\$3,000.00
	135		01/24/2013	Q1 2013 Contract Services		\$5,625.00
	134		01/24/2013	Q4 2012 Contract Services		\$5,625.00
				Fund 1000, Gen Fund=\$11250.00		
				Fund 1321, BIA=\$3000.00		

**City Checks Issued 2/8/2013**

From Payment Date: 2/4/2013 - To Payment Date: 2/8/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72073	02/08/2013 Invoice 2013-00000494	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	CHARLEBOIS, FREDERIC	\$4,901.50
72074	02/08/2013 Invoice 0198562-Feb13	Open	Date 01/11/2013	Description Internet Acces, Feb13 Fund 2211, Info Tech	Charter Communications	\$129.99
72075	02/08/2013 Invoice 2013-00000484	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	CLARK, DAVE	\$387.40
72076	02/08/2013 Invoice 1313182	Open	Date 01/08/2013	Description Cleaning supplies	CLEAN SOURCE	\$1,620.35
72077	02/08/2013 Invoice 2013-00000485	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	COHN, KRISTIN	\$134.55
72078	02/08/2013 Invoice 2989-143 28750-60	Open	Date 01/25/2013 02/02/2013	Description Web hosting-Rec General Plan webhosting Feb-Mar13 Fund 1000, Gen Fund=\$65.70 Fund 1313, Gen Plan Update=\$39.95	CRUZIO THE INTERNET STORE INC.	\$105.65
72079	02/08/2013 Invoice 16676534	Open	Date 01/20/2013	Description Copier Lease Contract, Sharp MX7001N Fund 2210, Stores	DE LAGE LANDEN FINANCIAL SVCS	\$334.84
72080	02/08/2013 Invoice 2013-00000488	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	DICKS, CHUCK	\$506.35
72081	02/08/2013 Invoice 18053	Open	Date 01/23/2013	Description Jade St. irrigation controller	ET Water Systems Inc.	\$199.00
72082	02/08/2013 Invoice 2013-00000489	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	EVANS, PAT	\$506.35
72083	02/08/2013 Invoice 5834633	Open	Date 01/25/2013	Description Irrigation supplies	EWING IRRIGATION	\$27.60
72084	02/08/2013 Invoice Feb 2013	Open	Date 01/24/2013	Description Storage, PD	EXTRA SPACE STORAGE OF SC INC	\$303.00

**City Checks Issued 2/8/2013**

From Payment Date: 2/4/2013 - To Payment Date: 2/8/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72085	02/08/2013 Invoice 2013-00000487	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	EYMANN, DANIEL	\$65.00
72086	02/08/2013 Invoice 2013-00000490	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	FAIA, MICHELE	\$819.00
72087	02/08/2013 Invoice 2749720	Open	Date 01/24/2013	Description Faucets	FERGUSON ENTERPRISES, INC.	\$286.52
72088	02/08/2013 Invoice 19	Open	Date 02/02/2013	Description Jan 2013 BIA Advertising, BIA Funded Fund 1321, BIA	FERRASCI-HARP, AMY	\$675.00
72089	02/08/2013 Invoice 2013-00000491	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	FITZGERALD, AIMEE	\$414.70
72090	02/08/2013 Invoice 13-813981	Open	Date 01/25/2013	Description 462 Gal Ethanol	FLYERS ENERGY, LLC	\$1,809.56
72091	02/08/2013 Invoice 2013-00000492	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	FOJACO, HANYA	\$640.90
72092	02/08/2013 Invoice 2013-00000493	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	FRANCA, CLAUDIO	\$520.00
72093	02/08/2013 Invoice 20130131	Open	Date 02/01/2013	Description Reimb Travel Exp, Pipeline Mediation Fund 1420, Pac Cove Bond	GOLDSTEIN, JAMIE	\$186.73
72094	02/08/2013 Invoice 20130125	Open	Date 01/25/2013	Description Reimb BIA Holiday Advertising Exp Fund 1321, BIA	HANNA, CARIN	\$1,796.00
72095	02/08/2013 Invoice 2013-00000495	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	HARRELL, ADRIENNE	\$321.75
72096	02/08/2013 Invoice 2013-00000486	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	HO KUK MU SUL CORPORATION	\$393.90
72097	02/08/2013 Invoice ICMA2-8-13	Open	Date 02/05/2013	Description Retirement Plan Contribution, Employee F	ICMA RETIREMENT TRUST 457	\$4,846.19

**City Checks Issued 2/8/2013**

From Payment Date: 2/4/2013 - To Payment Date: 2/8/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72098	02/08/2013 Invoice 2013-00000496	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	INK, BRUCE	\$395.20
72099	02/08/2013 Invoice 44052	Open	Date 01/08/2013	Description Carbide cutters/grinder	JaVelco Equipment Service, Inc.	\$645.46
72100	02/08/2013 Invoice 12913	Open	Date 01/29/2013	Description Backflow testing	JIM CLARK BACKFLOW	\$248.97
72101	02/08/2013 Invoice 1302007	Open	Date 01/15/2013	Description Senior Accountant Ad	JOBS AVAILABLE	\$350.00
72102	02/08/2013 Invoice 2013-00000498	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	KAPLAN, PHIL	\$614.90
72103	02/08/2013 Invoice DecStmnt	Open	Date 12/05/2012	Description Misc. Supplies	KELLY-MOORE PAINTS	\$26.02
72104	02/08/2013 Invoice A173579	Open	Date 01/29/2013	Description Red curb paint Fund 1310, Gas Tax	KING'S PAINT AND PAPER, INC.	\$124.27
72105	02/08/2013 Invoice 2013-00000499	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	KINNAMON, LORRAINE	\$278.85
72106	02/08/2013 Invoice LIUNA-Jan2013	Open	Date 02/05/2013	Description Pension Dues, Employee Funded	LIUNA PENSION FUND	\$576.00
72107	02/08/2013 Invoice 2013-00000500	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	MAC LAUGHLIN, DAWN	\$373.10
72108	02/08/2013 Invoice 76358	Open	Date 09/27/2012	Description Ad for Comparative Study Presentation 9/2	Mainstreet Media dba GOODTIMES	\$219.00
72109	02/08/2013 Invoice 2013-00000501	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	MARRUJO, SANDY	\$419.90
72110	02/08/2013 Invoice 2013-00000516	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	MARTEL, RAJIV	\$351.00

**City Checks Issued 2/8/2013**

From Payment Date: 2/4/2013 - To Payment Date: 2/8/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72111	02/08/2013 Invoice 2013-00000502	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	MATTERN, MARK	\$552.50
72112	02/08/2013 Invoice 2013-00000503	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	MCCUTCHEN, SUELLEN	\$214.50
72113	02/08/2013 Invoice 2013-00000504	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	MCLAUGHLIN, MARY	\$852.80
72114	02/08/2013 Invoice R12/13-10	Open	Date 02/06/2013	Description Riparian Restoration	McMENAMIN, GEORGE	\$712.50
72115	02/08/2013 Invoice 2013-00000505	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	MELLO, BRUCE	\$152.10
72116	02/08/2013 Invoice 329382 329378 329111 328282 328492 328340 328572 328200 328132	Open	Date 01/24/2013 01/24/2013 01/22/2013 01/15/2013 01/16/2013 01/15/2013 01/17/2013 01/14/2013 01/14/2013	Description credit - auto parts auto parts auto parts, PW F-800 Dump Truck auto parts, F-800 Dump Truck credit-auto parts auto parts, PD CSO2 auto parts-Sweeper auto parts-Saturn auto parts-Ford Van	MID-COUNTY AUTO SUPPLY	\$196.26
72117	02/08/2013 Invoice 2013-00000506	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	MILES, MITCHELL	\$666.25
72118	02/08/2013 Invoice 2013-00000507	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	MONIZ, CHARMAINE	\$221.65
72119	02/08/2013 Invoice ED7	Open	Date 02/04/2013	Description FY 12/13 Inspections, Jan 2013	MORRISON, EDWARD	\$2,500.00
72120	02/08/2013 Invoice 2013-00000508	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	MORRISSEY, YOSHIE	\$222.30



**City Checks Issued 2/8/2013**

From Payment Date: 2/4/2013 - To Payment Date: 2/8/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72121	02/08/2013 Invoice 20130129	Open	Date 02/01/2013	Description Reimb Transportation Exp for flood hearing Fund 1420, Pac Cove Bond	MURPHY, LISA	\$70.12
72122	02/08/2013 Invoice 21300149	Open	Date 01/28/2013	Description Sweeper Parts Fund 1310, Gas Tax	NIXON-EGLI EQUIPMENT CO.	\$3,337.64
72123	02/08/2013 Invoice 233082 232739	Open	Date 01/31/2013 01/15/2013	Description auto parts-PD Crown Vic auto parts-CSO2	NORTH BAY FORD	\$33.66
72124	02/08/2013 Invoice 2013-00000509	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	OFFUTT, MELISSA	\$487.50
72125	02/08/2013 Invoice 6007-3526729 6013-3171351 6014-1197041 6011-4792028 6007-3526463	Open	Date 01/25/2013 01/25/2013 01/25/2013 01/28/2013 01/23/2013	Description Supplies-Rec Plumbing supplies General supplies auto parts-Sweeper auto parts-Sweeper	ORCHARD SUPPLY HARDWARE	\$142.41
72126	02/08/2013 Invoice 249534	Open	Date 01/09/2013	Description Animal Control Exp, PD	PACIFIC VETERINARY SPECIALISTS	\$141.90
72127	02/08/2013 Invoice 8863271-0 995176 995871 995543	Open	Date 01/18/2013 01/23/2013 01/28/2013 01/24/2013	Description Supplies-Rec Paper, City Hall Paper-PD Office supplies-PD Fund 1000, Gen Fund=\$158.69 Fund 2210, Stores=\$260.61	PALACE ART & OFFICE SUPPLIES	\$419.30
72128	02/08/2013 Invoice 2013-00000510	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	PANARO, YVONNE	\$487.50
72129	02/08/2013 Invoice 20645031	Open	Date 01/16/2013	Description auto parts-fleet	PARTSMASTER	\$330.68
72130	02/08/2013 Invoice 17475	Open	Date 01/23/2013	Description Electrical service	PHIL ALLEGRI ELECTRIC, INC.	\$1,617.39

**City Checks Issued 2/8/2013**

From Payment Date: 2/4/2013 - To Payment Date: 2/8/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72131	02/08/2013 Invoice 122012070	Open	Date 01/16/2013	Description Citation Surcharges, Dec 2012	PHOENIX GROUP INFORMATION SYS.	\$710.90
72132	02/08/2013 Invoice 3654-Jan13	Open	Date 01/18/2013	Description Postage Meter Refill, City Hall Fund 2210, Stores	PITNEY BOWES INC.	\$2,019.99
72133	02/08/2013 Invoice 180902	Open	Date 01/30/2013	Description Safety supplies	PK SAFETY SUPPLY	\$238.25
72134	02/08/2013 Invoice 2013-00000511	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	POT, TRENISE	\$995.80
72135	02/08/2013 Invoice 45074738	Open	Date 01/20/2013	Description Gases, Corp Yd.	PRAXAIR DISTRIBUTION INC.	\$78.20
72136	02/08/2013 Invoice 5686793 5191460	Open	Date 01/11/2013 01/17/2013	Description Banner pole supplies Door bottom	ProBUILD COMPANY LLC	\$263.11
72137	02/08/2013 Invoice 49906	Open	Date 01/25/2013	Description Safety shoes	QUENVOLD'S SAFETY SHOEMOBILES	\$181.20
72138	02/08/2013 Invoice 7719-567648	Open	Date 01/17/2013	Description Misc.	ROYAL WHOLESALE ELECTRIC	\$32.85
72139	02/08/2013 Invoice 7581804	Open	Date 01/16/2013	Description Sports supplies	S&S WORLDWIDE	\$103.69
72140	02/08/2013 Invoice 10286	Open	Date 12/10/2012	Description Q2 FY12/13 Funding	SCC CONFERENCE & VISITORS COUNCIL	\$4,312.50
72141	02/08/2013 Invoice 20130205	Open	Date 02/05/2013	Description Zone 5 Flood Control District Plan Review Fund 1200, CIP	SCC DEPT OF PUBLIC WORKS	\$3,295.00
72142	02/08/2013 Invoice Q4 2012	Open	Date 01/11/2013	Description Oct thru Dec 2012 Radio Shop Invoice	SCC INFORMATION SERVICES	\$998.65

**City Checks Issued 2/8/2013**

From Payment Date: 2/4/2013 - To Payment Date: 2/8/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72143	02/08/2013 Invoice 2013-00000514	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	SANTA CRUZ DANCE & PERFORMING ARTS CO	\$169.00
72144	02/08/2013 Invoice 2013-00000512	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	SEE-CABARGA, DIANE	\$563.55
72145	02/08/2013 Invoice 2013-00000513	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	SENDEJAS, LINDA	\$318.50
72146	02/08/2013 Invoice 310606 310640	Open	Date 01/29/2013 01/31/2013	Description Plants for medians Plants	SOQUEL NURSERY GROWERS, INC.	\$174.36
72147	02/08/2013 Invoice 22151KM	Open	Date 01/11/2013	Description Softball equipment	SPORT ABOUT	\$1,344.71
72148	02/08/2013 Invoice 20130131	Open	Date 01/31/2013	Description Editing Service, Museum Arcadia book	STEEN, JUDITH	\$1,000.00
72149	02/08/2013 Invoice 2013-00000515	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	THOMPSON, HEATHER	\$76.70
72150	02/08/2013 Invoice 93030-Feb2013	Open	Date 02/01/2013	Description Dental & Vision Ins, Feb 2013	TLC ADMINISTRATORS, INC.	\$13,272.68
72151	02/08/2013 Invoice 212898	Open	Date 01/14/2013	Description City Hall Phone rmaintenance Fund 2211, Info Tech	TOTLCOM	\$195.00
72152	02/08/2013 Invoice 954791043	Open	Date 01/27/2013	Description Shipping-PD	UNITED PARCEL SERVICE	\$93.21
72153	02/08/2013 Invoice UPEC2-8-13	Open	Date 02/05/2013	Description Union Dues, Employee Funded	UPEC LIUNA LOCAL 792	\$992.25
72154	02/08/2013 Invoice 220694491	Open	Date 01/22/2013	Description Lease Payment, Canon IR1750, Jade St.	US BANCORP EQUIPMENT FINANCE	\$98.74

**City Checks Issued 2/8/2013**

From Payment Date: 2/4/2013 - To Payment Date: 2/8/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72155	02/08/2013 Invoice PARS2-8-13	Open	Date 02/05/2013	Description Retirement Plan Contribution, Employee F	US Bank Institutional Trust-Western Reg	\$235.79
72156	02/08/2013 Invoice 2013-00000497	Open	Date 02/05/2013	Description Winter 2013 Inst.Payments	WEINSTEIN, JOHANNA	\$208.00
72157	02/08/2013 Invoice 20130128	Open	Date 01/28/2013	Description Batteries for parking meters	WILSON, LORRIE	\$245.45
72158	02/08/2013 Invoice 2013-00000477	Open	Date 01/28/2013	Description Canceled class	Olsen, Kelly	\$71.00
201302	02/05/2013 Invoice Feb2013	Open	Date 01/14/2013	Description Health Insurance, Employee Funded	CalPERS Health Insurance	\$50,059.48
Check Totals:				Count	98	Total \$144,709.90

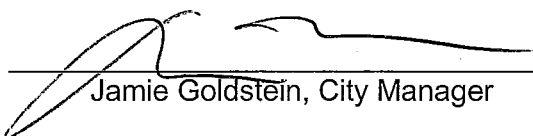
Checks dated 2/15/13 numbered 72159 to 72204 for a total of \$34,442.58 have been reviewed and authorized for distribution by the City Manager and City Treasurer.

As of 2/15/13 the unaudited cash balance is \$1,808,651

**CASH POSITION - CITY OF CAPITOLA 2/15/13**

	<u>Net Balance</u>
General Fund	339,265
Contingency Reserve Fund	671,646
Worker's Comp. Ins. Fund	31,225
Self Insurance Liability Fund	177,629
Stores Fund	(1,209)
Information Technology Fund	75,112
Equipment Replacement	142,200
Compensated Absences Fund	21,954
Public Employee Retirement - PERS	-
Open Space Fund	256
Capital Improvement Projects	350,573
TOTAL GENERAL FUND & COUNCIL DESIGNATED FUNDS	<u>1,808,651</u>

The Emergency Reserve Fund balance is \$289,295.54 and is not included above.

  
 \_\_\_\_\_  
 Jamie Goldstein, City Manager

2/15/2013  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 KyMBERLY V. DeWitt, City Treasurer

\_\_\_\_\_  
 Date

## City Checks Issued 2/15/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72159	02/15/2013	Open			ACME ROTARY BROOM SERVICE	\$1,011.63
	Invoice		Date	Description		Amount
	4867		02/04/2013	Sweeper Brooms Fund 1310, Gas Tax		\$1,011.63
72160	02/15/2013	Open			ALLEY, DONALD	\$485.64
	Invoice		Date	Description		Amount
	0213-02		02/13/2013	FY 12/13 Soquel Creek Fish Monitoring Cc		\$485.64
72161	02/15/2013	Open			ALLSAFE LOCK COMPANY	\$4.87
	Invoice		Date	Description		Amount
	44411		01/16/2013	Keys-Rec		\$4.87
72162	02/15/2013	Open			B & B SMALL ENGINE REPAIR	\$47.67
	Invoice		Date	Description		Amount
	278494		02/04/2013	Mix oil		\$47.67
72163	02/15/2013	Open			BETSY'S SUMMERHOUSE ANTIQUES	\$433.00
	Invoice		Date	Description		Amount
	20130213		02/13/2013	Map Cabinet purchase, museum		\$433.00
72164	02/15/2013	Open			BIG CREEK LUMBER	\$110.04
	Invoice		Date	Description		Amount
	2989572		02/07/2013	Jade St. baseball field		\$110.04
72165	02/15/2013	Open			BOBBY'S PIT STOP INC.	\$244.50
	Invoice		Date	Description		Amount
	0332107		01/31/2013	smog insp 2000 F-150		\$40.75
	0332066		01/30/2013	Smog insp 2000 Crown vic		\$40.75
	0332078		01/30/2013	Smog insp 1999 Ford Ranger		\$40.75
	0331840		01/15/2013	Smog insp Ford Crown vic 072		\$40.75
	0331833		01/15/2013	Smog insp Saturn		\$40.75
	0331826		01/14/2013	Smog insp 1997 Ford Aerostar Van		\$40.75
72166	02/15/2013	Open			CA DEPARTMENT OF JUSTICE	\$64.00
	Invoice		Date	Description		Amount
	952640		02/06/2013	Fingerprints		\$64.00
72167	02/15/2013	Open			CALE AMERICA INC.	\$125.00
	Invoice		Date	Description		Amount
	128423		01/22/2013	Serviced meter		\$125.00
72168	02/15/2013	Open			CALIFORNIA COAST UNIFORM CO	\$108.39
	Invoice		Date	Description		Amount
	1053		02/01/2013	Uniform Exp - Zamora, PD		\$108.39
72169	02/15/2013	Open			CHANTICLEER VET HOSPITAL	\$941.45
	Invoice		Date	Description		Amount
	Jan 2013		02/03/2013	Animal Control Expense		\$941.45

## City Checks Issued 2/15/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72170	02/15/2013	Open			COMPLETE MAILING SERVICE INC	\$1,522.29
	Invoice 61847		Date 02/05/2013	Description Spring brochure mail service		Amount \$1,522.29
72171	02/15/2013	Open			CVS PHARMACY INC.	\$14.94
	Invoice Jan 30 13		Date 01/30/2013	Description Disinf wipes-PD		Amount \$14.94
72172	02/15/2013	Open			ELITE K-9 INC.	\$261.72
	Invoice 52990A		Date 02/01/2013	Description K-9 supplies		Amount \$261.72
72173	02/15/2013	Open			EWING IRRIGATION	\$47.29
	Invoice 5808786		Date 01/17/2013	Description Christy lid		Amount \$21.16
	5870002		02/05/2013	Top soil		\$18.36
	5879451		02/07/2013	Irrigation supplies		\$7.77
72174	02/15/2013	Open			FERGUSON ENTERPRISES, INC.	\$68.41
	Invoice 2744180		Date 01/18/2013	Description Toilet seats		Amount \$68.41
72175	02/15/2013	Open			FLYERS ENERGY, LLC	\$2,662.92
	Invoice 13816749		Date 02/01/2013	Description 489 Gal Ethanol		Amount \$2,041.23
	13-816750		02/01/2013	150 Gal Diesel		\$621.69
72176	02/15/2013	Open			FLYNN, CAROLYN	\$3,290.00
	Invoice CBF-1-2013		Date 01/31/2013	Description Professional Services January 1-31, 2013 Fund 1313, Gen Plan Update=\$720.00 Fund 1350, CDBG Grants=\$950.00 Fund 1351, CDBG Program=\$100.00 Fund 1372, Housing Trust=\$1520.00		Amount \$3,290.00
72177	02/15/2013	Open			FOJACO, HANYA	\$37.70
	Invoice 2013-00000518		Date 02/11/2013	Description Winter Inst.Payment 2013		Amount \$37.70
72178	02/15/2013	Open			HOWELLS, NANCY	\$83.20
	Invoice 2013-00000517		Date 02/11/2013	Description Winter Inst.Payment 2013		Amount \$83.20
72179	02/15/2013	Open			JIM CLARK BACKFLOW	\$50.00
	Invoice 11613		Date 01/16/2013	Description Backflow test		Amount \$50.00
72180	02/15/2013	Open			KING'S PAINT AND PAPER, INC.	\$62.14
	Invoice A173112		Date 01/18/2013	Description Red curb paint Fund1310, Gas Tax		Amount \$62.14

## City Checks Issued 2/15/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72181	02/15/2013	Open			LOOMIS	\$907.61
	Invoice		Date	Description		Amount
	11189534		01/31/2013	armored car service		\$907.61
72182	02/15/2013	Open			MID-COUNTY AUTO SUPPLY	\$648.81
	Invoice		Date	Description		Amount
	330177		01/31/2013	auto parts, PW002 & shop		\$13.98
	330179		01/31/2013	auto parts-PD031		\$27.85
	330203		01/31/2013	credit-auto parts		(\$14.03)
	329924		01/29/2013	auto parts-Concrete Grinder		\$36.01
	329923		01/29/2013	auto parts-fleet		\$38.09
	329419		01/24/2013	auto parts, PW 2005 F-250		\$159.61
	329777		01/28/2013	auto parts-fleet		\$27.36
	329526		01/25/2013	auto parts-PD Vehicles		\$34.51
	329247		01/23/2013	auto parts-fleet		\$35.04
	329381		01/24/2013	auto parts-PD061		\$290.39
72183	02/15/2013	Open			MILLER'S TRANSFER & STORAGE CO	\$315.35
	Invoice		Date	Description		Amount
	84123		02/06/2013	Feb Storage, Jan Handling-Rcds Mgmt		\$315.35
72184	02/15/2013	Open			MISSION LINEN SUPPLY	\$951.79
	Invoice		Date	Description		Amount
	Jan2013		02/01/2013	Mat and Uniform Cleaning Svc, Jan 2013		\$951.79
72185	02/15/2013	Open			ORCHARD SUPPLY HARDWARE	\$291.06
	Invoice		Date	Description		Amount
	6011-4791979		01/28/2013	Drain opener (Wharf Fund)		\$32.53
	6013-1231720		01/29/2013	Misc.		\$59.62
	6007-3527285		01/29/2013	Misc.		\$24.49
	6007-3527354		01/29/2013	Misc.		\$15.17
	6013-2091822		01/30/2013	Misc.		\$31.41
	6013-2091844		01/30/2013	Misc. (Wharf Fund)		\$20.59
	6013-2091856		01/30/2013	Misc.		\$8.67
	6013-1231877		01/31/2013	Dust bags		\$39.03
	6011-4792299		01/30/2013	Shelf for CPD		\$55.00
	6005-1023902		01/31/2013	Toggle bolts		\$4.55
72186	02/15/2013	Open			PALACE ART & OFFICE SUPPLIES	\$375.66
	Invoice		Date	Description		Amount
	995828		01/28/2013	Supplies-Rec		\$108.38
	8868558		02/01/2013	Office Supplies, Museum		\$41.13
	997186		02/04/2013	Misc Supplies, City Hall (Stores Fund)		\$73.02
	997393		02/05/2013	office supplies		\$153.13
72187	02/15/2013	Open			PODS ENTERPRISES INC.	\$288.63
	Invoice		Date	Description		Amount
	050-320162		01/31/2013	Feb 2013 Storage Container, PD		\$288.63
72188	02/15/2013	Open			ProBUILD COMPANY LLC	\$91.15
	Invoice		Date	Description		Amount
	5694226		02/07/2013	Nuts/bolts bleachers		\$91.15



## City Checks Issued 2/15/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72189	02/15/2013	Open			RAY ALLEN MANUFACTURING LLC	\$153.98
	Invoice 288487		Date 02/05/2013	Description K-9 supplies		Amount \$153.98
72190	02/15/2013	Open			RBF CONSULTING	\$2,398.02
	Invoice 839579		Date 02/01/2013	Description Mobile Home Pkg Lot Traffic Impact Analy Fund 1200, CIP		Amount \$2,398.02
72191	02/15/2013	Open			ROM, HILLEL	\$375.00
	Invoice 2013-00000521		Date 02/13/2013	Description Sports Officials Vball Futsall Jan Feb 2013		Amount \$375.00
72192	02/15/2013	Open			SCC AUDITOR-CONTROLLER	\$6,193.00
	Invoice Jan2013		Date 02/08/2013	Description Jan 2013 Citation Surcharges		Amount \$6,193.00
72193	02/15/2013	Open			SCC DEPT OF PUBLIC WORKS	\$237.46
	Invoice 25108		Date 01/31/2013	Description Tire disposal		Amount \$237.46
72194	02/15/2013	Open			SCC INFORMATION SERVICES	\$3,540.00
	Invoice 20130111		Date 01/09/2013	Description Radio Antenna Fund 2211, Info Tech.		Amount \$3,540.00
72195	02/15/2013	Open			SANTA CRUZ MUNICIPAL UTILITIES	\$566.00
	Invoice Dec12-Jan13		Date 01/25/2013	Description WATER BILLS FOR STREET MEDIANS		Amount \$566.00
72196	02/15/2013	Open			SENTINEL PRINTERS, INC.	\$215.33
	Invoice 294239B		Date 01/16/2013	Description Business Cards, Council members		Amount \$215.33
72197	02/15/2013	Open			SIEMENS INDUSTRY INC.	\$1,998.31
	Invoice 400092133		Date 01/29/2013	Description FY 12/13 Signal Maintenance		Amount \$698.24
	400092312		Date 01/29/2013	Description FY 12/13 Signal Maintenance Fund 1310, Gas Tax		Amount \$1,300.07
72198	02/15/2013	Open			SOQUEL NURSERY GROWERS, INC.	\$121.94
	Invoice 310754		Date 02/06/2013	Description Plants		Amount \$121.94
72199	02/15/2013	Open			SUMMIT UNIFORM CORP	\$119.27
	Invoice 396		Date 01/10/2013	Description Uniform Exp, Anderson-PD		Amount \$119.27
72200	02/15/2013	Open			THILL, WENDY	\$120.00
	Invoice 2013-00000520		Date 02/13/2013	Description Sports Officials Vball Futsall Jan Feb 2013		Amount \$120.00

**City Checks Issued 2/15/2013**

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
72201	02/15/2013 Invoice Flex-Feb13	Open	Date 02/08/2013	Description Replenish Flex Cash	TLC ADMINISTRATORS, INC.	\$2,000.00
72202	02/15/2013 Invoice 17774	Open	Date 02/05/2013	Description Feb 2013 Admin Fee	TLC ADMINISTRATORS, INC.	\$175.00
72203	02/15/2013 Invoice 954791053	Open	Date 02/02/2013	Description shipping - PD	UNITED PARCEL SERVICE	\$182.41
72204	02/15/2013 Invoice 2013-00000519	Open	Date 02/11/2013	Description Tree Permit Deposit Refund #12-138	Gonzalez, Leonardo	\$500.00
Check Totals:				Count	46	Total \$34,442.58



## CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 28, 2013

FROM: OFFICE OF THE CITY CLERK

SUBJECT: ORDINANCE AMENDING AND ADDING SECTIONS TO THE CAPITOLA MUNICIPAL CODE SECTION 8.38 PERTAINING TO SMOKING REGULATIONS [2ND READING]

---

**RECOMMENDED ACTION:** Adopt the proposed Ordinance adding and amending Section 8.38 of the Capitola Municipal Code pertaining to the City's Smoking Regulation [2<sup>nd</sup> Reading].

**BACKGROUND:** The draft Ordinance amending Section 8.38 is presented for a second reading.

**DISCUSSION:** The City Council approved the first reading of this Ordinance at the Council meeting held on February 14, 2013.

The proposed Ordinance is before the City Council for its second reading and final adoption. If adopted, the Ordinance will take effect in thirty (30) days.

**FISCAL IMPACT:** None

### **ATTACHMENTS**

1. February 14, 2013 City Council meeting minute excerpt.
2. Draft Ordinance

Report Prepared By: Susan Sneddon, CMC  
City Clerk

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

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**MINUTE EXCERPT  
CAPITOLA CITY COUNCIL MEETING  
THURSDAY, FEBRUARY 14, 2013**

**9. GENERAL GOVERNMENT/PUBLIC HEARINGS**

- C. Consideration of an Ordinance amending Sections 8.38 of the Capitola Municipal Code Pertaining to Smoking Regulations [1st Reading]. [460-70]

**ACTION**            **Motion made by Council Member Norton and seconded by Council Member Termini to approve the introduction of an Ordinance amending Sections 8.38 of the Capitola Municipal Code Pertaining to Smoking Regulations [1<sup>st</sup> Reading].**

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**ORDINANCE NO. 980**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
AMENDING CHAPTER 8.38 AND ADDING SUBSECTIONS 8.38.055, 8.38.110, AND 8.38.112  
TO TITLE 8 OF THE CAPITOLA MUNICIPAL CODE PERTAINING  
TO SMOKING REGULATIONS**

BE IT ORDAINED BY THE CITY OF CAPITOLA OF THE CITY OF CAPITOLA AS  
FOLLOWS:

“Chapter 8.38”  
SMOKING REGULATIONS

**Section 1.** 8.38.030 is hereby amended to read as follows:

**8.38.030      Definitions**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

“Schools” means any public or private pre-school, elementary, middle, junior high or high school within the City of Capitola.

“Reasonable Distance” means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty (20) feet.

“Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

“City health officer” means the director of the county health department or designee serving as the city’s health officer.

“Employee” means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services to a nonprofit entity.

“Employer” means any person, partnership, corporation, public agency or nonprofit entity, which employs the services of one or more individual persons.

“Enclosed area,” for purposes of Section 8.38.050, which prohibits smoking in enclosed public places and Section 8.38.030 which defines means an area substantially surrounded by a combination of walls, windows, doors, partitions or other architectural feature which significantly prevent smoke from escaping into the open air.

“Place of employment” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms and classrooms, employee cafeterias and hallways. A private residence is not a place of employment unless it is used as a child care, health care, board and care, or community foster care facility.

“Public place” means any area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, places of employment, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail

## Item #: 8.B. 8.B Attach 2.pdf

ORDINANCE NO. 980

food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a public place.

“Restaurant” means any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, Outdoor Dining Areas, and any other eating establishment which gives or offers for sale food to the public, guests or employees; any kitchen in which food is prepared on the premises for serving elsewhere, including catering facilities. The term “restaurant” shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a “stand alone bar” as defined in this section.

“Retail tobacco store” means a retail store where the majority of its sales are from tobacco products and smoking accessories and in which the sale of other products is merely incidental.

“Right-of-way” means any portion of the street, sidewalk or adjacent public property, over which people and goods have the right to pass or travel.

“Service line” means any indoor or outdoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

“Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

“Sports arena” means auditoriums where sporting events are conducted from time to time; gymnasiums, health spas; indoor or outdoor swimming pools, skating rinks; bowling hallways; and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sporting events.

“Stand alone bar” means an area in which: (1) the serving of alcoholic beverages for consumption by patrons on the premises is its primary purpose; (2) persons under the age of twenty-one are not permitted on the premises; and (3) serves no food but snack-type foods. A “stand alone bar” for the purpose of this chapter does not include any bar which is structurally part of a building also hosting other business operations, unless it is physically separate from other uses in the same building and has a separate ventilating system ventilating directly to the outside of the building. “Physically separate” means separated (except for doors and windows left closed during business hours) by durable, smoke impervious materials from other areas (except open air areas) of the same structure.

“Nonprofit entity” means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, charter building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a nonprofit entity within the meaning of this subsection.

