

City of Capitola Agenda



Mayor: Michael Termini
Vice Mayor: Stephanie Harlan
Council Members: Kirby Nicol
Dennis Norton
Sam Storey
Treasurer: Jacques Bertrand

CAPITOLA CITY COUNCIL REGULAR MEETING THURSDAY, JULY 12, 2012 CLOSED SESSION – 5:30 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 LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of GC §54956.9: Five cases:

1. California State Department of Finance regarding Redevelopment Agency.
2. City of Capitola Insurance Coverage Claim Against Lexington Insurance (Noble Gulch Storm Drain Failure);
3. Pacific Cove Mobile Home Park Pipe Failure and Closure;
4. Consideration of lawsuit against the Department of Finance – Disputed Recognized Obligations of the Successor Agency;
5. Threatened Litigation. Save the Plastic Bag Coalition v. City of Capitola:

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

1. Kevin Calvert, D.D.S. and Pamela Calvert vs. City of Capitola, et al. [Superior Court of the State of California for County of Santa Cruz, Case #CV 172804];
2. Katie Saldana vs. City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case #CV 172324];
3. Foremost Insurance Company vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case #CV 173228];
4. Truck Insurance vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case #CV173071];
5. David Ross; Carousel Taffy Morro Bay, Inc.; Village Mouse dba; The Thomas Kinkade Gallery Capitola; Judith Ferro vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case #CV 173642];
6. American Alternative Insurance Corporation; Central Fire Protection District of Santa Cruz County vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case #CV173926].

CONFERENCE WITH LABOR NEGOTIATOR (Govt. Code §54957.6)

1. Negotiator: Jamie Goldstein, City Manager
2. Employee Organizations: Capitola Police Officers Association.

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: Brad and Cathy Sutton
Agency claimed against: City of Capitola

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

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Stephanie Harlan, Dennis Norton, Kirby Nicol, Sam Storey, and Mayor Michael Termini.

2. PRESENTATIONS

A. Senior Citizens Legal Services and Seniors Council presentation by Terry Hancock, Directing Attorney for Senior Citizens Legal Services, and Clay Kempf, Executive Director of Seniors Council of Santa Cruz & San Benito Counties.

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. COMMITTEE APPOINTMENTS

ALL MATTERS LISTED ON THE REGULAR MEETING OF THE CAPITOLA CITY COUNCIL AGENDA SHALL BE CONSIDERED AS PUBLIC HEARINGS.

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

- A. Approve City Council Minutes of the May 23, 2012 Special Joint Study Session of the Capitola City Council and the Successor Agency to the former Redevelopment Agency.
RECOMMENDED ACTION: Approve Minutes.
- B. Consideration of denying liability claim of Brad and Cathy Sutton in the amount of \$59,000 and forward to the City's liability insurance carrier.
RECOMMENDED ACTION: Deny liability claim.
- C. Receive Planning Commission Action Minutes for the Regular Meeting of July 5, 2012.
RECOMMENDED ACTION: Receive Minutes.
- D. Biennial review of the City of Capitola Conflict of Interest Code.
RECOMMENDED ACTION: Direct staff to conduct a biennial review of the City of Capitola Conflict of Interest Code and list of designated positions.
- E. Consideration of approving an agreement with Susan Westman for the position of General Plan Coordinator; authorize the City Manager to execute the agreement.
RECOMMENDED ACTION: Approve agreement.
- F. Consideration of approving the second amendment to the Agreement for City Attorney Services with Atchison, Barisone, Condotti & Kovacevich in the amount of \$133,560; authorize the City Manager to execute the agreement.
RECOMMENDED ACTION: Approve agreement.
- G. Consideration of approving a contract with Carolyn Flynn for professional services related to Community Development Block Grant (CDBG) Program administration for an amount not to exceed \$24,050; authorize the City Manager to execute the contract; and implementation of the City's Community Development Grants and assistance with the General Plan Update.
RECOMMENDED ACTION: Approve contract.

8. CONSENT CALENDAR (continued)

- H. Consideration of approving the list of contractors for removal of coaches from the Pacific Cove Mobile Home Park.

RECOMMENDED ACTION Take the following actions:

1. Approve a list of qualified contractors in response to the request for statements of interest from contractors for removal of coaches from the soon to be closed Pacific Cove Mobile Home Park; and
2. Authorize the City Manager to enter into contracts with the low bidder from the qualified contractors list for all phases of the coach removal work.

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. Consideration of an amendment to Section 17.57.040(D) of the Capitola Municipal Code pertaining to prohibited signs [1st reading].

RECOMMENDED ACTION: Introduce Ordinance.

- B. Consideration of an “Argument in Favor” of a Permanent Quarter Cent Sales Tax Measure to be printed in the ballot for the November 6, 2012 Election.

RECOMMENDED ACTION: That the City Council:

1. Review the draft argument in favor of the City’s 0.25% sales tax measure and provide any recommended changes;
2. Determine who will be signing the Signature Statement;
3. Designate one of its members to file the document by 5:00 PM, Tuesday, August 14, 2012.

- C. Consideration of a Resolution re-designating the Santa Cruz County Regional Transportation (RTC) as the Congestion Management Agency (CMA) for Santa Cruz County.

RECOMMENDED ACTION: Adopt Resolution.

- D. Consideration of a Resolution electing to become subject to the Uniform Construction Cost Accounting Act Procedures (alternative bidding procedures), and introducing an Ordinance amending Title 3 Section 16 of the Capitola Municipal Code pertaining to Purchasing and Purchasing contracts [1st reading].

RECOMMENDED ACTION: Adopt Resolution and introduce Ordinance.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

- E. Consideration of an Ordinance adding Section 8.07 (Single-use Plastic and Paper Carryout Bag Reduction) of the Capitola Municipal Code pertaining to the reduction of single-use plastic and paper carryout bags [1st reading].
RECOMMENDED ACTION: Council discretion; if the City Council wishes to consider an ordinance that imposes a ban on the use of single use plastic bags, actions to be taken include:
1. Determine the proposed Ordinance is not subject to CEQA;
 2. Pass a first reading of the proposed ordinance.

AT THIS POINT, ITEMS REMOVED FROM CONSENT CALENDAR WILL BE CONSIDERED

10. COUNCIL/STAFF COMMUNICATIONSA. Staff CommentsB. 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.

11. ADJOURNMENT

Adjourn to the next Regular Meeting of the City Council to be held on Thursday, July 26, 2012, 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 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. Agendas are also available at the Capitola Post Office located at 826 Bay Avenue, Capitola.

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

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

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

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



Item #: 8.A.

CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: OFFICE OF THE CITY CLERK

SUBJECT: APPROVAL OF THE MAY 23, 2012 SPECIAL JOINT STUDY SESSION OF THE CAPITOLA CITY COUNCIL AND THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY


RECOMMENDED ACTION: Approve the subject minutes as submitted.

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

ATTACHMENTS

1. May 23, 2012 Special Joint Study Session of the Capitola City Council and the Successor Agency to the former Redevelopment Agency Minutes

Report Prepared By: Susan Sneddon, CMC
City Clerk

Reviewed and Forwarded
By City Manager: 

NOT OFFICIAL UNTIL APPROVED BY COUNCIL

CITY OF CAPITOLA
CITY COUNCIL

May 23, 2012
Capitola, California

**MINUTES OF SPECIAL JOINT MEETING
CAPITOLA CITY COUNCIL/SUCCESSOR AGENCY
TO THE FORMER REDEVELOPMENT AGENCY
JOINT BUDGET STUDY SESSION**

6:00 P.M. – OPEN SESSION

CALL TO ORDER

Mayor Termini called the Special Budget Study Session of the Capitola City Council and the Successor Agency to order at 6:05 p.m. on Wednesday, May 23, 2012, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

1. ROLL CALL AND PLEDGE OF ALLEGIANCE:

PRESENT: Council Members Stephanie Harlan, Dennis Norton, Kirby Nicol, Sam Storey, and Mayor Michael Termini

ABSENT: None

OTHERS: City Treasurer Jacques Bertrand

STAFF: City Manager Jamie Goldstein, Interim Community Development Director Susan Westman, Public Works Director Steve Jesberg, Finance Director Tori Hannah, Police Chief Rudy Escalante, and City Clerk Susan Sneddon

2. PUBLIC COMMENT (none provided)

3. GENERAL GOVERNMENT

A. Presentation of the proposed 2012/2013 Fiscal Year Budget for the City of Capitola General Fund, the Capitola Successor Agency, and an overview of the unfunded Capital Improvement Program (CIP). [330-05/780-30]

City Manager Goldstein provided a summary of revenue declines and results of the dissolution of the Redevelopment Agency. He stated that in March 2012 the City Council directed staff to defund a number of programs in the proposed Fiscal Year 2012/2013 Budget; however, the budget contains approximately \$300,000 in unallocated funds.

3. GENERAL GOVERNMENT (continued)

Finance Director Hannah reviewed the City's Fiscal Year 2011/2012 General Fund finances, including some significant changes in cash flow. She stated that in Fiscal Year 2011/2012 staff is estimating a fund balance of \$262,000, primarily due to the unanticipated revenues (Administrative Allowance) from the dissolution of the Redevelopment Agency. She stated that in the proposed Fiscal Year 2012/2013 Budget \$299,000 is allocated for Council discretionary funds, and \$322,000 in Fiscal Year 2013/2014. She reviewed the projected Fiscal Year 2012/2013 sales tax increase, which is primarily based on a 2 percent increase and \$350,000 additional sales tax revenue resulting from the opening of the Target store later this year. She reviewed significant changes to the City's revenue and expenditures for Fiscal Year 2012/2013; the unallocated funds in the proposed Fiscal Year 2012/2013 Budget of a five-year replacement schedule for the City's reserves based on the City's Financial Management Policy, plus the unallocated Capital Improvement Projects (CIP), community groups, Capitola/Soquel Chamber of Commerce, Santa Cruz County Visitors Center, etc. She noted that \$266,000 in unallocated funds is from the one-time sources of the land sale (\$85,000) and PERS credit (\$181,000). It is anticipated that the City's General Fund will be \$42,000 by the end of Fiscal Year 2011/2012, primarily due to the additional Redevelopment Agency Administrative Allowance. The Contingency Reserve is estimated to have an ending balance of \$400,000. She stated that all internal loans have been repaid, leaving a cash balance of approximately \$305,000. Staff is projecting a total balance of available funds on average will be \$1.5 million.

City Manager Goldstein noted that the City's annual expenditures are processed on a relatively even basis; except the revenues are not spread out evenly through a given year. He stated that this has resulted in the City having to operate on a fine line in order to finance operations.

Finance Director Hannah provided an overview of the City's Fiscal Year 2012/2013 program funding for each City department and the key revenue sources (noting that 73 percent of the revenues are from taxes). In addition, she reviewed the Fiscal Year 2012/2013 proposed expenditures by the following categories: Personnel, contract services, training, supplies, grants and subsidies, capital overlay, and internal service fund.

City Manager Goldstein reviewed some of the following budgetary uncertainties and assumptions given the City's current level of reserves in the proposed Fiscal Year 2012/2013 Budget: (1) Target store opening; (2) 2 percent growth in transitional occupancy tax and sales tax growth; (3) \$250,000 for Successor Agency Administrative Allowance; (4) \$50,000 budget for litigation in addition to the contract for City Attorney fees; (5) \$110,000 for the Mobilehome Rental Assistance Program on the City's Enforceable Obligation Schedule (denied by the California State Department of Finance). He stated that the proposed budget assumes no recovery from Lexington Insurance (the City's first party insurance carrier); the City is pursuing legal action to recover costs associated with the March 2011 flood incidents. There is no repayment of the \$618,000 loan from the City to the Redevelopment Agency (which the California

3. GENERAL GOVERNMENT (continued)

State Department of Finance disallowed). He stated that the \$299,000 of unallocated funds is primarily due to one-time funding sources (McGregor property sale and closing out the PERS fund). He noted that the slurry seal contract (budgeted in previous fiscal year) should go to construction this fall.

Mayor Termini opened this item for public comments.

Willis O'Sullivan, Human Care Alliance representative, asked why the Community Grant Program is called the "former" Community Grant Program.

Mayor Termini responded that at mid-year in Fiscal Year 2011/2012 the Council voted to fund the City's reserves instead of funding the Community Grant Program.

Mayor Termini closed this item for public comments.

Council Member Nicol provided a handout and summarized the City's historic perspective beginning Fiscal Year 2002/2003 to present: The City has on average maintained a balanced budget; staff and Council during this time period have been responsible in their budgeting integrity. He stated that an anomaly has occurred in governments throughout the country in that they do not live within their means with regard to payroll. He stated that in Fiscal Year 2002/2003 the City had \$5.5 million in payroll with revenues of \$10.3 million; the City was spending 53 percent of the total gross revenues. In Fiscal Year 2012/2013 the City is realizing \$12.1 million in anticipated revenues, and the payroll is \$7.5 million. He stated that over a 10-year period the City realized a 17 percent rise in revenues, but payroll expense has increased 36 percent; the fulltime equivalent staff levels have declined from 69.6 percent to 61.7 percent, due to the City cutting back the number of staff. But because of the contracts traditions, etc., the City's overall costs have increased dramatically. He stated that the City's trend in the level of payroll expenses is not sustainable. The City should be aware of: One-time expenses (the City is down \$1.4 million); the replenishment of reserves over a five-year period needs to be a high priority; a cash-flow situation requiring the City to borrow funds to meet operating expenses. He stated that the City has infrastructure-deferred maintenance in the amount of approximately \$3 million; there are still unknowns with the Redevelopment Agency dissolution and ongoing expenses – unfunded CIP's (\$1 million), deferred operating expenses (\$850,000), and the City's pavement management. He stated that the City needs to commit to a balanced budget, to remember the City's mandate as a government entity to have clean and safe streets, maintain law and order, pavement management, and other public works projects. He recommended decreasing the City's expenses. A one-quarter percent sales tax increase will generate \$900,000 per year starting in 2013. The City should exhibit to the business community a business friendly posture; fast track any projects that offer some prospect of revenue enhancement; and encourage developers during a time when development is a risky proposition. He suggested eliminating a staff position and go to a 36-hour work week (Monday through Thursday from 8 a.m. to 5:00 p.m.), freezing vacation cash-out, and outsourcing casual labor.