**Section 2.** 8.38.050 is hereby amended to read as follows:

### **8.38.050 Prohibition of Smoking in indoor public places**

E. Restaurants and outdoor dining areas (except the open air portion thereof)

**Section 3.** 8.38.055 is hereby added and amended to read as follows:

### **8.38.055 Prohibition of Smoking in outdoor public places**

Q. Public events that are open to the general public regardless of any fee or age requirement to include farmer’s markets, theater plays and permitted public events.



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

- R. Reasonable Distance means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty (20) feet.

**Section 4.** 8.38.110 is hereby added to read as follows:

**8.38.110 Posting of Signs**

- D. Businesses that sell Tobacco Products shall visibly post Penal Code Section 308(c) signage at the entrance of any premises subject to regulation under this chapter and applicable state or federal law.
- E. Businesses that sell Tobacco Products shall visibly post signs at the point of purchase of Tobacco Products which comply with the signage requirements of California Business and Professions Code Section 22952, as amended from time to time.
- F. Businesses that sell Tobacco Products shall visibly post signs at each entrance to any premises on which any Tobacco Product is offered for sell, plainly visible from outside the premises, which state "Warning: The fine for buying tobacco for anyone under 18 is \$200" in letters at least ½" tall, and which cite California Penal Code 308(a). These signs shall be updated to conform to any subsequent state or federal requirements and/or amendments to Penal Code Section 308(a).

**Section 5.** 8.38.112 is hereby added to read as follows:

**8.38.112 Regulating the Sale of Tobacco Products**

- A. No Business shall sell, offer to sell or permit to be sold any Tobacco Product to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater unless the seller has some other clear and convincing basis for knowing the buyer's age.
- B. No Business shall be permitted to sell tobacco products from a location within 1,000 feet of a school, as measured by the shortest distance traveled from any entrance of the proposed location for tobacco retailing to the parcel boundary of the school, provided, however, that the prohibition contained in this subsection shall not apply to the following:
- (1) A Business selling tobacco products that was in operation lawfully on the date immediately prior to this chapter becoming effective; and
  - (2) Any lawfully operating Business that sells tobacco products that would otherwise become ineligible to receive or renew a tobacco retailer permit due to the creation or relocation of a school.

**Item #: 8.B. 8.B Attach 2.pdf**

ORDINANCE NO. 980

**Section 6.** This ordinance shall be in force and take effect thirty (30) days after final adoption.

This ordinance was introduced on the 14<sup>th</sup> day of February, 2013, and was passed and adopted by the City Council of the City of Capitola on the 28<sup>th</sup> day of February 2013, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

APPROVED:

\_\_\_\_\_  
Stephanie Harlan, Mayor

ATTEST:

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

DRAFT



## CITY COUNCIL AGENDA REPORT

### MEETING OF FEBRUARY 28, 2013

FROM: DEPARTMENT OF PUBLIC WORKS

SUBJECT: CITY HALL TREE REPLACEMENT

**RECOMMENDED ACTION:** Approve the removal of five pine trees fronting City Hall along Capitola Avenue, and the replacement with five to seven Cercis Canadensis "Forest Pansy" (Eastern Redbud) trees and three to five Sequoia Sempervirens "Coast Redwoods" at Jade Street Park.

**BACKGROUND:** In 2011 the City Council approved tree removal and replanting in the Village and the development of plans for landscaping the front area of City Hall. The tree work in the Village has been completed, including the planting of six queen palms along Monterey Avenue in the area of the old Village Theater.

Landscape Architect Michael Arnone has developed the preliminary plans included (Attachment 1) for the parking lot and front area of City Hall. These plans include the creation of a larger courtyard area to better serve the multi-uses that this area supports. Landscaping for the planted areas behind the sidewalk along Capitola Avenue is also included in the proposed plan.

While funding for the courtyard work has not been budgeted, staff is recommending that the removal and replacement the five misshaped pine trees as the first phase of the work. Funding for this work will be provided by the Community Tree Fund which was established for such projects.

**DISCUSSION:** The selection of the Forest Pansy was a collaborative effort between Mike Arnone and the Public Works Maintenance staff. An email included (Attachment 2) details Mr. Arnone's recommendations.

Pursuant to the City's Tree Regulations, the City will comply with the 2-to-1 tree replacement requirement by planting additional trees as needed at Jade Street Park. These trees will be located between the play area and Trade Winds Mobile Home Park to provide additional screening.

**FISCAL IMPACT:** The tree removal and stump grinding work will be done by contract at a cost of \$2,050. The tree replanting will be done by Public Works Crews and the cost of the new trees is not expected to exceed \$1,000. All costs will be paid from the Community Tree Fund.

#### **ATTACHMENTS**

1. Landscape and Planting Plans by Mike Arnone
2. Email from Mike Arnone dated February 15, 2013
3. July 28, 2011 Agenda Staff Report

Report Prepared By: Steven Jesberg  
Public Works Director

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

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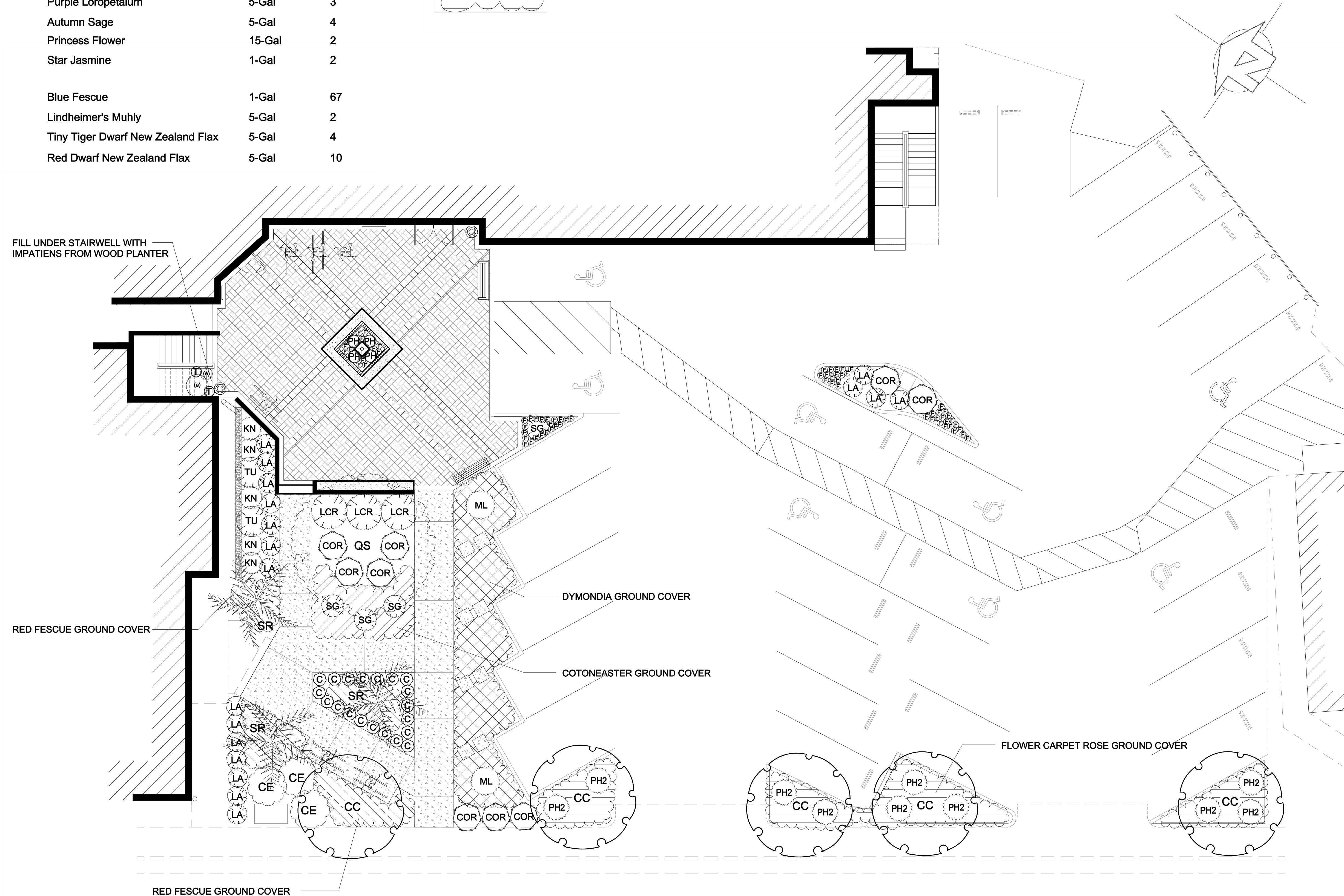
**CAPITOLA CITY HALL PLANT LEGEND**

Alias	Scientific Name	Common Name	Planting Size	Quantity
<b>Trees</b>				
CC or AM	Cercis canadensis 'Forrest Pansy' Arbutus 'Marina'	Burgundy Leafed Eastern Redbud Marina Strawberry Tree	24"-Box	5
SR	Syagrus romanzoffianum	Queen Palm	36"-Box	3
QS	Quercus suber	Cork Oak	48" Box	1
<b>Shrubs, Perennials and Vines</b>				
CE	Ceanothus griseus horizontalis 'Yankee Point'	Yankee Point Ceanothus	5-Gal	3
C	Coleonema pulchrum 'Sunset Gold'	Gold Breathe of Heaven	5-Gal	20
COR	Correa 'Dusky Bells'	Australian Fuchsia	5-Gal	9
KN	Kniphofia 'Alcazar'	Red Hot Poker	5-Gal	5
LA	Lavandula angustifolia	English Lavender	5-Gal	18
LCR	Loropetalum chinense 'Rubrum'	Purple Loropetalum	5-Gal	3
SG	Salvia gregii	Autumn Sage	5-Gal	4
TU	Tibouchina urvilleana	Princess Flower	15-Gal	2
T	Trachelospermum jasminoides	Star Jasmine	1-Gal	2
<b>Grasses</b>				
F	Festuca ovina glauca	Blue Fescue	1-Gal	67
ML	Muhlenbergia lindheimeri	Lindheimer's Muhly	5-Gal	2
PH	Phormium tenax 'Aurea Nana'	Tiny Tiger Dwarf New Zealand Flax	5-Gal	4
PH	Phormium tenax 'Dazzler'	Red Dwarf New Zealand Flax	5-Gal	10

**GROUND COVER LEGEND**

Symbol	Scientific Name	Common Name	Size	Spacing
	Dymondia margaretae	Dymondia	Flats	12" O.C.
	Festuca rubra	Creeping Red Fescue	1-Gal	2' O.C.
	Cotoneaster 'Lowfast'	Low Growing Cotoneaster	1-Gal	4' O.C.
	Rosa 'White Flower Carpet'	White Flower Carpet Rose	1-Gal	4' O.C.

© Michael Arnone Landscape Architect - 2012  
 THESE DRAWINGS ARE INSTRUMENTS OF SERVICE, ISSUED FOR A ONE-TIME SINGLE USE BY THE OWNER. THE ENTIRE CONTENTS OF THESE DRAWINGS IS COPYRIGHT © MICHAEL ARNONE LANDSCAPE ARCHITECT. LANDSCAPE ARCHITECT RETAINS ALL RIGHTS AND TITLE. NO PART MAY BE REPRODUCED IN ANY MANNER OR MEDIUM WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE LANDSCAPE ARCHITECT. THE PROPER ELECTRONIC TRANSFER OF DATA SHALL BE THE USER'S RESPONSIBILITY WITHOUT LIABILITY TO THE LANDSCAPE ARCHITECT.  
 OWNER SHALL ASSUME RESPONSIBILITY FOR COMPLIANCE WITH ALL EASEMENTS, SETBACK REQUIREMENTS AND PROPERTY LINES. OWNER SHALL ACQUIRE ALL NECESSARY PERMITS REQUIRED TO PERFORM WORK SHOWN ON PLANS. BASE INFORMATION HAS BEEN PROVIDED BY THE OWNER. MICHAEL ARNONE LANDSCAPE ARCHITECTURE ASSUMES NO LIABILITY FOR THE ACCURACY OF SAID PROPERTY LINE BOUNDARIES, FENCE LINES OR PROPERTY CORNERS.



**Item #: 8.C. 8.C Attach 1.pdf**  
 Michael Arnone  
 Landscape Architect  
**CAPITOLA CITY HALL**  
**420 CAPITOLA AVENUE**  
**CAPITOLA, CA**



DATE	PURPOSE	BY
12.14.11	first issue review	MAA

scale:  
 1/8" = 1' - 0"

sheet title:  
**planting**

sheet number:  
**L - 2**  
**of two**

**From:** [MICHAEL ARNONE](#)  
**To:** [Jesberg, Steve](#)  
**Subject:** RE: City Hall Trees  
**Date:** Friday, February 15, 2013 9:43:50 AM

---

Steve,

Replacing the pines will solve the pavement lifting problem that is ongoing in front of city hall. In addition the pines are visually rather unappealing. The use of the *Cercis canadensis* 'Forest Pansy' (Eastern Redbud) will provide seasonal interest with a showy spring bloom of magenta pink flowers. The leaves are a burgundy red throughout the year which also adds to the appeal of this tree. While *Cercis canadensis* is not native to California it is similar to the multi trunk native shrub *Cercis occidentalis* (Western Redbud). The eastern plant is more upright and tree-like which is needed in this instance. It is a deep rooting tree so it is a good street tree selection. It is considered to be drought tolerant. The tree will get about 25' tall by 20' wide within 15 years. It will be necessary to prune the trees to shape them and control growth toward the street. It is a deciduous tree so it will drop it leaves in the late fall. The flowers are very small and will not be a litter issue. If you have any further questions, give me a call.



**Michael Arnone + Associates**  
LANDSCAPE ARCHITECTURE  
*commercial and residential design*  
831.462.4988 desk  
[www.arnonelandscape.com](http://www.arnonelandscape.com)

---

Subject: City Hall Trees  
Date: Thu, 14 Feb 2013 16:57:51 -0800  
From: sjesberg@ci.capitola.ca.us  
To: rknown1@hotmail.com

Hi Mike, we have decided to move forward with the tree replacement at City Hall. I believe you and Eddie Ray came up with the recommendation of using *Cercis canadensis* 'Forest Pansy' for the replacement trees. I was hoping you could send me a quick email on this selection and its benefits to the property.

Thanks.

-Steve







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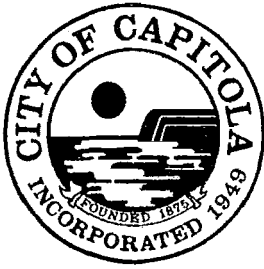
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Subject: City Hall Trees  
Date: Thu, 14 Feb 2013 16:57:51 -0800  
From: [sjesberg@ci.capitola.ca.us](mailto:sjesberg@ci.capitola.ca.us)  
To: [rknown1@hotmail.com](mailto:rknown1@hotmail.com)

Hi Mike, we have decided to move forward with the tree replacement at City Hall. I believe you and Eddie Ray came up with the recommendation of using *Cercis canadensis* 'Forest Pansy' for the replacement trees. I was hoping you could send me a quick email on this selection and its benefits to the property.

Thanks.

-Steve



## CITY COUNCIL AGENDA REPORT

MEETING OF JULY 28, 2011

FROM: DEPARTMENT OF PUBLIC WORKS

DATE: JULY 20, 2011

SUBJECT: APPROPRIATION OF COMMUNITY TREE AND FOREST MANAGEMENT FUNDS  
FOR TREE REPLACEMENT ALONG MONTEREY AVENUE AND LAWN WAY  
AND PLAN DEVELOPMENT FOR TREE REPLACEMENT AT CITY HALL

---

**Recommended Action:** By motion and roll call vote approve a budget amendment resolution appropriating \$25,000 in the Community Tree and Forest Management Account for expenses for tree removal and replacement along Monterey Avenue and Lawn Way and for the development and implementation of tree replacement at City Hall.

---

### BACKGROUND

As part of the City tree ordinance, in lieu tree replacement funds and fines have been collected in the past to pay for reforestation efforts throughout the City. Presently the Community Tree and Forest Management Account has a fund balance of \$33,000. City staff has developed a list of recommended projects utilizing these funds that can be undertaken quickly and address several trees of concern.

These projects include the following:

1. Removal of a stone pine at 110 Monterey Avenue and replacement with six queen palms
2. Removal of a magnolia tree near 123 Esplanade, on Lawn Way, and replacement with a fan palm
3. Preparation and implementation of landscape plans for removal and replacement of five pine trees and other landscape improvements at City Hall

The stone pine at 110 Monterey Avenue (Britannia Arms) is large and was originally planted directly over a water main and water service connections serving both the restaurant and Esplanade Park. Soquel Creek Water District has reported to the City that three breaks in their system have been caused by the roots of this tree. In addition, the roots are causing up lift of the areas immediately adjacent the tree well.

The magnolia tree on Lawn Way is an ailing tree that Public Works crews have been nursing along for several years. The tree is in an inappropriate location due to the direct exposure to sea air.

The five pine trees at City Hall are stunted, misshapen and continually drop sap on to the sidewalk along Capitola Avenue. At the request of staff, Landscape Architect Michael Arnone has prepared a proposal to review the landscaping in front of City Hall and make recommendations for both replacement trees and other improvements.

**DISCUSSION**

A tree permit application for the removal of the stone pine and magnolia trees has been filed with the Community Development Department. This application includes the tree replacement plan that entails planting six 24" box queen palms along the east side of Monterey Avenue where previous street trees have been planted but have been removed over the years and planting a 24" box fan palm to replace the magnolia tree. The queen palms will match the streetscape established along Capitola Avenue and the fan palm will match two other fan palms on the parking island nearby. The entire application packet is included as Attachment 2 for the Council's information. Upon approval of the funding, the Community Development Department will issue the tree removal permit that will include a ten day appeal period.

Further, upon approval of the budget amendment resolution, the City Manager will issue a contract to Mike Arnone in the amount of \$3,250 for the landscaping improvement plans for City Hall. The proposal from Mike Arnone is included as Attachment 3.

**FISCAL IMPACT**

The fund balance of \$33,000 represents approximately six years worth of in lieu fees and fines collected. This budget amendment will authorize the expenditure of \$25,000, leaving an unappropriated balance of \$8,000.

**ATTACHMENTS**

1. Draft resolution
2. Tree Permit Application
3. Proposal from Michael Arnone, Landscape Architect
4. Email from Taj Dufour with the Soquel Creek Water District

**Report Prepared By:** Steven Jesberg  
Public Works Director

**Reviewed and Forwarded  
By City Manager:**

\_\_\_\_\_



# CITY COUNCIL AGENDA REPORT

## MEETING OF FEBRUARY 28, 2013

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: AUTHORIZATION TO RECRUIT & HIRE FOR A SENIOR PLANNER

**RECOMMENDED ACTION:** Authorize the City Manager to recruit and hire for the position of Senior Planner.

**BACKGROUND:** Since the 2008/2009 Fiscal Year, the City has implemented a limited hiring freeze, requiring Council permission to fill any vacancy other than a vacancy in the Police Department.

**DISCUSSION:** The Senior Planner, Ryan Bane has accepted a position with the City of Santa Cruz effective February 22, 2013. The Senior Planner is primarily responsible for managing, and coordinating the processing of development applications, serves as a decision maker for certain types of applications, performs difficult research an analysis of various planning activities, and prepares reports for the Planning Commission as well as the City Council. The Senior Planner also assists applicants and the general public with interpretation of development regulations and standards and suggests improvement and or modifications of development applications.

The recruitment will begin within the next two weeks, but the selection process will be done with the new Community Development Director. The position is budgeted full-time in the Community Development Department and is a member of the Mid-Managers Employees Bargaining Unit.

**FISCAL IMPACT:** The position is currently fully funded in the adopted Fiscal Year 2012/2013 Budget.

Report Prepared By: Lisa G. Murphy  
Administrative Services Director

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

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# CITY COUNCIL AGENDA REPORT

## MEETING OF FEBRUARY 28, 2012

FROM: DEPARTMENT OF PUBLIC WORKS

SUBJECT: LOWER PACIFIC COVE PARKING LOT PROJECT UPDATE

**RECOMMENDED ACTION:** Receive public testimony regarding the proposed Mitigated Negative Declaration prepared for the Lower Pacific Cove Parking Lot Project and direct staff to return to City Council on March 28, 2013, for consideration of the Mitigated Negative Declaration and project permits.

**BACKGROUND:** On August 9, 2012, the City Council took the following actions related to the Lower Pacific Cove Property:

1. Approved the preliminary project description for the Lower Pacific Cove Parking Lot Project including improvements to the Upper Pacific Cove Parking Lot;
2. Authorized the release of a request for proposals for engineering and design services;
3. Authorized staff to initiate environmental review of the proposed project;
4. Approved Resolution No. 3932 at the August 9, 2012, City Council meeting, authorizing the advance of funds to pay \$75,000 in preliminary project costs prior to receiving debt funding.

The firms of Strelow Consulting and Bowman & Williams have been working on the environmental review and design of the project. The result of the environmental review was the preparation of a Negative Declaration (ND). The ND (Attachment 1) was release for public comment of January 17, 2013, and all comments were due by February 15, 2013. The ND will be considered by the Planning Commission on March 7, 2013, and by the City Council on March 28, 2013.

The plans are 50% complete at this time. The preliminary layout (Attachment 2) includes 226 parking spaces, a turnaround at both ends, relocation of an existing coach to the west end for the Police Department usage, and reconstruction of the restrooms.

**DISCUSSION:** The original schedule was for the City Council to consider the adoption of the ND at tonight's meeting. The schedule has been pushed back to allow for coordination with the Sanitation District and to allow the Planning Commission the opportunity to consider the ND. Due to the fact that the public notice for the ND advertised the Council's consideration tonight, public testimony on the project should be heard tonight. Legal noticing for the hearing on March 28, 2013, will be done also.

**FISCAL IMPACT:** None

**ATTACHMENTS:**

1. Negative Declaration dated January 14, 2013
2. Project Plan dated January 2012

Report Prepared By: Steven Jesberg  
Public Works Director

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

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**CITY OF CAPITOLA  
Notice of Intent to  
Adopt a Negative Declaration**

**PROJECT:** Lower Pacific Cove Parking Lot

**PROJECT LOCATION:** City of Capitola

**APPLICANT:** City of Capitola

**PROJECT DESCRIPTION:** The project consists of construction of a 233-space surface public parking lot adjacent to City Hall with access provided from Capitola Avenue and Bay Avenue. The project also includes renovation of an existing restroom facility to provide public restrooms with outdoor showers. A relocated mobile coach will be sited near the Capitola Avenue entrance that will be used by the City Police Department. Other improvements include a pedestrian walkway through the site, landscaping, and retaining wall replacement. The City intends to use the parking lot until a permanent parking structure is developed on the adjacent, existing City-owned public parking lot. At this time, it is expected that the proposed lot will be used for a period of up to five years or until such time that a parking structure is constructed and operational. Currently there is no schedule or funding for development of the parking garage. Future uses for the project site will be identified and considered at a later date when the lot is closed. No specific future uses of the property have been proposed at this time.

**Significant Effects on the Environment:** None.

The City of Capitola has reviewed the proposed project and has determined that the project will not have a significant effect on the environment. A copy of the Negative Declaration and Initial Study document may be reviewed or obtained at the address below and is available on the City of Capitola website at [www.ci.capitola.ca.us](http://www.ci.capitola.ca.us):

City of Capitola  
420 Capitola Avenue  
Capitola, Ca 95010

Comments on the Negative Declaration should be submitted in writing to Steve Jesberg at the address listed above from January 17, 2013 through February 15, 2013. The Negative Declaration and project will be considered at a public hearing before the City of Capitola City Council on February 28, 2013 at 7:00 PM at the Capitola City Hall at the address above.

If you have any questions or comments, please contact Steve Jesberg at (831) 475-7300 or email at: [sjesberg@ci.capitola.ca.us](mailto:sjesberg@ci.capitola.ca.us).



## CITY OF CAPITOLA NEGATIVE DECLARATION

The City of Capitola has prepared this Negative Declaration for the following described project:

**PROJECT:** Lower Pacific Cove Parking Lot

**PROJECT LOCATION:** City of Capitola

**APPLICANT:** City of Capitola

**PROJECT DESCRIPTION:** The project consists of construction of a 233-space surface public parking lot adjacent to City Hall with access provided from Capitola Avenue and Bay Avenue. The project also includes renovation of an existing restroom facility to provide public restrooms with outdoor showers. A relocated mobile coach will be sited near the Capitola Avenue entrance that will be used by the City Police Department. Other improvements include a pedestrian walkway through the site, landscaping, and retaining wall replacement. The City intends to use the parking lot until a permanent parking structure is developed on the adjacent, existing City-owned public parking lot. At this time, it is expected that the proposed lot will be used for a period of up to five years or until such time that a parking structure is constructed and operational. Currently there is no schedule or funding for development of the parking garage. Future uses for the project site will be identified and considered at a later date when the lot is closed. No specific future uses of the property have been proposed at this time.

**FINDINGS:** The City of Capitola has reviewed the proposed project and has determined, based on the attached Initial Study, that the project will have no or less-than-significant impacts on the environment. Consequently, adoption of a Negative Declaration is appropriate. An Environmental Impact Report is not required pursuant to the *California Environmental Quality Act of 1970 (CEQA)*. This environmental review process was conducted and the attached Initial Study was prepared in accordance with the State *CEQA Guidelines*.

**BASIS OF FINDINGS:** The Initial Study finds that all direct and potentially indirect impacts that could be caused by the project are less than significant.

  
By: Steve Jesberg, Interim Community Development Director

1-14-13  
Date

# **CITY OF CAPITOLA**

420 CAPITOLA AVENUE

CAPITOLA, CA 95010

PHONE: (831) 475-7300 FAX: (831) 479-8879

## ***INITIAL STUDY***

### **I. BACKGROUND INFORMATION**

<b>Project Title:</b>	Lower Pacific Cove Parking Lot
<b>Application No.:</b>	Not Applicable
<b>Project Location:</b>	426 Capitola Avenue
<b>Name of Property Owner:</b>	City of Capitola
<b>Name of Applicant:</b>	City of Capitola
<b>Assessor's Parcel Number(s):</b>	035-141-33
<b>Acreage of Property:</b>	3.4 acres
<b>General Plan Designation:</b>	R-MH – Residential, Mobile Homes
<b>Zoning District:</b>	MHE – Mobile Home Exclusive
<b>Lead Agency:</b>	City of Capitola
<b>Prepared By:</b>	Stephanie Strelow, Strelow Consulting
<b>Date Prepared:</b>	January 14, 2013
<b>Contact Person:</b>	Steve Jesberg, Public Works Director / Interim Community Development Director
<b>Phone Number:</b>	831-475-7300

## II. DESCRIPTION OF PROJECT AND ENVIRONMENTAL SETTING

### A. Environmental Setting and Surrounding Land Uses:

This project site is located along Capitola Avenue within the central portion of the City of Capitola, north of Capitola Village and adjacent to City Hall (see Figure 1). The site is located between the intersections of Riverview Drive / Capitola Avenue and the driveway of the former mobile home / Bay Avenue, just north of Monterey Avenue. The site is bordered by Capitola Avenue on the west, single-family homes on the north, Bay Avenue on the east, and the Pacific Cove public parking lot at City Hall on the south.

The site was formerly occupied by mobile homes, and some unoccupied mobile homes still exist on the property (see discussion below). Some paving and concrete pads also remain. A paved roadway traverses the site and extends from Capitola Avenue to Bay Avenue. The site is relatively flat on the western half of the site, with a slight upward slope upward toward Bay Avenue on the east. The site is enclosed by existing slopes with retaining walls in places. There numerous trees within the site and on adjacent slopes, though the majority are horticultural trees from former residential landscaping.

### B. Project Description

**Background.** The project site formerly housed the Pacific Cove Mobile Home Park that was in operation from the early 1960s to 2011. A storm drain through the project site failed in 2011, causing damage to some mobile homes and structures in Capitola Village. The City of Capitola decided to close the City-owned mobile home park. Because of the property damage from the March 2011 flood event, and the hazards posed by the park property, it was unlikely the park could be rebuilt to adequately protect life and property. Formerly, there were a maximum of 45 mobile homes on the site, but there were 42 when the park closed. The City is in the process of having the remaining units removed.

In 2011, the City completed conceptual studies for construction of a parking structure on the existing Pacific Cove parking lot, which is located adjacent to the project site on the south next to City Hall. The City is now proposing construction of a surface parking lot on the project site, referred to as the Lower Pacific Cove Parking Lot, to serve as a temporary parking lot until the permanent parking structure is constructed. At this time, it is expected that the proposed parking lot will be used for a period of up to five years or until such time that the planned parking structure is constructed and operational. Currently there is no schedule or funding for development of the parking garage.

The parking structure studies included traffic and parking demand estimates. The conceptual studies identified an alternative with approximately 560 parking spaces for a parking structure, which reflects current demand and parking shortfalls, as well as, future potential demand from other growth in Capitola Village. The upper parking lot currently has 232 existing spaces. A new parking structure of 560 spaces would result in an increase of 328 spaces. Parking demand in the Village during summer months currently exceeds parking supply by 176 spaces. Thus, the proposed temporary Lower Pacific Cove parking lot would be providing needed spaces to help fill the identified existing parking supply deficit in the area.

**Project Elements.** The project consists of construction of a 233-space surface public parking lot to increase the supply of parking for visitors to the Capitola Village area. The site plan is shown on Figure 2. (The site plan shows 227 spaces, but the layout may be slightly modified, and this analysis conservatively assumes a total of 233 spaces.) Access will be provided from both Capitola Avenue and Bay Avenue. Vehicular access will be provided via an existing all-way stop intersection Riverview Drive and Capitola Avenue. Access from Bay Avenue will be provided just north of the street's intersection with Monterey Avenue via an existing driveway that will be improved as part of the project. Pay stations will be provided for "Pay by Space" parking fee collection. Shuttle stops also be provided for the Village Beach Shuttle operations during the summer weekends. The lot will include a pedestrian walkway with access to Bay Avenue, as well as landscaping, although a landscaping plan has not yet been prepared.

The project also includes renovation of an existing restroom facility near the center of the site to provide public restrooms. Up to five outdoor showers are planned at the restroom. Additionally, the project includes relocation of an existing mobile coach (approximately 1,200 square feet) to an area adjacent to Capitola Road that will be used for a City Police Department office and storage.

In order to construct the parking lot, approximately 165 linear feet of existing wood retaining walls will be removed, and new (or replacement) retaining walls will be installed in several locations as shown on Figure 2, totaling approximately 90 linear feet. The walls will be constructed of wood and/or concrete with heights similar to existing retaining walls, which are generally 4-6 feet in height.

As indicated above, the City intends to use the project site as a parking lot until such time that a permanent parking structure is developed on the adjacent City-owned public parking lot. At that time, potential uses for the project site will be identified and considered. No specific future uses of the property have been proposed at this time.

**Construction Methods, Equipment and Schedule.** Construction is expected to commence in the spring of 2013. Construction activities would occur between 8:00 AM and 5:00 PM, Monday through Friday. The project is expected to be completed within 45-60 days.