3. GENERAL GOVERNMENT (continued)

Council Member Norton suggested that the City add park and roadside improvement fees to the development impact fees.

Public Works Director Jesberg stated that development impact fees are to help fund any new construction or needed expansion of offsite capital improvements; they are not intended to help fund an existing infrastructure.

Interim Community Development Director Westman responded that planning in the Community Development Department typically runs about 50 percent less than receipts because many of the services that planning provides at the counter are not chargeable. She suggested looking into the process in how the fees are calculated to see if some additional revenue could be generated, reviewing staff times and the associated costs.

Council Member Storey agreed with Mayor Termini's suggestion and asked to also include a review of the Recreation Department's fees. He stated that the Recreation Department should be 100 percent self sufficient; the department is pulling 9 percent of its expenses from the General Fund.

After Council discussion it was the consensus of the City Council to examine raising the City's fees for recreation, planning and new development.

City Manager Goldstein stated that the Recreation Department fees have been raised relatively significantly over the last several fiscal years. The current cost recovery for the Recreation Program is 91 percent. He suggested that he request the Recreation Manager to examine fees and report to Council. He stated that state law (Assembly Bill 1600) provides requirements for development impact fees. He stated one of the challenges with AB 1600 is that an overall CIP plan is required, and the costs are prorated out for a new development project. He stated another option is for the City to pursue a development agreement where staff negotiates with a developer on a specific project. However, it may end up being a "push-pull" situation whereby either the developer pays their fair share, or staff may be overly assessing the development project.

Council Member Storey requested a breakout of the sources of funds for the CIP projects to show the source of the funds and the scheduled timing of the particular projects.

Mayor Termini opened this item to the public.

Kathleen Johnson, Advocacy Inc., requested clarification regarding "Charges for Services" as listed in the draft budget.

Mayor Termini replied that "Charges for Services" are for the Recreation Budget.

3. GENERAL GOVERNMENT (continued)

Laurie Hill, Begonia Festival volunteer, provided a brief overview of the annual Begonia Festival expenses and requested clarification of the special event permit expense.

City Manager Goldstein responded that the draft Fiscal Year 2012/2013 budget includes an estimate of all proposed City special event permits.

Sandy Erickson, Capitola resident, stated that the City mismanagement has occurred in the past and that the Council should look at the 36 percent increase in personnel cost and consider contracting some of the work.

Mayor Termini closed this item to the public.

8. ADJOURNMENT

Mayor Termini adjourned at 8:32 p.m. to the next Regular Meeting of the City Council to be held on Thursday, May 24, 2012, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Item #: 8.B.

CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: LIABILITY CLAIMS


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

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

1. Brad and Cathy Sutton: \$59,000

ATTACHMENTS: None

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

Reviewed and Forwarded
by City Manager: 



Item #: 8.C.

CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: PLANNING COMMISSION ACTION MINUTES OF JULY 5, 2012

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Commissioners: Ed Newman, Gayle Ortiz, Mick Routh, Linda Smith and
Chairperson Ron Graves

Staff: Consultant Susan Westman
Senior Planner Ryan Bane
Minute Clerk Danielle Uharriet

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda

Public Hearing Item 5.C was withdrawn by the applicants.

B. Public Comments - NONE

C. Commission Comments - NONE

D. Staff Comments - NONE

3. APPROVAL OF MINUTES

A. June 7, 2012 Regular Planning Commission Meeting

APPROVED WITH CHANGES 4-0, SMITH ABSTAINING.

Verbatim minutes of Public Hearing Item 5.C: Amend Sign Ordinance 17.57, will be submitted to the City Council.

4. CONSENT CALENDAR

A. McGREGOR DRIVE

APN: 036-341-02

Planning Commission certification that the sale of .16 acres of City owned property on McGregor Drive (APN: 036-341-02), to the Soquel Creek Water District is in conformance with the City's adopted General Plan.

CONTINUED TO THE SEPTEMBER 6, 2012 PLANNING COMMISSION MEETING.

**B. 520 PILGRIM DRIVE
426 CAPITOLA AVENUE**

#12-077

**APN: 035-103-06
035-141-33**

Lot line adjustment to correct a building encroachment between an R-1 (Single-Family Residence) and MHE (Mobile Home Exclusive) Zoning District.
Environmental Determination: Categorical Exemption
Property Owner: City of Capitola, filed 6/5/12
Representative: William and Joyce Budisch

CONTINUED TO THE SEPTEMBER 6, 2012 PLANNING COMMISSION MEETING.

5. PUBLIC HEARINGS

A. 4800 OPAL CLIFF DRIVE

#12-035

APN: 034-462-05

Coastal Permit to install a blufftop stabilization system for a residential condominium complex (Opal Cliff West) in the AR/R-1 (Automatic Review/Single-Family Residence) Zoning District. This project requires a Coastal Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.
Environmental Determination: Mitigated Negative Declaration
Property Owner: Opal Cliff West HOA, filed 3/9/12
Representative: Suzanne Ise

APPROVED 5-0

B. 410 BAY AVENUE

#12-052

APN: 036-062-35

Coastal Permit and Tentative Map for a two-lot subdivision in the RM (Multiple-Family Residence) Zoning District. This project requires a Coastal Permit which is not appealable to the California Coastal Commission.
Environmental Determination: Categorical Exemption
Property Owner: Lori Rast, filed: 4/18/12

APPROVED 5-0, WITH ADDITIONAL CONDITIONS:

7. The building envelopes shown on the tentative map prepared by Luke R. Beautz, dated May 2012, are for information only.
8. Variances would not be granted based on the unusual shape of the lot being created.

C. 4140 CAPITOLA ROAD

#12-063

APN: 034-111-49

Conditional Use Permit to establish a yoga studio use in the CC (Community Commercial) Zoning District.
Environmental Determination: Categorical Exemption
Property Owner: Cristina Properties, LLC, filed 5/4/12
Representative: CJ Popp & Jeanette LeHouillier

APPLICATION WAS WITHDRAWN BY THE APPLICANTS

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

The Planning Commission adjourned the meeting at 7:45 p.m. to a Regular Meeting of the Planning Commission to be held on Thursday, August 2, 2012 at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Item #: 8.D.

CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: CITY CLERK'S OFFICE

SUBJECT: BIENNIAL REVIEW OF THE CITY OF CAPITOLA CONFLICT OF INTEREST CODE

RECOMMENDED ACTION: Direct staff to conduct a biennial review of the City of Capitola Conflict of Interest Code and list of designated positions.

BACKGROUND: In accordance with Government Code § 87306.5, no later than July 1st of each even-numbered year, the City Council shall direct staff to conduct a biennial review of the City's Conflict of Interest Code, and if a change in the Code is required because of changes in changed circumstances, submit an amended Conflict of Interest Code in accordance with subdivision (a) of § 87302 and § 87303 to the City Council no later than October 1st of the same year. The last review and update was approved by the City Council on September 9, 2010.

Under the Political Reform Act, all public agencies are required to adopt a conflict of interest code. A code designates positions required to file FPPC Statements of Economic Interests (Form 700), and assigns disclosure categories specifying the types of interests to be reported. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests that may create conflicts of interests. Designated positions must complete two hours of AB 1234 Ethics training every even-numbered year by December 31st.

DISCUSSION: Review of the Conflict of Interest Code consists of: (1) Evaluating the City's organizational structure to determine if any changes have occurred since the last review that would necessitate adding or deleting positions in order to accurately reflect all the positions that make or participate in the making of governmental financial decisions; and, (2) any changes that may need to be incorporated into the designated disclosure categories.

FISCAL IMPACT: None

ATTACHMENTS

1. City of Capitola Draft Conflict of Interest Code.

Report Prepared By: Susan Sneddon
City Clerk

Reviewed and Forwarded
By City Manager: 

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
RESCINDING RESOLUTION NO. 3839 AND ADOPTING A REVISED
CONFLICT OF INTEREST CODE FOR THE CITY OF CAPITOLA**

WHEREAS, the Political Reform Act, Government Code Section 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes; and

WHEREAS, the Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard conflict of interest code; and

WHEREAS, said standard conflict of interest code can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act.

NOW, THEREFORE, the City Council of the City of Capitola resolves as follows:

1. Effective January 1, 2013, Resolution No. 3839 is rescinded, and this resolution shall become effective.
2. This resolution does not pertain to the following offices because these offices are already regulated by and subject to Government Code Section 87200: Council Members, Planning Commissioners, City Manager, City Attorney, and City Treasurer.
3. The terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix in which members and employees are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the City of Capitola.
4. Upon receipt of the statements of the Council Members, Planning Commission Members, City Manager, City Attorney, and City Treasurer, the City Clerk shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. Designated employees shall file statements of economic interests with the City Clerk who will make the statements available for public inspection and reproduction (Government Code Section 81008). The City Clerk will retain statements for all designated employees.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola on the ____ day of _____, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Michael Termini, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk

APPENDIX "A"

LIST OF DESIGNATED POSITIONS

<u>TITLE</u>	<u>DISCLOSURE CATEGORIES</u>
<u>Administrative Services Director</u>	C, D¹
Architectural & Site Review Committee Public Members (Architect, Landscape Architect, and Historian)	A
Art & Cultural Commission Members	A
Assistant to the City Manager	C, D
Associate Planner	C, D
Building Official	C, D
Chief of Police	A
City Clerk	C
Community Development Director	C, D
Deputy City Attorney	A
Housing and Redevelopment Project Manager	C, D
Information Systems Specialist	A
Finance Director	C
<u>Oversight Board for the Capitola Successor Agency</u>	A
Police Captain	A
Public Works Director	C, D
Redevelopment Agency Treasurer	A
Senior Planner	C, D
<u>Successor Agency²</u>	A
Zoning Administrator	C, D
Consultants *	A

*Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The City Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

¹ Underline position titles are to be added

² To the former Capitola Redevelopment Agency

APPENDIX "B"

DISCLOSURE CATEGORIES

The Disclosure Categories for the City of Capitola are listed below.

- CATEGORY A.** All sources of income, interests in real property, and investments and business positions in business entities.
- CATEGORY B.** Investments and positions in business entities, and sources of income, which provide services, supplies, materials, machinery, or equipment of the type utilized by the City of Capitola.
- CATEGORY C.** Investments and positions in business entities, and sources of income, which provide services, supplies, materials, machinery or equipment of the type utilized by the designated employee's department or division.
- CATEGORY D.** Investments and positions in business entities, and sources of income, which engage in land development, construction or the acquisition or sale of real property, and all interests in real property.

General Provisions

When a designated employee is required to disclose investments and sources of income, he need only disclose investments in business entities and sources of income, which do business in the jurisdiction, plan to do business in the jurisdiction, or have done business in the jurisdiction within the past two years. In addition to other activities, a business entity is doing business within the jurisdiction if it owns real property within the jurisdiction. When a designated employee is required to disclose interests in real property, he need only disclose real property, which is located in whole or in part within, or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.

Designated employees shall disclose their financial interests pursuant to the appropriate disclosure category as indicated in Appendix "A".



CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: PROFESSIONAL SERVICES AGREEMENT WITH SUSAN WESTMAN AS THE
GENERAL PLAN COORDINATOR, AND AUTHORIZE THE CITY MANAGER TO
EXECUTE THE AGREEMENT

RECOMMENDED ACTION: Approve a professional services agreement in an amount not to exceed \$62,000 with Ms. Susan Westman as the General Plan Coordinator, and authorize the City Manager to execute the agreement.

BACKGROUND: In October of 2011 the City Council authorized an agreement with Ms. Westman as the Interim Community Development Director due to the departure of the previous Director earlier that month. The previous contract with Ms. Westman was for the Fiscal Year 2011-2012 Fiscal Year.

DISCUSSION: Ms. Westman has been the Interim Community Development Director (CDD), acting in the full capacity of the Directors position. Although the intent of the City was to fill the vacancy in Fiscal Year 2012-2013, the position is not anticipated to be filled until January of 2013. In the mean time, a significant amount of work related to the General Plan, Local Coastal Plan and the zoning updates remains to be completed. Ms. Westman posses a unique set of skills and experience in the aforementioned areas which are specific to Capitola and would greatly benefit the City. The regular duties related to the CDD position will be temporarily assumed by the Public Works Director until a new CDD is hired.

FISCAL IMPACT: The contract with Ms. Westman is for an amount not to exceed \$62,000. Funding for the contract is in the Community Development Department Fiscal Year 2012-2013 budget. There will be funding off-set from the Successor Agency and the General Plan Maintenance Fund.

ATTACHMENT:

1. Contract with Ms. Westman

Report Prepared By: Lisa G. Murphy
Administrative Services Director

Reviewed and Forwarded
by City Manager: 

**CITY OF CAPITOLA
PROFESSIONAL SERVICES AGREEMENT
GENERAL PLAN COORDINATOR
SUSAN WESTMAN**

THIS AGREEMENT is entered into on _____, 2012, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Susan Westman, hereinafter called "Consultant".

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

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

**SECTION 1
Scope of Services**

The services to be performed under this Agreement are for General Plan Coordinator and further detailed in Appendix One.

**SECTION 2
Duties of Consultant**

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

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

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

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

**SECTION 3
Duties of the City**

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

The Director may authorize a staff person to serve as his or her representative for conferring with Consultant relative to Consultant's services. The work in progress hereunder shall be reviewed from time

to time by City at the discretion of City or upon the request of Consultant. If the work is satisfactory, it will be approved. If the work is not satisfactory, City will inform Consultant of the changes or revisions necessary to secure approval.