### C. Agencies whose approval is required (and permits needed)

The City of Capitola is the lead agency and responsible for approving a coastal permit and conditional use permit for the proposed work. Other agencies whose approval is required include:

- California Regional Water Quality Control Board: Review Notice of Intent and Storm Water Pollution Prevention Plan filed by Applicant
- Santa Cruz County Sanitation District: Review Restroom Building Plans
- Santa Cruz County Flood Control and Water Conservation District Zone 5: Approval of Drainage Plan

FIGURE 1: Project Location



SOURCE: Imagine Capitola – City of Capitola General Plan Update

FIGURE 2A: Site Plan – Western Half of Site

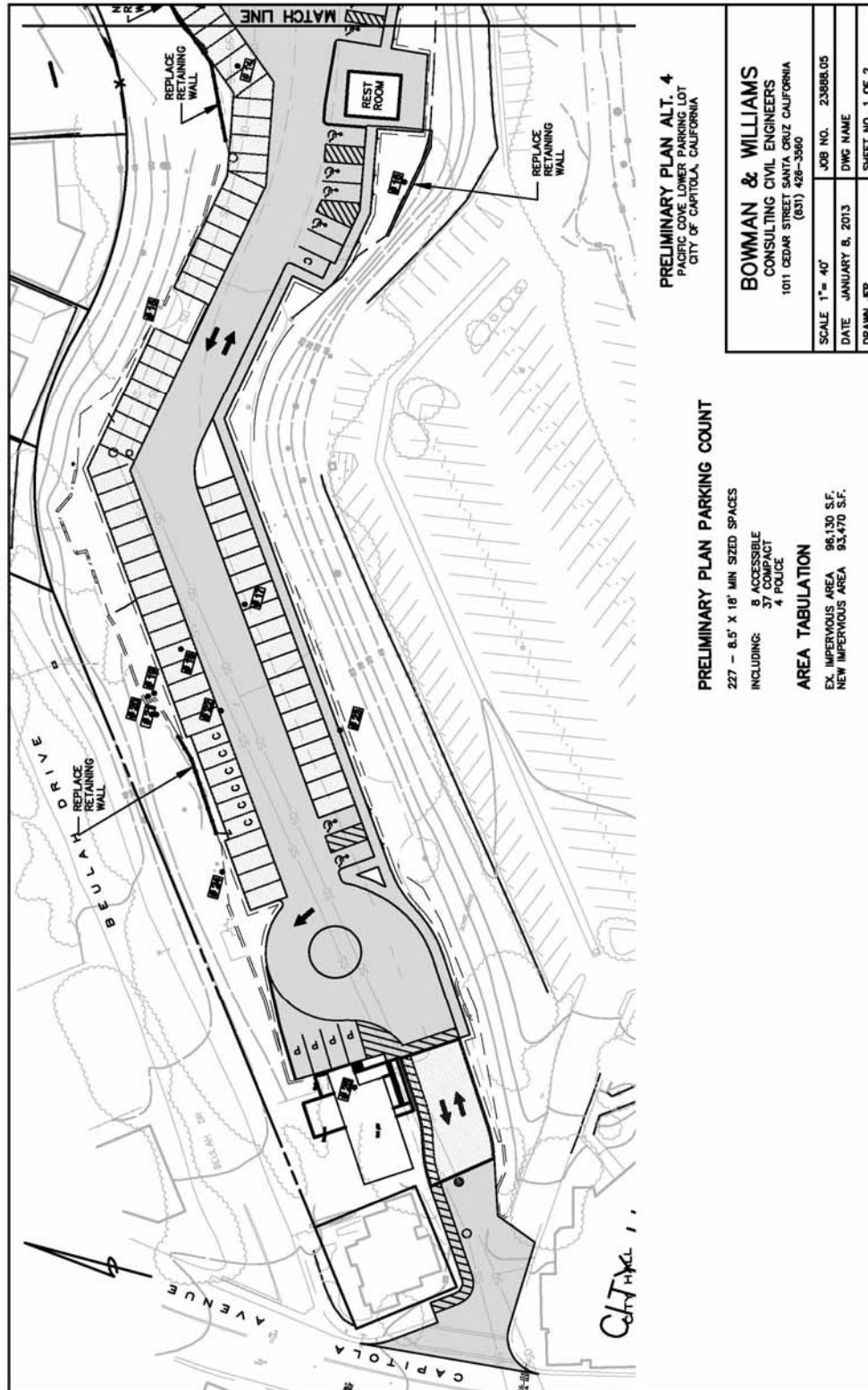
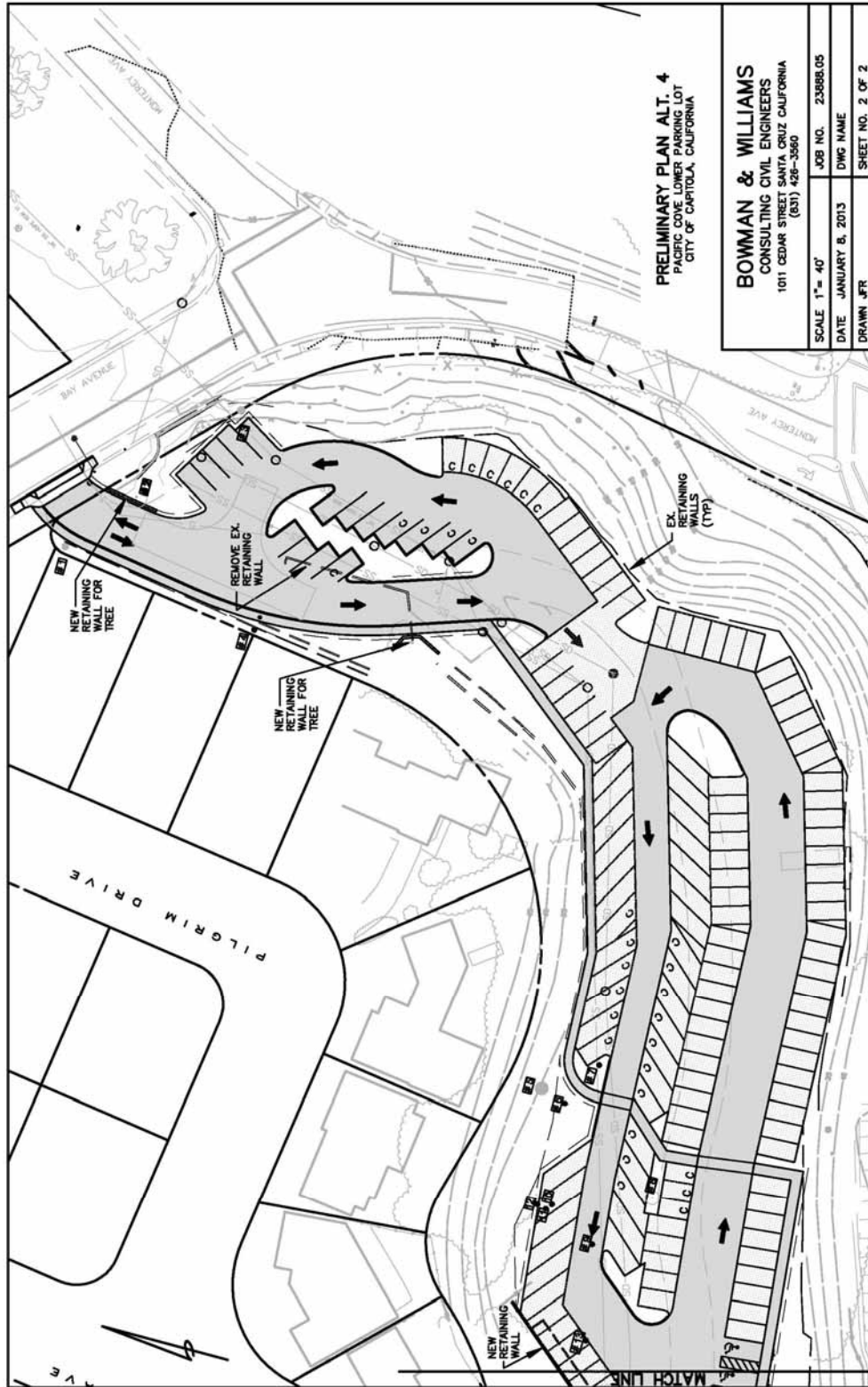


FIGURE 2B: Site Plan – Eastern Half of Site





### III. ENVIRONMENTAL CHECKLIST

**Environmental Factors Potentially Affected by the Project:** The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

✓	Aesthetics		Agriculture & Forest Resources	✓	Air Quality
✓	Biological Resources		Cultural Resources	✓	Geology / Soils
✓	Greenhouse Gas Emissions		Hazards & Hazardous Materials	✓	Hydrology / Water Quality
	Land Use / Planning		Mineral Resources	✓	Noise
	Population / Housing		Public Services		Recreation
✓	Transportation / Traffic	✓	Utilities / Service Systems		Mandatory Findings of Significance

#### Instructions:

1. A brief explanation is required (see VI. "Explanation of Environmental Checklist Responses") for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question (see V. Source List, attached). A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
2. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that any effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
4. "Negative Declaration: Less Than Significant With Mitigation Incorporated: applies where incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level.
5. Earlier Analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case a discussion should identify the following on attached sheets:

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

- a) *Earlier analysis used.* Identify earlier analyses and state where they are available for review.
  - b) *Impacts adequately addressed.* Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
  - c) *Mitigation measures.* For effects that are "Less than Significant with Mitigation Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
6. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
  7. Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
  8. The explanation of each issue should identify:
    - a) The significance criteria or threshold, if any, used to evaluation each question; and
    - b) The mitigation measure identified, if any, to reduce the impact to less than significance.

ENVIRONMENTAL IMPACTS Issues (and Supporting Information Sources):	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>1. AESTHETICS. Would the project:</b>				
a) Have a substantial adverse effect on a scenic vista?				✓
b) Substantially damage scenic resources, including but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?				✓
c) Substantially degrade the existing visual character or quality of the site and its surroundings?				✓
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?			✓	
<b>2. AGRICULTURE RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:</b>				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? (V.3)				✓
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				✓
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?				✓
d) Result in the loss of forest land or conversion of forest land to non-forest use?				✓
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?				✓

<b>ENVIRONMENTAL IMPACTS Issues (and Supporting Information Sources):</b>	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>3. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:</b>				
a) Conflict with or obstruct implementation of the applicable air quality plan?				✓
b) Violate any air quality standard or contribute to an existing or projected air quality violation?			✓	
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?				✓
d) Expose sensitive receptors to substantial pollutant concentrations?			✓	
e) Create objectionable odors affecting a substantial number of people?				✓
<b>4. BIOLOGICAL RESOURCES. Would the project:</b>				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				✓
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				✓
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				✓
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				✓

<b>ENVIRONMENTAL IMPACTS Issues (and Supporting Information Sources):</b>	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?			✓	
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				✓
<b>5. CULTURAL RESOURCES. Would the project:</b>				
a) Cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines section 15064.5?				✓
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to section 15064.5?				✓
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				✓
d) Disturb any human remains, including those interred outside of formal cemeteries?				✓
<b>6. GEOLOGY AND SOILS. Would the project expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:</b>				
a) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42?				✓
b) Strong seismic ground shaking?			✓	
c) Seismic-related ground failure, including liquefaction?				✓
d) Landslides?				✓
e) Would the project result in substantial soil erosion or the loss of topsoil?				✓
f) Would the project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?			✓	

<b>ENVIRONMENTAL IMPACTS Issues (and Supporting Information Sources):</b>	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
g) Would the project be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?				✓
h) Would the project have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water.				✓
<b>7. GREENHOUSE GAS EMISSIONS. Would the project:</b>				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?			✓	
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?				✓
<b>8. HAZARDS AND HAZARDOUS MATERIALS. Would the project:</b>				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				✓
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				✓
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within ¼ mile of an existing or proposed school?				✓
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				✓
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				✓
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				✓
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				✓

<b>ENVIRONMENTAL IMPACTS Issues (and Supporting Information Sources):</b>	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				✓
<b>9. HYDROLOGY AND WATER QUALITY. Would the project:</b>				
a) Violate any water quality standards or waste discharge requirements?				✓
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local ground water table level (for example, the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				✓
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site.				✓
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site.				✓
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?				✓
f) Otherwise substantially degrade water quality?			✓	
g) Place housing within a 100-year flood-hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? (V.1)				✓
h) Place within a 100-year flood-hazard area structures which would impede or redirect flood flows?			✓	
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? (V.1)				✓
j) Inundation by seiche, tsunami, or mudflow?			✓	

<b>ENVIRONMENTAL IMPACTS Issues (and Supporting Information Sources):</b>	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>10. LAND USE AND PLANNING. Would the project:</b>				
a) Physically divide an established community?				✓
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				✓
c) Conflict with any applicable Habitat Conservation Plan or Natural Community Conservation Plan?				✓
<b>11. MINERAL RESOURCES. Would the project:</b>				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? (V.1)				✓
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan? (V.1)				✓
<b>12. NOISE. Would the project result in:</b>				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance or applicable standards of other agencies?				✓
b) Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?				✓
c) Substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?			✓	
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			✓	
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				✓



<b>ENVIRONMENTAL IMPACTS Issues (and Supporting Information Sources):</b>	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				✓
<b>13. POPULATION AND HOUSING. Would the project:</b>				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				✓
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				✓
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				✓
<b>14. PUBLIC SERVICES. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or need for new or physical altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:</b>				
a) Fire protection?				✓
b) Police protection?				✓
c) Schools?				✓
d) Parks?				✓
e) Other public facilities?				✓
<b>15. RECREATION. Would the project:</b>				
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				✓
b) Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?				✓

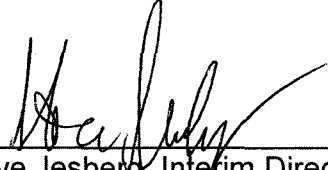
<b>ENVIRONMENTAL IMPACTS Issues (and Supporting Information Sources):</b>	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>16. TRANSPORTATION/TRAFFIC. Would the project:</b>				
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?			✓	
b) Conflict with an applicable congestion management program, including, but not limited to level of service standard and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?				✓
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				✓
d) Substantially increase hazards due to a design feature (for example, sharp curves or dangerous intersections) or incompatible uses (for example, farm equipment)?				✓
e) Result in inadequate emergency access?				✓
f) Conflict with adopted policies, plans, or programs supporting alternative transportation (for example, bus turnouts, bicycle racks.)				✓
<b>17. UTILITIES AND SERVICE SYSTEMS. Would the project:</b>				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				✓
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				✓
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				✓
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				✓

<b>ENVIRONMENTAL IMPACTS Issues (and Supporting Information Sources):</b>	Potentially Significant Issues	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				✓
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				✓
g) Comply with federal, state, and local statutes and regulations related to solid waste?				✓
<b>18. MANDATORY FINDINGS OF SIGNIFICANCE. Does the project:</b>				
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				✓
b) Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of the past projects, the effects of other current projects, and the effects of probable future projects.)				✓
c) Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				✓

**IV. DETERMINATION:**

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.	✓
I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.	
I find that the proposed project MAY have a significant effect on the environment and an ENVIRONMENTAL IMPACT REPORT is required.	
I find that the proposed project MAY have a potentially significant or a potentially significant unless mitigated impact on the environment, but at least one effect (1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and (2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.	
I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.	

  
 \_\_\_\_\_  
 Steve Jesberg, Interim Director  
 Community Development Department

1-14-13  
 \_\_\_\_\_  
 Date

## V. SOURCE LIST

1. City of Capitola.
  - a) Adopted September 28, 1989. *General Plan City of Capitola*. Prepared by Freitas + Freitas.
  - b) 1981 with amendments in October 2001 and January 2005. "Land Use Plan City of Capitola Local Coastal Program."
2. "Imagine Capitola" – City of Capitola General Plan Update.
  - a) "General Plan Update Existing Conditions White Paper #1. March 2011. Prepared by Design, Community & Environment for the City of Capitola.
  - b) "White Paper #3 – Transportation & Parking". April 2011. Prepared by RBF Consulting and Kimley-Horn and Associates.
  - c) "White Paper #4 – Environmental Resources & Hazards". April 2011. Prepared by RBF Consulting.
  - d) "White Paper #5 – Environmental Resources & Hazards". April 2011. Prepared by RBF Consulting.
3. California Department of Conservation. 2007. "Farmland Mapping and Monitoring Program."
4. Monterey Bay Unified Air Pollution Control District.
  - a) August 2008. *2008 Air Quality Management Plan for the Monterey Bay Region*.
  - b) February 2008. "CEQA Air Quality Guidelines."
  - c) May 18, 2011. Staff Report regarding "Presentation on Thresholds of Significance for Greenhouse Gases and Provide Suggestions to Staff for the Recommendation to be Presented at the June 2011 Board Meeting."
  - d) April 30, 2012, "Update on District GHG Threshold Development".
5. Soquel Creek Water District.
  - a) Adopted September 20, 2011. *Urban Water Management Plan 2010*.
  - b) September 12, 2012. "2012 Integrated Water Resources Plan Update."
6. James P. Allen & Associates. November 15, 2012. "City of Capitola Pacific Cove Lower Parking Lot Construction Project Protected Tree Resource Inventory."
7. Pacific Crest Engineering. December 2012. "Limited Geotechnical Report for New Parking Lot, Lower Pacific Cove, Capitola, California."
8. RBF Consulting.
  - a) January 14, 2013. "Traffic Impact Analysis for the Mobile Home Parking Lot." Prepared for City of Capitola Public Works Department.

- b) January 26, 2011. Final Traffic Impact, Circulation and Congestion Relief Study for the Pacific Cove Village Parking Structure.” Prepared for the City of Capitola Public Works Department.
9. Global Climate Change References:
- a) California Air Resources Board. December 2008. *Climate Change Proposed Scoping Plan – A Framework for Change.* December 2008. Online at: [http://www.arb.ca.gov/cc/scopingplan/document/adopted\\_scoping\\_plan.pdf](http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf)
  - b) California Governor’s Office of Planning and Research. June 19, 2008. “CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review.”
  - c) California Air Resources Board. November 16, 2007. “Staff Report – California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit.”
  - d) California Air Resources Board. September 22, 2010 (Last Updated). “Greenhouse Gas Inventory Data – 2000 to 2008” website, including:
    - May 12, 2010. “California Greenhouse Gas Inventory for 2000-2008 – By — by Category as Defined in the Scoping Plan”
    - May 28, 2010. “Trends in California Greenhouse Gas Emissions for 2000 to 2008 – by Category as Defined in the Scoping Plan.”
10. Persons Contacted:
- a) Steve Jesberg, City of Capitola Public Works Director / Community Development Interim Director
  - b) Susan Westman, City of Capitola General Plan Coordinator
  - c) Joel Ricca, Bowman & Williams, Project Engineer
  - d) Ron Duncan, Soquel Creek Water District

## VI. EXPLANATION OF ENVIRONMENTAL CHECKLIST RESPONSES

### 1. Aesthetics.

(a-b) Scenic Views and Resources. The proposed project is located within an existing developed area that is generally only visible from a few adjacent properties. The City’s General Plan identifies “vista points” along the coastal bluffs to the southeast of the project site. Panoramic views of the Monterey Bay, beaches, Capitola Wharf and Capitola Village are the prominent visual features in these areas of the mapped vista points.

The project site is not visible from a designated vista point nor is it within a scenic view. The project is situated between two vegetated slopes that serve to enclose the site. There are numerous trees on the slopes and at the top of the slope. Thus, the project site is mostly screened from views due to existing topography and vegetation.

The proposed project consists of construction of a surface parking lot with restroom and small office/storage building to be housed in a manufactured modular building. The project would not obstruct or remove scenic coastal views as none exist in the area.

The project will not result in removal of trees or other resources that might be considered scenic resources. Project construction will result in removal of 13 small, mostly horticultural trees, as further discussed below in subsection 4(e). However, these trees are not visually distinctive or prominent from public viewpoints and do not represent a significant or prominent visual element of the surrounding area, which is characterized by existing development and landscaping. Most of the trees are smaller horticultural trees within the interior of the site that are not visible from public locations. Therefore, the trees to be removed are not considered scenic resources, and the proposed project would not affect or remove scenic views or scenic resources. Furthermore, twelve trees within the site will be retained, including several larger trees: two Monterey cypress trees, one oak tree and one redwood tree. One cypress and redwood are located at the Monterey Avenue entrance.

(c) Visual Effects upon Surrounding Area. The visual quality of the project vicinity is currently characterized by primarily existing single-family residential development of varying sizes, age and building styles to the north of the site with City Hall and commercial uses in Capitola Village to the south. The site is generally bounded by vegetated slopes, and the interior of the site is not highly visible from either Capitola Avenue or Bay Avenue.

The proposed project consists of construction of a surface parking lot with a restroom building and small office building to be housed in a new or relocated mobile home. Thus, there would be no substantial above-ground structural development. The project would not be visible from any public areas due to the limited visibility of the site as discussed above. Thus, given limited visibility of the site and the low profile nature of the development (surface parking lot), the project would not result in a substantial degradation of the visual quality of the surrounding area.

(d) Creation of Light and Glare. The project site is bordered by residential development on the north that is situated at a higher elevation than the project site. There is generally a 15 foot elevation difference between the parking lot site and residences to the north.

*Impact Analysis.* Project construction will include lighting throughout the parking lot, but it will be oriented and designed to prevent offsite glare onto adjacent properties. Thus, the project would not result in creation of a new source of substantial light or glare that would adversely affect nighttime views in the area. Although specific design and placement of light fixtures has not been completed, the project description approved by the City Council calls for utilization of “downcast” lighting. According to information provided to City staff by the project engineer and consultants, parking lot lighting would typically include fixtures that are approximately 15 feet in height above finished grade and installed at 50 to 70 foot spacing intervals. The light poles may be flush with the top of the slope, but

the light fixtures will be downcast and will meet “Dark Sky” requirements.<sup>1</sup> This type of lighting will not create significant visual impacts on the surrounding neighborhood as the lighting would typically be shielded, directed downward and/or oriented so as not create offsite glare.

## 2. Agricultural and Forest Resources.

The project site is located in a developed urban area and is not in agricultural production or located adjacent to or near agricultural uses. The project site, as all of Capitola, is designated “Urban and Built-Up” by the California Department of Conservation Farmland Mapping and Monitoring Program (SOURCE V.3). Similarly, the project site, is not designated for Timberland Preserve and does not support trees that would be considered commercial timber resources. The proposed project would have no effects on agricultural or forest resources, and would not lead to conversion of agricultural or forest lands as none exist in the area.

## 3. Air Quality.

(a) Consistency with Air Quality Management Plan. The Monterey Bay Unified Air Pollution Control District’s regional Air Quality Management Plan (AQMP) establishes emission forecasts based on population forecasts developed by AMBAG. The project consists of a parking lot and would not result in new housing development or population growth. Thus, the project would not conflict with or obstruct implementation of the existing air quality management plan for the region.

(b) Project Emissions. The North Central Coast Air Basin (NCCAB), in which the project site is located, is under the jurisdiction of the Monterey Bay Air Pollution Control District (MBUAPCD) and includes Santa Cruz, Monterey and San Benito Counties. Under the Federal Clean Air Act, as of March 2006 the NCCAB is designated an attainment area for the federal 8-hour ozone standard. (The federal 1-hour ozone standard was revoked in the basin on June 15, 2005.) The basin is designated unclassified/attainment for all other Federal standards, including those for carbon monoxide, nitrogen dioxide, inhalable particulates (PM<sub>10</sub>), and fine particulates (PM<sub>2.5</sub>). Under the California Clean Air Act, the NCCAB is classified as nonattainment for the State 1-hour ozone standard. The air basin is also a nonattainment area for the State inhalable particulate (PM<sub>10</sub>) standard. The basin is an attainment area or is unclassified for all other State standards, including those for carbon monoxide, nitrogen dioxide, sulfur dioxide, and fine particulates (PM<sub>2.5</sub>).

*Impact Analysis.* The proposed project consists of construction of a 233-space public parking lot with a restroom and small office. The project would not result in permanent habitable structural development. Emissions from project

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<sup>1</sup> “Dark sky” standards have been developed by the International Dark-Sky Association (IDA), a non-profit organization founded in 1988, to preserve and protect the nighttime environment and heritage of dark skies through environmentally responsible outdoor lighting.



construction and operations would not result in a significant impact related to air quality as discussed below.

The project does not include operations that would result in stationary emissions. However, vehicle traffic and emissions will be associated with the operation of the proposed parking lot. According to the traffic analysis conducted for the project, the project could generate approximately 495 trips per day when the parking lot is fully utilized. This is a net increase in daily trips and reflects a deduction of trips based on the estimated daily trips from the former mobile home park at the project site. This is a worst-case estimate as the proposed parking lot will help accommodate an existing parking supply deficit within the Village, and some of the estimated project trips will be generated by vehicles already looking for a parking space. (See subsection 16 below for further discussion of traffic impacts.)

The URBEMIS-2007 program (Version 9.2.4) was used to calculate estimated daily vehicle emissions based on the estimated project trip generation. The results indicate that daily emissions would be substantially below MBUAPCD significance thresholds as summarized on Table 1. Thus, the project emissions would not violate current air quality standards or expose sensitive receptors to substantial pollutant concentrations, and therefore, would result in a less-than-significant impact related to air emissions.

**TABLE 1: Project Air Emissions**

Pollutant	Daily Total Project Emissions (lbs per day)	MBUAPCD Threshold [1]
ROG	3.18 pounds per day	137 pounds per day <sup>2</sup>
No <sub>x</sub>	3.93 pounds per day	137 pounds per day
CO	28.93 pounds per day	550 pounds per day
So <sub>2</sub>	0.02 pounds per day	150 pounds per day
PM <sub>10</sub>	19.22 pounds per day	82 pounds per day

[1] Per MBUAPD's CEQA Guidelines (SOURCE V.4b)

Project grading could result in generation of dust and PM<sub>10</sub> emissions. According to MBUAPCD's "CEQA Air Quality Guidelines" (as updated in February 2008), 8.1 acres could be graded per day with minimal earthmoving or 2.2 acres per day with grading and excavation without exceeding the MBUAPCD's PM<sub>10</sub> threshold of 82 lbs/day (SOURCE V.4b). The project site covers approximately 3.4 acres, which would be above the 2.2-acre per day

<sup>2</sup> MBUAPCD does not have a threshold for ROG, which are reactive organic gases – classes of organic compounds that react rapidly in the atmosphere to form photochemical smog or ozone. The MBUAPD has a significance threshold of 137 pounds per day of for VOC – volatile organic compounds, which are considered to be the primary compounds or precursors contributing to the formation of ozone (SOURCE V.5b). The URBEMIS program outputs are for ROG. There is a minor difference between the two, but the terms are mostly interchangeable.

threshold, although the entire site would not be graded. Additionally, grading would not occur all in one day, so it is likely that grading on any given day would be below the threshold. However, the results of the URBEMIS model indicate that PM<sub>10</sub> emissions from construction would be below the District's daily threshold. Thus, no significant dust generation, exceedances of the PM<sub>10</sub> threshold or significant emissions impacts would occur with project grading. Although mitigation measures are not required as a significant impact has not been identified, implementation of dust-suppression practices is recommended to prevent nuisances to nearby residents.

**RECOMMENDED CONDITION OF APPROVAL:** Require implementation of "Best Management" construction practices to control dust and PM<sub>10</sub> emissions during grading and site development. The MBUAPCD identifies the following construction practices to control dust:

- Water all active construction areas at least twice daily;
- Prohibit all grading activities during periods of high winds (over 15 mph);
- Cover all trucks hauling dirt, sand or loose materials.
- Cover or water stockpiles of debris, soil and other materials which can become windblown;
- Sweep streets if visible soil material is carried out from the construction site;
- Plant vegetative ground cover in disturbed areas as soon as possible.

Therefore, the project emissions related to construction and operation are considered less than significant, and the project would not violate current air quality standards or expose sensitive receptors to substantial pollutant concentrations.

(c) Cumulative Pollutant Increases. According to the MBUAPCD CEQA Guidelines, projects that are consistent with the "Air Quality Management Plan" (AQMP) would not result in cumulative impacts as regional emissions have been factored into the Plan (SOURCE V.4b). The MBUAPCD prepares air quality plans, which address attainment of the state and federal emission standards. These plans accommodate growth by projecting growth in emissions based on different indicators. For example, population forecasts adopted by AMBAG are used to forecast population-related emissions. These forecasts are then accommodated within the AQMP. As indicated above, the project is a public parking lot that would not result in new population growth, and thus, would not conflict with the adopted Air Quality Management Plan for the region.

(d) Sensitive Receptors. The project site is located within a developed area of the City of Capitola and is surrounded primarily by residential development, except for City Hall and commercial development to the south. As indicated above, the proposed project would not result in stationary emissions. Thus, the proposed project will not expose sensitive receptors to substantial pollutant concentrations.

Diesel particulate matter was identified as a toxic air contaminant (TAC) by the State of California in 1998. Following the identification of diesel as a TAC, the California Air Resources Board (CARB) developed a comprehensive strategy to control diesel PM emissions. The “Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles”—a document approved by CARB in September 2000—set goals to reduce diesel PM emissions in California by 75% by 2010 and 85% by 2020. This objective would be achieved by a combination of approaches (including emission regulations for new diesel engines and low sulfur fuel program). An important part of the Diesel Risk Reduction Plan is a series of measures for various categories of in-use on- and off-road diesel engines, which are generally based on the following types of controls:

- Retrofitting engines with emission control systems, such as diesel particulate filters or oxidation catalysts,
- Replacement of existing engines with new technology diesel engines or natural gas engines, and
- Restrictions placed on the operation of existing equipment.

Once the Diesel Risk Reduction Plan was adopted, the ARB started developing emission regulations for a number of categories of in-use diesel vehicles and equipment. In July 2007, the ARB adopted regulations for in-use, off-road diesel vehicles that will significantly reduce particulate matter emissions by requiring fleet owners to accelerate turnover to cleaner engines and install exhaust retrofits.

*Impact Analysis.* Project grading and construction could involve the use of diesel trucks and equipment that will emit diesel exhaust, including diesel particulate matter, which is classified as a toxic air contaminant. Adjacent residents and businesses would be exposed to construction-related diesel emissions, but activities that would use diesel equipment would be of temporary and of short-term duration. Thus, potential exposure to adjacent residents is considered a less-than-significant impact.

There are some existing residential units adjacent to the site on the north. Construction-related diesel emissions would be of limited duration (i.e., primarily during grading) and would be temporary. CARB has identified diesel exhaust particulate matter as a toxic air contaminant, and assessment of toxic air contaminant cancer risks is typically based upon a 70-year exposure period. Project excavation and construction activities that would utilize diesel-powered equipment would expose receptors to possible diesel exhaust for a very limited number of days (approximately 30 to 60 days). Because exposure to diesel exhaust will be well below the 70-year exposure period, and given the limited and short-term duration of activities that would use diesel equipment, construction-related diesel emissions are not considered significant. Furthermore, the State is implementing emission standards for different classes of on- and off-road diesel vehicles and equipment that applies to off-road diesel fleets and includes measures such as retrofits. Additionally, Title 13 of the California Code of Regulations (section 2485(c)(1)) prohibits idling of a diesel engine for more than five minutes in any location. Thus, the project would not expose sensitive

receptors to substantial pollutant concentrations, and potential exposure of sensitive receptors to diesel emissions and associated risks is considered a less-than-significant impact.

(e) Odors. The planned parking lot will not include activities that would create objectionable odors.

#### 4. Biological Resources.

(a-d) Special Status Species and Sensitive Habitats. The project site is located within a developed area of Capitola. The site was formerly developed and used as a mobile home park. There are no known biological resources on the project site or in the vicinity. The site is not mapped in the City's General Plan as being located in a riparian corridor or monarch butterfly grove (SOURCE V.1a). Thus, the project will have no effect on biological resources.

(e) Tree Removal. There are approximately 25 existing trees on or immediately adjacent to the project site that include mostly small ornamental trees planted as part of previous residential landscaping, except for two large Monterey cypress, two oak trees and one redwood tree, all of which are mostly located near the entrances from both Capitola and Monterey Avenues. An arborist has prepared an inventory of these 25 trees with some notes on the condition of the trees. There are also numerous trees on the slopes bordering the project site.

Chapter 12.12 of the City's Municipal Code includes provisions to protect trees within the City with a policy "to protect the locally significant, scenic and mature trees as listed in the heritage tree list" to be adopted pursuant to this chapter. A "heritage" tree is any locally significant, scenic and mature tree growing on public or private property that is listed on the city's adopted heritage tree list.

The trees on the project site are not considered "heritage" trees under City of Capitola regulations (Chapter 12.12 – Community Tree and Forest Management) as they are not on an adopted list. However, removal of non-heritage trees requires a permit pursuant to section 12.12.160 of the City's Municipal Code with the following findings pursuant to section 12.12.1890:

1. The tree removal is in the public interest based on one of the following:
  - a. Because of the health or condition of the tree, with respect to disease infestation, or danger of falling;
  - b. Safety considerations; or
  - c. In situations where a tree has caused, or has the potential to cause, unreasonable property damage and/or interference with existing utility services.
2. All possible and feasible alternatives to tree removal have been evaluated, including, but not limited to undergrounding of utilities, selective root cutting, trimming and relocation.
3. The type, size and schedule for planting replacement trees are specified and shall be concurrent with the tree removal or prior to it.

4. The removal of the tree would not be contrary to the purposes of Chapter 12.12 – “Community Tree and Forest Management” and Chapter 17.95 – Environmental Sensitive Habitats.
5. Replacement trees in a ratio of two to one as needed to ensure that with replacement trees, a canopy coverage of at least fifteen percent will result, and location(s) for tree replanting are selected, and/or as a last resort, in-lieu fees have been paid as a condition of the permit in accordance with Section 12.12.190. Replacement trees and/or in-lieu fees are not required if post-removal tree canopy coverage on the site or parcel will be thirty percent or more.

*Impact Analysis.* The proposed project will result in removal of 13 small trees, but none are considered heritage trees under City regulations. All of the trees are horticultural trees, except for two small oak trees. Tree removal would not conflict with City regulations with approval of a permit and replanting replacement trees as required by City regulations. However, replacement trees or in-lieu fees are not required if post-removal tree canopy coverage is 30% or more as indicated above. The trees on the slopes bordering the parking lot site appear to provide the majority of the existing tree canopy coverage, and these trees will be retained. There is no proposed landscaping plan at this time. City staff will make a final determination as to the number of replacement trees to be provided, and the City has indicated that a landscaping plan will be developed for the project. Thus, it appears that planned tree removal and subsequent replanting as part of the project landscaping plan would not conflict with City regulations.

Twelve onsite trees will be retained including the two large Monterey cypress trees, one oak tree, one redwood tree and several other smaller horticultural trees. The arborist review noted that grading and trenching within the “critical root zones” of these trees should be minimized, and that each requires regular professional maintenance if they are to be preserved (SOURCE V.6). Although mitigation measures are not warranted as a significant impact has not been identified, the following Condition of Approval is recommended.