SECTION 4 **Fees and Payment**

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

SECTION 5 **Changes in Work**

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

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

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

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

Work shall begin on or about July 13, 2012.

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

SECTION 7 **Termination**

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

SECTION 8 Insurance

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

Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

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

Other Insurance Provisions

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

1. The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.

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

Acceptability of Insurers

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

Verification of Coverage

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

SECTION 9 Indemnification

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

SECTION 10 Civil Rights Compliance/Equal Opportunity Assurance

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

SECTION 11
Legal Action/Attorneys' Fees

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

SECTION 12
Assignment

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

SECTION 13
Amendments

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

SECTION 14
Miscellaneous Provisions

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

project. The drawings, specifications, records, documents, and Consultant's other work product shall not be used by the Consultant on other projects, except by agreement in writing and with appropriate compensation to the City.

6. *Consultant's Records.* Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Consultant's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Consultant's services.

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

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

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

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

CONSULTANT
Susan Westman
507 Riverview Dr.
Capitola, CA 95010

By: _____
Benjamin Goldstein, City Manager

By: _____
Susan Westman, Consultant

Dated: _____

Dated: _____

Approved as to Form:

John G. Barisone, City Counsel

**APPENDIX ONE
Scope of Services**

Susan Westman
507 Riverview Drive
Capitola, CA 95010
831 462 4362

June 29, 2012

Mr. Jamie Goldstein
City Manager
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

Dear Jamie,

I have very much appreciated the opportunity to work as the Interim Community Development Director for the City of Capitola these last few months and understand the City's desire to have the Public Works Director assume the Community Development Director's duties and responsibilities for the next year. It is my belief that Mr. Jesberg will do a good job in this role. There will still remain a need for shorter term extra help related to the completion of the City's new general plan, local coastal plan and zoning ordinance. While Mr. Jesberg is quite capable of performing the day to day Community Development responsibilities, it could be overwhelming for him to manage the City's general plan, local coastal plan and zoning update process at the same time. This update process should be completed in 2013, and a need for duties outlined below would then be eliminated. The City's need for this extra help should only be for this limited time frame.

The City is in the process of rewriting the City's General Plan, Local Coastal Plan and Zoning Ordinance. The City has entered into a contract with Design, Community and Environment (DC&E) for much of the general plan, local coastal plan and zoning work. I would propose that the City needs to have a staff member assigned to the "General Plan" team who will be there to assure the final work product is representative of Capitola. Having been involved in the writing of Capitola's 1989 General Plan, the City's 1984 Local Coastal Plan and having spent 16 years working with the City's zoning ordinance, I believe I have a unique set of skills which would allow me to manage the City's General Plan Process and make certain the program not only stays on budget but is reflective of the goals of Capitola citizens. I would propose that you contract with me to be your General Plan Coordinator.

In addition to working on the General Plan, I would be able to guide the rewriting of the City's Local Coastal Plan and Zoning Ordinance so that the City creates a quality General Plan that truly reflects the goals of Capitola citizens. This coordination effort would not only include working with City staff and DC&E but also with the Planning Commission and City Council.

My work plan would be as follows:

1. Work with DC&E and all of their subcontractors to assure the new general plan, local coastal plan and new zoning ordinance reflect the character and goals of the citizens of Capitola. This will include coordination of all GPAC and public meetings relating to the General Plan, Local Plan and Zoning Ordinance updates.
2. Work with the Planning Commission and City Council on sensitive issues related to writing a new zoning ordinance. This would include working on zoning changes necessary to implement the City's adopted Housing Element and other zoning issues such as signage needed prior to the adoption of new zoning regulations.
3. Work with your existing planning staff to assure that the evaluation of planning projects is done in a manner to reflect the emerging goals of the new General Plan, Local Coastal Plan and Zoning Ordinance. This will be critical for planned new developments such as a hotel in the Village or significant changes in the 41st Avenue commercial area since they have already been identified as components of a new General Plan.
4. Work on the City's climate action plan. This plan will require coordination with City staff and other agencies to make certain that is consistent with the programs in the new General Plan.
5. Work to review and adopt the City's Housing Policies and housing related problems with the end of Redevelopment. The City is going to need to develop new housing programs as well as understand and address issues related to the City's current housing programs. The new programs will need to be integrated into the City's new general plan, local coastal plan and zoning ordinance. The process of developing a new Housing Element to be incorporated into the General Plan has already started. Coordination is important to assure the elements within the General Plan are consistent.
6. Special care will need to be given on the City's Local Coastal Plan. The Local Coastal Plan requires approval of a separate agency. It is important to develop a relationship with the local Coastal Commission staff and understand their expectations. Integrating the Local Coastal Plan into the General Plan is going to be critical.
7. It will be important for me to be working with all of your Departments, Planning Commission and City Council to coordinate this effort. This will result in a need for me to attend various scheduled Management meetings, Planning Commission meetings, and General Plan related meetings such as the GPAC, City Council meetings and work with the Commission on the Environment.

While the role of a General Plan Coordinator is broad, it is important to have this flexibility so that the city will ultimately have a plan for the next 20 years which will make the entire development process run smoothly.

My work schedule will follow the GPAC schedule meaning that it will be more intense at various times. My hourly rate will be \$64.00 per hour, and I would propose a contract for 960 hours. Billing will be made on a monthly basis and will include a summary of work areas and meetings attended. While much of my work will be done from a remote location, I would appreciate the opportunity to have a work

space located in City Hall where I can meet with City Staff and conduct timely review of documents that require coordination and evaluation by other City Departments.

I will be unavailable to work the weeks of July 16, August 13, September 17, September 24 and October 1 but these dates do not conflict with scheduled General Plan meetings.

Sincerely,


Susan Westman

APPENDIX TWO Fees and Payments

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

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

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

In no event shall the total fee charged for the scope of work set forth in Appendix One exceed the total budget of \$62,000 (Sixty Two Thousand Dollars and Zero Cents), without specific, written advance authorization from the City.

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

"I hereby certify as principal of the firm of _____, that the charge of \$62,000 as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated _____, ____, and has not been previously paid."



CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: SECOND AMENDMENT TO THE AGREEMENT FOR CITY ATTORNEY SERVICES WITH ATCHISON, BARISONE, CONDOTTI & KOVACEVICH, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT

RECOMMENDED ACTION: Approve the Second Amendment to the Agreement for City Attorney Services with Atchison, Barisone, Condotti & Kovacevich in the amount of \$133,560, and authorize the City Manager to execute the agreement.

BACKGROUND: In Fiscal Year 2001-2002, the City transitioned from an in-house staff City Attorney to a contract City Attorney with John G. Barisone from the law firm of Atchison, Barisone, Condotti & Kovacevich (Firm) for general and special legal services. The current contract will expire on June 30, 2012, and the Firm has proposed a one-year contract with no change in compensation from the Fiscal Year 2010-2011 amount.

DISCUSSION: The legal firm of Atchison, Barisone, Condotti & Kovacevich has been providing full-time City Attorney services since 2001. Mr. Barisone has submitted a contract proposal for a term of one-year at the same rates. In Fiscal Year 2008-2009, the contract amount was \$140,000 per year, but when the City implemented the furlough program which was a 4.6% salary reduction, the firm also accepted the 4.6% reduction, resulting in an amended contract in the amount of \$133,560. This contract incorporates the reduction from the previous contract. The retainer fee includes attendance at City Council meetings and other meetings as requested; office hours at City Hall; day-to-day legal work required by the various departments; assistance to the City Council; and participation in various training programs.

Additionally, the firm provides special legal services at a current rate of \$225 per hour for attorneys and \$85 per hour for paralegals. Special legal services are composed of: Litigation, arbitration, mediation or hearings commenced or defended by the City, civil or administrative municipal code enforcement, and criminal municipal code prosecutions. These services are provided only upon assignment by the City Council or City Manager.

FISCAL IMPACT: The ongoing fiscal impact would be \$133,560 per year for general legal services which is contained in the proposed FY12-13 Budget.

ATTACHMENT:

1. Second Amendment to Agreement for City Attorney Services.

Report Prepared By: Lisa G. Murphy
Administrative Services Director

Reviewed and Forwarded
by City Manager: 

SECOND AMENDMENT TO AGREEMENT FOR CITY ATTORNEY SERVICES

THIS SECOND AMENDMENT TO AGREEMENT FOR CITY ATTORNEY SERVICES is made and entered into this first day of July, 2012, by and between the City of Capitola, on a municipal corporation, hereinafter referred to as "City" and Atchison, Barisone, Condotti & Kovacevich, a professional corporation, hereinafter referred to as "Law Firm" and is made with reference to, and will serve to amend, that certain agreement for legal services entered into on or about July 1, 2010, and first amended on July 1, 2011 between the City and Law Firm pursuant to which Law Firm agreed to provide legal services to the City for the 2010/2011 fiscal year (hereinafter referred to as the "2010/2011 Agreement").

NOW, THEREFORE, the parties agree as follows:

1. Paragraph 2 of the 2010/2011 Agreement as amended on July 1, 2011 is hereby amended to read as follows: "2. The term of this Agreement shall commence on July 1, 2012, and shall continue through June 30, 2013. Accordingly, the remaining term of this Agreement shall cover one fiscal year. For fiscal year 2012/2013, the annual compensation amounts and rates specified elsewhere in this Agreement shall remain in full force and effect."

2. Except as hereby expressly amended, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to the 2010/2011 Agreement for City Attorney Services the day and year first written above.

"CITY"

CITY OF CAPITOLA,
a Municipal Corporation

By: _____
Jamie Goldstein, City Manager

"LAW FIRM"

ATCHISON, BARISONE,
CONDOTTI & KOVACEVICH,
a Professional Corporation

By: _____
John G. Barisone



CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: APPROVE CONTRACT WITH CAROLYN FLYNN FOR PROFESSIONAL SERVICES RELATED TO COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM ADMINISTRATION, IMPLEMENTATION OF THE CITY'S COMMUNITY DEVELOPMENT GRANTS AND ASSISTANCE WITH THE GENERAL PLAN UPDATE

RECOMMENDED ACTION: Approve proposed sole source contract with Carolyn Flynn for an amount not to exceed \$24,050 for Fiscal Year 2012/13 for assistance with grant administration and applications, and professional assistance with the General Plan Update, as needed.

BACKGROUND: Carolyn Flynn has provided consulting assistance with the City's Community Development Block Grant (CDBG) Program since September 1997. Her services have included writing grant applications, administration of grants, preparation and submittal of quarterly and annual reports, grant closeout activities, and CDBG Program Income tracking and oversight. Ms. Flynn has provided outstanding services, has managed several successful on-site monitoring visits from CDBG and other state agencies, and had excellent professional relationships with CDBG and other funding agency staff members.

In addition to writing and administering the City's Economic Development Grants, Ms. Flynn has provided professional project management and planning assistance to the City on a wide variety of economic development planning projects. She provided project management for the City's CDBG-funded Economic Development Strategic Plan, the Village Parking Study, the 41st Avenue Comprehensive Plan and the City Hall Site Re-Use Study. She is currently managing two CDBG grants which brought in \$70,000 as part of the General Plan Update process: The 41st Avenue/Capitola Mall Re-Visioning Plan and the Green Economy/Jobs Study.

On behalf of the City, Ms. Flynn is currently administering the Strategic Growth Council/Prop 84 Grant to fund Sustainability in the General Plan Update, and the CDBG Disaster Recovery Initiative Program Grant (DRI) for the City's Local Hazard Mitigation Plan (LHMP) and the Safety Element of the General Plan Update.

DISCUSSION: The contract with Ms. Flynn is for professional services for Fiscal Year 2012/13 in an amount not to exceed \$24,050. The contract is a standard form City contract for professional services, as approved by the City Attorney. Services to be performed under this contract include: Grant administration and professional technical services for the following grants:

- Overall CDBG Program Administration;
- Prop 84 General Plan Sustainability Grant Management;
- Disaster Recovery Initiative grant for Local Hazard Mitigation Plan, the Safety Element Update, and Local Coastal Plan;

- Professional services for flood, FEMA, economic development and disaster related grants;
- Professional services as needed for the General Plan Update.

Ms. Flynn will be responsible for quarterly reporting and annual submittals, as well as professional assistance to ensure that the technical studies and final reports meet CDBG grant requirements. Other duties include overall administration and coordination of the City's Fiscal Year 2012/13 CDBG Program, including management of program income and grant writing for future CDBG applications; management of the Prop 84 and DRI grants in connection with the General Plan Update. She will continue to provide the lead project management on the Local Hazard Mitigation Plan, and incorporation of the LHMP principles into the updates of the Safety Element and the Local Coastal Plan. Ms. Flynn is familiar with the City's General Plan Update process, and coordinates grant funding into the budget. She will provide back-up professional assistance as needed on the General Plan Update process.

Ms. Flynn's knowledge of the City's CDBG Program and with existing and new grants, as well as her unique previous knowledge of the City's Community Development Department, provides her with the required experience that no other consultant can provide without first spending a significant amount of time to learn the City's financial processes, existing CDBG grant agreements, federal reporting requirements, and community and economic development projects.


FISCAL IMPACT: The funding for this contract is available from CDBG grants, CDBG Program Income, and matching funds from the General Plan Fund, as noted below.