**RECOMMENDED CONDITION OF APPROVAL:** Implement measures to protect existing trees to be retained, especially the larger cypress and oak trees, in order to minimize damage to the trees and their root zones during construction as recommended by a certified arborist review.

(f) Conflicts with Plans. There are no adopted Habitat Conservation Plans in the vicinity.

5. **Cultural Resources.** The project site was formerly a mobile home park, but most of the former homes have been removed. There are no structures on the site that would be considered historical resources.

(b.d) Archaeological Resources. The project site is not within a mapped area of archaeological sensitivity as depicted in the City’s General Plan/Local Coastal Program. The project consists of development of a parking lot that would involve some grading. However, the site has been previously graded and disturbed, and the

preliminary geotechnical investigation identified fill soils throughout the site. It is not expected that archeological resources would be encountered during the limited grading for and construction of the parking lot and associated facilities. Thus, there would be no impacts to cultural resources, and no mitigation measures are required. However, the following Condition of Approval is recommended in the event that unknown resources are discovered during project grading and excavation.

**RECOMMENDED CONDITION OF APPROVAL:** If archaeological resources or human remains are accidentally discovered during construction, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented. Disturbance shall not resume until the significance of the archaeological resources is determined and appropriate mitigations to preserve the resource on the site are established. If human remains are encountered during construction or any other phase of development, work in the area of discovery must be halted, the Santa Cruz County coroner notified, and the provisions of Public Resources Code 5097.98-99, Health and Safety Code 7050.5 carried out. If the remains are determined to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours as required by Public Resources Code 5097.

(c) Paleontological/Unique Geological Resources. No unique geologic features have been identified in plans or observed on the site. The limited grading for the proposed public parking lot will have no effect on any unanticipated paleontological resources as the site has been previously disturbed with former placement of fill soils throughout the site.

## 6. Geology and Soils.

(a-d) Seismic and Geologic Hazards. The project site is located in a seismically active region of California. There are no active faults which underlie the City of Capitola, but active faults are located nearby in the Santa Cruz Mountains and offshore in Monterey Bay (SOURCE V.1a & V.2d). The regional faults of significance potentially affecting Capitola include the San Andreas, the Zayante, and the Palo Colorado-San Gregorio.

The most probable seismic hazards to Capitola are from the San Andreas Fault (in the Santa Cruz Mountains) and, further south, the Palo Colorado-San Gregorio fault. Seismic historical records of the area show that earthquakes of 6.5 – 7.0 magnitude occur periodically on the San Andreas Fault. The main trace of the San Andreas Fault is approximately nine miles northeast of Capitola. One of the largest earthquakes in the Santa Cruz area occurred on October 17, 1989 due to movement on this fault and measured 7.1 on the Richter scale. The epicenter of the Loma Prieta earthquake was approximately five (5) miles southeast of Capitola (SOURCE V.2d).

The Zayante fault is located approximately five miles northeast of Capitola, and the Palo Colorado-San Gregorio is located approximately 14 miles southwest of Capitola. The California Division of Mines and Geology considers the Zayante fault active (SOURCE V.2d). The Palo Colorado-San Gregorio fault is not well understood, but is considered potentially active with an estimates maximum credible magnitude of 7.7 and a recurrence level of 800+ years (Ibid.).

The primary seismic hazard that could affect the project is seismic shaking. The site is located in an area subject to high seismic shaking hazards according to maps in the City's General Plan (SOURCE V.1a). Liquefaction, differential compaction of near surface soils, and lateral spreading can present seismic hazards during earthquakes. Soil liquefaction occurs when loose, saturated sandy soil deposits lose internal strength and transform from a solid to a liquefied state due to reduced stresses within the soils mass. According to maps prepared for the General Plan update, the site is in a high liquefaction potential zone (SOURCE V.2d). The project site is located within a developed urban area, and there are no accounts of landslides in the geotechnical report; adjacent slopes are supported by retaining walls.

The California Building Standards Code (CBC) design standards have a primary objective of ensuring public safety and a secondary goal of minimizing property damage and maintaining function during and following a seismic event. The CBC prescribes seismic design criteria for different types of structures, and provides methods to obtain ground motion inputs. The CBC also requires analysis of liquefaction potential, slope instability, differential settlement, and surface displacement due to faulting or lateral spreading for various categories of construction. Recognizing that the risk of severe seismic ground motion varies from place to place, the CBC provisions vary depending on location within the state.

*Impact Analysis.* The project site is located in an area of high seismic activity and will be subject to strong seismic shaking during an earthquake. However, the project does not involve construction of habitable residential structures that would be at risk or which would place people at risk, and no seismic issues were identified in the geotechnical review for the proposed temporary parking lot. The geotechnical investigation evaluated only the parking lot and includes recommendations for removal of surface fill soils and replacement with engineered soils, which will be implemented as part of project design and construction. The restroom facility and small office subject would be subject to applicable CBC requirements, which set forth structural design parameters for buildings to withstand seismic shaking without substantial structural damage. Structures built in accordance with the latest edition of the CBC and recommendations in the required geotechnical report have an increased potential for experiencing relatively minor damage which should be repairable. Thus, this is considered a less-than-significant impact.

(e.g) Soils and Erosion. A preliminary project geotechnical investigation was conducted that included soil test borings. The surficial geology in the project area is mapped as Alluvial Deposits with Older FloodPlain Deposits (SOURCE V.7). The soil

test borings did not encounter native soils, but encountered a variety of fill soil types (Ibid.). All investigated areas were underlain by at least 2.5 to 6.5 feet of fill that appeared relatively loose. The presence of fill soils is the primary consideration at the site, which could lead to settlement without removal and recompaction (Ibid.). The geotechnical review provides three options to consider with varying degrees of removal of fill and recompaction of soils.

According to the 1980 Soil Conservation Survey of Santa Cruz County (U.S. Department of Agriculture), the soils on the project site and surrounding area have a moderate shrink-swell potential. However, the project does not involve construction of habitable structures that would be at risk, and the geotechnical review indicated that onsite soils consist of 2.5 to 6.5 feet of fill.

*Impact Analysis.* Soils with potential shrink-swell conditions could result in structural damage if not properly designed. The geotechnical report sets forth recommendations for site preparation and design requirements, including removal of fill soils and replacement with engineered soil. Thus, impacts related to soils constraints are considered less-than-significant.

The onsite project soils are classified as having a slight to moderate erosion hazard. Project development will include excavation and grading, although the project site is relatively flat and located within a developed urban area. Approximately 1,100 cubic yards of material will be excavated with 1,150 cubic yards of fill for grading existing to finish grades. Additionally, approximately 1,700 cubic yards will be removed and exported to remove existing fill soils with imported replacement soils. Approximately 2,150 cubic yards of asphalt pavement with base and 1,548 cubic yards of rock for porous pavement will be imported.

Project excavation could result in potential off-site transport of sediments into the municipal storm drain system. The project site is not located adjacent to existing water bodies. Grading is typically subject to approval of a permit with identification of erosion control measures. Under City regulations, public works projects are exempt from a permit where the City provides inspections. However, The project will be required to prepare and implement Stormwater Pollution Prevention Plan (SWPPP) to prevent water quality degradation during construction, as well as a Drainage Plan that will include post-construction erosion control measures. With implementation of standard erosion control measures and Stormwater Pollution Prevention Plan (SWPPP), the potential for offsite erosion and inadvertent transport of soils into the municipal storm drain system is considered less-than-significant. (See subsection 9(f) above for further discussion of SWPPPs.) Although mitigation measures are not required, the following Condition of Approval is recommended.

**RECOMMENDED CONDITION OF APPROVAL:** Implement erosion control measures, including, but not limited to: conduct grading prior to the rainy season if possible; protect disturbed areas during the rainy season; stockpile excavated and fill soils away from storm drain outlets;



implement other Best Management Practices (BMPs) during construction to protect water quality; and immediately revegetate disturbed areas.

(h) Soil Suitability for Septic Systems. The project is a parking lot. Public restrooms will be provided that are connected to a public sanitary sewer line. Septic systems are not utilized in the City of Capitola.

## 7. Greenhouse Gas Emissions.

(a) Greenhouse Gas Emissions. Climate change refers to any significant change in measures of climate, such as average temperature, precipitation, or wind patterns over a period of time. Climate change may result from natural factors, natural processes, and human activities that change the composition of the atmosphere and alter the surface and features of the land. Significant changes in global climate patterns have recently been associated with global warming, an average increase in the temperature of the atmosphere near the Earth's surface, attributed to accumulation of greenhouse house gas (GHG) emissions in the atmosphere. Greenhouse gases trap heat in the atmosphere, which in turn heats the surface of the Earth. Some GHGs occur naturally and are emitted to the atmosphere through natural processes, while others are created and emitted solely through human activities (SOURCE V.9b).

The most common GHG that results from human activity is carbon dioxide, followed by methane and nitrous oxide (SOURCE V.9b). The primary contributors to GHG emissions in California (as of 2008) are transportation (about 37%), electric power production (24%), industry (20%), agriculture and forestry (6%), and other sources, including commercial and residential uses (13%) (SOURCE V.9c). Approximately 81% of California's emissions are carbon dioxide produced from fossil fuel combustion (SOURCE V.9d).

The State of California passed the Global Warming Solutions Act of 2006 (AB32), which seeks to reduce GHG emissions generated by California. The Governor's Executive Order S-3-05 and AB 32 (Health & Safety Code, § 38501 et seq.) both seek to achieve 1990 emissions levels by the year 2020. Executive Order S-3-05 further requires that California's GHG emissions be 80 percent below 1990 levels by the year 2050. AB 32 defines GHGs to include carbon dioxide, methane, nitrous oxide, hydrocarbons, perfluorocarbons and sulfur hexafluoride.

The California Air Resources Board (CARB) is the lead agency for implementing AB32. In accordance with provisions of AB 32, CARB has completed a statewide Greenhouse Gas (GHG) Inventory that provides estimates of the amount of GHGs emitted to, and removed from, the atmosphere by human activities within California. In accordance with requirements of AB32, a Scoping Plan was adopted by CARB in December 2008. The Scoping Plan identifies 18 emissions reduction measures that address cap-and-trade programs, vehicle gas standards, energy efficiency, low carbon fuel standards, renewable energy, regional transportation-related greenhouse gas targets, vehicle efficiency measures, goods movement, solar roofs program,

industrial emissions, high speed rail, green building strategy, recycling, sustainable forests, water and air (SOURCE V.9a).

*Impact Analysis.* The proposed project will not result in the construction of new structures that would result in permanent, ongoing traffic and energy related emissions. However, the proposed project would result in a new parking lot with associated vehicle emissions. Vehicle emissions calculated as part of the URBEMIS program (see subsection 3b above) indicate that approximately 0.94 metric tons per of carbon dioxide emissions per day would be result from the project under full operations, which is equivalent to approximately 345 MT CO<sub>2</sub>e/yr. Assuming an average annual parking lot use of nearly 20% based on the use of the existing adjacent Pacific Cove Parking Lot, the project could result in carbon dioxide emissions of approximately 70 metric tons per year.

To date, no state agency has adopted significance criteria for GHG emissions. On December 30, 2009, the Natural Resources Agency adopted the CEQA Guidelines Amendments addressing greenhouse gas emissions, but these amendments do not specify significance thresholds for GHG emissions. In June 2010, the Bay Area Air Quality Management District (BAAQMD) in the San Francisco Bay area adopted revised its CEQA Guidelines, which include thresholds of significance for greenhouse gas emissions. The BAAQMD was the first regional air district to adopt numeric thresholds for greenhouse gas emissions from residential and commercial projects. The guidelines identified 1,100 MT CO<sub>2</sub>e/yr<sup>3</sup> or 4.6 MT/year per service population (residents/employees) as a numeric emissions level below which a project's contribution to global climate change would be less than "cumulatively considerable"<sup>4</sup>.

The project site is located within the jurisdiction of the Monterey Bay Unified Air Pollution Control District (MBUAPCD), which to date, has not adopted significance criteria or thresholds. In June 2011, the MBUAPCD initiated a process to develop GHG emission thresholds for project and plan level impact analyses. In April 2012, District staff recommended a threshold of 10,000 metric tons (MT) of CO<sub>2</sub>e per year for stationary source projects and a threshold of 2,000 MT CO<sub>2</sub>e per year for land-use projects (SOURCE V.4d). A GHG threshold has not yet been adopted by the MBUAPCD, but is expected to be taken to the District Board of Directors in 2013.

Although, the MBUAPCD has not yet adopted GHG emission significance thresholds, the project's estimated GHG emissions are well below the significance threshold of 2,000 metric tons per year being considered by the

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<sup>3</sup> Carbon dioxide equivalent in metric tons; one metric ton = 2,204.62262 pounds.

<sup>4</sup> In March 2012, the Alameda County Superior Court issued a judgment finding that the Air District had failed to comply with CEQA when it adopted the Thresholds. The Court did not determine whether the Thresholds were valid on their merits, but found that the adoption of the Thresholds was a project under CEQA and order the District to set aside the Thresholds until it complied with CEQA. The District has appealed the decision, but is no longer recommending use of the Thresholds (per BAAQMD website: <http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Updated-CEQA-Guidelines.aspx>).

MBUAPCD, and thus, the potential project-level GHG emissions are considered less than significant and less than cumulatively considerable. Additionally, these emissions are expected to be at least partially offset with implementation of the State's Scoping Plan strategies to improve fuel and vehicle efficiency standards. The project will also serve the Capitola Beach Shuttle operations. Therefore, greenhouse gas emissions resulting from development of the project are not considered significant, and the project's incremental effect is less than cumulatively considerable.

(b) Conflict with Applicable Plans. The project would not conflict with implementation of state plans adopted for the purpose of reducing greenhouse gas emissions. The City of Capitola is in the process of updating its General Plan and preparing a Climate Action Plan to address citywide greenhouse emissions, but a plan has not been completed or adopted.

- 8. Hazards.** The proposed public parking lot project would not involve the use, disposal or emission of hazardous materials that would constitute a threat of explosion or other significant release that would pose a threat to neighboring properties. The site location and scale have no impact on emergency response or emergency evacuation. The site is not located near an airport or airstrip.

**9. Hydrology.**

(a-b) Water Quality Standards and Groundwater. The project is located on formerly developed site within a developed area and will not affect groundwater recharge. The project is a public parking lot that will not result in discharges or potential violations of water quality standards.

(c-e) Drainage. The project site was formerly developed with a mobile home park and will be converted to a temporary paved parking lot. Calculations provided by the project engineer that impervious surfacing on the site will decrease from approximately 96,130 square feet to 93,470 square feet. Thus, stormwater runoff from site would also be reduced.

Site drainage will be directed to an existing 72-inch storm drain that goes through the site and is part of the Nobel Gulch storm drain system. Noble Gulch flows into Soquel Creek at the Village. Approximately 30 years ago, the last approximately 2,000 feet of the Gulch (west of Bay Avenue) was diverted via a 72-inch drainage pipe that extends under the project site. During a heavy storm in March of 2011, rushing water overwhelmed the drainage pipe creating an upwards surge that tore apart the ground beneath several mobile homes and caused flooding and damages in Capitola Village (SOURCE V.2d). A joint City-County project to repair the storm drain is underway and is expected to be completed by February 15, 2013.

(f) Water Quality. The City's Local Coastal Plan seeks to protect and improve the water quality in the Monterey Bay. Within urbanized areas such as the City of

Capitola, pollutants frequently associated with storm water include sediment, nutrients, oil and grease, heavy metals, and litter. The primary sources of storm water pollution in urban areas include automobiles, parking lots, landscape maintenance, construction, illegal connections to the storm water system, accidental spills and illegal dumping.

Urban runoff and other “non-point source” discharges are regulated by the 1972 Federal Clean Water Act (CWA), through the National Pollutant Discharge Elimination System (NPDES) permit program that has been implemented in two phases through the California Regional Water Quality Control Boards (RWQCB). Phase I regulations, effective since 1990, require NPDES permits for storm water discharges for certain specific industrial facilities and construction activities, and for municipalities with a population size greater than 100,000. Phase II regulations expand the NPDES program to include all municipalities with urbanized areas and municipalities with a population size greater than 10,000 and a population density greater than 1,000 persons per square mile. Phase II regulations also expand the NPDES program to include construction sites of one to five acres.

Cities and districts maintaining stormwater systems must obtain coverage under a NPDES stormwater permit and implement stormwater pollution prevention plans or stormwater management programs (both using best management practices) that effectively reduce or prevent the discharge of pollutants into receiving waters. For most jurisdictions, the best management practices have resulted in higher operations and maintenance costs for their stormwater systems. The City of Capitola is working on a joint effort with other jurisdictions to develop guidelines to implement the state’s requirement for storm water retention on new construction sites (SOURCE V.2d).

*Impact Analysis.* Project runoff would not result in significant water quality degradation as the project drainage plan will utilize a “Low Impact Development” (LID) design using porous pavements to treat and detain new site runoff. The porous pavements consist of permeable interlocking pavers and plastic grids filled with drain rock constructed over open-graded aggregate bases. The open-graded aggregate bases temporarily store the collected runoff to allow the stormwater to make contact with the underlying soil for infiltration. Any excess runoff unable to infiltrate is then routed to a controlled outlet structure to regulate flow to 2 and 10 year storm events per Santa Cruz County Design Criteria. Thus, impacts to water quality would be less than significant with the proposed drainage designs.

Potential erosion associated with grading is addressed in subsection 6(e,g) above. Furthermore, construction activity on projects that disturb one or more acres of soil must obtain coverage under the State’s General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 99-08-DWQ). Construction activity subject to this permit includes clearing, grading, and disturbances to the ground such as stockpiling or excavation. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP must list best management practices (BMPs) that the discharger will use

to protect storm water runoff and the placement of those BMPs. Because the project site size is over one acre, the project must file a Notice of Intent (NOI) with the Regional Water Quality Control Board and abide by the state regulations outlined in the general permit and implement best management practices to the maximum extent practicable.

(g-j) Flood and Tsunami Hazards. The project site is located within a 100-year floodplain (SOURCE V.1a and V.2b) and in an area identified as being subject to tsunami hazards (SOURCE V.2b). However, the project is a parking lot and will not result in habitable development or expose people or structures to these hazards. Furthermore, the proposed project would not worsen the potential for flood or tsunami damage.

- 10. Land Use and Planning.** The project is located within a developed area of the city of Capitola, and is located on a site that was formerly developed as a mobile home park. The proposed project consists of construction of a temporary public parking lot that will remain in use until such time as a parking structure is developed on the adjacent Pacific Cove Parking Lot site. The proposed project would not divide an established community. There are no known Habitat Conservation or Natural Community Conservation Plans that would be applicable to the site.

(b-c) Consistency with Local Policies/ Plans. The project site is designated for mobile home residential uses in the City's General Plan and Zoning Ordinance. The MHE (Mobile Home Exclusive) zone district allows public facilities with the issuance of a use permit. A small area of the project site along Capitola Avenue is located in the coastal zone. The project does not conflict with any policies or regulations adopted for the purpose of avoiding or mitigating an environmental impact. The project is consistent with the General Plan's objective to encourage development of convenient parking facilities consistent with anticipated demand (Circulation, Chapter 9).

- 11. Mineral Resources.** The General Plan determined that no known mineral resources were located within the General Plan Area which would be of value to the region or state, and the site is already developed with a residential use.

**12. Noise.**

(a-c) Noise Exposure and Permanent Noise Increases. The proposed parking lot would not expose people to severe existing noise levels as no habitable structures will be constructed. The project site is not located near an airport or private airstrip. The use of a parking lot will result in varying levels of vehicular noise associated with cars and people arriving and departing and associated. However, sound levels would fluctuate throughout the day and would not result in a prolonged duration. It is likely that sound levels would be less than those associated with permanent residential or commercial uses and attendant activities. Furthermore, City staff has indicated that there have not been complaints from residents regarding the existing Pacific Cove

Parking Lot use. Therefore, any sounds arising from the proposed parking lot would not be expected to generate substantial increases in ambient noise levels or result in a significant impact.

(b,d) Temporary Noise and Vibration. There will be a temporary increase in existing noise levels during grading and construction. However, construction would be of limited duration and is expected to be completed within 45 to 60 days. Construction-related noise levels would vary throughout the day depending on the type of equipment that is in use at any one time. Construction is planned on weekdays between 8 AM and 5:00 PM. Because impacts would occur only during daylight hours and are temporary and of limited duration, impacts are considered less-than-significant.

**13. Population and Housing.** The proposed temporary public parking lot project will not result in habitable structures or new population growth. The project site was a former mobile home park that was closed in 2011 after flood damage from a failed storm drain. The park has been closed since then with some removal of mobile homes; removal of the remaining unoccupied and damaged units is underway. The project will not result in displacement of residents or housing.

**14-15. Public Services & Recreation.** The proposed public parking lot project will not result in habitable structures or new population growth, and thus would not result in a demand for public services or recreation. The project will include a small onsite office for the City Policy Department

**16. Transportation/Traffic.**

(a-b,f) Traffic and Circulation. The project site is located between Capitola and Monterey Avenues, just north of Capitola Village. Capitola Avenue and nearby Bay Avenue are identified as arterial streets in the City's existing General Plan, and Monterey Avenue is identified as a "minor" arterial in the background reports prepared for the General Plan Update that is in progress (SOURCE V.2b). There are no signalized intersections in the project vicinity; stop signs control intersection movements along Capitola and Bay Avenues. There are no congestion management programs in effect in Capitola or county of Santa Cruz.

Intersection traffic operations were evaluated based on the Level of Service (LOS) concept. LOS is a qualitative description of an intersection and roadway's operation, ranging from LOS A to LOS F. Level of service "A" represents free flow un-congested traffic conditions. Level of service "F" represents highly congested traffic conditions with unacceptable delay to vehicles on the road segments and at intersections. The intermediate levels of service represent incremental levels of congestion and delay between these two extremes. The City of Capitola General Plan has established LOS D as the acceptable standard for overall traffic operations at intersections in the Village Area and LOS C everywhere else (SOURCE V.1a).

A traffic analysis conducted for the project found four of the study intersections operate at an acceptable LOS as summarized on Table 2. The Monterey Avenue/Park Avenue intersection currently operates at a LOS D, which does not meet the City's existing standard of C. The Capitola Avenue/Stockton Avenue intersection currently operates at a LOS E, which does not meet the City's existing standard of D for intersections in the Village.

**TABLE 2: Intersection Levels of Service**

Intersection	PM Peak Hour LOS (Delay in seconds)	
	Existing	With Project
Capitola Ave./Bay Ave.	C (21.4)	C (24.6)
Capitola Ave./Riverview Dr.	B (10.2)	B (10.6)
Capitola Ave./Stockton Ave.	<b>E (38.8)</b>	<b>E (42.8)</b>
Monterey Ave./Bay Ave.	B (11.3)	B (11.7)
Bay Ave./Project Entrance		Driveway: A (0.9) Worst Approach: B (12.7)
Monterey Ave./Park Ave.	<b>D (27.4)</b>	<b>D (32.7)</b>
SOURCE: RBF Consulting, January 2013		

*Impact Analysis.* The proposed project is estimated to result in an increase in daily traffic and PM peak hour trips. However, as discussed below, increased traffic associated with the project would not result in substantial increases in congestion or deterioration of intersection operations. Thus, traffic generated as a result of the project is considered a less-than-significant impact.

The proposed surface parking lot will provide a total of up to 233 public parking spaces (including accessible parking spaces), and will replace the former mobile home park that was located at the project site. Vehicular access will be provided at two full movement driveways off of Bay Avenue and Capitola Avenue. The west access driveway is located at the existing all-way stop controlled intersection of Riverview Drive / Capitola Avenue, and the east driveway is located at an existing driveway off Bay Avenue just south of Monterey Avenue.

The project is estimated to turn over one third of the parking spaces in the PM peak hour. Trips to and from the former mobile home site will be removed from the road network once the proposed parking lot is constructed. The proposed project is estimated to result in a net increase of 495 daily trips and 134 weekday PM peak hour trips based on trip generation rates for uses published by the Institute of Transportation Engineers (SOURCE V.8a). Traffic from the former mobile home park was deducted from the total trips generated by the proposed parking lot project.

The project trip generation is conservatively high. As discussed above in section II.B, parking demand in Capitola Village currently exceeds parking supply during

summer months and peak visitor periods. Approximately 176 spaces would be needed to meet existing demand. Thus, the proposed temporary Lower Pacific Cove parking lot would be providing needed spaces to help fill the identified existing parking supply deficit in the area. Thus, some of the estimated trips would be existing trips redirected to the parking lot.

The project trips would not result in a change in existing levels of service as shown on Table 2. The four intersections operating at an acceptable LOS would continue to operate at an acceptable level. The project would add trips to intersections currently operating at an unacceptable LOS per City standards: Capitola Avenue/Stockton Avenue (E) and Monterey Avenue/Park Avenue (D). Existing delays at these two intersections would increase slightly by 4 to 5 seconds. The increase in traffic represents slightly less than 3% at the Capitola/Stockton intersection and slightly more than 3% at the Monterey/Park intersection. The increase in trips and delay at these intersections is not considered substantial given daily fluctuations in traffic<sup>5</sup> nor would the amount of increased delay be considered significant. It should also be noted that LOS D is typically considered the minimum acceptable level of service for intersections in developed cities, and LOS D is the City of Capitola's standard for traffic in Capitola Village according to the City's General Plan. Thus, the project's traffic would result in a less-than-significant impact, and no mitigation measures are required.

The City has identified the potential installation of roundabouts and/or signals at the Monterey Avenue/Park Avenue and Capitola Avenue/Bay Avenue intersections in the *One-Way Traffic Analysis for the Capitola Village Area* (RBF Consulting, March 2008) study. The installation of roundabouts would improve operating conditions to an acceptable LOS C at the intersection of Monterey Avenue / Park Avenue and an acceptable LOS A at the intersection of Capitola Avenue / Bay Avenue during the PM peak hours. The installation of a signal at the intersection of Monterey Avenue/Park Avenue would also improve the LOS to acceptable conditions. The northbound queue at the adjacent intersection of Monterey Avenue/Bay Avenue is not projected to extend back to the Monterey Avenue/Park Avenue intersection and would not impact the proposed roundabout. With the installation of these improvements, the operating conditions will improve to acceptable conditions (SOURCE V.8a). The City plans to install roundabouts or signals at these two intersections, and funding is provided in the City Capital Improvement Program. No feasible improvements can be implemented at the intersection of Stockton Avenue and Capitola Avenue due to right-of-way constraints and the spillover effect on the adjacent Capitola Village intersections (Ibid.). However, as discussed above, the increase in traffic and delays at this intersection would not be considered substantial or significant.

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<sup>5</sup> Caltrans has identified the standard deviation expected with regards to reliability of traffic count data. The standard deviation ranges indicate a 12% deviation at 10,000 vehicle trips, meaning that if a traffic count totals 10,000 vehicles per day, then approximately 90% of the time, the actual traffic counts will lie within a range of 8,800 to 11,200 vehicles (California Department of Transportation, June 2006 and "2011 Traffic Volumes on the California State Highway System").



(d-e) Access. Vehicular access will be provided via an existing all-way stop intersection from the intersection of Riverview Drive / Capitola Avenue and an existing driveway off Bay Avenue that will be improved as part of the project. The design will meet fire access requirement. The project design would not result in increased hazards or inadequate emergency access. The proposed project would not conflict with adopted policies or plans supporting alternative transportation. Shuttle stops will be provided at the proposed parking lot for the Village Beach Shuttle operations during summer weekends.

- 17. Utilities and Service Systems.** The proposed project will be served by existing utilities and will have no measurable effect on existing sewer, water, or storm drainage utilities in that the incremental increased demand will not require expansion of any of those services or construction of new facilities to serve the project.

(a-b, e) Wastewater Collection and Treatment. Sanitary sewer service for the City of Capitola is provided under contract through the Santa Cruz County Sanitation District, which provides sewage collection and disposal services to the Live Oak, Capitola, Soquel, and Aptos areas. The City of Capitola is not responsible for nor has the authority to maintain the sanitary sewers. The District's customers generate approximately 5-6 million gallons a day (mgd) of wastewater that flows to the Lode Street treatment facility and is then pumped to the City of Santa Cruz wastewater treatment plant at Neary Lagoon (SOURCE V.2d). The design capacity of the treatment plant is 17 mgd, and the current average flow is approximately 12 mgd. As part of this total capacity, the District has treatment capacity rights of 8 million gallons per day in the City of Santa Cruz wastewater treatment plant.

The treatment plant has adequate capacity to serve the project, which is estimated to generate far less wastewater than the previous mobile home park use. Based on estimated water demand (see the following subsection), the project would result in a net decrease in wastewater generation compared to the former mobile home park at the site that historically housed 42-45 mobile home units. Wastewater flows from the project would not require improvements to sanitary sewer lines or the City's wastewater treatment plant.

It is also noted that the County has plans to replace the sewer trunkline in the project area, a segment of which will cross the project site. The replacement of the trunkline is not part of the proposed project.

(b,d) Water Supply. The project site is located within the service area of the Soquel Creek Water District (SqCWD), which encompasses seven miles of shoreline along Monterey Bay, and extends from one to three miles inland into the foothills of the Santa Cruz Mountains, essentially following the County Urban Services Line. The City of Capitola is the only incorporated area within the SqCWD. Unincorporated communities include Aptos, La Selva Beach, Rio Del Mar, Seascape, Seacliff Beach, and Soquel (SOURCE V.5a).

The District currently serves a population of about 37,720 people through approximately 15,420 service connections (including approximately 1,320 fire service connections and approximately 180 dedicated landscape irrigation connections) in four service subareas within mid-Santa Cruz County. (SOURCE V.5a). Population in the District's service area is estimated to increase to approximately 39,550 in the year 2030 and to 40,037 in the year 2035 (Ibid.).

In September 2011, the District Board of Directors adopted the *2010 Urban Water Management Plan* (UWMP) in accordance with State law. The 2010 UWMP includes important information on SqCWD's water supply sources, water deliveries and uses, projected water demand, drought contingency and emergency response measures, and current and planned conservation programs. The UWMP is one of several documents that SqCWD uses as a long-range water supply planning tool (SOURCE V.5a). Pursuant to state law, the UWMP is updated every five years and covers a period of 20 years.

The SqCWD currently receives 100 percent of its water from groundwater aquifers in the Soquel-Aptos area. The aquifers are located within two geologic formations that underlie the District's service area. The Purisima Formation (Purisima) provides approximately two-thirds of SqCWD's annual production and serves the communities of Capitola, Soquel, Seacliff Beach, and Aptos, while the Aromas Red Sands (Aromas) aquifer provides the remaining one-third of District's annual production (SOURCE V.5a). The groundwater within the Soquel-Aptos area is also a source of supply for the City of Santa Cruz Water Department, Central Water District (CWD), and numerous mutual water companies and private wells. Water production data are generally only available from the public water agencies; however, there has been some effort to extrapolate total production based on land use. It is estimated that SqCWD pumps approximately 60 percent of the total annual groundwater yield from the Soquel-Aptos area, with the remaining 40 percent pumped by all other users (Ibid.).

The current average annual demand in the SqCWD service area, based on average annual demand from 2006 through 2010, is 4,615 acre-feet per year (afy) (approximately 1.5 billion gallons) (SOURCE V.5a). As a result of ongoing conservation efforts and other potential factors, including but not limited to weather, the economic downturn, and rate increases, the average annual demand has been reduced by approximately 800 acre-feet compared to average annual demand from 2001 to 2005, which was 5,416 afy (Ibid). Average per capita water use within the District averaged 118 gallons per capita per day between the years 2000 and 2010 (Ibid.). The District anticipates a modest increase in water service accounts over the next 30 years (approximately 316) with an estimated decrease in total water demand from 4,092 afy in 2010 to 3,787 afy in the year 2030 (Ibid.).

Coastal groundwater levels are below elevations that protect the Soquel-Aptos area from seawater intrusion, therefore creating a state of overdraft with a potential for seawater intrusion (SOURCE V.5a). Recent modeling and evaluations by the District and its consultants indicate that SqCWD's portion of the sustainable yield of the Purisima is approximately 2,500 afy, and SqCWD's portion of the sustainable yield of

the Aromas could be just a few hundred acre-feet, which is significantly less than the 1,800 afy previously projected. In order to recover groundwater levels to protective elevations and eliminate overdraft, SqCWD has determined that it must temporarily reduce pumping to levels below its portion of the sustainable yield and other pumpers must not further impact the overdrafted portion of the basin (Ibid.).

The District has reviewed water supply and management options. After conducting feasibility studies of the various supplemental supply alternatives, an Integrated Resources Plan (IRP) was adopted in early 2006. The SqCWD recently updated its "Integrated Water Resources Plan" and identified the water supply objectives to recover the groundwater basin, including limiting groundwater pumping ("recovery pumping goal") to 2,900 afy for an estimated 20-year period to restore groundwater levels and prevent seawater intrusion. Once the groundwater basin has been restored and protective levels are achieved, a post-recovery pumping goal of 4,000 afy is identified (SOURCE V.5b).

The IRP, which is to be implemented in phases to meet the growing shortages that could occur in the future, identifies the following components for assuring a sustainable water supply:

- *Demand Management* – Continued implementation of existing and new conservation and drought management programs.
- *Conjunctive Use Supply Project* – Evaluation and potential development of a regional seawater desalination facility with the City of Santa Cruz.
- *Local Supplemental Supply Alternatives* – If determined to be needed, preparation of project-level feasibility studies for a modified Soquel Creek diversion project and/or local-only desalination as alternatives, or in addition to, the regional desalination project, as well as development of site specific recycled water supplies for non-potable irrigation use.
- *Groundwater Management* – Continued monitoring/assessment of coastal groundwater quality and levels under the guidelines provided in the Groundwater Management Plan for the Soquel-Aptos Area, first adopted in 1996 – Redistribute groundwater pumping to alleviate the potential for seawater intrusion as identified in the Well Master Plan – Support recharge protection and enhancement projects and policies (SOURCE V.5a).

To date, the SqCWD has maintained and expanded conservation efforts including adopting water use efficiency requirements for new/remodeled development and rebate incentives for newly available technology, e.g. high efficiency toilets, graywater systems, weather-based irrigation controllers, etc. The District also completed a grant funded feasibility study for satellite reclamation plants to provide non-potable water for large irrigation use.

SqCWD also completed a Well Master Plan and will be developing up to five new wells over the next five or so years to redistribute pumping inland. Additionally, groundwater modeling and evaluations are still underway to more fully characterize protective elevations and the sustainable yield within portions of the Aromas aquifer

used by SqCWD (SOURCE V.5a). Furthermore, in 2007, there was a comprehensive update of the 1996 Groundwater Management Plan for the Soquel-Aptos Area that established groundwater management goals to: 1) ensure water supply reliability for current and future beneficial uses; 2) maintain water quality to meet current and future beneficial uses; and 3) prevent adverse environmental impacts. Basin management objectives (BMO) were established to meet each goal and specific actions were identified to achieve each BMO. Actions include: regular groundwater level and quality monitoring from production wells and dedicated monitoring wells.

The SqCWD also continues to increase water conservation efforts and is pursuing a supplemental supply (desalination in partnership with the City of Santa Cruz). The proposed desalination plant would be located in the City of Santa Cruz, and the SqCWD would have priority use of the desalination facility during non-drought conditions to help supplement water demand needs while reducing groundwater pumping (approximately five out of six years). To date, a one-year pilot study and feasibility studies for intake, brine disposal and pre-treatment have been completed, and preparation of an the Environmental Impact Report (EIR) is underway for a permanent facility, which is expected to be constructed and in operation by the year 2016, pending completion of project-level environmental review and regulatory permit approvals, e.g., approval of a coastal development permit from the California Coastal Commission.<sup>6</sup> The design and environmental review phases are currently underway. The likelihood of construction of a permanent plant is currently uncertain as design plans have not been completed, and it cannot be predicted at this time whether the Coastal Commission and other agencies would issue the necessary approvals.

*Impact Analysis.* The proposed project is estimated to result in a net decrease in water demand from has historically occurred at the site. Thus, the project would not result in significant impacts on water supplies or require construction of new or expanded water facilities to serve the project.

The project site historically housed 45 mobile homes with 42 when the park was closed. Based on a water demand rate of approximately 0.14 afy of water per mobile home that was provided by the Soquel Creek Water District, the former mobile home park's water demand is estimated at approximately 6.3 afy. The project water demand was developed by City staff utilizing the District's water fixture standards and requirements and is summarized on Table 3. Total project water demand is estimated at approximately 220,000 gallons per year, which is approximately 0.7 afy. Thus, water use at the project site would decrease by approximately 5.5 afy over historical demand levels.

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<sup>6</sup> Other potential permits, approvals and/or consultations for a permanent desalination plant and supporting infrastructure (i.e., intake facility and distribution pipeline) may be required from various agencies, including, but not limited to U.S. Fish and Wildlife Service, State Lands Commission, and California Department of Health Services.

TABLE 3: Estimated Project Water Demand

Fixture/Use [1]	Count	gal/use	use/day	Daily usage	Total Annual Usage (In Gallons)
Landscape Area (sf)	7,500				102,600
Mens room urinals	3	0.5	10	5	1,825
Mens room toilets	3	1.28	10	12.8	4,672
Mens room sinks	3	1.5	20	30	10,950
Womens room toilets	6	1.28	35	44.8	16,352
Womens room sinks	3	1.5	35	52.5	19,163
Public Showers	5	10	15	150	54,750
PD Building					
Toilet	1	1.28	6	7.68	2,803
Sink	2	1.5	10	15	5,475
				total	218,590
[1] ASSUMPTIONS:					
• Number of public spaces			233		
• % Use of Lot based on existing lot use			16%		
• Space Daily Usage			37.2		
• People Per Car			2		
• Total People Per Day in Lot			74		
• Estimated % Using Restroom			75%		
• Total Usage Per Day			55		
	Men	20			
	Women	35			

(c) Storm Drainage Facilities. See discussion above under subsection 9 (c-e) regarding drainage.

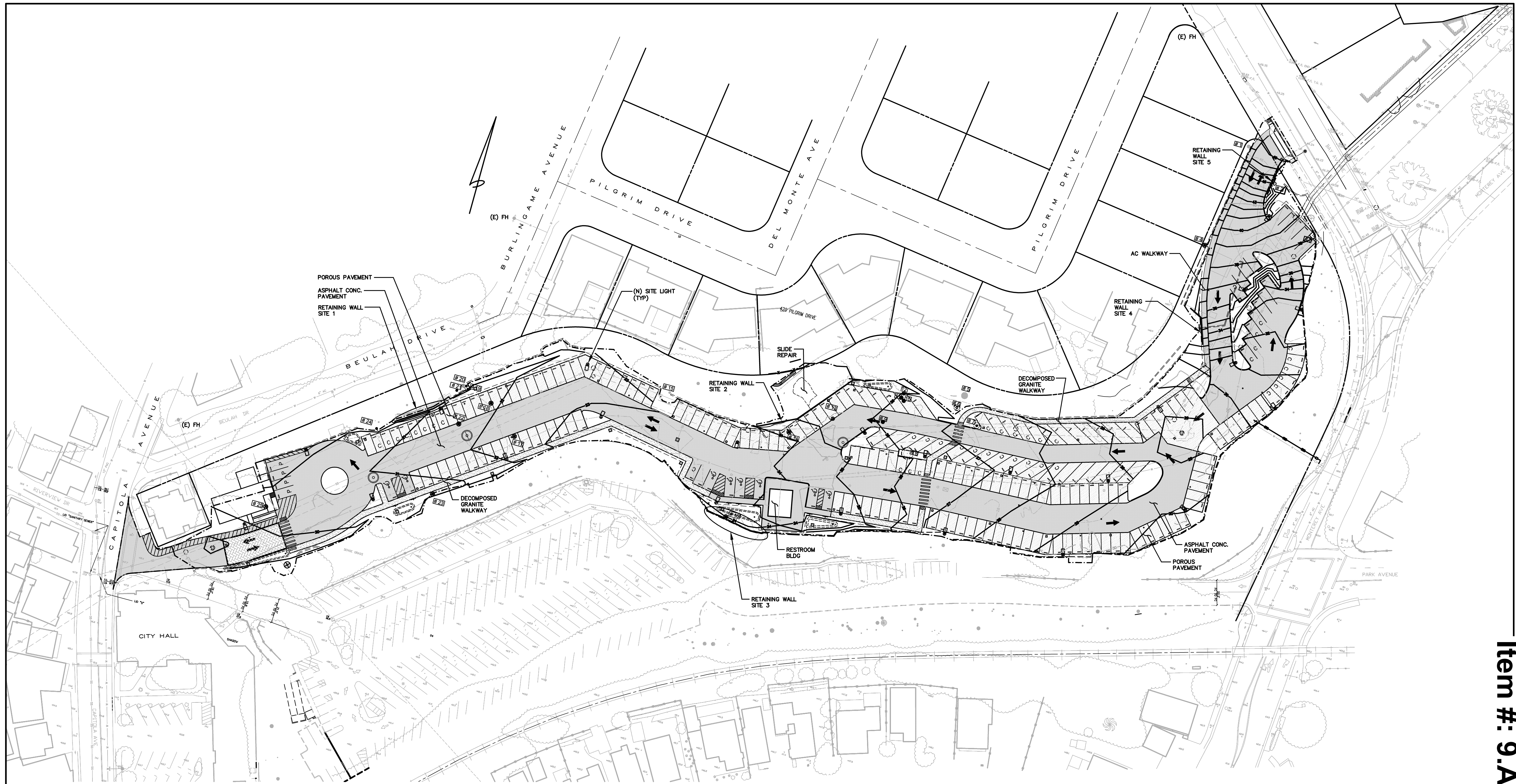
(f) Solid Waste Disposal. Since 2007, the City of Capitola has a franchise agreement with Green Waste Recovery (GWR) for the collection of refuse, recycling, and yard waste. Solid waste collected in Capitola is transferred to the Monterey Peninsula Class III Landfill located in the City of Marina, which is operated by the Monterey Regional Waste Management District. It is a regional disposal facility that serves an 853 square mile area with a population of approximately 170,000. This landfill covers 475 acres and is comprised of both unlined and lined disposal areas. Waste types accepted and permitted at this facility include: agricultural, construction/demolition, sludge (biosolids), and mixed municipal. The landfill has a remaining waste capacity of approximately 40 million tons (74 million cubic yards) and has an anticipated life capacity of 100 years (SOURCE V2.d). Thus, there is adequate existing capacity to

serve the proposed project and limited amount of refuse that would be generated from a public parking lot.

18. **Mandatory Findings of Significance.** The project will not result in significant environmental impacts, is of a limited scale and will not degrade the quality of the environment or result in significant biological or cultural impacts. No environmental impacts have been identified which would have direct or indirect adverse effects on human beings.

(b) Cumulative Impacts. There are no other known cumulative development projects to which the proposed project would contribute to cumulative impacts. The traffic and parking study prepared for the parking garage on the Pacific Cove parking lot site identified potential additional development in the Village area. However, at this time there are no specific proposed or approved development plans pending before the City.

There are two infrastructure projects that are planned in the area. Replacement of the storm drain through the site has been funded and is scheduled to be completed in mid-February prior to construction of the proposed project. The County of Santa Cruz also plans to upgrade the sanitary sewer line in the area. There are no known permanent cumulative impacts that would result from these improvements in combination with the proposed parking lot. It is expected that the storm drain replacement will be completed prior to or simultaneously with the parking lot construction.



**PARKING SPACE COUNT**

226 SPACES TOTAL INCLUDING  
 8 ADA SPACES  
 4 POLICE DEPT. SPACES  
 40 COMPACT (8.5 x 16') SPACES

**DISCLAIMER**  
 THE DATA SET FORTH ON THIS SHEET IS THE PROPERTY OF BOWMAN & WILLIAMS CONSULTING CIVIL ENGINEERS. IT IS AN INSTRUMENT OF SERVICE AND MAY NOT BE REPRODUCED, ALTERED OR USED WITHOUT THE CONSENT OF THE ENGINEER. THE PROPER ELECTRONIC TRANSFER OF DATA SHALL BE THE USER'S RESPONSIBILITY WITHOUT LIABILITY TO THE ENGINEER. UNAUTHORIZED USE IS PROHIBITED.

APN 035-141-33 & 35



REVISIONS		PROJECT PLAN	
BOWMAN & WILLIAMS CONSULTING CIVIL ENGINEERS 1011 CEDAR STREET SANTA CRUZ, CA 95060 (831) 426-3560		IMPROVEMENT PLANS PACIFIC COVE LOWER PARKING LOT RETAINING WALL AND LAND SLIDE REPAIR CITY OF CAPITOLA, CALIFORNIA	
REGISTERED CIVIL ENGINEER NO. 53588		JOB NO. 23888-05	
SCALE 1" = 40'	DRAWN JFR	CHECKED	INDEX SOQUEL 2
DATE JANUARY 2013	DWG 23888parkinglotgrading	FILE NO. 23888-05	OF

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## CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 28, 2013

FROM: POLICE DEPARTMENT

SUBJECT: URGENCY ORDINANCE OF THE CITY OF CAPITOLA REVISING AND SUPPLEMENTING CURRENT CAPITOLA MUNICIPAL CODE CHAPTER 5.32 FIREARMS AND AMMUNITION REGULATIONS AND ADOPTING REGULATIONS PERTAINING TO THE POSSESSION OF FIREARMS ON CITY PROPERTY AND PUBLIC PROPERTY IN THE VICINITY OF SCHOOLS; CORRESPONDING NON-URGENCY ORDINANCE

**RECOMMENDED ACTION:** Adopt an ordinance amendment pertaining to the City's firearms and ammunition regulations, limiting the number of retail dealers which may operate in the City at any given time, adopting regulations pertaining to the possession of firearms on City property and public property in the vicinity of schools, and adopting firearms security regulations.

**BACKGROUND:** At its January 10, 2013 meeting, City Council directed staff to evaluate and explore options for additional gun regulations within the City. There are two licensed businesses that sell firearms to the public in the City, Outdoor World and Big 5 Sporting Goods. Both have a Federal Firearms License (FFL), a Department of Justice Firearms Certificate, and local business licenses. Both are allowed to sell firearms and ammunition; however, Big 5 Sporting Goods has elected not to sell handguns.

**DISCUSSION:** At its February 14<sup>th</sup>, 2013 meeting, staff presented options to the Council regarding potential new and revised firearms and ammunition sales/possession regulations in the City. At that hearing, Council directed staff to research a number of these and other options, including regulations that potentially would limit the number of retail firearms and ammunitions dealers which may operate in the City at any given time, that would regulate the possession of firearms on city and public property in the vicinity of schools, and that would implement firearms security requirements.

Recent events throughout the County of Santa Cruz have generated additional fear of random usage of guns to commit violence on unsuspecting residents, minors and adults alike. Between January 18, 2013 and February 18, 2013 alone, the County has experienced three gun-imposed homicides, two armed (gun) robberies, two assaults with serious injuries including the robbery of a young woman who received a non-fatal gunshot wound to the head, fifteen other incidents involving the use of firearms and six firearms seizures, including seizures of stolen weapons and seizures from gang members and other suspected criminals.

Gun crimes in and around schools have become increasingly common, including most recently the February 15, 2013 homicide on the campus of Watsonville High School while a soccer game, wrestling tournament and dance, all involving high school students, were in process.

The City Council has authority over the management and control of City-owned property, and it may regulate the manner in which privately owned property in the City is used by members of the public. In addition, to the extent authorized by state law and the California Constitution, the City Council has the authority to regulate the sale, lease, or transfer of firearms and ammunition within the City's jurisdictional limits.

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2-28-13 CITY COUNCIL AGENDA ITEM  
SUBJECT: URGENCY ORDINANCE REGARDING FIREARMS

Based upon the recent abundance of gun-related violence and crime both locally and nationally, and at the direction of Council, staff has developed proposed new and revised regulations to strengthen the City's firearms and ammunition policies. The following amendments to Section 5.32 pertaining to Firearms and Ammunition Regulations are proposed:

Section 5.32.020 of the Municipal Code is amended to read as follows:

Section 5.32.020. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

...

C. "Firearms dealer" includes any business that sells, leases, transfers, advertises, or exposes for sale, lease, or transfer any firearm or ammunition for firearms.

D. "Ammunition" means any projectile intended for expulsion from the barrel of a firearm.

Section 5.32.050 of the Municipal Code is amended as follows:

Section 5.32.050 Approval by City Council. The City Council shall have the authority to approve or not approve applications under this chapter. For the purpose of considering applications for licenses under this chapter, the City Council shall apply the standards set forth in this chapter.

~~5.32.050 Approval by chief of police.~~

~~\_\_\_\_\_ The chief of police shall have the authority to approve or not approve applications under this chapter. For the purpose of considering applications for licenses under this chapter, the chief of police shall apply the minimum standards set forth in this chapter. (Ord. 728 § 1 (part), 1992)~~

Section 5.32.070 of the Municipal Code is amended as follows:

Section 5.32.070 Business site standards.

.....

G. The business must be located at least 2,000 feet from any other existing business with a firearms license.

Section 5. Section 5.32.090 of the Capitola Municipal Code is hereby amended to read as follows:

Section 5.32.090 Approval of application – Fitness standards. The Capitola City Council ~~police chief~~ shall have the sole discretion to approve or deny all applications for licenses brought pursuant to the provisions of this chapter. Before considering any such application, the Capitola Police Chief shall conduct an investigation of the applicant with respect to the criteria referenced in this Section and any other criteria deemed pertinent by the Chief and make a recommendation to the City Council. ~~Chapter 2.52 (appeals to city council) does not apply to determinations made pursuant to this chapter.~~ Factors to be considered in the exercise of City Council ~~this~~ discretion include:

- A. Whether the applicant has fulfilled all requirements of this chapter;
- B. Whether the applicant is under indictment for, is presently charged with, or has ever been convicted of any crime;
- C. Whether the applicant has committed any unlawful act involving firearms;
- D. Whether the applicant is, or ever has been, a fugitive from justice;
- E. Whether the applicant is an unlawful user of any narcotic drug, depressant, stimulant drug or marijuana, or an excessive use of alcohol, to the extent that such use would impair his or her fitness to deal in firearms;
- F. Whether the applicant suffers from any severe psychological disturbance

2-28-13 CITY COUNCIL AGENDA ITEM  
 SUBJECT: URGENCY ORDINANCE REGARDING FIREARMS

- which would impair his or her fitness to deal in firearms;
- G. Whether the applicant has ever been committed to a mental institution, adjudicated as mentally defective, or diagnosed as having a serious mental illness;
  - H. Whether the applicant has willfully violated any provisions of this chapter;
  - I. Whether the applicant has willfully made any false statements as to any material fact in applying for the license;
  - J. Whether the applicant has done any act which if done by a licensee would be grounds for suspension or revocation of the license;
  - K. Whether all employees of the applicant who would be engaged in the sale, lease or transfer of firearms meet the standards set forth in this chapter, pursuant to Section 5.32.040.
  - L. Whether the proposed business site meets all business site standards under Section 5.32.070.
  - M. In addition to the criteria set forth in this Chapter for issuance of a firearms dealer permit, the Council shall also consider: adjacent uses and structures; neighborhood integrity, character and compatibility; the benefits of the proposed dealership in comparison to its potential detriment to public welfare; and other potentially applicable criteria as enumerated in Section 17.60.030 of this code.

Section 5.32.160 is added to the Municipal Code to read as follows:

Section 5.32.160. Number of Retail Firearms Dealers Permitted. A maximum of two retail firearms dealers shall be allowed to operate in the City of Capitola.

Section 5.32.170 is added to the Municipal Code to read as follows:

Section 5.32.170 Gun Shows. Gun shows or events shall be prohibited in the City. For purposes of this section, a gun show or event is any event at which firearms, as defined in section 5.32.020.A, are sold, transferred, leased or offered or advertised for sale, transfer or lease. This section shall not apply to the display or sale of antique firearms as defined in section 5.32.020.A.

Section 5.32.180 is added to the Municipal Code to read as follows:

Section 5.32.180 Existing Firearms Dealers. Firearms dealers legally transacting business in the city as of February 28, 2013 who had previously obtained a firearms dealer permit shall comply with all provisions of this Code, with the exception of 5.32.070 (G). If such existing dealers are located outside the Community Commercial District, such uses shall be considered legal nonconforming uses. If an existing firearms dealer increases its firearms or ammunition display area over that which it maintained as of February 28, 2013, the firearms dealer shall no longer be considered a legal nonconforming use. Such firearms dealers shall thereafter comply with all requirements of this Code.

Section 5.32.190 is added to the Municipal Code as follows:

Section 5.32.190 Firearms Security. Every owner of a firearm in the city shall be required to assure that each such firearm is locked and secured when he or she is not in actual possession of the firearm so as to assure, to the extent reasonable, that no other person may access or use that firearm outside the presence of the owner.

Section 9.20.015 is added to the Municipal Code as follows:

Section 9.20.015. Possession of Firearms on City Property or Public Property in the Vicinity of a School Prohibited.

A. Every person who brings a loaded or unloaded firearm onto, or poses a

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

2-28-13 CITY COUNCIL AGENDA ITEM  
SUBJECT: URGENCY ORDINANCE REGARDING FIREARMS

firearm on, city property or public property in the vicinity of a school, is guilty of a misdemeanor.

B. As used in this section, the term “city property” means real property, including any buildings thereon, owned or leased by the city of Capitola, and in the city’s possession, or in the possession of a public or private entity under contract with the city to perform a public purpose.

C. As used in this section, “public property in the vicinity of a school” means any publicly owned parcel of property with a parcel line that is within 1,000 feet of a parcel line of a parcel that hosts a public or private elementary school, middle school or high school.

D. As used in this section, “city property” and “public property in the vicinity of a school” do not include any “local public building” as defined in Penal Code Section 171b(c) where and when the state regulates possession of firearms in those buildings pursuant to Penal Code 171b.

E. This section shall not apply to the following:

1. A peace officer as defined in Title 3, Part 2, Chapter 4.5 of the California Penal Code (Sections 830 et seq.);

2. A guard or messenger of a financial institution, a guard of a contract carrier operating an armored vehicle, a licensed private investigator, a patrol operator, or alarm company operator, or a uniformed security guard as those occupations are defined in Penal Code Section 12031(d) and who holds a valid certificate issued by the Department of Consumer Affairs under Penal Code Section 12033, while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment;

3. A person holding a valid license to carry a firearm issued pursuant to Penal Code Section 12050;

4. The possession of a firearm by an authorized participant in a motion picture, television, video, dance or theatrical production or event, when the participant lawfully uses the firearm as part of that production or event, provided that when such firearm is not in the actual possession of the authorized participant, it is secured to prevent unauthorized use;

5. A person lawfully transporting firearms and ammunition in a motor vehicle on a city street;

6. A federal criminal investigator or law enforcement officer; or

7. A member of the military forces of the State of California or of the United States while engaged in the performance of his or her duty.

**FISCAL IMPACT:** None

### **ATTACHMENTS:**

1. Draft Urgency Ordinance
2. Current Capitola Municipal Code 5.32
3. Radius Map of current Firearms Dealers
4. Various articles regarding gun violence

Report Prepared By: Rudy Escalante  
Chief of Police

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

## URGENCY ORDINANCE NO. 979

**AN URGENCY ORDINANCE OF THE CITY OF CAPITOLA REVISING CURRENT CITY FIREARM/AMMUNITION REGULATIONS, LIMITING THE NUMBER OF RETAIL FIREARM/AMMUNITION DEALERS WHICH MAY OPERATE IN THE CITY AT ANY GIVEN TIME, ADOPTING REGULATIONS PERTAINING TO THE POSSESSION OF FIREARMS ON CITY PROPERTY AND PUBLIC PROPERTY IN THE VICINITY OF SCHOOLS AND ADOPTING FIREARMS SECURITY REGULATIONS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS FOLLOWS:

Section 1. Legislative Findings.

A. The national and statewide statistical information available from numerous sources overwhelmingly demonstrates that the incidence of gunshot fatalities and injuries has reached alarming, and thus, unacceptable proportions. See, for example the Law Center to Prevent Gun Violence fact sheet incorporated by reference into the agenda report for this ordinance documenting the pervasive and tragic rate of firearms fatalities and injuries nationally each year in connection with homicides, suicides, unintentional deaths and injuries and domestic violence, not to mention the widespread use of firearms in connection with violent crime not referenced in that fact sheet.

B. Government at all levels has a substantial interest in protecting the people from those who acquire guns legally or illegally and then use them to commit crimes resulting in injury or death of their victims or who use them in the commission of other coercive crimes such as robbery and sexual assault.

C. Recent events throughout the County of Santa Cruz have generated additional fear of random usage of guns to commit violence on unsuspecting residents, minors and adults alike. Between January 18, 2013 and February 18, 2013 alone, the County has experienced three gun-imposed homicides, two armed (gun) robberies, two assaults with serious injuries including the robbery of a young woman who received a non-fatal gunshot wound to the head, fifteen other incidents involving the use of firearms and six firearms seizures, including seizures of stolen weapons and seizures from gang members and other suspected criminals.

D. Gun crimes in and around schools have become increasingly common, including most recently the February 15, 2013 homicide on the campus of Watsonville High School while a soccer game, wrestling tournament and dance, all involving high school students, were in process.

E. The toll taken on society, both locally and nationally, by firearm violence is enormous and is most graphically and tragically illustrated by the recent epidemic of random mass terrorist-style executions across the country in: Aurora, Colorado; Columbine, Colorado; Atlanta, Georgia; Fort Worth, Texas; Washington, DC; Chicago, Illinois; Birchwood, Wisconsin; Brookfield, Wisconsin; Nickel Mines, Pennsylvania; Delaware State University; Omaha, Nebraska; Carnation, Washington; suburban Chicago; Northern Illinois University; Virginia Tech University; Alger, Washington; Covina, California; Alabama; North Carolina; Santa Clara, California; Binghamton, New York; Texas Southern University; Fort Hood, Texas; University of Alabama at Huntsville; Tucson, Arizona; Oakland, California; Oak Creek, Wisconsin; New York City; Minneapolis, Minnesota; Milwaukee, Wisconsin; Tustin, California; and, recently, Newtown, Connecticut – a small town that is similar to Capitola in many respects. All of these tragedies occurred within the last thirteen years, one as recent as last week, and lead, inexorably, to the conclusion that because such crimes are so random and so senseless, a similar tragedy could take place at any time and in any populated location such as a mall or

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a school or college in the City of Capitola or County of Santa Cruz. Indeed, according to USA Today, between 2006 and 2010, a mass killing involving at least four murder victims took place on average in the United States once every two weeks. All told those attacks killed 774 people, including at least 161 young children.

F. The City Council has authority over the management and control of City-owned property, and it may regulate, by ordinance, the manner in which privately-owned property in the City is used by members of the public. In addition, to the extent authorized by state law and the California Constitution, the City Council has the authority to regulate the sale, lease, or transfer of firearms and ammunition within the City's jurisdictional limits.

Section 2. Section 5.32.020 of the Capitola Municipal Code is hereby amended to read as follows:

Section 5.32.020. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

A. "Firearm" means any device, designed to be used as a weapon, from which a projectile is expelled through a barrel by the force of any explosion or other form of combustion. The term "firearm" includes, but is not limited to: (1) the frame or receiver of any such weapon, and (2) any rocket, rocket-propelled projectile launcher or similar device containing any explosive or incendiary material, whether or not such device is designed for emergency or distress signaling purposes. The term "firearm" does not include an unloaded firearm which is defined as an "antique firearm" in Section 921(a)(16) of Title 18 of the United States Code or a curio or relic as defined in Section 178.11 of Title 28 of the Code of Federal Regulations.

B. "Clear evidence of his or her identity and age" includes but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides seller reasonable assurance of the identity and age of the purchaser.

C. "Firearms dealer" includes any business that sells, leases, transfers, advertises, or exposes for sale, lease, or transfer any firearm or ammunition for firearms.

D. "Ammunition" means any projectile intended for expulsion from the barrel of a firearm.

Section 3. Section 5.32.050 of the Capitola Municipal Code is hereby amended to read as follows:

### Section 5.32.050 Approval by City Council.

The City Council shall have the authority to approve or not approve applications under this chapter. For the purpose of considering applications for licenses under this chapter, the City Council shall apply the standards set forth in this chapter.

### 5.32.050 Approval by chief of police.

~~———— The chief of police shall have the authority to approve or not approve applications under this chapter. For the purpose of considering applications for licenses under this chapter, the chief of police shall apply the minimum standards set forth in this chapter. (Ord. 728 § 1 (part), 1992)~~

Section 4. Section 5.32.070 of the Capitola Municipal Code is hereby amended to read as follows:

Section 5.32.070 Business site standards.

A. The business location must be in the Community Commercial zoning district, and in compliance with city building and fire codes and regulations.

B. The business site must be a permanent building having four solid walls and a roof; constructed of wood, metal, cement or like materials and resting on a foundation of cement, stone, brick or metal or similar materials commonly used in the construction of foundations for permanent buildings.

C. Building doors and windows must be alarmed with a system of any manufacture which will cause an audible alarm to sound on the exterior of the building or a silent alarm to be sent to a centralized monitored facility signaling unauthorized entry during nonbusiness hours.

D. All inventory of an explosive or flammable nature must be stored in compliance with federal, state and city fire codes.

E. Inventory of firearms must conform to the type of federal firearms license issued to the permittee.

F. All firearms shall be kept in an approved locked metal safe, cabinet, or box during nonbusiness hours.

G. The business site must be located at least 2,000 feet from any other existing business with a firearms license.

Section 5. Section 5.32.090 of the Capitola Municipal Code is hereby amended to read as follows:

Section 5.32.090 Approval of application—Fitness standards. The Capitola City Council shall have the sole discretion to approve or deny all applications for licenses brought pursuant to the provisions of this Chapter. Before considering any such application, the Capitola Police Chief shall conduct an investigation of the applicant with respect to the criteria referenced in this Section and any other criteria deemed pertinent by the Chief and make a recommendation to the City Council. Factors to be considered in the exercise of this discretion include:

~~Section 5.32.090 Approval of application—Fitness standards. The Capitola police chief shall have the sole discretion to approve or deny all applications for license brought pursuant to the provisions of this chapter. Chapter 2.52 (appeals to city council) does not apply to determinations made pursuant to this chapter. Factors to be considered in the exercise of this discretion include:~~

A. Whether the applicant has fulfilled all requirements of this chapter;

B. Whether the applicant is under indictment for, is presently charged with, or has ever been convicted of any crime;

C. Whether the applicant has committed any unlawful act involving firearms;

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D. Whether the applicant is, or ever has been, a fugitive from justice;

E. Whether the applicant is an unlawful user of any narcotic drug, depressant, stimulant drug or marijuana, or an excessive user of alcohol, to the extent that such use would impair his or her fitness to deal in firearms;

F. Whether the applicant suffers from any severe psychological disturbance which would impair his or her fitness to deal in firearms;

G. Whether the applicant has ever been committed to a mental institutions, adjudicated as a mental defective, or diagnosed as having a serious mental illness;

H. Whether the applicant has willfully violated any provisions of this chapter;

I. Whether the applicant has willfully made any false statements as to any material fact in applying for the license;

J. Whether the applicant has done any act which if done by a licensee would be grounds for suspension or revocation of the license;

K. Whether all employees of the applicant who would be engaged in the sale, lease or transfer of firearms meet the standards set forth in this chapter, pursuant to Section 5.32.040.

L. Whether the proposed business site meets all business site standards under Section 5.32.070.

M. In addition to the criteria set forth in this Chapter for issuance of a firearms dealer permit, the Council shall also consider: Adjacent uses and structures; neighborhood integrity, character and compatibility; the benefits of the proposed dealership in comparison to its potential detriment to public welfare; and other potential applicable criteria as enumerated in Section 17.60.030 of this code.

Section 6. Section 5.32.160 is hereby added to the Capitola Municipal Code to read as follows:

Section 5.32.160. Number of Retail Firearms Dealers Permitted. A maximum of two retail firearms dealers shall be allowed to operate in the City of Capitola.

Section 7. Section 5.32.170 is hereby added to the Capitola Municipal Code to read as follows:

Section 5.32.170 Gun Shows. Gun shows or events shall be prohibited in the City. For purposes of this section, a gun show or event is any event at which firearms, as defined in section 5.32.020.A, are sold, transferred, leased or offered or advertised for sale, transfer or lease. This section shall not apply to the display or sale of antique firearms as defined in section 5.32.020.A.

Section 8. Section 5.32.180 of the Capitola Municipal Code is hereby added to the Capitola Municipal Code to read as follows:



Section 5.32.180 Existing Firearms Dealers. Firearms dealers legally transacting business in the city as of February 28, 2013 who had previously obtained a firearms dealer permit shall comply with all provisions of this Code, with the exception of 5.32.070 (G). If such existing dealers are located outside the Community Commercial District, such uses shall be considered legal nonconforming uses. If an existing firearms dealer increases its firearms or ammunition display area over that which it maintained as of February 28, 2013, the firearms dealer shall no longer be considered a legal nonconforming use. Such firearms dealers shall thereafter comply with all requirements of this Code.

Section 9. Section 5.32.190 is hereby added to the Capitola Municipal Code is hereby amended to read as follows:

Section 5.32.190 Firearms Security. Every owner of a firearm in the city shall be required to assure that each such firearm is locked and secured when he or she is not in actual possession of the firearm so as to assure, to the extent reasonable, that no other person may access or use that firearm outside the presence of the owner.

Section 10. Section 9.20.015 is hereby added to the Capitola Municipal Code is hereby amended to read as follows:

Section 9.20.015. Possession of Firearms on City Property or Public Property in the Vicinity of a School Prohibited.

A. Every person who brings a loaded or unloaded firearm onto, or posses a firearm on, city property or public property in the vicinity of a school, is guilty of a misdemeanor.