Task	Project/Fund	Proposed FY 12/13
1.	FY 12/13 CDBG Program Management CDBG Program Income <i>Manage City's CDBG Program</i>	\$ 2,500 CDBG Repayment \$ 1,500 CDBG Grants
2.	Grant Writing & Housing Assistance <i>ED & Flood Recovery Grant Assistance</i>	\$ 5,000 Housing Trust Fund
3.	Prop 84 / Grant Management: General Plan Update Sustainability Grant Management <i>Grant Administration and Management</i>	\$ 2,350 (carryover)
4.	CDBG DRI Grant for LHMP & Safety Element <i>Grant Administration and project management for DRI Grant</i>	\$ 9,700
5.	General Plan Update Professional Assistance <i>Provide professional assistance as needed</i>	\$ 3,000
TOTAL		\$24,050

ATTACHMENT

1. Sole Source Purchases Determination

Report Prepared By: Susan Westman
Interim Community Development Director

**Reviewed and Forwarded
By City Manager:** 

**Sole Source Purchases Determination
Carolyn Flynn – July 12, 2012**

BACKGROUND: The City of Capitola Purchasing and Procurement Policy (Administrative Policy III-4), Section II B and C requires telephone quotes for purchases between \$2,000 - \$10,000, and requires a formal RFP bid procedure for purchases over \$10,000. The policy conditions for Sole Source (Section II B1 and B2), which are purchases exempt from the competitive process.

DISCUSSION: The contract with **Carolyn Flynn**, in the amount of \$ 24,05 dated July 12, 2012 , 2012 is a qualified sole source purchase within the City Administrative Policy III-4 Section B2 (check one of the following)

Policy Section B1: Materials, Supplies & Equipment:

_____ (a) Definition. Sole source purchases are used where no secondary source is reasonably available precluding the use of a competitive process.

Policy Section B2: Consultant or General Services:

 X (a.) In the case where a consulting firm has satisfactorily performed the previous stage of a project (e.g. a pre-design), or has acquired extensive background and working knowledge, the firm may be selected for follow- up work without solicitations from other firm upon written justification and recommendation of the department head and approval by the City Manager or designee.

_____ (b.) If a firm is a highly recognized authority in a field or specialty, or has unique specific knowledge regarding the project, then the firm may be selected without other solicitations for contracts and upon written justification and recommendation of the department head and approval by the City Manager or designee.

_____ (c.) Upon those infrequent occasions when confidence in the consultant and quality of service are important.

The Housing Authority of the County of Santa Cruz has provided technical assistance to the City for many years and has helped set up and administer many of the City' current housing programs.

Dept Head	Date	City Manager	Date
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Item #: 8.H.

CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: DEPARTMENT OF PUBLIC WORKS

SUBJECT: APPROVAL OF QUALIFIED CONTRACTORS LIST FOR REMOVAL OF
COACHES FROM THE PACIFIC COVE MOBILE HOME PARK

RECOMMENDED ACTION: Take the following actions:

1. Approve a list of qualified contractors in response to the request for statements of interest from contractors for removal of coaches from the soon to be closed Pacific Cove Mobile Home Park; and
2. Authorize the City Manager to enter into contracts with the low bidder from the qualified contractors list for all phases of the coach removal work.

BACKGROUND: In June 2012 the Public Works Department issued a Request for Statement of Interest (SOI) from qualified contractors for the removal of coaches from the Pacific Cove Mobile Home Park. The SOI is attached. The intent of the SOI is to develop a list of qualified contractors who will then be invited to bid on the removal of coaches in phases as they are ready for removal by the City.

DISCUSSION: By pre-qualifying contractors, the bidding process will be shortened expediting the removal of coaches. All qualified contractors will be given ten days to prepare a bid for any phase of work with the City Manager awarding a contract to the low bidder.

Responses to the SOI are due on July 11, 2012. The list of respondents and Public Work's recommendations for the list of qualified contractors will be presented to the City Council at the City Council meeting.

FISCAL IMPACT: Financing for the coach removal was included in the financing plan approved by the City Council on January 26, 2012. All contracts awarded under this item will be in compliance with that plan.

ATTACHMENTS

1. Request for Statements of Interest;
2. Submittals of the Statements of Interest available at the July 12, 2012 City Council Meeting.

Report Prepared By: Steven Jesberg
Public Works Director

Reviewed and Forwarded
By City Manager: 

ATTACHMENT 1



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

19 June 2012

Subject: Request for Statements of Interest
Pacific Cove Mobile Home Park Coach Removal
City of Capitola

Dear Interested Party:

The City of Capitola owns the Pacific Cove Mobile Home Park and is seeking to establish a list of qualified contractors to remove mobile home coaches from the park as directed by the City. It is the intent of this project to remove up to 35 mobile homes in phases.

Based on the responses to this notice, the City will develop a list of qualified contractors who will then be invited to provide bids on each phase of coach removal process.

Site

The site of the Pacific Cove Mobile Home Park is located at 426 Capitola Avenue, Capitola, California. The City has previously acquired several of the coaches in the park and is currently in the process of acquiring the other coaches.

Project Scope

Upon release of a project phase, each approved contractor will be expected to provide a bid for removal of the identified coaches from the park. The bids shall include a single cost per coach for the following work:

1. Obtaining any and all necessary permits for removal and transport of the mobile homes in tact off site
2. Assuming title for each coach in a given phase of work
3. Disconnecting and safely capping or otherwise securing all utilities pursuant to rules and regulations of utility company
4. Removing each coach from the park. Contractor shall be responsible for reselling or disposing of the coach. Demolition of any coach on the park property is prohibited.
5. Removing and recycling or disposing of all ancillary structures attached to the coaches, such as covered patios and decks
6. Removing and recycling or disposing of all contents remaining in mobile homes
7. Removing and recycling or disposing of all site debris

Project Timelines

Each approved contractor will be given ten working days to provide a bid for each project phase. Each contractor shall be responsible for inspecting each coach and determining all work necessary to comply with the scope of work outlined above. Upon receipt of bids the contract will be awarded to the lowest bidder and contractor shall then have ten working days to enter into a contract with the City for this work. The form of the contract is included at Attachment A. Upon issuance of a Notice to Proceed with the work the contractor shall be given ten working days to commence work.

If your company is interested in participating in this project please provide the following:

- Letter expressing interest and including:
 - Experience of company
 - List of employees who will be working on this project, including a single point of contact
 - A statement indicating you have reviewed the contract form and are prepared to sign it without changes
- Provide proof of current contractors Class B or C47 license issued by the State of California.
- Provide proof of ability to meet liability insurance requirements of \$1,000,000 for General Liability, Automobile, and Workers' Compensation, as detailed in the contract form.
- References with contact numbers of two clients of similar projects.

Required Submission

Contractors shall be qualified under this proposal based on the following criteria:

- Completeness of the proposal
- Proof of current Class B or C47 license
- Demonstrated qualifications and experience of the company, and its employees
- Evaluation of previous work performed and client satisfaction

All Statements of Interest must be submitted to the City by 5:00 p.m. on Wednesday, July 11, 2012. Once submitted the statements of interest shall become the property of the City of Capitola. The City maintains the authority to disqualify any contractor submitting a statement of interest for failure to meet the conditions of this notice or any subsequent contract conditions. Proposals should be mailed or delivered to Steven E. Jesberg, Public Works Director, 420 Capitola Avenue, Capitola, CA 95010.

Should you have any questions about this Statement of Interest or the selection process, please contact me by phone at (831) 475-7300 or via email at sjesberg@ci.capitola.ca.us.

Yours truly,

Steven E. Jesberg
Public Works Director

ATTACHMENT A

**CITY OF CAPITOLA
SANTA CRUZ COUNTY, CALIFORNIA
AGREEMENT
TO REMOVE MOBILE HOMES FROM PACIFIC COVE MOBILE HOME PARK**

THIS AGREEMENT, made this _____ day of _____, 2012, by and between the City of Capitola, a Municipal Corporation, in Santa Cruz County, California, hereinafter called the City, and _____, hereinafter called the Contractor.

WITNESSETH

WHEREAS, the City desires certain work described in Appendix One, and

WHEREAS, the Contractor has submitted to the City a proposal for the removal of _____ mobile homes in accordance with the terms of this contract, and

WHEREAS, the City, in the manner prescribed by law, and in compliance with the City's Purchasing and Procurement Policy, has awarded sole source contract to the Contractor for all of the work in this agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I. WORK TO BE DONE

That the Contractor shall provide all necessary labor, machinery, tools, apparatus and other means of construction; shall furnish all materials, superintendence and overhead expenses of whatever nature necessary to complete the project for the City of Capitola in conformity with the generally accepted practices and standards of the Contractor's profession.

ARTICLE II. CONTRACT PRICES

Except as provided in Section IB ("Changes and Extra Work"), the City shall pay the Contractor \$_____ (_____ Dollars and _____ Cents), for complete performance of the work.

The Contractor hereby agrees to accept such payment as full compensation for all materials and appliances necessary to complete the work; for all loss or damage arising from the work or from action of the elements, or from any unforeseen obstruction or difficulties which may be encountered in the prosecution of the work; incurred in and in consequence of the suspension or discontinuance of the work; as hereby specified; for all liability and other insurance; for all fees or royalties or other expenses on account of any patent or patents; for all overhead and other expenses incident to the work and expected profits; and for well and faithfully performing and completing the work within thirty (30) working days from the date of the Notice to Proceed.

In case of any conflict between this Agreement and any other part of the contract, this Agreement shall be binding.

CITY OF CAPITOLA
A Municipal Corporation

By:

Benjamin Goldstein
City Manager

Date: _____

CONTRACTOR

License No. _____

Tax ID or SSN _____

By:

Title: _____

Date: _____

By signing above on behalf of the corporation, the individual so signing warrants that he/she has authority to sign this agreement on behalf of the corporation and legally bind the company to all of the obligations contained therein.

HOLD HARMLESS CLAUSE

WHEREAS, _____, (Contractor), has been awarded a contract with the City of Capitola to perform certain work described as follows:

REMOVAL OF _____ MOBILE HOMES FROM PACIFIC COVE MOBILE HOME PARK

Contractor hereby agrees to indemnify, defend and hold harmless the City, its officers, agents and employees from any and all demands, claims or liabilities of any nature caused by or arising out of Contractor's negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor in the performance or nonperformance of this agreement.

Date:

Contractor

By:
Title:

SECTION I. SCOPE OF WORK

- A. WORK TO BE DONE. The work to be done on this project consists, in general, of the following:
1. Obtaining any and all necessary permits for removal and transport of the mobile homes in tact off site
 2. Assuming title for each coach in a given phase of work
 3. Disconnecting and safely capping or otherwise securing all utilities pursuant to rules and regulations of utility company
 4. Removing each coach from the park. Contractor shall be responsible for reselling or disposing of the coach. Demolition of any coach on the park property is prohibited.
 5. Removing and recycling or disposing of all ancillary structures attached to the coaches, such as covered patios and decks
 6. Removing and recycling or disposing of all contents remaining in mobile homes
 7. Removing and recycling or disposing of all site debris
- B. CHANGES AND EXTRA WORK. Changes and extra work, if found necessary, shall not be done beyond the approved scope of work unless additional work is approved in advance by the City.

The City may require changes in, additions to or deductions from, the work to be performed or the materials to be furnished under this Contract pursuant to the provisions of the Contract Documents.

No change to the work shall be made, extra work performed, or deduction from the work made unless in pursuance of a written change order from the City, signed by the Director of Public Works or his authorized representative, stating that the change, addition, deletion, or any combination thereof is authorized. Written field orders may be issued to the contractor pending the issuance of a formal change order. No claim for additional payment shall be considered unless so ordered.

Adjustments to the contract amount by reason of a duly authorized change order shall be determined on the basis of one of the following methods, at the option of the Director of Public Works:

1. On the basis of an acceptable lump sum proposal from the Contractor in response to a quotation request.
2. On the basis of unit prices specified in the Contractor's proposal.
3. On the basis of actual necessary cost plus fifteen (15) percent to cover superintendence, general expense and profit, hereinafter referred to as "Force Account Work.

Force Account Work, if ordered, shall be adjusted and certified daily on record sheets acceptable to the Director of Public Works and signed by both he and the Contractor. Such daily report sheets shall thereafter be considered as the true record of Force Account Work done. Computation of actual costs shall include wages paid for workers and any employer payment made to, or on behalf of, workers for health, welfare, pension, vacation plans or

similar purposes. Equipment costs shall be on the basis of generally accepted rental schedules for the locality. Material costs shall be supported by supplier's invoices.

When a lump sum proposal for extra work is requested from the Contractor, such quotation request shall be furnished by the Contractor, and a quotation for the work involved delivered to the Director of Public Works within five (5) calendar days. If the Director of Public Works finds said proposal unacceptable, he may then proceed with such extra work by Force Account or such other means as are available under the provisions of the contract.

- C. CLEANING UP. The Contractor shall not allow the site of the work to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition throughout the construction period. The Engineer shall have the right to determine what is or is not waste material or rubbish and the place and manner of disposal.

SECTION II. CONTROL OF WORK

- A. AUTHORITY OF THE DIRECTOR OF PUBLIC WORKS. The Director shall decide any and all questions which may arise as to the quality and acceptability of the work performed, as to the quality and acceptability of materials furnished, and as to the manner of performance and the rate of progress of the work, and all questions as to the acceptable fulfillment of the contract on the part of the Contractor, and as to compensation. The Director's decisions shall be final; the Director shall have authority to enforce and make effective such decisions and orders as the Contractor fail to carry out promptly.
- B. COOPERATION OF THE CONTRACTOR. Whenever the Contractor is not present on any part of the work where it may be desired to give directions, orders will be given by the Director in writing and shall be received and obeyed by the Superintendent or Foreman who may have charge of the particular work in question.
- C. COOPERATION BETWEEN CONTRACTORS. Where two or more contractors are employed on related or adjacent work, each shall conduct their operation in such a manner as not to cause any unnecessary delay or hindrance to the other. Each Contractor shall be responsible to the other for all damage to work, to persons or property, or for loss caused by failure to finish the work within the time specified for completion.
- D. ACCESS TO WORK. The Director and the Director's authorized assistants shall at all times have access to the work during its progress. All work done and all materials furnished shall be subject to the inspection of the Director.
- E. INSPECTION. The inspection of the work shall not relieve the Contractor of his obligation to fulfill the contract as prescribed and defective work shall be made good and unsuitable materials may be rejected, notwithstanding that such defective work and materials have been previously overlooked by the Director and accepted or estimated for payment.
- F. REMOVAL OF DEFECTIVE OR UNAUTHORIZED WORK. All work which has been rejected shall be remedied or removed and replaced in an acceptable manner by the Contractor at the Contractor's own expense, and no compensation will be allowed Contractor for such removal or replacement.
- G. EQUIPMENT. The use of equipment which is obsolete as to type, in bad condition or worn out will not be permitted on the work. The Contractor shall provide adequate and suitable equipment to meet the requirements of the work, and when ordered by the Director shall remove unsuitable equipment from the work.
- H. FINAL INSPECTION. When the work performed by the Contractor shall have been satisfactory and the final cleaning up performed, the Director will make the final inspection.