B. As used in this section, the term “city property” means real property, including any buildings thereon, owned or leased by the city of Capitola, and in the city’s possession, or in the possession of a public or private entity under contract with the city to perform a public purpose.

C. As used in this section, “public property in the vicinity of a school” means any publicly owned parcel of property with a parcel line that is within 1,000 feet of a parcel line of a parcel that hosts a public or private elementary school, middle school or high school.

D. As used in this section, “city property” and “public property in the vicinity of a school” do not include any “local public building” as defined in Penal Code Section 171b(c) where and when the state regulates possession of firearms in those buildings pursuant to Penal Code 171b.

A. This section shall not apply to the following:

- 1) A peace officer as defined in Title 3, Part 2, Chapter 4.5 of the California Penal Code (Sections 830 et seq.);
- 2) A guard or messenger of a financial institution, a guard of a contract carrier operating an armored vehicle, a licensed private investigator, a patrol operator, or alarm company operator, or a uniformed security guard as those occupations are defined in Penal Code Section 12031(d) and who holds a valid certificate issued by the Department of Consumer Affairs under Penal Code Section 12033, while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment;

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

- 3) A person holding a valid license to carry a firearm issued pursuant to Penal Code Section 12050;
- 4) The possession of a firearm by an authorized participant in a motion picture, television, video, dance or theatrical production or event, when the participant lawfully uses the firearm as part of that production or event, provided that when such firearm is not in the actual possession of the authorized participant, it is secured to prevent unauthorized use;
- 5) A person lawfully transporting firearms and ammunition in a motor vehicle on a city street;
- 6) A federal criminal investigator or law enforcement officer; or
- 7) A member of the military forces of the State of California or of the United States while engaged in the performance of his or her duty.

Section 11. For the reasons set forth in the Legislative Findings, this ordinance is declared to be an urgency ordinance intended to preserve the public peace, health and safety and is adopted as such pursuant to California Government Code section 36937.

Section 12. This ordinance shall take effect immediately and be enforce immediately upon its final adoption.

Passed and adopted by the City Council of the City of Capitola as an urgency ordinance this 28th day of February, 2013, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

APPROVED:

\_\_\_\_\_  
Stephanie Harlan, Mayor

ATTEST:

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

## Capitola Municipal Code

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[Title 5 BUSINESS TAXES, LICENSES AND REGULATIONS](#)

**Chapter 5.32 LICENSING OF FIREARMS DEALERS****5.32.010 Purpose.**

The purpose of this chapter is to bring the retailing of firearms within the city into compliance with the mandates of state law, as set forth in the California Penal Code (see Penal Code Sections 12070 and 12071). (Ord. 728 § 1 (part), 1992)

**5.32.020 Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

A. "Firearm" means any device, designed to be used as a weapon, from which a projectile is expelled through a barrel by the force of any explosion or other form of combustion. The term "firearm" includes, but is not limited to: (1) the frame or receiver of any such weapon, and (2) any rocket, rocket-propelled projectile launcher or similar device containing any explosive or incendiary material, whether or not such device is designed for emergency or distress signaling purposes. The term "firearm" does not include an unloaded firearm which is defined as an "antique firearm" in Section 921(a)(16) of Title 18 of the United States Code or a curio or relic as defined in Section 178.11 of Title 28 of the Code of Federal Regulations.

B. "Clear evidence of his or her identity and age" includes but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides seller reasonable assurance of the identity and age of the purchaser. (Ord. 728 § 1 (part), 1992)

**5.32.030 License required.**

No person shall engage in the business of selling, leasing, transferring, advertising, or offering or exposing for sale, lease, or transfer any firearm without first obtaining and keeping in current effect a license as required by this chapter. A separate license shall be required for each location at which sales, leases or transfers of such firearms, or offers therefor, take place. In addition, a separate license may be required for any employee engaged in the sale, lease or transfer of firearms, if the police chief determines that is necessary to fulfill the purposes of this chapter. Exceptions to this section are: (1) the exceptions set forth in Penal Code Section 12070(b); and (2) products designed for, and sold for the purpose of, marine emergency signaling. (Ord. 728 § 1 (part), 1992)

**5.32.040 Application for license.**

Each person applying for a license under this chapter shall submit an application to the Capitola police department. Where the applicant is a corporation, each of the requirements contained in this chapter must be completed and/or adhered to by a legally recognized corporate officer of said corporation. Where the applicant is a partnership, each of the requirements contained in this chapter must be completed and/or adhered to by a legally recognized general partner of said partnership. Both the individual and the corporation or partnership shall be liable for any violation of the provisions of this chapter. In addition, each employee of the applicant engaged in the sale, lease or transfer of firearms may be required to submit a separate application and adhere to each of the requirements contained in this chapter, at the discretion of the Capitola police chief.

The application shall be accompanied by a fee (in the form of a check or cash) as set forth in the schedule of fees established by resolution of the city council. The fee is to defray the cost of processing the application, and shall include the cost of processing noncriminal fingerprint cards. Each application shall specify only one location at which the sale or transfer of firearms shall take place. If a licensee changes his or her place of business, an application for the new location shall be submitted, accompanied by a fee (in the form of a check or cash) as set forth in the schedule of fees established by resolution of council. That application shall be considered an initial application and not an application for renewal. (Ord. 728 § 1 (part), 1992)

#### **5.32.050 Approval by chief of police.**

The chief of police shall have the authority to approve or not approve applications under this chapter. For the purpose of considering applications for licenses under this chapter, the chief of police shall apply the minimum standards set forth in this chapter. (Ord. 728 § 1 (part), 1992)

#### **5.32.060 Procedural requirements.**

The applicant must comply with the following minimum requirements:

- A. Possess a valid and current federal firearms license;
- B. Pay the requisite permit fee to the police department;
- C. Pay the requisite fingerprinting fee to police department;
- D. Complete the application form provided by the Capitola police department;
- E. Be fingerprinted at the police department;
- F. Be photographed at the police department;
- G. Provide clear evidence of his or her identity to the officer assigned to process the application;
- H. Be interviewed at the police department by the officer assigned to process the application;
- I. Supply or sign an authorization for release of pertinent records;
- J. Submit the name, job title and job description, in addition to any other employee information sought in the application, for each employee of the applicant who will be engaged in the sale, lease or transfer of firearms. Fingerprinting may be required for each said employee, at the discretion of the Capitola police chief. (Ord. 728 § 1 (part), 1992)

#### **5.32.070 Business site standards.**

- A. The business location must be in compliance with the city zoning, building and fire codes and regulations.
- B. The business site must be a permanent building having four solid walls and a roof; constructed of wood, metal, cement or like materials and resting on a foundation of cement, stone, brick or metal or similar materials commonly used in the construction of foundations for permanent buildings.
- C. Building doors and windows must be alarmed with a system of any manufacture which will cause an audible alarm to sound on the exterior of the building or a silent alarm to be sent to a centralized monitored facility signaling unauthorized entry during nonbusiness hours.
- D. All inventory of an explosive or flammable nature must be stored in compliance with federal, state and city fire codes.
- E. Inventory of firearms must conform to the type of federal firearms license issued to the permittee.

F. All firearms shall be kept in an approved locked metal safe, cabinet, or box during nonbusiness hours. (Ord. 728 § 1 (part), 1992)

#### 5.32.080 Compliance with state law.

The business must comply with the following requirements of Section 12071 of the California Penal Code:

- A. The business shall be carried on only in the building designated in the license.
- B. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.
- C. No firearm shall be delivered within fifteen days of the application for purchase or within such other time period as set forth in Penal Code Section 12071.
- D. No firearms shall be delivered unless the purchaser presents clear evidence of his or her identity.
- E. No firearm shall be delivered unless it is unloaded and securely wrapped or unloaded and in a locked container.
- F. No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.
- G. The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than three inches in height: "IF YOU LEAVE A LOADED FIREARM WITHIN THE REACH OR EASY ACCESS OF A CHILD, YOU MAY BE FINED OR IMPRISONED, OR BOTH, IF THE CHILD GAINS ACCESS TO, AND IMPROPERLY USES, THE FIREARM." (Ord. 728 § 1 (part), 1992)

#### 5.32.090 Approval of application—Fitness standards.

The Capitola police chief shall have the sole discretion to approve or deny all applications for license brought pursuant to the provisions of this chapter. Chapter 2.52 (appeals to city council) does not apply to determinations made pursuant to this chapter. Factors to be considered in the exercise of this discretion include:

- A. Whether the applicant has fulfilled all requirements of this chapter;
- B. Whether the applicant is under indictment for, is presently charged with, or has ever been convicted of any crime;
- C. Whether the applicant has committed any unlawful act involving firearms;
- D. Whether the applicant is, or ever has been, a fugitive from justice;
- E. Whether the applicant is an unlawful user of any narcotic drug, depressant, stimulant drug or marijuana, or an excessive user of alcohol, to the extent that such use would impair his or her fitness to deal in firearms;
- F. Whether the applicant suffers from any severe psychological disturbance which would impair his or her fitness to deal in firearms;
- G. Whether the applicant has ever been committed to a mental institutions, adjudicated as a mental defective, or diagnosed as having a serious mental illness;
- H. Whether the applicant has wilfully violated any provisions of this chapter;
- I. Whether the applicant has wilfully made any false statements as to any material fact in applying for the license;
- J. Whether the applicant has done any act which if done by a licensee would be grounds for suspension or revocation of the license;
- K. Whether all employees of the applicant who would be engaged in the sale, lease or transfer of firearms

meet the standards set forth in this chapter, pursuant to Section 5.32.040.

L. Whether the proposed business site meets all business site standards under Section 5.32.070. (Ord. 728 § 1 (part), 1992)

#### **5.32.100 Maintenance and submission of records.**

Each licensed dealer shall maintain records of importation, shipment, receipt, sale or other disposition of firearms and ammunition, and shall make such records available at all reasonable times, and shall submit to the licensing authority such reports and information upon reasonable request. The licensing authority may enter the premises (including places of storage) of any firearms or ammunition dealer during business hours for the purpose of inspecting or examining (1) any records or documents required to be kept; and/or (2) any firearms or ammunition kept or stored at such premises.

In addition, the licensee shall notify the Capitola police department, in writing, of any proposed change in business location; such relocation shall require a new application pursuant to Section 5.32.040. (Ord. 728 § 1 (part), 1992)

#### **5.32.110 Denial of application.**

If the applicant does not meet all written standards set forth in this chapter, the chief of police shall not issue a license to such applicant. It shall be the duty of the chief of police to notify an applicant that his or her application has been denied by serving such person, either personally or by first class United States mail, with a letter setting forth the reason or reasons for such denial. The notice, if served by mail, shall be deemed to have been served on the date of its deposit in the United States mail, postage prepaid, to the applicant's address of record. The notice shall also inform the applicant of his or her right to a reconsideration by the chief of police if the applicant believes an erroneous determination has been made. A request for reconsideration may include a request for a hearing before the chief of police. (Ord. 728 § 1 (part), 1992)

#### **5.32.120 License renewal.**

Every license issued under this chapter shall expire one year from the date of its issuance. Licensees shall submit an application for renewal at least ninety days before the expiration of the license. If renewal is not timely, the application will be deemed an application for a new license pursuant to Section 5.32.040. Licensees who apply for renewal shall be required to meet all standards specified in this chapter. The application for renewal of the license issued under this chapter shall be accompanied by a fee (in the form of a check or cash) as set forth in the schedule of fees established by resolution of the city council. The fee is to defray the cost of processing such renewal application. All of the procedures applicable to new applications shall apply to renewal applications. (Ord. 728 § 1 (part), 1992)

#### **5.32.130 Licenses nonassignable.**

Except as otherwise hereinafter provided, no license issued under this chapter may be sold, transferred or assigned by the licensee or by operation of law, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such license and such license shall thereafter be deemed terminated and void. (Ord. 728 § 1 (part), 1992)

#### **5.32.140 Suspension and revocation.**

Every license issued under this chapter shall be subject to summary suspension and revocation by the chief of police if he or she determines that:

- A. The licensee has failed to meet any of the requirements specified under this chapter;
- B. The licensee has violated any of the conditions or provisions which appear on the license;
- C. The licensee has violated any federal or state firearms sales laws;
- D. The licensee's federal firearms sales license has been revoked;
- E. The licensee has committed any act which could have resulted in denial of issuance of license. (Ord. 728 § 1 (part), 1992)

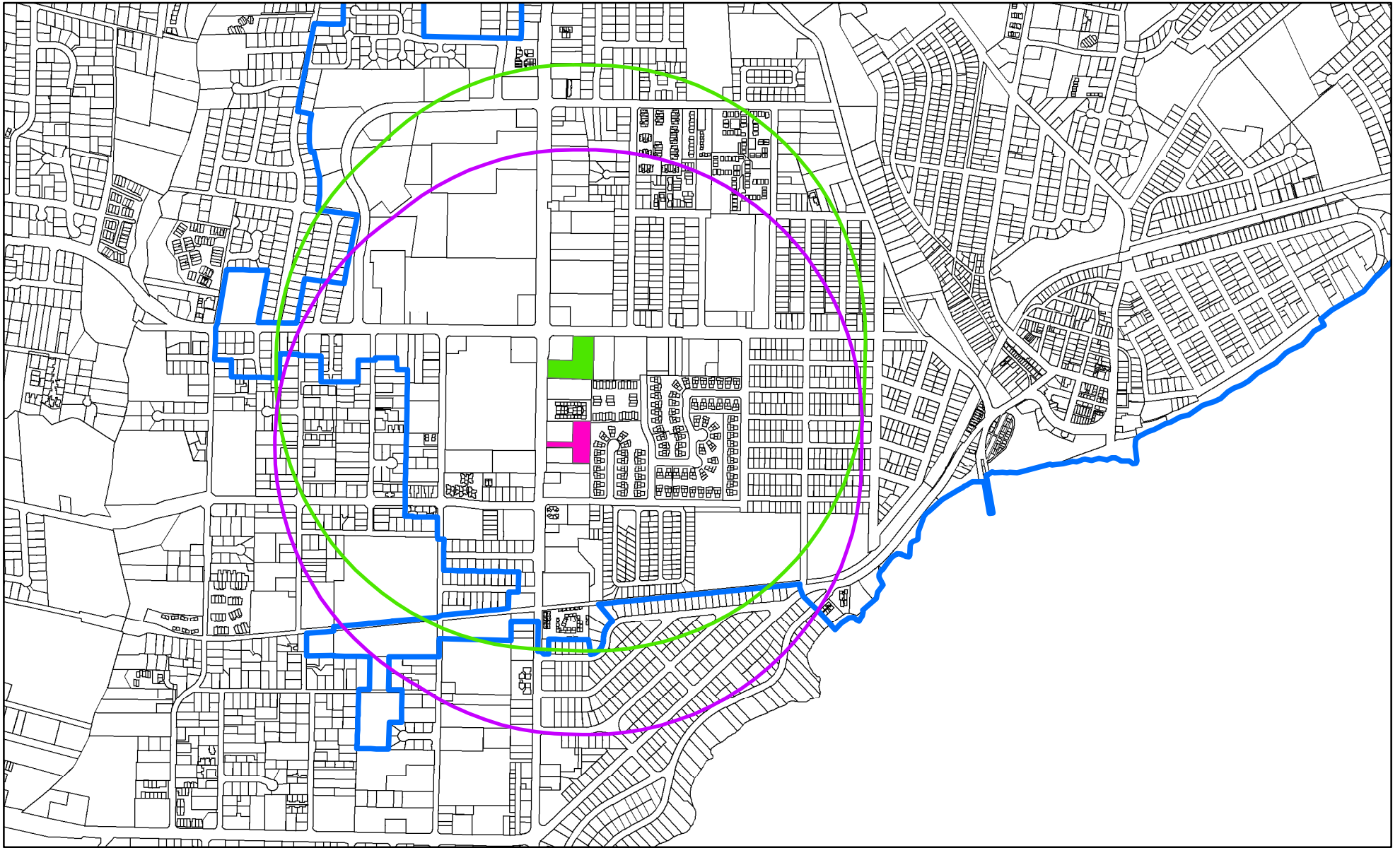
#### **5.32.150 Notification of suspension or revocation.**

It shall be the duty of the chief of police or his or her designee to notify any licensee charged with any violation or misconduct, as described above, by serving such person, either personally or by first class United States mail, with a letter setting forth the particular written standard or condition which has been violated. The letter shall inform such licensee of the right to a hearing before the chief of police, at which time the licensee may appear with counsel if so desired and be heard in defense of the charges. The licensee shall also be given notice that any request for a hearing before the chief of police within ten days after the date on which notice is served on the licensee. The suspension or revocation shall be effective on the date the notice is served on the licensee unless the notice establishes a different date. Such notice, if served by United States mail shall be deemed to have been served on the date of its deposit in the United States mail postage prepaid, to the licensee's address of record. Failure on the part of the licensee to request in writing a hearing before the chief of police within ten days after the notice is served shall result in a permanent revocation of the license. (Ord. 728 § 1 (part), 1992)

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# 2000ft Proximity from Existing Firearms Dealers








N  
-125-

850

1,700

3,400 Feet

## Legend

-  Outdoor World
-  Outdoor World 2000ft Proximity
-  Big 5
-  Big 5 2000ft Proximity
-  Capitola City Limits

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BECAUSE SMART GUN LAWS SAVE LIVES

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GUN VIOLENCE STATISTICS

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Introduction to Gun Violence Statistics

Posted on Sunday, November 18th, 2012

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The United States experiences epidemic levels of gun violence, claiming over 30,000 lives annually, according to the U.S. Centers for Disease Control and Prevention. For every person who dies from a gunshot wound, two others are wounded. Every year, approximately 100,000 Americans are victims of gun violence. In addition to those who are killed or injured, there are countless others whose lives are forever changed by the deaths of and injuries to their loved ones.

Gun violence touches every segment of our society. It increases the probability of deaths in incidents of domestic violence, raises the likelihood of fatalities by those who intend to injure others and among those who attempt suicide, places children and young people at special risk, and disproportionately affects communities of color.

Mass shooting tragedies like the school shootings at Virginia Tech in April 2007 and Northern Illinois University in February 2008 – or the 1993 office shooting in San Francisco that led to the formation of the Law Center to Prevent Gun Violence – receive significant media attention. However, gun deaths and injuries in the U.S. usually occur quietly, without national press coverage, every day.

Statistics on Gun Deaths & Injuries

Posted on Friday, November 16th, 2012

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In 2010, guns took the lives of 31,076 Americans in homicides, suicides and unintentional shootings. This is the equivalent of more than 85 deaths each day and more than three deaths each hour.<sup>1</sup>

73,505 Americans were treated in hospital emergency departments for non-fatal gunshot wounds in 2010.<sup>2</sup>

Firearms were the third-leading cause of injury-related deaths nationwide in 2010, following poisoning and motor vehicle accidents.<sup>3</sup>

Between 1955 and 1975, the Vietnam War killed over 58,000 American soldiers – less than the number of civilians killed with guns in the U.S. in an average two-year period.<sup>4</sup>

In the first seven years of the U.S.-Iraq War, over 4,400 American soldiers were killed. Almost as many civilians are killed with guns in the U.S., however, every seven weeks.<sup>5</sup>

Homicide

Guns were used in 11,078 homicides in the U.S. in 2010, comprising almost 35% of all gun deaths, and over 68% of all homicides.<sup>6</sup>

On average, 33 gun homicides were committed each day for the years 2005-2010.<sup>7</sup>

Regions and states with higher rates of gun ownership have significantly higher rates of homicide than states with lower rates of gun ownership.<sup>8</sup>

Follow @smartgunlaws

Where guns are prevalent, there are significantly more homicides, particularly gun homicides.<sup>9</sup>

#### Suicide

Firearms were used in 19,392 suicides in the U.S. in 2010, constituting almost 62% of all gun deaths.<sup>10</sup>

Over 50% of all suicides are committed with a firearm.<sup>11</sup>

On average, 49 gun suicides were committed each day for the years 2005-2010.<sup>12</sup>

White males, about 40% of the U.S. population, accounted for over 80% of firearm suicides in 2010.<sup>13</sup>

A study of California handgun purchasers found that in the first year after the purchase of a handgun, suicide was the leading cause of death among the purchasers.<sup>14</sup>

Firearms were used in nearly 44% of suicide deaths among persons under age 25 in 2010.<sup>15</sup>

More than 75% of guns used in suicide attempts and unintentional injuries of 0-19 year-olds were stored in the residence of the victim, a relative, or a friend.<sup>16</sup>

The risk of suicide increases in homes where guns are kept loaded and/or unlocked.<sup>17</sup>

#### Unintentional Deaths and Injuries

In 2010, unintentional firearm injuries caused the deaths of 606 people.<sup>18</sup>

From 2005-2010, almost 3,800 people in the U.S. died from unintentional shootings.<sup>19</sup>

Over 1,300 victims of unintentional shootings for the period 2005-2010 were under 25 years of age.<sup>20</sup>

People of all age groups are significantly more likely to die from unintentional firearm injuries when they live in states with more guns, relative to states with fewer guns. On average, states with the highest gun levels had nine times the rate of unintentional firearms deaths compared to states with the lowest gun levels.<sup>21</sup>

A federal government study of unintentional shootings found that 8% of such shooting deaths resulted from shots fired by children under the age of six.<sup>22</sup>

The U.S. General Accounting Office has estimated that 31% of unintentional deaths caused by firearms might be prevented by the addition of two devices: a child-proof safety lock (8%) and a loading indicator (23%).<sup>23</sup>

1. Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Injury Mortality Reports, 1999-2010, for National, Regional, and States* (Dec. 2012), [http://webappa.cdc.gov/sasweb/ncipc/dataRestriction\\_inj.html](http://webappa.cdc.gov/sasweb/ncipc/dataRestriction_inj.html) (hereinafter *WISQARS Injury Mortality Reports, 1999-2010*). Note: Users must agree to data use restrictions on the CDC site prior to accessing data). [—]
2. Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Nonfatal Injury Reports*, at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html> (last visited Nov. 20, 2012) (hereinafter *WISQARS Nonfatal Injury Reports*). [—]
3. Nat'l Ctr. for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Leading Causes of Death Reports, 1999-2010, for National, Regional, and States (RESTRICTED)*, at [http://www.cdc.gov/injury/wisqars/leading\\_causes\\_death.html](http://www.cdc.gov/injury/wisqars/leading_causes_death.html) (last visited Nov. 30, 2012). [—]
4. U.S. Department of Defense, Statistical Information Analysis Division, Personnel & Military Casualty Statistics, *U.S. Military Casualties in Southeast Asia: Vietnam Conflict – Casualty Summary As of May 16, 2008*, at <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/vietnam.pdf> (last visited Feb. 10, 2012); *WISQARS Injury Mortality Reports, 1999-2010*, *supra* note 1. [—]
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6. *WISQARS Injury Mortality Reports, 1999-2010*, *supra* note 1. [—]
7. *Id.* [—]
8. Matthew Miller, Deborah Azrael & David Hemenway, *Rates of Household Firearm Ownership and Homicide Across US Regions and States, 1988-1997*, 92 *Am. J. Pub. Health* 1988 (2002). [—]
9. David Hemenway, *Private Guns, Public Health* 65 (2004). [—]
10. *WISQARS Injury Mortality Reports, 1999-2010*, *supra* note 1. [—]
11. *Id.* [—]
12. *Id.* [—]
13. *Id.* [—]
14. Garen J. Wintemute et al., *Mortality Among Recent Purchasers of Handguns*, 341 *New Eng. J. Med.* 1583, 1585 (Nov. 18, 1999). [—]
15. *WISQARS Injury Mortality Reports, 1999-2010*, *supra* note 1. [—]

16. David C. Grossman, Donald T. Reay & Stephanie A. Baker, *Self-inflicted & Unintentional Firearm Injuries Among Children & Adolescents: The Source of the Firearm*, 153 Archives Pediatric & Adolescent Med. 875 (Aug. 1999), at <http://archpedi.ama-assn.org/cgi/content/short/153/8/875>. [↔]
17. Matthew Miller & David Hemenway, *The Relationship Between Firearms and Suicide: A Review of the Literature*, 4 Aggression & Violent Behavior 59, 62-65 (1999) (summarizing the findings of multiple studies). [↔]
18. WISQARS *Injury Mortality Reports, 1999-2010*, *supra* note 1. [↔]
19. *Id.* [↔]
20. *Id.* [↔]
21. Matthew Miller, Deborah Azrael & David Hemenway, *Firearm Availability and Unintentional Firearm Deaths*, 33 Accident Analysis & Prevention 477 (July 2001). [↔]
22. U.S. General Accounting Office, *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented* 17 (Mar. 1991), at <http://161.203.16.4d2019/143619.pdf>. [↔]
23. *Id.* A loading indicator, also known as a "chamber load indicator," is a safety device that indicates at a glance whether a firearm is loaded and whether a round remains in the chamber. [↔]

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## Statistics on Youth Gun Violence & Gun Access

Posted on Thursday, November 15th, 2012

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Firearm injuries are the cause of death of 18 children and young adults (24 years of age and under) each day in the U.S.<sup>1</sup>

Children and young adults (24 years of age and under) constitute 38% of all firearm deaths and non-fatal injuries.<sup>2</sup>

In the United States, over 1.69 million kids age 18 and under are living in households with loaded and unlocked firearms.<sup>3</sup>

More than 75% of guns used in suicide attempts and unintentional injuries of 0-19 year-olds were stored in the residence of the victim, a relative, or a friend.<sup>4</sup>

A 2000 study found that 55% of U.S. homes with children and firearms have one or more firearms in an unlocked place; 43% have guns without a trigger lock in an unlocked place.<sup>5</sup>

The practices of keeping firearms locked, unloaded, and storing ammunition in a locked location separate from firearms may assist in reducing youth suicide and unintentional injury in homes with children and teenagers where guns are stored.<sup>6</sup>

Many young children, including children as young as three years old, are strong enough to fire handguns.<sup>7</sup>

1. Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Injury Mortality Reports, 1999-2010, for National, Regional, and States* (Sept. 2012), [http://webappa.cdc.gov/sasweb/ncipc/dataRestriction\\_inj.html](http://webappa.cdc.gov/sasweb/ncipc/dataRestriction_inj.html) (hereinafter *WISQARS Injury Mortality Reports, 1999-2010*). Note: Users must agree to data use restrictions on the CDC site prior to accessing data. [↔]
2. *Id.*, Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control & Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Nonfatal Injury Reports*, at <http://webappa.cdc.gov/sasweb/ncipc/nfirales2001.html> (last visited Nov. 20, 2012) (hereinafter *WISQARS Nonfatal Injury Reports*). [↔]
3. Catherine A. Okoro et al., *Prevalence of Household Firearms and Firearm-Storage Practices in the 50 States and the District of Columbia: Findings from the Behavioral Risk Factor Surveillance System, 2002*, 116 Pediatrics e370, e370 (Sept. 2005), at <http://pediatrics.aappublications.org/cgi/content/full/116/3/e370>. [↔]
4. David C. Grossman, Donald T. Reay & Stephanie A. Baker, *Self-inflicted & Unintentional Firearm Injuries Among Children & Adolescents: The Source of the Firearm*, 153 Archives Pediatric & Adolescent Med. 875 (Aug. 1999), at <http://archpedi.ama-assn.org/cgi/content/short/153/8/875>. [↔]
5. Mark A. Schuster et al., *Firearm Storage Patterns in U.S. Homes with Children*, 90 Am. J. Pub. Health 588, 590 (Apr. 2000). [↔]
6. David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711-13 (Feb. 2005). [↔]
7. Naureckas, S.M. et al, *Children's and Women's Ability to Fire Handguns*, 149 Archives of Pediatric and Adolescent Medicine, 1318 (Dec. 1995). [↔]

## Statistics on Non-Powder Guns

Posted on Wednesday, November 14th, 2012

Tweet { 0 }

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Non-powder guns, including BB, air and pellet guns, injured 13,851 people in 2010, including 9,252 young people (age 19 or younger).<sup>1</sup>

From July 1993 to July 2003, non-powder guns caused 40 deaths nationwide.<sup>2</sup> Although injury rates for non-powder guns appear to have declined significantly since the early 1990's, non-powder guns are becoming more powerful and more accurate, and are often designed to appear almost indistinguishable from firearms.<sup>3</sup>

For additional information about non-powder guns, including background information and state and local laws on the topic, see LCPGV's [Non-Powder Guns Policy Summary](#).

1. National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, *Web-based Injury Statistics Query and Reporting System (WISQARS) Nonfatal Injury Reports 2010*, at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>. [↔]
2. Jennifer E. Keller et al., *Air-Gun Injuries: Initial Evaluation and Resultant Morbidity*, 70 Am. Surgeon 484, 484 (June 2004). [↔]
3. Ann Marie McNeill & Joseph L. Annett, *The Ongoing Hazard of BB and Pellet Gun-Related Injuries in the United States*, 26 Annals Emergency Med. 187, 191-92 (Aug. 1995); Press Release, U.S. Consumer Product Safety Commission, *CPSC Chairman Challenges Toy Industry To Stop Producing Look-Alike Guns* (Oct. 17, 1994), at <http://www.cpsc.gov/CPSCPUB/PRERELE/PRHTML95/95009.html>. [↔]

[PERMALINK](#)

## Statistics on Gun Deaths & Race

Posted on Sunday, January 1st, 2012

Tweet **8**

Like **78**

Firearm homicide is the leading cause of death for African Americans ages 1-44.<sup>1</sup>

African Americans make up nearly 13% of the U.S. population, but in 2009 suffered almost 24% of all firearm deaths – and over 54% of all firearm homicides.<sup>2</sup>

1. Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control & Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Leading Causes of Death Reports, 1999-2009, for National, Regional, and States (RESTRICTED)*, at [http://webappa.cdc.gov/sasweb/ncipc/dataRestriction\\_lcd.html](http://webappa.cdc.gov/sasweb/ncipc/dataRestriction_lcd.html) (last visited Mar. 8, 2012) (hereinafter *WISQARS Leading Causes of Death Reports, 1999-2009*; Note: Users must agree to data use restrictions on the CDC site prior to accessing data). [↔]
2. Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Injury Mortality Reports, 1999-2009, for National, Regional, and States* (Sept. 2011), [http://webappa.cdc.gov/sasweb/ncipc/dataRestriction\\_inj.html](http://webappa.cdc.gov/sasweb/ncipc/dataRestriction_inj.html) (hereinafter *WISQARS Injury Mortality Reports, 1999-2009*. Note: Users must agree to data use restrictions on the CDC site prior to accessing data). [↔]

## Statistics on Domestic Violence & Firearms

Posted on Sunday, January 1st, 2012

Tweet **24**

Like **61**

Guns increase the probability of death in incidents of domestic violence.<sup>1</sup>

Firearms were used to kill more than two-thirds of spouse and ex-spouse homicide victims between 1990 and 2005.<sup>2</sup>

Domestic violence assaults involving a firearm are 12 times more likely to result in death than those involving other-weapons or bodily force.<sup>3</sup>

Abused women are five times more likely to be killed by their abuser if the abuser owns a firearm.<sup>4</sup>

A recent survey of female domestic violence shelter residents in California found that more than one third (36.7%) reported having been threatened or harmed with a firearm.<sup>5</sup> In nearly two thirds (64.5%) of the households that contained a firearm, the intimate partner had used the firearm against the victim, usually threatening to shoot or kill the victim.<sup>6</sup>

Laws that prohibit the purchase of a firearm by a person subject to a domestic violence restraining order are associated with a reduction in the number of intimate partner homicides.<sup>7</sup>

Between 1990 and 2005, individuals killed by current dating partners made up almost half of all spouse and current dating partner homicides.<sup>8</sup>

A study of applicants for domestic violence restraining orders in Los Angeles found that the most common relationship between the victim and abuser was a dating relationship, and applications for protective orders were more likely to mention firearms when the parties had not lived together and were not married.<sup>9</sup>

For additional information about domestic violence and firearms, including background information and state and local laws on the topic, see LCPGV's [Domestic Violence and Firearms Policy Summary](#).