SECTION III. LEGAL RELATIONS AND RESPONSIBILITY

- A. LEGAL RESTRICTIONS. The Contractor shall stay fully informed of all existing and future state and national laws and municipal ordinances and regulations which in any manner affect those engaged or employed on the work, or which in any manner affect the conduct of the work. The Contractor shall at all times observe and comply with all such existing and future laws, ordinances and regulations.
- B. PATENTS. The Contractor shall assume all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the work.
- C. SANITARY PROVISIONS. The Contractor shall comply with all of the sanitary regulations prescribed by the Department of Health of the State of California.
- D. PUBLIC CONVENIENCE AND SAFETY. The Contractor shall so conduct his operations as to offer the least possible obstruction and inconvenience to the public. It shall be the responsibility of the Contractor to protect and guard the public from injury or damage due to any cause.
- E. RESPONSIBILITY FOR WORK. Excepting as herein otherwise provided, until the formal acceptance of all work by the City, the Contractor shall have the charge and care thereof, and shall take every necessary precaution against injury or damage to any part thereof from any cause whatever. The Contractor shall rebuild, repair, restore and make good all injuries or damages to any portion of the work occasioned by any cause before its acceptance, and shall bear the expense thereof.
- F. PROGRESS OF THE WORK. Except as otherwise provided by these specifications, the Contractor shall begin work within seven (7) calendar days after receipt of the Notice to Proceed and shall diligently prosecute the same to completion within the time set forth in the contract and/or special provisions.
- G. CHARACTER OF WORKERS. If any person employed by the Contractor, or by a subcontractor, shall fail or refuse to carry out the directions of the Director, or shall appear to the Director to be incompetent, or to act in a disorderly or improper manner, that person shall be discharged immediately upon the recommendation of the Director, and shall not again be employed on the work.
- H. HOURS OF LABOR. The Contractor shall forfeit as penalty to the City, Fifty Dollars (\$50.00) for each laborer, worker, or mechanic employed in the execution of the contract by the Contractor, or by any subcontractor, upon any of the work hereinafter mentioned, for each working day during which said laborer, worker or mechanic is required or permitted to labor more than eight hours per day or forty hours per week in violation of the provisions of Article 3, Chapter 1, Part 7, Division 2 of the Labor Code.
- I. HOURS OF WORK. The Contractor shall limit his hours of work to 7:30 a.m. – 9 p.m. Monday through Friday, 9:00 a.m. – 4:00 p.m. Saturday. No work shall be permitted on Sunday and holidays or beyond these hours without the authorization of the Director.
- J. RESPONSIBILITY FOR DAMAGE. The City of Capitola, the City Council, or the Director shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof; or for any of the materials or other things used or

employed in performing the work; or for injury to any person or persons, either workers or the public; for damage to property from any cause which might have been prevented by the Contractor, Contractor's workers, or anyone employed by the Contractor; against all of which injuries or damages to persons and property the Contractor having control over such work must properly guard. The Contractor shall be responsible for any liability imposed by law for any damage to any person or property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance, and shall indemnify and save harmless the City of Capitola, the City Council, and the Director from all suits or actions of every name and description brought forth or on account of any injuries or damages received or sustained by any person or persons by or from the Contractor, Contractor's servants or agents, in the construction of the work or by or in consequence of any negligence in guarding against such injuries or damages or on the account of any act or omission of the Contractor or Contractor's agents, and in addition to any remedy authorized by law so much as shall be considered necessary by the City Council may be retained by the City of Capitola until disposition has been made of such suits or claims for damages as aforesaid.

The Contractor shall be responsible for any liability imposed by law or for any damage to any person or property and shall indemnify and hold harmless the City of Capitola, its officers and employees, all in the same manner and to the same extent as provided above for the protection of the City, the City Council and the Director, except that no retention of money due the Contractor under and by virtue of the contract will be paid by the City of Capitola, pending disposition of suits or claims for damages brought against the City.

- K. TERMINATION OF CONTRACT. If the work provided for under this contract shall be abandoned, or if the contract shall be sublet or assigned without the consent of the City, or if at any time the Director shall be of the opinion that the conditions specified as to the rate of progress are not being fulfilled, or that the work or any part thereof is unnecessarily delayed, or that the Contractor is willfully violating any of the conditions or provisions of this contract or is executing the same in bad faith, the City shall notify the Contractor to fulfill the conditions of this contract. Should the Contractor fail to begin compliance with said notice within five (5) calendar days, the City may, at its discretion, notify the Contractor to discontinue all work under this contract or any part thereof, and thereupon the Contractor shall discontinue work, and the City may, by contract or otherwise, at its discretion, complete the work or such part thereof, and may take possession of the work and use therein such materials, machinery, implements and tools of every description as shall be found upon the work, or provide whatever is needed for the completion of the work and charge the expense thereof to the Contractor. In order to meet the expenses so incurred, the City is hereby authorized by the Contractor to draw a warrant in the name of the Contractor and in favor of these persons, firms or corporations doing the work or providing the materials or labor therefore, against the fund or appropriation set aside for the purpose of this contract. When a warrant is so drawn it shall be conclusive upon the Contractor and shall be to all intent and purposes the same as drawn by the Contractor in person. When any of the said demands have been audited and paid, the amount of the same shall be deducted from the fund or appropriation set aside for the purposes of this contract being so terminated. The Contractor shall immediately, upon due notice from the Director to do so, remove from the premises all materials and personal property belonging to the Contractor which have not already been used in the construction of the work or which are not in place in the work, and the Contractor shall forfeit all rights under this contract, and both the Contractor and Contractor's sureties shall be liable for the bond for all damages caused the City by reason of Contractor's failure to complete this contract.

Neither the extension of time for any reason beyond the date fixed for the completion of this work, nor the doing and acceptance of any part of the work called for by the terms of this contract, subsequent to the said date, shall be deemed to be a waiver by the City of the right to abrogate, annul, or terminate this contract for abandonment or other cause as provided above.

During the performance of this contract, the Contractor, its assignees and successors in interest (hereinafter referred to as "Contractor") agree as follows:

1. COMPLIANCE WITH REGULATIONS. The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 15, Code of Federal Regulations, Part 8, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. NONDISCRIMINATION. The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, sex, or national origin, ancestry, physical handicap, medical condition, marital status, or religion in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 1735 of the Labor Code.
3. SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, ancestry, physical handicap, medical condition, marital status, or religion.
4. INFORMATION AND REPORTS. The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the City, and shall set forth what efforts it has made to obtain the information.
5. SANCTIONS FOR NONCOMPLIANCE. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the City shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. Cancellation, termination or suspension of the contract, in whole or in part.

6. INCORPORATION OF PROVISIONS. The Contractor will include the provisions of Paragraphs 1 through 5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations, order or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the City of Capitola may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interests of the City.
- L. PREVAILING WAGE. The Contractor shall, as a penalty to the City, forfeit Fifty Dollars (\$50.00) for each working day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed for any public work done under the contract by the Contractor or any of Contractor's subcontractors. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each working day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor. The provisions of Section 1773, 1773.2, 1773.4 and 1775 of the Labor Code will be complied with.

Pursuant to the State of California, or local law thereto applicable, the City Council hereby determines that the general prevailing per diem rate in the locality in which the work is to be performed, for laborers and for each craft or type of worker and mechanic employed in the execution of this contract, is the Union Wage Scale established for Santa Cruz County, which wage scale as of the execution date of this contract is incorporated herein as if fully set forth.

Copies of the prevailing rate of per diem wages prepared and available by the California State Department of Industrial Relations.

SECTION IV. INSURANCE

A. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE. The Contractor shall take out and maintain during the life of this contract such public liability and property damage insurance, by an insurer acceptable to the City, that shall protect Contractor and any subcontractor performing work covered by this contract from any claims for property damage which may arise because of the nature of the work or from operations under this contract, whether such operations are performed by the Contractor or by any subcontractor or anyone directly or indirectly employed by either of them, even though such damages may not be caused by the negligence of the Contractor or any subcontractor, or anyone employed by either of them. The public liability and property damage insurance shall name the City, its officers, agents and employees as insureds, and all insurance policies issued hereunder shall so state. The amounts of such insurance shall be as follows:

1. CONTRACTORS LIABILITY INSURANCE. Shall provide bodily injury liability limits of not less than \$1,000,000 for each person, and \$2,000,000 for each accident or occurrence, and property damage liability limits of not less than \$1,000,000 for each accident or occurrence with an aggregate limit of \$2,000,000 for claims which may arise from the operations of the Contractor in the performance of the work hereunder provided. This insurance must include coverage for contractual liability assumed by the Contractor under Paragraph F, Section VII, Responsibility for Work.
2. AUTOMOBILE LIABILITY INSURANCE. Covering all vehicles used in the performance of the contract providing bodily injury liability limits of not less than \$500,000 for each person and \$1,000,000 for each accident or occurrence, and property damage liability limits of not less than \$500,000 for each accident or occurrence which may arise from the operations of the Contractor in performing the work provided for herein.

Before the execution of the contract, the Contractor shall file with the City a certificate or certificates of insurance, covering the specified insurance. Each such certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy evidenced by such certificate, before the expiration of thirty (30) calendar days after the City shall have received notifications by registered mail from the insurance carrier.

All policies shall name the City of Capitola as an insured under all terms of the policy.

B. WORKER'S COMPENSATION INSURANCE. Before beginning the work, the Contractor shall furnish to the City satisfactory proof that Contractor has taken out for the period covered by the work under this contract, full compensation insurance for all persons employed directly by Contractor or through subcontractors in carrying out the work contemplated under this contract, in accordance with the "Worker's Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof. Such insurance shall be maintained in full force and effect during the period covered by this contract.



CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: AMENDMENT TO THE CITY OF CAPITOLA SIGN ORDINANCE TO CONSIDER ALLOWING SIDEWALK OR SANDWICH BOARD SIGNS IN THE CENTRAL VILLAGE ZONING DISTRICT

RECOMMENDED ACTION: Uphold the Planning Commission's recommendation to not change the sign ordinance at this time but have sidewalk/sandwich boards signs consider in the new zoning regulation being prepared as part of the City's General Plan Update.

BACKGROUND: The City's Sign Ordinance specifically prohibits sandwich board signs in Capitola. In September 2011, the Community Development Department responded to several complaints about the placement of sandwich board signs in the Village. Staff initiated an enforcement effort throughout Capitola. Over a dozen merchants were sent Courtesy notices along Capitola Avenue and throughout the Village area. Courtesy notices were also sent to 41st Avenue merchants.

Following the distribution of Courtesy notices, the Village Business Improvement Association (BIA) approached the City with the idea to develop a program to allow sandwich board signs under certain conditions. The Community Development Director met with BIA representatives and brought forward a new Ordinance which would allow sandwich board signs for a one-year trial period.

When the Ordinance revision was taken to the Planning Commission in November 2011, the Planning Commission recommended to the City Council that no revisions to the City's sign regulation should be made at this time but should be a part of the City's zoning regulation revision process. It is estimated that the new zoning regulations will be in place sometime in 2013.

The City Council considered the proposed Sign Ordinance amendment at their meeting on November 22, 2011 and again on February 9, 2012. At the February 9, 2012 meeting the City Council provided direction to staff to come back to Council with a proposed amendment to the Capitola Municipal Code to allow sandwich board signs.

The two Sign Ordinances which are before Council tonight were considered at the June 7, 2012 Planning Commission meeting. (The process has been delayed at the request of the BIA to provide additional time to redesign the BIA sign.) The Planning Commission voted 3-1 (Commissioner Smith was absent) to recommend to the City Council that the Sign Ordinance not be modified at this time. The Planning Commission recommended this issue should be considered when the City does a major Sign Ordinance revision as part of the General Plan Update.

At the Planning Commission meeting on July 5, 2012 the Planning Commission asked staff to provide the City Council with verbatim minutes of the Planning Commission's discussion on June 7, 2012 (Attachment 7). The Planning Commission expressed concern that the City Council does not understand the time and thought the Planning Commission is putting into these types of request because you are only receiving the Action Minutes.

DISCUSSION: Provided are the same three options which were presented at the June 7, 2012 Planning Commission meeting. The first option has been developed by the Capitola Village and Wharf Business Improvement Area; the second option is a traditional style sandwich board sign program; and the third option is to adopt the Planning Commission recommendation to not amend the sign program at this time but wait until there is a complete review of the sign ordinance which is scheduled for next year. Option 1 and 2 would be for a one-year trial period.

OPTION 1: The BIA has developed their proposal hoping to address a number of issues raised by both the public and the City during the previous hearings on sandwich board signs. The BIA proposal is designed to address the concerns that the signs could be a hazard for pedestrians and would end up in different locations. The proposal also addresses the expressed need for signs which were well designed and would add to the attractiveness of the Village. As this design is not your typical sandwich board sign but a sidewalk sign. A sample of the actual sign will be available at the City Council meeting and is currently available in the Planning Department (Attachment 1).

To address the issue of sign placement, the BIA has developed a two-sided sign which would be placed on a pole drilled into the sidewalk or on a stand. For signs in stands, the stand needs to be included in the application. The stand would need to be designed to be attractive compliment to the sign and of sufficient size and weight to hold the sign on windy days. The Planning Commission recommended that signs located in the sidewalk or signs in a stand be attached to eliminate the sign being pulled out.

The sign proposed by the BIA would be 24-inches wide and 34-inches long. The signs would be placed on the poles so that the top of the sign would be 46-inches (3 feet 10 inches) off the ground. Each sign, in addition to obtaining a permit from the Planning Commission, would need to receive an encroachment permit from Public Works. If a hole is drilled into the public sidewalk, the applicant will be responsible for the cost of drilling, an encroachment permit, as well as the normal City Planning fees. The holes should not be a trip hazard because of their size but could accumulate trash. The encroachment permit will include a condition requiring the hole be filled if not in use.

The revised Sign Ordinance will require sidewalk signs whether on poles or stands to be removed and brought inside when the business is not open. In addition, no other special event or temporary signs can be used when the sign is displayed and that these signs are allowed only in the Center Village Zoning District on sidewalks which are at least 78-inches wide. Basically signs will be allowed on the Esplanade, part of Stockton Avenue and Capitola Avenue. Most other areas do not have sidewalks which meet the size criteria. In February 2012 the Council requested that the number of permits issued for sidewalk signs, whether on a pole or in a stand, be limited to 30. Once the City reaches 30 permits no new permits would be issued until one is eliminated. The permits will be issued on a first-come basis. When a business is closed, sold or is significantly changed the permits become null and void.

Approval of the signs will be done by the Planning Commission. This will allow the Planning Commission to consider the location of the sign and other signage on the property. At the end of the one-year trial period it may be appropriate to change the Ordinance to have these types of signs approved by staff.

Option 1 Draft Ordinance would implement this approach (Attachment 2)

OPTION 2: The City Council could consider an Ordinance revision which would allow a more traditional type of sandwich board (A frame sign) rather than signs on poles. These signs would be placed within 5 feet of the main entrance of the business. Two examples of traditional sandwich board type signs are show in Attachment 3 (these are only examples). The City Council could add additional specifics to the sign design. Staff is recommending using the standard wood frame chalk board sign because of its simplicity. There would be size limits of sandwich board signs. There is a maximum size and minimum size so they do not become trip hazards. Staff is recommending the

JULY 12, 2012: SANDWICH BOARD SIGN ORDINANCE

signs be no taller than 46-inches and no wider than 24-inches. There needs to be a minimum base spread of 18-inches for stability.

The advantage of going with a more traditional type sign is that they are easy to obtain, are moveable and fit into the category of announcing special sales, menus or event. This is designed to be a one-year trial period; the cost would not be significant to the applicant.

Option 2 Draft Ordinance would implement this program (Attachment 4)

OPTION 3: The City Council has the option of upholding the Planning Commission's recommendation to not modify the Sign Ordinance at this time.

SUMMARY: Both of the draft Ordinances are to allow for signs in the Center Village Commercial area only, and only in areas where there are wider sidewalks. Both draft Ordinances are for one-year trial periods which will begin when the City's application to amend the Local Coastal Plan is approved. Both draft Ordinances will require encroachment permits to place the sign on the public sidewalk. Both draft Ordinances are for a maximum of 30 permits being issued. If there are problems with the program, modification or cancellation can be made at the end of the one-year trial period.

CEQA REVIEW: Two sections of the California Environmental Quality Act (CEQA) apply to the proposed amendments, which would temporarily allow sandwich board signs in the Central Village and Neighborhood Commercial Zone Districts. Section 15311(a) of the CEQA Guidelines consists of the construction, or replacement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to on-premises signs.

Section 15061 (b) (3) provides that a project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Sign placement in an existing urban environment will not have a significant impact on the environment. Allowing sandwich board signs in the Central Village and Neighborhood Commercial Zone Districts would be insignificant as it is already a built-out environment with urban amenities and would have a minimal impact on visual resources and the environment.

ATTACHMENTS

1. Photo of BIA sidewalk sign;
2. Ordinance to implement the sidewalk sign program (Option 1);
3. Examples of standard type sandwich board signs;
4. Ordinance to implement a sandwich board sign program (Option 2);
5. Minutes from the February 9 City Council Meeting;
6. Verbatim June 7, 2012 Planning Commission minutes.

Report Prepared By: Susan Westman
Interim Community Development Director

**Reviewed and Forwarded
By City Manager:** 



ATTACHMENT 2

Option 1 - Ordinance to Implement Sidewalk Sign Program Proposed by the BIA

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING SECTION 17.57.040 D. OF THE MUNICIPAL CODE PERTAINING TO
PROHIBITED SIGNS AND ADDING SECTIONS 17.57.020 B. 4. AND 17.57.060 F.
TO THE MUNICIPAL CODE PERTAINING THE USE OF SIDEWALK SIGNS IN THE
CENTRAL VILLAGE**

THE CITY COUNCIL OF THE CITY OF CAPITOLA HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 17.57.020 B. 4. is added to the Capitola Municipal Code to read as follows:

"4. Sidewalk signs as allowed in this chapter."

Section 2. Section 17.57.040 D. of the Capitola Municipal Code is amended to read as follows:

"D. Sidewalk signs, except as allowed in this chapter."

Section 3. Section 17.57.060 F. is added to the Capitola Municipal Code to read as follows:

"F. Sidewalk signs are permitted in the Central Village Zoning District subject to the following standards:

1. Only one (1) two sided sidewalk sign per business establishment is permitted.
2. The sidewalk in front of the business must be at least 78 inches in width.
3. Sidewalk signs require a sign permit to be issued by Planning Commission through the City's Design Review process prior to the placement of the sign.
4. Sidewalk signs shall be no larger than twenty-four (24) inches in width and thirty four (34) inches in height and will be placed on a pole so that the bottom of the sign is no more than sixteen (16) inches off the ground. (Total height shall not exceed 46 inches from the ground.)
5. Poles will either be placed in a hole drilled into the sidewalk or in moveable stand. The moveable stands will need to be approved as part of the sign permit. An encroachment permit is required to drill into the public sidewalk.
6. Lights, banners, flags or similar objects shall not be placed on or adjacent to sidewalk signs.
7. All sidewalk signs will need to obtain an encroach permit which will identify the location of the sign from the Public Works Department. Location of the sign will be in conformance with the sign permit issued by the Planning Commission.
8. Sidewalk signs shall not interfere with pedestrian ingress or egress as required by the Building Code or obstruct vehicular traffic sight distance requirements. A forty eight (48) inch level clear path of travel on concrete or similar material must be maintained where the sign is located.
9. Sidewalk signs shall be spaced a minimum of 15 linear feet from all other permitted sidewalk signs.
10. Sidewalk signs must use the approved Business Improvement Association master design approved by the City Council on -----which includes locating the sign on a pole to be placed in the sidewalk or in a moveable stand. A copy of the approved sign shall be maintained in the Planning Department of the City of Capitola.
11. Sidewalk signs may be used only during the hours when the business is open to the public. At all other times the sign and base must be stored within the business premises.

12. No other temporary advertising signs may be used at the same time as the sidewalk sign is in use. This includes all banners, flags, window signs covering more than 1/3 of the window or other temporary signage.
13. All other signs on the property receiving a permit for a sidewalk sign must be in conformance with the City's sign regulations prior to a sidewalk sign permit being issued.
14. Damaged or dilapidated sidewalk signs shall be replaced at the discretion of the Community Development Director.
15. No sidewalk sign may contain lights of any kind.
16. No more than 30 sidewalk signs will be allowed in the Central Village Zoning District at any time. Sidewalk sign permits will be issued on a first come basis. A change in business ownership or type of business will result in the permit becoming null and void.
17. The owner of any business desiring to place a sidewalk sign on the City right-of-way shall provide an executed City hold harmless waiver and proof of liability insurance to the satisfaction of the City Attorney in the amount of \$1,000,000 prior to placing the sign within said right-of-way.
18. Multi-tenant developments shall be permitted one sandwich board sign per each common exterior public business entrance.

Section 3. This ordinance shall remain in effect for 12 months from the date of the Coastal Commission approval of the amendment to the City's Local Coastal Plan.

Section 4. This ordinance shall be in full force and take effect on the date of the Coastal Commission approval of the amendment to the City's Local Coastal Plan.

This ordinance was introduced on the 12th day of July, 2012, and was passed and adopted by the City Council of the City of Capitola on the ___ day of ____ 2012, by the following vote:

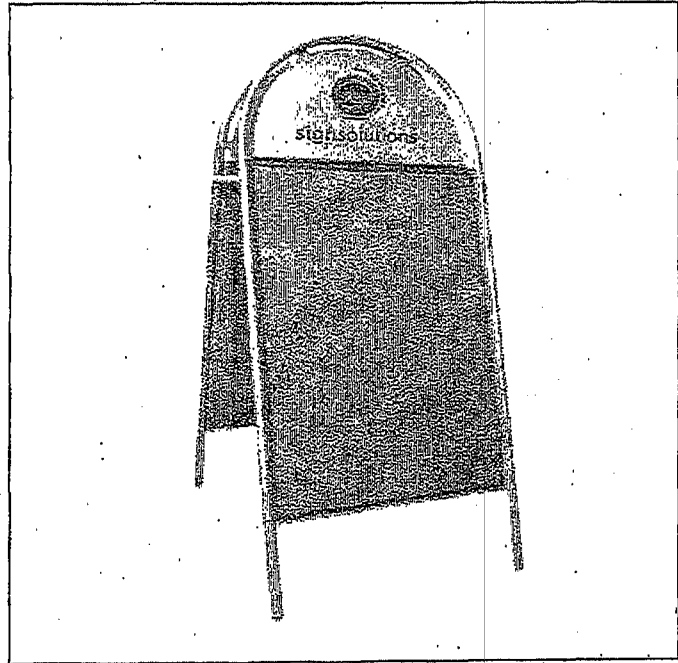
AYES:
 NOES:
 ABSENT:
 ABSTAIN

APPROVED:

 Michael Termini, Mayor

ATTEST:

_____, CMC
 Susan Sneddon, City Clerk



Option 2 – Ordinance to implement a sandwich board sign program.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING SECTION 17.57.040 D. OF THE MUNICIPAL CODE PERTAINING TO
PROHIBITED SIGNS AND ADDING SECTIONS 17.57.020 B. 4. AND 17.57.060 F.
TO THE MUNICIPAL CODE PERTAINING THE USE OF SANDWICH BOARD SIGNS IN THE
CENTRAL VILLAGE

THE CITY COUNCIL OF THE CITY OF CAPITOLA HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 17.57.020 B. 4. is added to the Capitola Municipal Code to read as follows:

“4. Sandwich board signs as allowed in this chapter.”

Section 2. Section 17.57.040 D. of the Capitola Municipal Code is amended to read as follows:

“D. Sandwich board and other movable freestanding signs; except as allowed in this chapter.”

Section 3. Section 17.57.060 F. is added to the Capitola Municipal Code to read as follows:

“F. Sandwich board signs are permitted in the Central Village Zoning District subject to the following standards:

1. Only one (1) sandwich board sign per business establishment is permitted.
2. The sidewalk in front of the business must be at least 78 inches in width.
3. Sandwich board signs require a sign permit to be issued by the Planning Commission through the City’s Design Review process prior to the placement of the sign.
4. Sandwich board signs shall be made of wood and/or metal. No PVC or other plastic type pipe will be allowed.
5. Sandwich board signs shall be a minimum of 28 inches in height but not exceed 48 inches in height. Sandwich board signs shall not exceed 24 inches in width. The A-frame structure shall be a minimum spread of 18 inches wide.
6. Lights, banners, flags or similar objects shall not be placed on or adjacent to a sandwich board sign.
7. Sandwich board signs shall not interfere with pedestrian ingress or egress as required by the Building Code or obstruct vehicular traffic sight distance requirements. A forty eight (48) inch level path of travel on concrete or similar material must be maintained where the sign is located.
8. Sandwich board signs must be placed on a sidewalk or landscaped area immediately adjacent to the business. No sandwich board sign shall be placed on the roadway or in a parking space.
9. Sandwich board signs may be used only during the hours when the business is open to the public.
10. All other signs on the property receiving a permit for a sandwich board sign must be in conformance with the City’s sign regulations prior to a sandwich board sign permit being issued.
11. Damaged or dilapidated sandwich board signs shall be replaced at the discretion of the Community Development Director.
12. No sandwich board sign may contain lights of any kind.

13. Multi-tenant developments shall be permitted one sandwich board sign per each common exterior public business entrance.
14. Sandwich board signs shall be spaced a minimum of 15 linear feet from all other permitted sandwich board signs.
15. No more than 30 sandwich board sign permits will be issued at any one time. Sidewalk sign permits will be issued on a first come basis. A change in business ownership or type of business will result in the permit becoming null and void.
16. The owner of any business desiring to place a sidewalk sign on the City right-of-way shall provide an executed City hold harmless waiver and proof of liability insurance to the satisfaction of the City Attorney in the amount of \$1,000,000 prior to placing the sign within said right-of-way.

Section 3. Section 3 of this Ordinance shall remain in effect for 12 months from the date of the Coastal Commission approval of the amendment to the City's Local Coastal Plan.

Section 4. This ordinance shall be in full force and take effect on the date of the Coastal Commission approval of the amendment to the City's Local Coastal Plan.

This ordinance was introduced on the 12th day of July, 2012, and was passed and adopted by the City Council of the City of Capitola on the ____ day of ____ 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN

APPROVED:

Michael Termini, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk

CITY OF CAPITOLA MINUTES EXCERPT

CITY OF CAPITOLA
CITY COUNCIL

February 9, 2012
Capitola, California

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL

6. GENERAL GOVERNMENT

A. Consideration of an amendment to the Capitola Municipal Code to allow sandwich board signs. [720-50/570-10]

Interim Community Development Director Westman provided a brief history of this item; staff was directed to come back to the City Council with a revised Ordinance. She stated that staff has met with village merchants, who have been working on developing ideas for sandwich board signs. She stated that this item is a presentation from the village merchants with purposed ideas. She stated that in the future staff will need direction from the City Council regarding modifying a new draft sign ordinance.