1. Susan B. Sorenson, *Firearm Use in Intimate Partner Violence: A Brief Overview*, in *30 Evaluation Review*, A Journal of Applied Social Research, Special Issue: Intimate Partner Violence and Firearms, 229, 232-33 (Susan B. Sorenson ed., 2006). [↔]
2. Bureau of Justice Statistics, U.S. Department of Justice, *Homicide Trends in the U.S.: Intimate Homicide* (July 2007), at <http://bjs.ojp.usdoj.gov/content/homicide/intimates.cfm>. [↔]
3. Linda E. Saltzman, et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 JAMA, 3043-3047 (1992). [↔]
4. Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (July 2003). [↔]
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6. *Id.*, at 1414. [↔]
7. Elizabeth R. Vigdor et al., *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 Evaluation Rev. 313, 332 (June 2006). [↔]
8. Bureau of Justice Statistics, U.S. Department of Justice, *Homicide Trends in the U.S.: Intimate Homicide* (July 2007), at <http://bjs.ojp.usdoj.gov/content/homicide/intimates.cfm>. [↔]
9. Katherine A. Villes et al., *Are Temporary Restraining Orders More Likely to be Issued When Application Mention Firearms?*, 30 Evaluation Rev. 266, 271, 275 (2006). [↔]

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## Statistics on the Costs of Gun Violence

Posted on Sunday, January 1st, 2012

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Firearm-related deaths and injuries result in estimated medical costs of \$2.3 billion each year – half of which are borne by U.S. taxpayers.<sup>1</sup>

Once all the direct and indirect medical, legal and societal costs are factored together, the annual cost of gun violence in America amounts to \$100 billion.<sup>2</sup>

1. Philip Cook et al., *The Medical Costs of Gunshot Injuries in the United States*, 282 JAMA 447 (Aug. 4, 1999). [↔]
2. Philip J. Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000). [↔]

## Statistics on Gun Ownership

Posted on Sunday, January 1st, 2012

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Americans own an estimated 270 million firearms – approximately 90 guns for every 100 people.<sup>1</sup>

1. Small Arms Survey, Graduate Institute of International Studies, Geneva, *Small Arms Survey 2007: Guns and the City* at 39 (Aug. 2007). [↔]

## Statistics on Gun Crimes

Posted on Sunday, January 1st, 2012

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In 2007, nearly 70% of all murders nationwide were committed with a firearm.<sup>1</sup>

In 2007, 385,178 total firearm crimes were committed, including 11,512 murders, 190,514 robberies, and 183,153 aggravated assaults.<sup>2</sup>

1. U.S. Dep't of Justice, Bureau of Justice Statistics, *Key Facts at a Glance: Crimes Committed with Firearms, 1973-2007*, at <http://bjs.ojp.usdoj.gov/content/glance/tables/guncrimetab.cfm> (last visited Aug. 15, 2010). [↔]
2. *Id.* [↔]

### Statistics on the Dangers of Gun Use for Self-Defense

Posted on Sunday, January 1st, 2012

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Using a gun in self-defense is no more likely to reduce the chance of being injured during a crime than various other forms of protective action.<sup>1</sup>

Of the 13,636 Americans who were murdered in 2009, only 215 were killed by firearms (165 by handguns) in homicides by private citizens that law enforcement determined were justifiable.<sup>2</sup>

A study reviewing surveys of gun use in the U.S. determined that most self-reported self-defense gun uses may well be illegal and against the interests of society.<sup>3</sup>

1. David Hemenway, *Private Guns, Public Health* 78 (2004). [↔]
2. Federal Bureau of Investigation, U.S. Dept. of Justice, *Crime in the United States, 2009, Expanded Homicide Data Table 15*, at [http://www2.fbi.gov/ucr/cius2009/offenses/expanded\\_information/data/shrtable\\_15.html](http://www2.fbi.gov/ucr/cius2009/offenses/expanded_information/data/shrtable_15.html) (last visited Oct. 10, 2010). (A "justifiable homicide" in this context is defined by the FBI as the killing of a felon, during the commission of a felony, by a private citizen). [↔]
3. David Hemenway, Deborah Azrael & Matthew Miller, *Gun Use in the United States: Results from Two National Surveys*, 6 *Inj. Prevention* 263, 263 (2000). [↔]



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# Newtown, Conn. Shooting: Timeline of Mass Killings Since Columbine

Friday, 14 Dec 2012 02:14 PM

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Dozens of mass killings have occurred in the United States since two teenagers went on a rampage at Columbine High School in Littleton, Colorado in April of 1999, killing 12 of their fellow students and a teacher.

The deadly school shooting at a Newtown, Connecticut elementary school on Friday was the latest in a series of shooting crimes in the United States this year.

The following is the list of mass killings in the United States since Columbine compiled by Reuters and the Telegraph:

**April 1999** - two teenage schoolboys shot and killed 12 schoolmates and a teacher at Columbine High School in Littleton, Colorado, before killing themselves.

**July 1999** - a stock exchange trader in Atlanta, Georgia, killed 12 people including his wife and two children before taking his own life.

**September 1999** - a gunman opened fire at a prayer service in Fort Worth, Texas, killing six people before committing suicide.

**October 2002** - a series of sniper-style shootings occurred in Washington DC, leaving 10 dead.

**August 2003** - in Chicago, a laid-off worker shot and killed six of his former workmates.

**November 2004** - in Birchwood, Wisconsin, a hunter killed six other hunters and wounded two others after an argument with them.

**March 2005** - a man opened fire at a church service in Brookfield, Wisconsin, killing seven people.

**October 2006** - a truck driver killed five schoolgirls and seriously wounded six others in a school in Nickel Mines, Pennsylvania before taking his own life.

**April 2007** - student Seung-Hui Cho shot and killed 32 people and wounded 15 others at Virginia Tech in Blacksburg, Virginia, before shooting himself, making it the deadliest

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mass shooting in the United States after 2000.

**August 2007** - Three Delaware State University students were shot and killed in "execution style" by a 28-year-old and two 15-year-old boys. A fourth student was shot and stabbed.

**December 2007** - a 20-year-old man killed nine people and injured five others in a shopping center in Omaha, Nebraska.

**December 2007** - a woman and her boyfriend shot dead six members of her family on Christmas Eve in Carnation, Washington.

**February 2008** - a shooter who is still at large tied up and shot six women at a suburban clothing store in Chicago, leaving five of them dead and the remaining one injured.

**February 2008** - a man opened fire in a lecture hall at Northern Illinois University in DeKalb, Illinois, killing five students and wounding 16 others before laying down his weapon and surrendering.

**September 2008** - a mentally ill man who was released from jail one month earlier shot eight people in Alger, Washington, leaving six of them dead and the rest two wounded.

**December 2008** - a man dressed in a Santa Claus suit opened fire at a family Christmas party in Covina, California, then set fire on the house and killed himself. Police later found nine people dead in the debris of the house.

**March 2009** - a 28-year-old laid-off worker opened fire while driving a car through several towns in Alabama, killing 10 people.

**March 2009** - a heavily armed gunman shot dead eight people, many of them elderly and sick people, in a private-owned nursing home in North Carolina.

**March 2009** - six people were shot dead in a high-grade apartment building in Santa Clara, California.

**April 2009** - a man shot dead 13 people at a civic center in Binghamton, New York.

**July 2009** - Six people, including one student, were shot in a drive-by shooting at a community rally on the campus of Texas Southern University, Houston.

**November 2009** - U.S. army psychologist Major Nidal Hasan opened fire at a military base in Fort Hood, Texas, leaving 13 dead and 42 others wounded.

**February 2010** - A professor opened fire 50 minutes into a Biological Sciences Department faculty meeting at the University of Alabama in Huntsville, killing three colleagues and wounding three others.

**January 2011** - a gunman opened fire at a public gathering outside a grocery in Tucson, Arizona, killing six people including a 9-year-old girl and wounding at least 12 others. Congresswoman Gabrielle Giffords was severely injured with a gunshot to the head.

**April 2** - A gunman kills seven people and wounds three in a shooting rampage at a Christian college in Oakland.

**July 20** - A masked gunman kills 12 people and wounds 58 when he opens fire on moviegoers at a showing of the Batman film "The Dark Knight Rises" in Aurora, a suburb of Denver, Colorado.

**Aug. 5** - A gunman kills six people during Sunday services at a Sikh temple in Oak Creek, Wisconsin, before he is shot dead by a police officer.

**Aug. 24** - Two people are killed and eight wounded in a shooting outside the landmark Empire State Building in New York City at the height of the tourist season.

**Sept. 27** - A disgruntled former employee kills five people and takes his own life in a shooting rampage at a Minneapolis sign company from which he had been fired.

**Oct. 21** - Three people are killed in a Milwaukee area spa including the estranged wife of the suspected gunman, who then killed himself.



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Dec. 14 - A shooter opens fire at the Sandy Hook Elementary School in Newtown, Connecticut, killing several people including children.

Sources: Telegraph, Reuters, and Milwaukee Journal Sentinel

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# Mass killings occur in USA once every two weeks

## HOMICIDES AND MASS KILLINGS IN THE UNITED STATES, 2006-10

About every two weeks in the United States, four or more people (not including the killer) die in a mass killing. Some get little media attention. As frequent as they are, however, mass killings make up only about 1% of the roughly 15,000 people murdered in the U.S. each year.

Source: Research by Brad Heath and Meghan Hoyer. Source: Federal Bureau of Investigation, Supplemental Homicide Report. Note: The report has missing or incomplete data from the District of Columbia, 2006-08; Florida, 2006-10; and Nebraska, 2006-08.  
Kevin A. Kepple and Jeff Dionise, USA TODAY

Meghan Hoyer and Brad Heath, USA TODAY 9:36a.m. EST December 19, 2012



(Photo: Brendan Smialowski, AFP/Getty Images)

Mass killers target Americans once every two weeks on average, in attacks that range from robberies to horrific public shooting sprees like the massacre Friday of 27 people in Newtown, Conn., a USA TODAY examination found.

Using news accounts and FBI records from 2006 through 2010, the most recent years for which complete records were available, USA TODAY identified 156 murders that met the FBI definitions of mass killings, where four or more people were killed.

All told, the attacks killed 774 people, including at least 161 young children.

The review offers perhaps the most current, complete picture yet of a crime that is both frighteningly common and not widely understood.

**FULL COVERAGE:** [Nation mourns victims of Conn. school shooting \(http://www.usatoday.com/topic/a5877aa8-a9a0-4dfa-b14d-9dc8549e43e0/connecticut-shooting-victims/\)](http://www.usatoday.com/topic/a5877aa8-a9a0-4dfa-b14d-9dc8549e43e0/connecticut-shooting-victims/)

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"Everybody is surprised when they hear it's dozens a year," said Northeastern University criminologist James Alan Fox, who has studied mass murders. "People don't understand them. When they think of mass murders, they only think it's random."

USA TODAY's examination did not include murders during the past two years, both of which were marked by a series of high-profile public shootings, including a rampage this year at an Aurora, Colo., movie theater that left 12 dead and 57 injured, and an attack on a Sikh temple in Wisconsin that killed six.

Without more complete records, it is impossible to know whether mass killings increased over those years — though they have become less common since the mid-1990s, according to Grant Duwe, director of research at the Minnesota Department of Corrections, who has studied mass murders.

- The killings between 2006 and 2010, however, offer a portrait of mass murder that in many ways belies the stereotype of a lone gunman targeting strangers:
- Lone gunmen, such as the one who terrorized Sandy Hook Elementary School last week, account for less than half of the nation's mass killers. About a quarter of mass murders involve two or more killers.
- A third of mass killings didn't involve guns at all. In 15 incidents, the victims died in a fire. In 20 others, the killer used a knife or a blunt object. When guns were involved, killers were far more likely to use handguns than any other type of weapon.
- Children are frequently victims. At least 161 who died in mass killings -- roughly one in five -- were 12 and younger.
- Mass murderers tend to be older than other killers, with an average age of nearly 32 years old. Like all killers, they are overwhelmingly men.

Friday's massacre in Newtown "has turned a whole new page" in the nation's long-running debate over guns, said Rep. Carolyn McCarthy, D-N.Y., a leading proponent of tighter gun laws. "Parents and grandparents, dads, gun owners are thinking that their children at any time at any place could have someone come in and do this kind of massacre."

But for all the attention they receive, mass killings still accounted for only a tiny fraction — about 1% — of all the Americans who were murdered over those five years. During those five years, more died from migraines and falling out of chairs than were murdered by mass killers, according to death records kept by the U.S. Centers for Disease Control and Prevention. Three times as many people perished from sunstroke.



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## CITY COUNCIL AGENDA REPORT

### MEETING OF FEBRUARY 28, 2013

FROM: OFFICE OF THE CITY MANAGER

SUBJECT: ADMINISTRATIVE PROCEDURE REVISION  
BOARD, COMMISSIONS AND COMMITTEES GUIDE PROCEDURES

---

**RECOMMENDED ACTION:** Approve the Board, Commission and Committee Guide Procedures revision, draft City Manager Memorandum regarding public meeting teleconferencing procedures, and the draft Teleconferencing Requests Form.

**BACKGROUND:** On August 10, 2006, the City Clerk's Office revised the "Board, Commission and Committee Guide Procedures" as a reference for City Advisory Bodies (hereafter, "Guide"). The Guide sets forth policy and procedures to be followed by staff liaisons concerning agenda preparation, meeting conduct and other administrative matters for City advisory bodies. It also provides standard forms to be used for all City boards, commissions and committees.

**DISCUSSION:** Various City Boards, Commissions and Committees ("Committee") members have requested to either telephone or skype into their respective Committee meetings from a remote location. Teleconferencing into public meetings has specific requirements that must comply with the Ralph M. Brown Act ("the Act"). The Act imposes an "open meeting" requirement on local "legislative bodies" of all local agencies (e.g. councils, boards, commissions and committees).

The Act allows that legislative bodies may use any type of teleconferencing in connection with a public meeting. Government Code Section 54953(b) defines "teleconference" as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."

Staff has drafted a revised Guide (Attachment 1) which includes the option for Committee members to teleconference if the required Brown Act requirements are adhered to. In addition, staff has prepared a memorandum from the City Manager regarding public meeting teleconferencing procedures. If approved by Council, the memorandum will be sent to all City Committee members along with the Teleconferencing Request Form (Attachment 3).

#### **ATTACHMENTS**

1. Revised Board, Commission and Committee Procedures;
2. Draft City Manager Memorandum;
3. Draft Teleconferencing Request Form;
4. League of California Cities Guide to the Ralph M. Brown Act.

**Report Prepared By:** Susan Sneddon, CMC  
City Clerk

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

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## ADMINISTRATIVE PROCEDURE

Number: I-20  
 Issued: 9/20/05  
 Revised: 8/10/06  
Revised: 2/28/13  
 Jurisdiction: Council

## Board, Commission and Committee Guide Procedures

### I. PURPOSE

The purpose of this procedure is to set forth consistent procedures concerning agenda preparation, meeting procedures, conduct and other administrative matters for city boards, commissions and committees.

### II. POLICY

It is the policy of the City of Capitola that all city boards, commissions, and committees shall follow the guidelines established in the “Board, Commission and Committee Guide – A Reference Guide for City Advisory Bodies” (“Guide”) initially issued on March 1, 2005, and any revisions made thereto. It is the responsibility of the staff liaison of each board, commission or committee to be familiar with this guide, particularly as it relates to regular meeting protocol, including agenda preparation and posting, and staff responsibilities.

### ~~III. PROCEDURES/STAFF RESPONSIBILITIES~~

~~It is the responsibility of the staff liaison to follow the procedures contained in the guide, as well as the following:~~

- ~~A. The “Guide,” along with the current member roster and implementing resolution or ordinance, shall be presented to each advisory body member at the time he/she attends his/her first meeting and takes the Oath of Office.~~
- ~~B. Following appointment of an advisory body member by the City Council, the City Clerk shall prepare the Oath form and forward it to the staff liaison. The staff liaison shall administer the Oath to each committee member at his/her first meeting using the standard Oath of Office form for Boards, Commissions and Committees. [Attachment 1] The committee member and the staff liaison administering the oath shall sign the Oath of Office form. The original form shall be given to the City Clerk for filing.~~
- ~~C. Agendas for advisory committees will be prepared by staff in consultation with the advisory body Chair using the standard agenda format. [Attachment 2] The following also applies to agendas:~~
- ~~1) Advisory body regular meeting agendas are posted in the City Hall foyer at least 72 hours prior to the meeting.~~
  - ~~2) Agendas and packet materials shall be distributed to all committee members prior to the meeting. This can be done by mail or email if all members have an email address and agree to receive materials in that manner. A copy of the agenda and packet materials shall also be provided to the City Clerk’s Office for file. In addition, the advisory body staff liaison shall email a copy of all meeting agendas~~

- ~~to the City Clerk, Records Coordinator, City Council Members, and the city's cost claims consultant pursuant to the Guide.~~
- ~~3) A Notice of Cancellation shall be posted as soon as staff knows a regular meeting will not occur, and a copy sent to the City Clerk, Records Coordinator, Receptionist and members of the committee. This can be done by email. [Attachment 4]~~
  - ~~4) If an advisory body adjourns to a date other than the next regular meeting noted on the posted agenda, then a Notice of Adjournment must be prepared and posted within 24 hours of adjournment. The notice shall also be sent to the City Clerk, Records Coordinator, Receptionist and committee members. This can be done by email. [Attachment 5]~~
  - ~~5) Special Meetings may be called by the presiding officer of the advisory body and coordinated with the staff liaison. Staff will prepare the necessary Notice and Call of a Special Meeting, make sure it is signed by the Chair, and see that the notice is delivered to each member of the advisory body and local media at least 24 hours prior to the Special Meeting. In addition, special meeting notices shall be sent to the City Clerk, Records Coordinator, Receptionist, and City Council members. The notice must specify the time, place and business to be transacted at the Special Meeting [Attachment 6]. Only matters specified on the notice may be discussed and considered at the special meeting. No items may be added to the agenda at the meeting.~~
- ~~D. Minutes for advisory bodies will be prepared by the staff liaison immediately following the meeting to be included on the next advisory body agenda for approval. Minutes shall be action minutes with some discussion of matters considered by the body, including the names of members of the public who address the board. Minutes shall be prepared in a format similar to the standard minute format. [Attachment 3] Following approval of the minutes by the advisory body, a copy shall be emailed to the City Clerk, Records Coordinator, and City Council.~~
- ~~E. The staff liaison shall be responsible for scheduling the meeting room with the receptionist and informing the receptionist of any changes to regularly scheduled meetings, special meetings, etc.~~
- ~~F. It is the responsibility of the staff liaison to keep attendance records and report attendance issues to the Mayor pursuant to Administrative Policy I 5, Attendance Policy and Leaves of Absence for City Advisory Bodies.~~

### III. PUBLIC MEETINGS

This section describes the key steps necessary for complying with the Ralph P. Brown Act, known as the "Brown Act", for public meetings of boards, commissions, and committees. The Brown Act (Gov. Code §§ 54950 et seq.4) is the state's open meetings act. It is intended to ensure that the public has adequate notice of what it's elected and appointed local decision makers do, and that those decisions and the deliberations leading to them take place in public. The Brown Act has evolved under a series of amendments and court decisions, and has been the model for open meeting laws. To locate the most

current version the Brown Act on the Internet go to the League of California Cities website (<http://www.cacities.org/>) and in the search box enter *Open & Public IV: A Guide to the Ralph M. Brown Act*.

#### **IV. Agenda, Agenda Packet, and Noticing Requirements**

Agendas for advisory committees will be prepared by staff in consultation with the advisory body Chair using the standard agenda format [Attachment 2]. The following also applies to agendas:

- A. Advisory body regular meeting agendas are posted in the City Hall foyer at least 72 hours prior to the meeting.
- B. Agendas and packet materials shall be distributed to all committee members prior to the meeting. This can be done by mail or email if all members have an email address and agree to receive materials in that manner. A copy of the agenda and packet materials shall also be provided to the City Clerk's Office for file. In addition, the advisory body staff liaison shall email a copy of all meeting agendas to the City Clerk, Records Coordinator, City Council Members, and the City's cost claims consultant pursuant to the Guide.

#### **V. Procedures for Approval to Technological Conferencing**

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both." In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act. Refer to *III. Public Meetings* in this Administration Procedure for Board, Commission and Committee.

- A. Commissioner must complete a form (Attachment 7) requesting the ability to teleconference and confirm the following:
  - 1. Agenda is posted at least 72 hours in advance.
  - 2. The teleconference location is accessible to the disabled and has the technology, such as a speakerphone, to enable the public to participate.
  - 3. The location is specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable.
  - 4. The Commission consulted the City Attorney or Assistant City Attorney prior to the teleconferencing of a meeting.
- B. The request is placed on the agenda of the next regular commission meeting and is voted upon by the full commission membership. The request must receive a two-thirds vote for approval. In the event of an urgent matter where a special meeting of the commission is called to consider a request to teleconference, the request must be approved at least five business days prior to the meeting date to allow for proper Brown Act noticing.
- C. Only one commissioner from any commission may be permitted to teleconference at each meeting.

## V. STAFF RESPONSIBILITIES

It is the responsibility of the staff liaison to follow the procedures contained in the guide, as well as the following:

- A. The "Guide," along with the current member roster and implementing resolution or ordinance, shall be presented to each advisory body member at the time he/she attends his/her first meeting and takes the Oath of Office.
- B. Following appointment of an advisory body member by the City Council, the City Clerk shall prepare the Oath form and forward it to the staff liaison. The staff liaison shall administer the Oath to each committee member at his/her first meeting using the standard Oath of Office form for Boards, Commissions and Committees [Attachment 1]. The committee member and the staff liaison administering the oath shall sign the Oath of Office form. The original form shall be given to the City Clerk for filing.
- C. The staff liaison shall be responsible for scheduling the meeting room with the receptionist and informing the receptionist of any changes to regularly scheduled meetings, special meetings, etc.
- D. It is the responsibility of the staff liaison to keep attendance records and report attendance issues to the Mayor pursuant to Administrative Policy I-5, Attendance Policy and Leaves of Absence for City Advisory Bodies.
- E. Minutes for advisory bodies will be prepared by the staff liaison immediately following the meeting to be included on the next advisory body agenda for approval. Minutes shall be action minutes with some discussion of matters considered by the body, including the names of members of the public who address the board. Minutes shall be prepared in a format similar to the standard minute format [Attachment 3]. Following approval of the minutes by the advisory body, a copy shall be emailed to the City Clerk, Records Coordinator, and City Council.
- F. The staff liaison shall be responsible for receiving the completed Teleconferencing Request form and providing a copy to the City Clerk.

Approved and authorized by the Capitola City Council at its meeting of ~~August 10,~~  
2006:February 28, 2013.

~~Richard Hill~~Jamie Goldstein, City Manager

Attachments (Sample Documents):

- 1) Oath: R:/Committees/Committee Guide-Forms/Committee Oath form
- 2) Agenda: R:/Committees/Committee Guide-Forms/Committee Agenda format
- 3) Minutes: R:/Committees/Committee Guide-Forms/Committee Minute format
- 4) Notice of Cancellation: R:/Committees/Committee Guide-Forms/Cancellation Notice
- 5) Notice of Adjournment: R:/Committees/Committee Guide-Forms/Adjournment Notice
- 6) Notice of Special Meeting: R:/Committees/Committee Guide-Forms/Special Mtg Notice
- 7) Teleconferencing Request Form

# City of Capitola Memorandum

## Office of the City Manager

DATE: February 28, 2013  
TO: City Boards, Commission and Committee Members  
FROM: Jamie Goldstein, City Manager  
SUBJECT: Public Meeting Teleconferencing Procedure

---

This memo outlines the procedure for City board, commission or committee members to follow if teleconferencing is used for a public meeting. A teleconference meeting is a meeting in which one or more members of the body attend the meeting from a remote location via electronic means, transmitting audio or audio/video. In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act. Refer to the *City's Board, Commission and Committee Guide Procedures (Administrative Procedure I-20)*.

The biggest issue surrounding the use of teleconference meetings concerns the public's access to the meeting. Members of the public must be able to hear the meeting and testify from each location. The Brown Act allows teleconference meetings if they comply with the following specifications:

- Each teleconference location must be accessible to the public including the disabled; the location must be specifically identified in the notice and agenda of the meeting, including a full address.
- All votes are taken by roll call, and at least a quorum of the members of the legislative body are located within the City (§ 54953(b)).
- Agendas must be posted at each teleconference location 72 hours prior to the meeting.
- Each teleconference location must have technology, such as a speakerphone, to enable the public to participate.
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.

In addition to the specific requirements listed above, the meeting must comply with all provisions of the Brown Act otherwise applicable.

Attached please find the *City's Teleconference Request Form*. The form is to be filled out by the committee/board/commission members that plan to teleconference into a meeting. Upon completion, the form is to be faxed or emailed to the attention of the City's staff liaison for the board, commission or committee.

Attachment:

1. Teleconference Request Form

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TELECONFERENCE REQUEST FORM

PUBLIC MEETING INFORMATION

Name of Committee: \_\_\_\_\_

Committee Member Name: \_\_\_\_\_

Committee Member Contact No: \_\_\_\_\_ Email: \_\_\_\_\_

Committee Staff Member: \_\_\_\_\_

Date of Teleconference: \_\_\_\_\_ Method of teleconferencing:<sup>1</sup> \_\_\_\_\_

Teleconferencing Location:<sup>2</sup> \_\_\_\_\_

Meeting Date: \_\_\_\_\_ Meeting Time: \_\_\_\_\_

INSTRUCTIONS

Complete the following:

1. Public Meeting Information Section (above)
2. Certification Section (below)
3. Provide any additional comments if applicable
4. Sign and date

ADDITIONAL MATERIAL

Please refer to the City's *Board, Commission and Committee Guide Procedures (Administrative Procedure I-20)* regarding agenda preparation, meeting procedures, conduct and other administrative matters for City boards, commissions and committees.

Check the boxes below to certify that the following will occur:

- Agenda posted at least 72 hours in advance.
- The teleconference location is accessible to the disabled and has the technology, such as a speakerphone, to enable the public to participate.
- The location is specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable.
- Consulted the City Attorney or Assistant City Attorney prior to the teleconferencing a meeting.

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

<sup>1</sup> Audio (e.g. telephone), video (e.g. skype)

<sup>2</sup> Include complete address

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# OPEN & PUBLIC IV:

*A Guide to the Ralph M. Brown Act*

— 2ND EDITION, REVISED JULY 2010 —

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# CHAPTER 1:

## IT IS THE PEOPLE'S BUSINESS



THE RIGHT OF ACCESS

BROAD COVERAGE

NARROW EXEMPTIONS

PUBLIC PARTICIPATION  
IN MEETINGS

CONTROVERSY

BEYOND THE LAW—GOOD  
BUSINESS PRACTICES

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# OPEN & PUBLIC IV

## A GUIDE TO THE RALPH M. BROWN ACT



CH. 1: IT IS THE PEOPLE'S BUSINESS

CH. 2: LEGISLATIVE BODIES

CH. 3: MEETINGS

CH. 4: AGENDAS, NOTICES, AND  
PUBLIC PARTICIPATION

CH. 5: CLOSED SESSIONS

CH. 6: REMEDIES

OPEN & PUBLIC IV:  
A GUIDE TO THE RALPH M. BROWN ACT, 2ND EDITION  
Revised July 2010



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League of California Cities

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## FOREWORD

The goal of this publication is to explain the requirements of the Ralph M. Brown Act, California's open meeting law, in lay language so that it can be readily understood by local government officials and employees, the public and the news media. We offer practical advice—especially in areas where the Brown Act is unclear or has been the subject of controversy—to assist local agencies in complying with the requirements of the law.

A number of organizations representing diverse views and constituencies have contributed to this publication in an effort to make it reflect as broad a consensus as possible among those who daily interpret and implement the Brown Act. The League thanks the following organizations for their contributions:

- Association of California Healthcare Districts
- Association of California Water Agencies
- California Association of Sanitation Agencies (CASA)
- California Attorney General—Department of Justice
- City Clerks Association of California
- California Municipal Utilities Association
- California Redevelopment Association
- California School Boards Association
- California Special Districts Association
- California State Association of Counties
- Community College League of California
- California First Amendment Project
- California Newspaper Publishers Association
- Common Cause
- League of Women Voters of California

This publication is current as of June 2010. Updates to the publication responding to changes in the Brown Act or new court interpretations are available at [www.cacities.org/opengovernment](http://www.cacities.org/opengovernment).

This publication is not intended to provide legal advice. A public agency's legal counsel is responsible for advising its governing body and staff and should always be consulted when legal issues arise.

### *To improve the readability of this publication:*

- Most text will look like this;
- Practice tips are in the margins;
- **Hypothetical examples are printed in blue; and**
- Frequently asked questions, along with our answers, are in shaded text.

Additional copies of this publication may be purchased by visiting CityBooks online at [www.cacities.org/store](http://www.cacities.org/store).

# CHAPTER 1:

IT IS THE PEOPLE'S BUSINESS



## ■ THE RIGHT OF ACCESS

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the Brown Act's initial section, declaring the Legislature's intent:

*"In enacting this chapter, the Legislature finds and declares that the public commissions, boards, and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."*

*"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."<sup>1</sup>*

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

*"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."<sup>2</sup>*

The Brown Act's other unchanged provision is a single sentence:

*"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."<sup>3</sup>*

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

### **Practice Tip:**

The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.



## ■ BROAD COVERAGE

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common e-mail practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an Internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, personal digital assistants, or cellular telephones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

## ■ NARROW EXEMPTIONS

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.<sup>4</sup>

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body don't discuss issues related to their local agency's business. Meetings of temporary advisory committees—as distinguished from standing committees—made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.<sup>5</sup>

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents. On the other hand, it requires—with certain specific exceptions to protect the community and preserve individual rights—that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.



### **Practice Tip:**

Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest.

## ■ PUBLIC PARTICIPATION IN MEETINGS

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

## ■ CONTROVERSY

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately—such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business—the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises—are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

## ■ BEYOND THE LAW—GOOD BUSINESS PRACTICES

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney's fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.<sup>6</sup> Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act doesn't provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.



### **Practice Tip:**

Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly;
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation; and
- The right of the press to fully understand and communicate public agency decision-making.

An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law—but if the law were enough this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

### ■ ACHIEVING BALANCE

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action is to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must ensure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

### ■ HISTORICAL NOTE

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on “Your Secret Government” that ran in May and June 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted such a bill and Assembly Member Ralph M. Brown agreed to carry it. The Legislature passed the bill and Gov. Earl Warren signed it into law in 1953.

The Ralph M. Brown Act, known as the “Brown Act”, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws—such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

#### **Practice Tip:**

The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.



Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Legislature in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

---

**Endnotes**

- 1 California Government Code section 54950
- 2 California Constitution, Art. 1, section 3 (b)(1)
- 3 California Government Code section 54953 (a)
- 4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the state's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2)
- 5 California Government Code section 54952.2 (c); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533
- 6 California Government Code section 54953.7

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# CHAPTER 2:

## LEGISLATIVE BODIES



WHAT IS A "LEGISLATIVE BODY"  
OF A LOCAL AGENCY?

WHAT IS NOT A "LEGISLATIVE BODY"  
FOR PURPOSES OF THE BROWN ACT?

# CHAPTER 2:

## LEGISLATIVE BODIES



The Brown Act applies to the legislative bodies of local agencies. It defines “legislative body” broadly to include just about every type of decision-making body of a local agency.<sup>1</sup>

### ■ WHAT IS A “LEGISLATIVE BODY” OF A LOCAL AGENCY?

A “legislative body” includes:

- **The “governing body”** of a local agency or any other local body created by state or federal statute.<sup>2</sup> This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A “local agency” is any city, county, school district, municipal corporation, redevelopment agency, district, political subdivision, or other public agency.<sup>3</sup> A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.<sup>4</sup> The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.<sup>5</sup> Entities created pursuant to joint powers agreements are local agencies within the meaning of the Brown Act.<sup>6</sup>
- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.<sup>7</sup> Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

**Q.** On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

**A.** *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

### **Practice Tip:**

The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

- **Appointed bodies**—whether permanent or temporary, decision-making or advisory—including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and “blue ribbon committees” created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information, they would have been exempt from the Brown Act.<sup>8</sup>
- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.<sup>9</sup> Even if comprised of less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, function over form controls. For example, a statement by the legislative body that “the advisory committee shall not exercise continuing subject matter jurisdiction” or the fact that the committee does not have a fixed meeting schedule is not determinative.<sup>10</sup> “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.<sup>11</sup>
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity’s governing board.<sup>12</sup> These include some nonprofit corporations created by local agencies.<sup>13</sup> If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.<sup>14</sup> When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.<sup>15</sup>

### Practice Tip:

It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a non-exempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee’s charge, or whether the committee exists long enough to have “continuing jurisdiction.”

**Q:** The local chamber of commerce is funded in part by the city. The mayor sits on the chamber’s board of directors. Is the chamber board a legislative body subject to the Brown Act?