Mayor Termini requested the representative from the Capitola Village and Wharf Business Improvement Area present their proposal.

Carl Hyman, local business owner, stated that he has worked with village business owners to come up with the proposed sandwich board sign design. He reviewed specifics about the proposed signage and presented a prototype sandwich board sign.

Council discussion ensued regarding the proposed sandwich board sign design.

Mayor Termini opened this item for public comment.

Gary Wetsel, Paradise Beach Grille, clarified some of the sandwich board sign design specifics. He stated that the design process has included input from residents, business owners, and the City Council.

Michael Lavigne, Michael Lavigne Real Estate Services, provided his support for the proposed sandwich board sign design.

Ed Bottorff, Capitola resident, provided his support for the proposed sandwich board sign design, stating that the signs should be placed in the same location where the previous parking meters were located.

Peter Latour, Santa Cruz Hostel, suggested that the proposed sandwich board signage be more decorative and be placed high enough to be viewed above vehicles.

Mayor Termini closed this item for public comment.

Council Member Norton made a motion with the following proposed sandwich board sign criteria: (a) allow free-standing signs in the commercial part of the Central Village Zoning District for a one-year trial period; (2) do not allow banners or temporary outside signs if the proposed sandwich board signs are approved; (3) obtain the cost of a sign permit from the City that would include code enforcement costs; (4) allow the height of the proposed signage to be thirty inches and a width of twenty-inches; (5) require ADA compliance; (6) allow for two-way sidewalk pedestrian traffic; (6) allow a minimum distance between signs to be forty feet.

Mayor Termini seconded the motion with an amendment to include that the proposed signs be placed at least twenty-four inches from the curb and to keep the sidewalk clear for two-way pedestrian traffic.

Council Member Nicol stated the following point of order: the Mayor should provide a second to a motion only in the absence of a second from another council member.

Mayor Termini withdrew his motion.

Council Member Storey asked about the standard “look and feel” format required for the proposed design standard.

Council Member Norton suggested that staff provide the City Council with a standardized design that would allow for some variations.

Mayor Termini stated that businesses should be able to use the top oval section of the sign for their own design, and the remaining portion of the sign should be a standard design.

Interim Community Development Director Westman stated that staff will return to Council with recommendations on the sign ordinance.

Mayor Termini requested that staff provide the City Council with the number of businesses that would be affected by the proposed sign ordinance and for staff to provide a recommendation on consistency of text used on the signs.

ACTION: Motion by Council Member Norton, seconded by Council Member Nicol, for staff to come back to the City Council with a proposed amendment to the Capitola Municipal Code to allow sandwich board signs. The motion carried unanimously on the following vote: AYES: Council Members Harlan, Norton, Nicol, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

Mayor Termini stated concerns regarding businesses (i.e., various 41st Avenue businesses) being affected by the proposed amended Sandwich Board Sign Ordinance.

Interim Community Development Director Westman responded that staff will be coming back to the City Council in the future with direction to address the egregious problem of businesses placing flags and large banners in storefronts, and staff will return to the City Council with the Planning Commission's recommendation.

EXCERPT OF THE JUNE 7, 2012 PLANNING COMMISSION MEETING MINUTES REGARDING
PUBLIC HEARING ITEM 5.C

C. AMEND SIGN ORDINANCE 17.57

#12-017

The Planning Commission shall consider an amendment of the Capitola Municipal Code Section 17.57 to allow sidewalk signs (sandwich board/A-frame signs/pole signs) in the Central Village Zone Districts subject to a city permit. The proposed amendment will be for a one year trial period.

Commissioner Ortiz asked if there were materials specified in the ordinance. The term sandwich board sign is incorporated in the sidewalk sign, this is confusing.

Interim Community Development Director Westman stated that under option one the sandwich board side will be corrected to read sidewalk sign. The sign materials are specified in section 9.

Commissioner Ortiz asked what will happen to the hole if the sign is no longer being placed.

Interim Community Development Director Westman stated the hole will be filled and covered per city standard if it is no longer being used.

Commissioner Ortiz: I think a map should be included in ordinance so people understand where this is. The Central Village district does include residential. I was wondering if businesses like vacation rentals, a real estate office, etc., can these businesses have signs and how far down the street can these signs go into the village neighborhoods?

Interim Community Development Director Westman: If someone had a business in that area, these signs would be allowed. As an example, there was a piano store on San Jose Avenue and the new paddle board store that clearly indicated that they are one of the businesses that would like a sign, mainly because they are off the main street.

Commissioner Ortiz: If you were a second story CPA or a non-retail business you could request a sidewalk or sandwich board sign?

Interim Community Development Director Westman: A second floor businesses could submit an application for a sign and the Planning Commission could say that this was not an appropriate type of sign the business.

Commissioner Ortiz: What about vacation rentals?

Interim Community Development Director Westman: Individual homes that are rented as vacation rentals do not qualify under the proposed ordinance. However, a vacation rental business would qualify.

Commissioner Ortiz: Individuals vacation rental homes do not have to have a business license, but the businesses such as Vacations by the Sea must have a business license and could request a sign.

Commissioner Newman: The number is fixed at 30 permits. That just sets up a number of questions and this system sounds like taxi medallions. My first questions is who gets the permits, it seems that there are more than 30 people who what them.

Interim Community Development Director Westman: I've been telling you how this is going to work and the ordinance specifies the process. The City Council, when they considered this on February 9th, came up with the number 30 and they would like to see the ordinance provision for only 30 of these sign permits. So the first 30 people who come in the door will get a sign permit. Once 30 permits are issued, then no more will be issued until one has gone away.

Commissioner Newman: Once this is announced, then it will be like people lining up at the Apple store to get a sign permit. So when someone sells the business do they sell the rights to the sign?

Interim Community Development Director Westman: It would seem that someone could sell the rights to the sign just as you would be able to keep the wall sign to the business.

Chairperson Graves: But if they changed the business and now it requires a new sign, then shouldn't they be able to come into the city for a new sidewalk sign permit? This is like a can of worms.

Interim Community Development Director Westman: The Planning Commission is considering this ordinance and may revise it any way you want. You could say that the number of permits should be removed or should be greater than 30, but at this time staff is following the direction of the City Council.

Commissioner Newman: My question is this really the right time given the timing of the rewriting of the zoning ordinance?

Interim Community Development Director Westman: I have had a number of meetings with the BIA and other businesses and there may be 10-15 businesses requesting the signs at this time. I don't anticipate there being a number of businesses knocking on the door for these signs partly because this is a one year trial period and if you go with this type of sign it's a bit of a financial investment to make for a one year sign.

Vice-Chair Routh: Are we going to provide a list of companies who will drill the holes so that we don't have everybody down there with a hammer and chisel? How is the post secured?

Interim Community Development Director Westman: Again for them to put the hole in the sidewalk they will have to get an encroachment permit and the Public Works Director will come up with a standard for the size and location where the hole can be drilled just as with other utilities in the street.

Vice-Chair Routh: Have we ever done an inventory of the number of signs we have in the village?

Interim Community Development Director Westman: Not that I'm aware of.

Vice-Chair Routh: I just remember years ago when we implemented the sign ordinance the number of signs in the Village and visual blight. I'd like to see us say that for every sign we put up we're going to take one down. It seems that we're just adding more and more signs. It's crazy.

Interim Community Development Director Westman: I think that the more important thing for the city to do at this point is to make a decision one way or the other on this particular sign issue because our direction was to not be enforcing anything down there, but we have had a number of banners removed, such as Sousa's Ice Cream. It has been there for 3-4 years. So you'll see some signs gone the cupcake one will be gone tomorrow.

Commissioner Graves: I don't have any questions right now. I'd like to hear from Gary then bring it back to the Commission for discussion

The public hearing was opened.

Gary Wetsel: The Planning Commission meeting was held at the Jade Street Community Center. Mr. Wetsel spoke from the audience and the tape recording did not pick up his statements clearly to present the verbatim. The following are comments from the meeting:

Gary Wetsel, business owner of Paradise Grille, spoke in support of the proposed ordinance. He stated that the process has been one of compromise, cooperation and peer pressure with a positive result.

Mr. Wetsel suggested that a number be assigned and placed on the sign so that it can be easily identified as a permitted sign. He also suggested that a lock be incorporated into the post design for security. He supported the city requiring a new sign permit be obtained when there is a change of business ownership.

The public hearing was closed.

Commissioner Newman: The ordinance does not address sign content.

Interim Community Development Director Westman: The ordinance does not. We can no longer address the issue of sign content. You can only address the size and location of the sign you cannot regulate what the sign says. So on this particular sign (sample sign) where it says "Welcome to Capitola by the Sea", it would be up to each individual business to put whatever wording they want. Some would have permanent wording, some would have wording that would advertise specials in their business. The sign will be two-sided.

Commissioner Newman: We have been enforcing the sign ordinance in the where the sign in the window cannot advertise the contents inside the store.

Interim Community Development Director Westman: Yes, the sign ordinance that the City of Capitola has would not stand any kind of legal challenge.

Commissioner Newman: Did something happen that changed that?

Interim Community Development Director Westman: Something did happen. It was about 6 years ago there were a number of court cases that determined that a jurisdiction cannot regulate content. I previously handed out a legal opinion that goes through the issue.

Chairperson Graves: I'd like to see the case.

Commissioner Newman: We've certainly been enforcing the opposite.

Vice-Chairperson Routh: I'd like to discuss the construction. Would the post be permanently attached? What will keep someone from removing the sign from the stand? Would the construction allow for, let's say for example, a changeable plexi-glass menu board?

Commissioner Ortiz: But it would be plexi-glass right?

Interim Community Development Director Westman: It could be a blackboard and someone could erase and change the wording on it or in this particular case a white board and someone could write on the board

Vice-Chairperson Routh: So we have three options: sidewalk sign the traditional sandwich board sign and wait until there is re-write of the sign ordinance

Commissioner Graves: Most of you know that I'm probably the biggest sign police around and I have a real concern about the area of sign blight. I was hoping to get from Gary what I was trying to find out was what audience are the village merchants trying to attract? Because when you rent a space in the village you know what your rent is. Your rent should be based on your ability to sign the business under the ordinance. We already have an ordinance with provisions for plexi-glass wall cabinets that you can put your menus in and change your daily specials. Mick is absolutely correct that if the post is not permanently attached the sign may end up through someone else's window, not necessarily the person who put the sign out, but one of the bars a couple doors down. The next thing that really bothered me about it was the problem of the base. I think it's a mistake. It doesn't matter if the base is large or small but it is too curvy and if one handicapped person or one person may trip on them it will become a liability even though it belongs to each business. I really like the blade signs that come off the buildings. With regards to a sign for Gary's for the patio, he could put a neon sign saying "patio open or patio at rear." He could put it in a glass fronted box on the wall at the front of the business. As proposed, the signs at this height are not going to attract anyone driving by. It's really hard to see them at 27" off the ground. I can see the real need of some merchants, unlike Gary, to have a need for sign at the front of the building. As I said before, when you rent the space, you would think you would know what type of sign would be allowed. I'm all for encouraging business, but the number of signs proposed bothers me. I hope you're right that there are only 10-15 businesses that want these signs. I think the ordinance needs to be cleaned up, but I don't know where this ordinance gets you. Lee Walter's sign is ugly and is a tripping hazard, I don't know how someone hasn't tripped and fallen. Even though this is a year trial I don't support this ordinance, most trials go beyond the end date. The public does not want this. I've never received more emails and public comments on any item before.

Commissioner Ortiz: I think Ron did a good job of covering all the bases. I also got a lot of public response to this, with the exception of 2 or 3, everyone wants to keep the village more pristine a little bit purer. I think having one or two signs that work for you is fine. My question is when you get one sign after another, you get overload and stop reading. I think there will be too much up and down the Esplanade and people will not want to see anymore signs. I can't tell you how strongly I am about this issue. This is a real bugaboo for me too. I think you have problems today with enforcement, we're going to have a bigger problem with businesses not taking in the signs. We're adding a whole other problem to this already existing problem. My concern is with the people being treated unfairly and those who follow the sign ordinance. Without enforcement we're punishing everyone who follows the ordinance. I think we're doing a bad job of enforcing the ordinance. Better but, bad. It's one more sign we don't need. I really like the idea of blade signs and the ordinance currently provides for blade signs, window signs and wall signs.

Commissioner Newman: I too, heard from many business leaders in the community, like Gary and others, and hearing that this is an important ordinance for them. That made me really consider this carefully. This really highlights the different roles between the Planning Commission and the City Council. Planning Commission reviews the ordinance for planning issues and the City Council has the policy decisions. I'm really troubled by the fact that this is solely for the Central Village exclusively and not the rest of the community. I think this is going to create some problems. An example is when we ask someone to remove the signs along Capitola Road, those people are not going to be happy when the Council approves the signs in the village only. That's an impact the Council needs to be aware of. I just can't see the old timers having their A-frames up and others not allowed just because the businesses have been established. This would be so unfair; this would be the same for those businesses on the second floor. The City Council should take the existing ordinance and tear it up and let people have a sign anywhere they want. Otherwise we need a uniform fair enforced sign ordinance. I'm in favor of not approving any signs in the future until we enforce the current sign

ordinance. This ordinance is an enormous management and administrative headache for the city. This will mean more enforcement and applications. These signs are proposed in areas where you barely can walk anyway. This is just a small part of an equation that needs to be addressed. I support dealing with the whole issue with the general plan and the re-writing of the zoning ordinance.