**A:** *Maybe. If the chamber’s governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

**Q:** If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

**A:** *Yes. But, if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain kinds of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after Jan. 1, 1994, which exercises “material authority” delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.<sup>16</sup>

■ **WHAT IS NOT A “LEGISLATIVE BODY” FOR PURPOSES OF THE BROWN ACT?**

- A temporary advisory committee **composed solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.<sup>17</sup> Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.<sup>18</sup>
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.<sup>19</sup>

**Q.** A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

**A.** *No, because the committee has not been established by formal action of the legislative body.*

**Q.** During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

**A.** *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.<sup>20</sup>
- County central committees of political parties are also not Brown Act bodies.<sup>21</sup>



---

**Endnotes**

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 2 California Government Code section 54952(a)
- 3 California Government Code section 54951. *But see*: Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354
- 7 California Government Code section 54952.1
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799
- 9 California Government Code section 54952(b)
- 10 79 Ops. Cal.Atty.Gen. 69 (1996)
- 11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781
- 12 California Government Code section 54952(c)(1)(B). The same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)
- 13 California Government Code section 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862; *see also*: 81 Ops.Cal.Atty.Gen. 281 (1998); 85 Ops.Cal.Atty.Gen. 55
- 14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287, 300 fn. 5
- 15 "The Brown Act," California Attorney General (2003), p. 7
- 16 California Government Code section 54952(d)
- 17 California Government Code section 54952(b); *see also*: *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821
- 18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 19 56 Ops.Cal.Atty.Gen. 14 (1973)
- 20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 21 59 Ops.Cal.Atty.Gen. 162 (1976)

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# CHAPTER 3:

## MEETINGS



BROWN ACT MEETINGS

SIX EXCEPTIONS TO THE MEETING  
DEFINITION

COLLECTIVE BRIEFINGS

RETREATS OR WORKSHOPS OF  
LEGISLATIVE BODIES

SERIAL MEETINGS

INFORMAL GATHERINGS

TECHNOLOGICAL CONFERENCING

LOCATION OF MEETINGS

# CHAPTER 3:

## MEETINGS



The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "... any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains."<sup>1</sup> Under the Brown Act, the term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well.

### ■ BROWN ACT MEETINGS

Brown Act gatherings include a legislative body's regular meetings, special meetings, emergency meetings and adjourned meetings.

- "Regular meetings" are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.<sup>2</sup>
- "Special meetings" are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings.<sup>3</sup>
- "Emergency meetings" are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.<sup>4</sup>
- "Adjourned meetings" are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.<sup>5</sup>

### ■ SIX EXCEPTIONS TO THE MEETING DEFINITION

The Brown Act creates six exceptions to the meeting definition: <sup>6</sup>

#### *Individual Contacts*

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

### **Conferences**

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, so long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.



### **Community Meetings**

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. Again, a majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

*"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition.*

*"I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"*

*The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

- Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?
- A.** Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.



### *Other Legislative Bodies*

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency and (2) a legislative body of another local agency.<sup>7</sup> Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their local agency's subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

- Q.** The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?
- A.** *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*
- Q.** The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?
- A.** *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

### *Standing Committees*

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).<sup>8</sup>

- Q.** The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?
- A.** *She may attend, but only as an observer; she may not participate.*

### *Social or Ceremonial Events*

The sixth and final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the local agency.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attends the function, but whether business of a specific nature within the subject matter jurisdiction of the local agency is discussed. So long as no local agency business is discussed, there is no violation of the Brown Act.

## ■ COLLECTIVE BRIEFINGS

None of these six exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.

## ■ RETREATS OR WORKSHOPS OF LEGISLATIVE BODIES

There is consensus among local agency attorneys that gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or on team building and group dynamics.<sup>9</sup>

- Q.** The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?
- A.** *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

## ■ SERIAL MEETINGS

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority.

The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful participation in legislative body decision-making. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting...use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."<sup>10</sup>

The serial meeting may occur by either a "daisy-chain" or a "hub-and-spoke" sequence. In the daisy-chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated or taken action on an item within the legislative body's subject matter jurisdiction. The hub-and-spoke process involves, for example, a staff member (the hub) communicating with members of a legislative body (the spokes) one-by-one for a decision on a proposed action,<sup>11</sup> or a chief executive officer briefing a majority of redevelopment agency members prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."<sup>12</sup>

The Brown Act has been violated however, if several one-on-one meetings or conferences leads to a discussion, deliberation or action by a majority. In one case, a violation occurred when a quorum of a city council directed staff by letter on an eminent domain action.<sup>13</sup>



A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.<sup>14</sup> Such a memo, however, may be a public record.<sup>15</sup>

The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"

"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"

"Well, I've got Bradley and Cohen lined up and another vote leaning. With you I'd be over the top."

Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"

*Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff and news media against revealing such positions of others.*

The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."

*Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."<sup>16</sup> Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.*

"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."

"Glad to be of assistance," replied the planning director. "Any idea what the other council members think of the problem?"

*The planning director should not ask, and the member should not answer. A one-on-one meeting that involves communicating the comments or position of other members violates the Brown Act.*

- Q.** The agency's Web site includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A.** Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate or take action on matters of agency business.
- Q.** A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?
- A.** No, the Brown Act expressly allows this kind of communication, though the members should avoid discussing the merits of what is to be taken up at the meeting.

### Practice Tip:

When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.



Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the “reply to all” button that may inadvertently result in a Brown Act violation.

## ■ INFORMAL GATHERINGS

Often members are tempted to mix business with pleasure—for example, by holding a post meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.<sup>17</sup> A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to hear or participate in the deliberations of members.

Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop’s Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.

*A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues. But it is the kind of situation that should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive’s presence in no way lessens the potential for a violation of the Brown Act.*

- Q.** The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?
- A.** *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*

## ■ TECHNOLOGICAL CONFERENCING

In an effort to keep up with information age technologies, the Brown Act now specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.<sup>18</sup> While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary within the body.

“Teleconference” is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.”<sup>19</sup> In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following specific requirements:<sup>20</sup>

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency’s jurisdiction;
- Additional teleconference locations may be made available for the public;



**Practice Tip:**

Legal counsel for the local agency should be consulted before teleconferencing a meeting.

- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

- Q.** A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?
- A.** *She may not participate or vote because she is not in a noticed and posted teleconference location.*

The use of teleconferencing to conduct a legislative body meeting presents a variety of new issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

## ■ LOCATION OF MEETINGS

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.<sup>21</sup>

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:

- Comply with state or federal law or a court order, or for a judicial conference or administrative proceeding in which the local agency is a party;
- Inspect real or personal property, which cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property;

- Q.** The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?
- A.** *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be able to attend.*

- Participate in multiagency meetings or discussions, however, such meetings must be held within the boundaries of one of the participating agencies, and all involved agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries or at its principal office if that office is located outside the territory over which the agency has jurisdiction;

- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction;
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.<sup>22</sup>

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.<sup>23</sup> A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.<sup>24</sup>

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.<sup>25</sup>

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**Endnotes:**

- 1 California Government Code section 54952.2(a)
- 2 California Government Code section 54954(a)
- 3 California Government Code section 54956
- 4 California Government Code section 54956.5
- 5 California Government Code section 54955
- 6 California Government Code section 54952.2(c)
- 7 California Government Code section 54952.2(c)(4)
- 8 California Government Code section 54952.2(c)(6)
- 9 “The Brown Act,” California Attorney General (2003), p. 10
- 10 California Government Code section 54952.2(b)(1)
- 11 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
- 12 California Government Code section 54952.2(b)(2)
- 13 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 14 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 15 California Government Code section 54957.5(a)
- 16 California Government Code section 54952.2(b)(2)
- 17 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)
- 18 California Government Code section 54953(b)(1)
- 19 California Government Code section 54953(b)(4)
- 20 California Government Code section 54953
- 21 California Government Code section 54954(b)
- 22 California Government Code section 54954(b)(1)-(7)
- 23 California Government Code section 54954(c)
- 24 California Government Code section 54954(d)
- 25 California Government Code section 54954(e)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at [www.cacities.org/opengovernment](http://www.cacities.org/opengovernment). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

# CHAPTER 4:

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



AGENDAS FOR REGULAR MEETINGS

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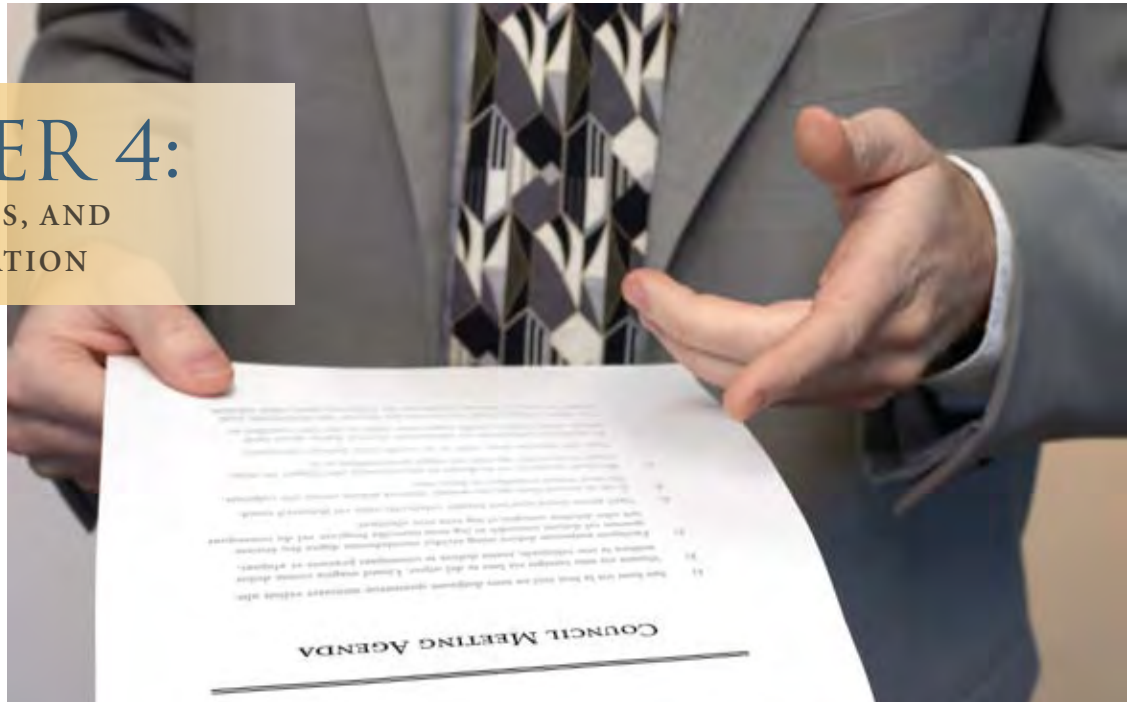
THE RIGHT TO ATTEND MEETINGS

RECORDS AND RECORDINGS

THE PUBLIC'S PLACE ON THE AGENDA

# CHAPTER 4:

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

### ■ AGENDAS FOR REGULAR MEETINGS

Every regular meeting of a legislative body of a local agency—including advisory committees, commissions, or boards, as well as standing committees of legislative bodies—must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.”<sup>1</sup> The courts have not definitively interpreted the “freely accessible” requirement. The California Attorney General has interpreted this provision to require posting in locations accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.<sup>2</sup> Posting may also be made on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.<sup>3</sup> However, only posting an agenda on an agency’s Web site is inadequate since there is no universal access to the internet. The agenda must state the meeting time and place and must contain “a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.”<sup>4</sup>

#### **Practice Tip:**

Putting together a meeting agenda requires careful thought.

**Q.** The agenda for a regular meeting contains the following items of business:

- “Consideration of a report regarding traffic on Eighth Street”
- “Consideration of contract with ABC Consulting”

Are these descriptions adequate?

**A.** *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read “consideration of a contract with ABC Consulting in the amount of \$50,000 for traffic engineering services regarding traffic on Eighth Street.”*

**Q.** The agenda includes an item entitled “City Manager’s Report,” during which time the city manager provides a brief report on notable topics of interest, none of which are listed on the agenda.

Is this permissible?

**A.** Yes, so long as it does not result in extended discussion or action by the body.

A brief general description may not be sufficient for closed session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions. Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

### ■ MAILED AGENDA UPON WRITTEN REQUEST

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted. If requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed Jan. 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.<sup>5</sup>



### ■ NOTICE REQUIREMENTS FOR SPECIAL MEETINGS

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed. Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda—with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act’s safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements. The special meeting notice must also be posted at least 24 hours prior to the special meeting in a site freely accessible to the public. The body cannot consider business not in the notice.<sup>6</sup>

### ■ NOTICES AND AGENDAS FOR ADJOURNED AND CONTINUED MEETINGS AND HEARINGS

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.<sup>7</sup> If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.<sup>8</sup> A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.<sup>9</sup>

### ■ NOTICE REQUIREMENTS FOR EMERGENCY MEETINGS

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.<sup>10</sup> News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings—although notification may be advisable in any event to avoid controversy.

### ■ EDUCATIONAL AGENCY MEETINGS

The Education Code contains some special agenda and special meeting provisions,<sup>11</sup> however, they are generally consistent with the Brown Act. An item is probably void if not posted.<sup>12</sup> A school district board must also adopt regulations to make sure the public can place matters affecting district's business on meeting agendas and to address the board on those items.<sup>13</sup>

### ■ NOTICE REQUIREMENTS FOR TAX OR ASSESSMENT MEETINGS AND HEARINGS

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased general tax or assessment.<sup>14</sup> At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which public testimony may be given before the legislative body proposes to act on the tax or assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.<sup>15</sup>

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.<sup>16</sup> As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

### ■ NON-AGENDA ITEMS

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:<sup>17</sup>

- When a majority decides there is an "emergency situation" (as defined for emergency meetings);
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action "came to the attention of the local agency subsequent to the agenda being posted." This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline; or
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

#### **Practice Tip:**

Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.





The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

“I’d like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project,” said Chair Lopez.

“It’s not on the agenda. But we learned two days ago that we finished phase one ahead of schedule—believe it or not—and I’d like to keep it that way. Do I hear a motion?”

*The desire to stay ahead of schedule generally would not satisfy “a need for immediate action.” Too casual an action could invite a court challenge by a disgruntled resident. The prudent course is to place an item on the agenda for the next meeting and not risk invalidation.*

“We learned this morning of an opportunity for a state grant,” said the chief engineer at the regular board meeting, “but our application has to be submitted in two days. We’d like the board to give us the go ahead tonight, even though it’s not on the agenda.”

*A legitimate immediate need can be acted upon even though not on the posted agenda by following a two-step process:*

- First, make two determinations: (a) that there is an immediate need to take action and (b) that the need arose after the posting of the agenda. The matter is then placed on the agenda.
- Second, discuss and act on the added agenda item.

## ■ RESPONDING TO THE PUBLIC

The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body’s rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.<sup>18</sup> However, caution should be used to avoid any discussion or action on such items.

**Council Member A:** I would like staff to respond to Resident Joe’s complaints during public comment about the repaving project on Elm Street—are there problems with this project?

**City Manager:** The public works director has prepared a 45-minute power point presentation for you on the status of this project and will give it right now.

**Council Member B:** Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.



*It is clear from this dialogue that the Elm Street project was not on the council's agenda, but was raised during the public comment period for items not on the agenda. Council Member A properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.*

## ■ THE RIGHT TO ATTEND AND OBSERVE MEETINGS

A number of other Brown Act provisions protect the public's right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.<sup>19</sup>

No meeting can be held in a facility that prohibits attendance based on race, religion color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.<sup>20</sup> This does not mean however that the public is entitled to free entry to a conference attended by a majority of the legislative body.<sup>21</sup>

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.<sup>22</sup>

Action by secret ballot, whether preliminary or final, is flatly prohibited.<sup>23</sup>

**Q:** The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

**A:** *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward—or even counterproductive—does not justify a secret ballot.*

There can be no semi-closed meetings, in which some members of the public are permitted to attend as spectators while others are not; meetings are either open or closed.<sup>24</sup>

The legislative body may remove persons from a meeting who willfully interrupt proceedings. If order still cannot be restored, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.<sup>25</sup>



## ■ RECORDS AND RECORDINGS

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.<sup>26</sup> A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.<sup>27</sup>

**Q:** In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

**A:** *No. The memorandum is a privileged attorney-client communication.*

**Q:** In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

**A:** *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.<sup>28</sup> A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.<sup>29</sup>

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.<sup>30</sup> The agency may impose its ordinary charge for copies.<sup>31</sup>

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.<sup>32</sup>

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.<sup>33</sup>

## ■ THE PUBLIC'S PLACE ON THE AGENDA

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.<sup>34</sup>

- Q.** Must the legislative body allow members of the public to show videos or make a power point presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?
- A.** *Probably, although the agency is under no obligation to provide equipment.*

### **Practice Tip:**

Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record, but must respect a speaker's desire for anonymity.

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But, the Brown Act provides no immunity for defamatory statements.<sup>35</sup>

- Q.** May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?
- A.** *No, as long as the criticism pertains to job performance.*
- Q.** During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?
- A.** *There is no case law on this subject. Some would argue that campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section because it is relevant to the governing of the agency and an implicit criticism of the incumbents.*

The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.<sup>36</sup>

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.<sup>37</sup>

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.<sup>38</sup>

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**Endnotes**

- 1 California Government Code section 54954.2(a)(1)
- 2 78 Ops.Cal.Atty.Gen. 327 (1995)
- 3 88 Ops.Cal.Atty.Gen. 218 (2005)
- 4 California Government Code section 54954.2(a)(1)
- 5 California Government Code section 54954.1
- 6 California Government Code section 54956
- 7 California Government Code section 54955
- 8 California Government Code section 54954.2(b)(3)
- 9 California Government Code section 54955.1
- 10 California Government Code section 54956.5
- 11 Education Code sections 35144, 35145 and 72129
- 12 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196
- 13 California Education Code section 35145.5
- 14 California Government Code section 54954.6
- 15 California Government Code section 54954.6(g)
- 16 See: Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)
- 17 California Government Code section 54954.2(b)
- 18 California Government Code section 54954.2(a)(2)
- 19 California Government Code section 54953.3
- 20 California Government Code section 54961(a); California Government Code section 11135(a)
- 21 California Government Code section 54952.2(c)(2)
- 22 California Government Code section 54953(b)
- 23 California Government Code section 54953(c)
- 24 46 Ops.Cal.Atty.Gen. 34 (1965)
- 25 California Government Code section 54957.9
- 26 California Government Code section 54957.5
- 27 California Government Code section 54957.5(d)
- 28 California Government Code section 54957.5(b)
- 29 California Government Code section 54957.5(c)
- 30 California Government Code section 54953.5(b)
- 31 California Government Code section 54957.5(d)
- 32 California Government Code section 54953.5(a)
- 33 California Government Code section 54953.6
- 34 California Government Code section 54954.3(a)
- 35 California Government Code section 54954.3(c)
- 36 California Government Code section 54954.3(b); *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal. App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)
- 37 California Government Code section 54954.3(a)
- 38 California Government Code section 54954.3(a)

**Updates to this publication responding to changes in the Brown Act or new court interpretations are available at [www.cacities.org/opengovernment](http://www.cacities.org/opengovernment). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).**



# CHAPTER 5:

## CLOSED SESSIONS



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# CHAPTER 5:

## CLOSED SESSIONS



The Brown Act begins with a strong statement in favor of open meetings; private discussions among a majority of a legislative body are prohibited, unless expressly authorized under the Brown Act. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter must be discussed in public. As an example, a board of police commissioners cannot generally meet in closed session, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.<sup>1</sup>

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session. Individuals who do not have an official role in advising the legislative body on closed session subject matters must be excluded from closed session discussions.<sup>2</sup>

### **Practice Tip:**

Meetings are either open or closed. There is no “in between.”

- Q.** May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?
- A.** *No, attendance in closed sessions is reserved exclusively for the agency’s advisors.*

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind.



In this chapter, the grounds for convening a closed session are called “exceptions” because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, the Brown Act does not authorize closed sessions for general contract negotiations.

## ■ AGENDAS AND REPORTS

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption. An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.

The Brown Act supplies a series of fill-in-the-blank sample, agenda descriptions for various types of authorized closed sessions, which provide a “safe harbor” from legal attacks. These sample agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional drug cases, hospital boards of directors, and medical quality assurance committees.<sup>3</sup>

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.<sup>4</sup>

Following a closed session the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session.<sup>5</sup> The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.<sup>6</sup>

The Brown Act does not require minutes, including minutes of closed session. A confidential “minute book” may be kept to record actions taken at closed sessions.<sup>7</sup> If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.<sup>8</sup> A court may order the disclosure of minute books for the court’s review if a lawsuit makes sufficient claims of an open meeting violation.

### **Practice Tip:**

Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

### **Practice Tip:**

Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session.

## ■ LITIGATION

There is an attorney/client relationship, and legal counsel may use it for privileged written and verbal communications—outside of meetings—to members of the legislative body. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.<sup>9</sup>

The Brown Act expressly authorizes closed sessions to discuss what is considered litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is a party.<sup>10</sup> The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel. For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body and an adverse party or to hold a closed session for the purpose of participation in a mediation.<sup>11</sup>

The California Attorney General believes that if the agency's attorney is not a participant, a litigation closed session cannot be held.<sup>12</sup> In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda, in order to be certain that it is being done properly.

Litigation that may be discussed in closed session includes the following three types of matters:

### *Existing litigation*

- Q.** May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?
- A.** *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind.

Grounds for convening a closed session in this chapter are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. It is improper in these cases, to convene a closed session, even to protect confidential information. For example, the Brown Act does not authorize closed sessions for general contract negotiations.

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or to consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation that requires actions that are subject to public hearings cannot be approved in closed session.<sup>13</sup>

### *Threatened litigation against the local agency*

Closed sessions are authorized for legal counsel to inform the legislative body of specific facts and circumstances that suggest that the local agency has significant exposure to litigation. The Brown Act lists six separate categories of such facts and circumstances.<sup>14</sup> The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff.

### *Initiation of litigation by the local agency*

A closed session may be held under the pending litigation exception when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

In certain cases, the circumstances and facts justifying the closed session must be publicly noticed on the agenda or announced at an open meeting. Before holding a closed session under the pending litigation exception, the legislative body must publicly state which of the three basic situations apply. It may do so simply by making a reference to the posted agenda.

Certain actions must be reported in open session at the same meeting following the closed session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.

Each agency attorney should be aware of and should make other disclosures that may be required in specific instances.



## ■ REAL ESTATE NEGOTIATIONS

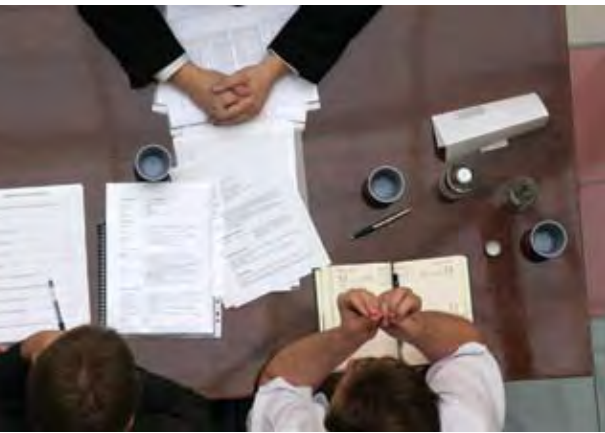
A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.<sup>15</sup> Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.<sup>16</sup>

**Q.** May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

**A.** *No. However, there are differing opinions over the scope of the phrase "price and terms of payment" in connection with real estate closed sessions. Many agency attorneys believe that any term that directly affects the economic value of the transaction falls within the ambit of "price and terms of payment." Others take a narrower, more literal view of the phrase.*

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiator, the real property that the negotiations may concern and the names of the persons with whom its negotiator may negotiate.<sup>17</sup>

After real estate negotiations are concluded, the approval and substance of the agreement must be reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval as soon as informed of it. Once final, the substance of the agreement must be disclosed to anyone who inquires.



“Our population is exploding, and we have to think about new school sites,” said Board Member Jefferson.

“Not only that,” interjected Board Member Tanaka, “we need to get rid of a couple of our older facilities.”

“Well, obviously the place to do that is in a closed session,” said Board Member O’Reilly. “Otherwise we’re going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar.”

*A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites—which must be identified at an open and public meeting.*

## ■ PUBLIC EMPLOYMENT

The Brown Act authorizes a closed session “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.”<sup>18</sup> The purpose of this exception—commonly referred to as the “personnel exception”—is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.<sup>19</sup> The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.<sup>20</sup> That authority may be delegated to a subsidiary appointed body.<sup>21</sup>

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.<sup>22</sup> If the employee is not given notice, any disciplinary action is null and void.<sup>23</sup>

### **Practice Tip:**

Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

- Q.** Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?
- A.** *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.<sup>24</sup>

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.<sup>25</sup> An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, “employee” specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager or superintendent. An example of the latter is a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.<sup>26</sup> Action on individuals who are not “employees” must also be public—including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

Reclassification of a job must be public, but an employee’s ability to fill that job may be considered in closed session. Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.<sup>27</sup> However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.<sup>28</sup>

**“I have some important news to announce,” said Mayor Garcia. “We’ve decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we’ve negotiated six months severance pay.”**

**“Unfortunately, that has some serious budget consequences, so we’ve had to delay phase two of the East Area Project.”**

*This may be an improper use of the personnel closed session if the council agenda described the item as the city manager’s evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

- Q.** The school board is meeting in closed session to evaluate the superintendent and to consider giving her a pay raise. May the superintendent attend the closed session?
- A.** *The superintendent may attend the portion of the closed session devoted to her evaluation, but may not be present during discussion of her pay raise. Discussion of the superintendent’s compensation in closed session is limited to giving direction to the school board’s negotiator. Also, the clerk should be careful to notice the closed session on the agenda as both an evaluation and a labor negotiation.*

#### **Practice Tip:**

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.

## ■ LABOR NEGOTIATIONS

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,<sup>29</sup> on employee salaries and fringe benefits for both union and non-union employees. For represented employees, it may also consider working conditions that by law require negotiation. These sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.<sup>30</sup>

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.<sup>31</sup> The labor sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees. For purposes of this prohibition, an “employee” includes an officer or an independent contractor who functions as an officer or an employee. Independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.

## ■ LABOR NEGOTIATIONS—SCHOOL AND COMMUNITY COLLEGE DISTRICTS

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

- (1) A negotiating session with a recognized or certified employee organization;
- (2) A meeting of a mediator with either side;
- (3) A hearing or meeting held by a fact finder or arbitrator; and
- (4) A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.<sup>32</sup>

Public participation under the Rodda Act also takes another form.<sup>33</sup> All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.<sup>34</sup> The final vote must be in public.

### **Practice Tip:**

Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.



## ■ OTHER EDUCATION CODE EXCEPTIONS

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.<sup>35</sup>

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.<sup>36</sup> Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.<sup>37</sup>

## ■ GRAND JURY TESTIMONY

A legislative body, including its members as individuals, may testify in private before a grand jury, either individually or as a group.<sup>38</sup> Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act, since the body would not be meeting to make decisions or reach a consensus on issues within the body's subject matter jurisdiction.

## ■ LICENSE APPLICANTS WITH CRIMINAL RECORDS

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.<sup>39</sup>

## ■ PUBLIC SECURITY

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.<sup>40</sup> Action taken in closed session with respect to such public security issues is not reportable action.

## ■ MULTIJURISDICTIONAL DRUG LAW ENFORCEMENT AGENCY

A joint powers agency formed to provide drug law enforcement services to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.<sup>41</sup>

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.<sup>42</sup>

### **Practice Tip:**

Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

### ■ HOSPITAL PEER REVIEW AND TRADE SECRETS

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.<sup>43</sup>

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss “reports involving trade secrets”—provided no action is taken.

A “trade secret” is defined as information which is not generally known to the public or competitors and which: (1) “derives independent economic value, actual or potential” by virtue of its restricted knowledge; (2) is necessary to initiate a new hospital service or program or facility; and (3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district’s dissolution.<sup>44</sup>

### ■ THE CONFIDENTIALITY OF CLOSED SESSION DISCUSSIONS

It is not uncommon for agency officials to complain that confidential information is being leaked from closed sessions. The Brown Act prohibits the disclosure of confidential information acquired in a closed session by any person present and offers various remedies to address willful breaches of confidentiality.<sup>45</sup> It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.<sup>46</sup> Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.<sup>47</sup>

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long believed that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is “improper” for officials to disclose information received during a closed session regarding pending litigation,<sup>48</sup> though the Attorney General has also concluded that a local agency may not go so far as to adopt an ordinance criminalizing public disclosure of closed session discussions.<sup>49</sup> In any event, the Brown Act now prescribes remedies for breaches of confidentiality. These include injunctive relief, disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.<sup>50</sup>

The duty of maintaining confidentiality, of course, must give way to the obligation to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, the Brown Act exempts from its prohibition against disclosure of closed session communications disclosure of closed session information to the district attorney or the grand jury due to a perceived violation of law, expressions of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action, and disclosing information that is not confidential.<sup>51</sup>

#### **Practice Tip:**

There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.



The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.

"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee.

"The city's offer coming your way is not our bottom line."

*The first comment to the press is appropriate—the Brown Act requires that certain final votes taken in closed session be reported publicly.<sup>52</sup> The second comment to the property owner is not—disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

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### Endnotes

- 1 61 Ops.Cal.Atty.Gen. 220 (1978)
- 2 82 Ops.Cal.Atty.Gen. 29 (1999)
- 3 California Government Code section 54954.5
- 4 California Government Code sections 54956.9 and 54957.7
- 5 California Government Code section 54957.1(a)
- 6 California Government Code section 54957.1(b)
- 7 California Government Code section 54957.2
- 8 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18702.1(c)
- 9 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 10 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
- 11 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471
- 12 "The Brown Act," California Attorney General (2003), p. 40
- 13 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172
- 14 Government Code section 54956.9(b)
- 15 California Government Code section 54956.8
- 16 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 172; see also \_\_\_ Ops.Cal.Atty.Gen. \_\_\_ (May 21, 2010) (2010 WL 2150433) (concluding it is impermissible for a redevelopment agency to meet in closed session to discuss the terms of a rehabilitation loan to a business that was leasing property from the agency when the terms and conditions of the lease itself were not also a matter of discussion.)
- 17 California Government Code section 54956.8
- 18 California Government Code section 54957(b)
- 19 63 Ops.Cal.Atty.Gen. 215 (1980); but see: *Duwall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session).
- 20 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)
- 21 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty.Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.
- 22 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860
- 23 California Government Code section 54957
- 24 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87
- 25 *Moreno v. City of King* (2005) 127 Cal.App.4th 17
- 26 California Government Code section 54957
- 27 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165
- 28 California Government Code section 54957.1(a)(5)

- 29 California Government Code section 54957.6
- 30 57 Ops.Cal.Atty.Gen. 209 (1974)
- 31 California Government Code section 54957.1(a)(6)
- 32 California Government Code section 3549.1
- 33 California Government Code section 3540
- 34 California Government Code section 3547
- 35 California Education Code section 48918, but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings.)
- 36 California Education Code section 72122
- 37 California Education Code section 60617
- 38 California Government Code section 54953.1
- 39 California Government Code section 54956.7
- 40 California Government Code section 54957
- 41 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354
- 42 California Government Code section 54957.8
- 43 California Government Code section 54962
- 44 California Health and Safety Code section 32106
- 45 Government Code section 54963
- 46 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also: California Government Code section 54963
- 47 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 48 80 Ops.Cal.Atty.Gen. 231 (1997)
- 49 76 Ops.Cal.Atty.Gen. 289 (1993)
- 50 California Government Code section 54963
- 51 California Government Code section 54963
- 52 California Government Code section 54957.1

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# CHAPTER 6:

## REMEDIES



INVALIDATION

CIVIL ACTION TO PREVENT  
FUTURE VIOLATIONS

COSTS AND ATTORNEY'S FEES

CRIMINAL COMPLAINTS

VOLUNTARY RESOLUTION

# CHAPTER 6:

## REMEDIES



Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

### ■ INVALIDATION

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act.<sup>1</sup> Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:

- Those taken in substantial compliance with the law;
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the meeting at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action, the nature of the claimed violation, and the "cure" sought. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendaized items are acted on by the governing body during a meeting.<sup>2</sup> The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days.

The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and to start over.

Although just about anyone has standing to bring an action for invalidation,<sup>3</sup> the challenger must show prejudice as a result of the alleged violation.<sup>4</sup> An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.<sup>5</sup>

### ■ CIVIL ACTION TO PREVENT FUTURE VIOLATIONS

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions.

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.<sup>6</sup> Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.<sup>7</sup>

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

### ■ COSTS AND ATTORNEY'S FEES

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.<sup>8</sup> When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorneys fees will be awarded against the agency if a violation of the Act is proven.

An attorney fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.<sup>9</sup>

### ■ CRIMINAL COMPLAINTS

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.<sup>10</sup>

A criminal violation has two components. The first is that there must be an overt act—a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.<sup>11</sup>

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a

#### **Practice Tip:**

A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options.



#### **Practice Tip:**

Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

majority of the legislative body to make a positive or negative decision.<sup>12</sup> If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.<sup>13</sup> In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act—not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member “to deprive the public of information to which the member knows or has reason to know the public is entitled” by the Brown Act.<sup>14</sup>

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

### ■ VOLUNTARY RESOLUTION

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

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#### Endnotes

- 1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); and 54956 (special meetings). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 5490.1.
- 2 California Government Code section 54960.1 (b) and (c)(1)
- 3 *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310
- 4 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 571
- 5 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1117-18
- 6 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524. *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6
- 7 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36
- 8 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal.App.4th 1313, 1324-27 and cases cited therein.
- 9 California Government Code section 54960.5
- 10 California Government Code section 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
- 11 California Government Code section 54959
- 12 California Government Code section 54952.6
- 13 61 Ops.Cal.Atty.Gen.283 (1978)
- 14 California Government Code section 54959

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