Vice-Chairperson Routh: I think the root of the problem is the old sign ordinance that was developed in the late 70's and 80's and is totally antiquated. I see this as an evolutionary process. We need a new sign ordinance and enforcement. The existing signs need to be abated over a period of time. This may be the direction the city wants to move and this could be incorporated into a larger ordinance. I think we need to offer the opportunity to see if this works and possibly incorporate this into the new sign ordinance. I may be the one single vote in support of this.

Commissioner Newman: I'm concerned about the one year sunset date. A business will need to invest a lot of money in a new sign for one year.

Commissioner Graves: Usually there is a way to determine the effectiveness of a program, but I don't know how we're going to know if this program has been successful.

Vice-Chairperson Routh: This may eliminate a lot of other signs that are down there. I think we need to give the program a chance.

Chairperson Graves: Most of the unsightly signs are prohibited by the ordinance now. I going to make a motion that the comments of this meeting be forwarded to the City Council and that the ordinance be completely re-write. Blade signs, window signs and a menu in the glass case on the wall are sufficient and very attractive. Give merchants a better change to advertise their business with a re-write of the existing ordinance and the piecemeal process of the proposed sandwich board and sidewalk sign ordinance is not a good option at this time.

Commissioner Ortiz: I second the motion. There were many new good points raised in the discussion this evening and verbal minutes should be attached to the City Council report. One of the things that no one thought about was how does this affect the businesses in the residential area of the village? And this needs to be addressed. What I see is a resolution that is just longer and longer and the ordinance that is becoming fatter and fatter, and that is just points to the fact that this ordinance does not work.

Chairperson Graves: You mentioned that these signs could be used in the upper Cherry Avenue, San Jose Avenue and areas north of Capitola Avenue. I question if there is sufficient sidewalk space in those areas for these signs. The sidewalks get very narrow in those areas.

Interim Community Development Director Westman: You may be absolutely correct. Commissioner Ortiz' suggestion about including a map of where these signs will be permitted is a good one. And it will go before the City Council with the additional information about the 30 sign permits, the issue of what will happen to the permit with the change of business ownership, the idea that the poles for the signs be locked into place.

Commissioner Newman: Does anyone know when it is anticipated, through the general plan process, when the zoning ordinance will be completed?

Interim Community Development Director Westman: Staff anticipates an entirely new ordinance to be complete and adopted in the Fall of 2013.

Commissioner Newman: So a little more than a year from now. By the time this ordinance goes before the Coastal Commission this one year time period will expire.

Interim Community Development Director Westman: If this ordinance passes it will not get to the Coastal Commission until late summer and it takes them 2-3 months to process so the one year trial period will end about the same time as the adoption of the new zoning ordinance.

A MOTION WAS MADE BY COMMISSIONER NEWMAN AND SECONDED BY COMMISSIONER ORTIZ TO RECOMMEND TO THE CITY COUNCIL THAT THIS ORDINANCE WAIT UNTIL THERE IS A COMPREHENSIVE REVIEW OF THE CITY'S SIGN ORDINANCE NEXT YEAR.

THE MOTION CARRIED ON THE FOLLOWING VOTE: AYES: COMMISSIONERS NEWMAN, ORTIZ, AND CHAIRPERSON GRAVES. NOES: COMMISSIONER ROUTH. ABSENT: COMMISSIONER SMITH. ABSTAIN: NONE.



Item #: 9.B.

CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: CITY MANAGER'S DEPARTMENT
SUBJECT: ARGUMENT IN FAVOR OF CITY SALES TAX MEASURE

RECOMMENDED ACTION: That the City Council:

1. Review the draft argument in favor of the City's 0.25% sales tax measure and provide any recommended changes.
2. Determine who will be signing the Signature Statement
3. Designate one of its members to file the document by 5 PM, Tuesday, August 14, 2012.

BACKGROUND: At its June 14, 2012 meeting the City Council adopted Resolution No. 3922 which authorized its members to file written arguments for or against the City measure. The Mayor has been working with several community members on a draft argument in favor of the 0.25% sales tax measure

DISCUSSION: Attached is a draft "Argument in Favor of Measure ____." Since a majority of the Council members have expressed interest in signing the proposed Argument, consideration of the argument needs to be made at a public meeting.

Council members should review the draft document and provide any recommended changes or corrections. The current document contains 255 words; the total number of words allowed for the initial argument is 300 words.

FISCAL IMPACT: None

ATTACHMENT

1. Draft Argument

Report Prepared By: Susan Sneddon
City Clerk

Reviewed and Forwarded
By City Manager: 

Argument in Favor of Measure __

During the last 5 years the City of Capitola has experienced a severe fiscal decline due to loss of revenues. Public Works, administrative and police staffing have been reduced by 8 full time employees. As we all know, the flood depleted our emergency and contingency reserves to a dangerous level.

More critically during this period, maintenance and improvements to the City's streets, storm drains and other infrastructure has had to be decreased. At least \$450,000 / year is needed to keep the streets in a stable condition.

Unfortunately only an average of \$150,000 / year has been able to be spent on streets during the last three fiscal years. Of greater concern are the delays in preventive pavement maintenance. If we delay this work it will cause our roads to deteriorate to the point where the cost of repair will increase by a factor of 50 times!

Furthermore with the elimination of the Redevelopment Agency by the State, resources for improving 41st Avenue to manage traffic congestion have been eliminated.

If this measure passes, the City can,

- Restore lost police services;
- Restore lost Public Works projects;
- Improve infrastructure;
- Maintain long-term City fiscal stability;
- Assure essential services;
- Restore emergency reserves depleted by the recent flood damage repairs;
- Assist in relocating Pacific Cove Mobile Home Park residents.

This measure has broad community support because;

- It shares the tax with tourists, visitors, and nonresidents contributing 83% of the tax;
- The impact is only 25 cents for every \$100 of taxable expenditures;
- Proceeds are reinvested in the Capitola economy, not sent to the State or Federal government.

Please vote yes on this measure, and support your City in its efforts to achieve fiscal stability and effectively deliver the most essential services.

Let's keep Capitola the very best place to live!



CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: DEPARTMENT OF PUBLIC WORKS

SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING THE RE-DESIGNATION OF THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION AS THE REGIONAL CONGESTION MANAGEMENT AGENCY

RECOMMENDED ACTION: Adopt a Resolution re-designating the Santa Cruz County Regional Transportation Commission as the Congestion Management Agency (CMA) for Santa Cruz County pursuant to California Government Code commencing with Section 65088.

BACKGROUND: In 1990 voters passed Proposition 111 requiring urban counties, including Santa Cruz County, to develop and implement a Congestion Management Plan. However, in 1996 Assembly Bill 2419 was signed by the Governor allowing urbanized areas the option of being exempt from preparation of a Congestion Management Program (CMP) and in 2000 local agencies in Santa Cruz County opted out of the CMP.

However, with passage of Senate Bill 83 in 2009, voters in counties with a congestion management agency can increase vehicle registration fees by \$10 to fund some of the backlog of local transportation needs. These funds would provide a stable source of funds to local agencies that would be dedicated to maintain roadways and improve safety for pedestrians and school children.

DISCUSSION: Attached is a letter from George Dondero, Executive Director of the Santa Cruz County Regional Transportation Commission (RTC), requesting that the City Council consider the adoption of a Resolution designating the RTC as the Congestion Management Agency for Santa Cruz County. This action is necessary in order for a measure to be placed on the ballot asking voters to approve a \$10 vehicle registration fee to fund over \$2 million in local transportation projects.

Staff will work closely with the RTC to minimize the amount of work required to implement a Congestion Management Program. Much of this work is already being done as part of the SB 375-mandated Sustainable Communities Strategy, Regional Transportation Improvement Program (RTIP), and Regional Transportation Plan (RTP). Attachment 3 is copy of the RTC's June 14th agenda staff report on this issue that includes additional information concerning the proposed ballot measure and Congestion Management Agency.

FISCAL IMPACT If approved by the voters, the funds would be distributed to local jurisdictions based on population, with Capitola receiving the minimum of \$115,000 per year. The funds would be used to fund local road repairs and pedestrian projects.

ATTACHMENTS

1. Draft Resolution.
2. June 14, 2012 letter from George Dondero, Executive Director of the Santa Cruz County Regional Transportation Commission (RTC);
3. RTC's June 14th agenda staff report.

Report Prepared By: Steven Jesberg
Public Works Director

Reviewed and Forwarded
By City Manager:

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
RE-DESIGNATING THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION
COMMISSION AS THE CONGESTION MANAGEMENT PROGRAM AGENCY**

WHEREAS, California voters passed Proposition 111 in June 1990 establishing the requirement that urban counties develop and implement a congestion management program;

WHEREAS, Section 65089 of the Government Code requires that the congestion management program be prepared either by the county transportation commission or by another public agency as designated by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated areas of the county;

WHEREAS, the Santa Cruz County Regional Transportation Commission is the state designated local transportation commission and regional transportation planning agency for Santa Cruz County;

WHEREAS, the Santa Cruz County Regional Transportation Commission has a standing technical advisory committee with membership by the planning and public works departments of all local jurisdictions can provide the forum for consultation and cooperation with local governments as required in Section 65089;

WHEREAS, in 1990, Santa Cruz County local jurisdictions elected to designate the Santa Cruz County Regional Transportation Commission as the agency responsible for the Santa Cruz County congestion management program;

WHEREAS, subsequent to that designation, legislative revisions progressively eroded the strength and effectiveness of the congestion management program statutes;

WHEREAS, in 1996, Assembly Bill 2419 was passed and signed by the Governor allowing urbanized counties the option to be exempt from preparation and implementation of a congestion management program;

WHEREAS, in 2000, local jurisdictions in Santa Cruz County elected that Santa Cruz County be exempt in accordance with California Government Code Section 65088.3 from the statutes requiring the development and implementation of a congestion management program as described in California Government Code Sections 65088 to 65089.10.

WHEREAS, in 2009, Senate Bill 83 was passed and signed by the Governor adding section 65089.20 to the Government Code allowing transportation planning agencies pursuant to Chapter 2.6 commencing with Section 65088 to place a ballot measure before the voters of the county to authorize an increase in the fees of motor vehicle registration in the county by up to \$10 for transportation-related projects and programs;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Capitola hereby once again designates the Santa Cruz County Regional Transportation Commission as the Congestion Management Program agency for Santa Cruz County pursuant to Government Code Sections 65088 to 65089.20.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 12th day of July, 2012, by the following vote:

AYES:

NOES:

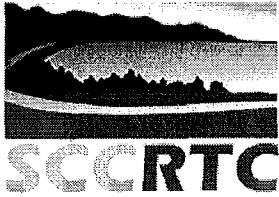
ABSENT:

ABSTAIN:

Michael Termini, Mayor

ATTEST:

_____,CMC
Susan Sneddon, City Clerk



SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

1523 Pacific Ave., Santa Cruz, CA 95060-3911 • (831) 460-3200 FAX (831) 460-3215 EMAIL info@scrtc.org

June 14, 2012

Capitola City Council
420 Capitola Ave
Capitola, CA 95010

RE: Request for Resolution Re-designating the Santa Cruz County RTC as the
Congestion Management Agency (CMA) for Santa Cruz County

Dear Members of the City Council:

In recognition of the significant backlog of transportation system needs in Santa Cruz County, the Regional Transportation Commission (RTC) has been investigating local funding strategies to address at least a portion of the funding shortfalls. At its June 14, 2012 meeting, the RTC approved placing a measure on the November 2012 ballot asking voters to authorize a \$10 vehicle registration fee (VRF), with funds to be distributed to local jurisdictions for local street and road repairs, safe routes to schools and pedestrian projects. A March 2012 poll showed that 69% of voters could support the new fee. RTC staff has been working with your public works department and the community to develop the expenditure plan. RTC adoption of the Ordinance calling for the election and final expenditure plan and ballot language is scheduled for the August 2, 2012 RTC board meeting. In order to pursue this funding opportunity for your local jurisdiction's transportation projects, **the RTC requests that the city approve a resolution designating the RTC as the congestion management agency for Santa Cruz County.**

In 2009, the California Legislature approved Senate Bill 83 (SB83) authorizing the countywide transportation planning agency to impose an annual fee of up to \$10 on motor vehicles registered within the county for transportation programs and projects, subject to voter approval. While a "countywide transportation planning agency" typically is defined as the Regional Transportation Planning Agency (RTPA), under SB83 this definition was restricted to the "congestion management agency" (CMA), inadvertently excluding the Santa Cruz County Regional Transportation Commission (RTC).

In 2000, at the request of the RTC, local jurisdictions opted out of the congestion management program (consistent with Government Code 65088.3). In order to be able to take a local Vehicle Registration Fee to the voters and generate over \$2 million per year for local jurisdictions, the RTC must now be re-designated as the CMA by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county (per Government Code section 65089.a).

History of CMA Designation

In June 1990 California voters passed Proposition 111 establishing the requirement that urban counties develop and implement a congestion management program (CMP). In September 1990,

the cities in Santa Cruz County and the County Board of Supervisors adopted resolutions designating the Santa Cruz County Regional Transportation Commission (SCCRTC) as the agency responsible for developing and implementing the CMP. In 1996 the California Legislature passed and the Governor signed Assembly Bill 2419 allowing urbanized areas the option to be exempt from preparation and implementation of a CMP. In 2000, at the request of the Santa Cruz County Regional Transportation Commission (SCCRTC) local jurisdictions in Santa Cruz County exercised this option.

The CMP statutes were initially established to create a tool for managing and reducing congestion; however, revisions to those statutes progressively eroded the effectiveness of the CMP. There is also duplication between the CMP and other transportation documents such as the Regional Transportation Plan (RTP) and the Regional Transportation Improvement Program (RTIP). In addition, the goals of the CMP may be carried out through the Regional Transportation Improvement Program and the Regional Transportation Plan. While several functions of the CMP which the region considered most useful were incorporated into those documents, designating the RTC as the CMP agency once more will add work to the RTC and local jurisdiction. The RTC will work with public works and planning department to ensure that the production and implementation of the Congestion Management Program is as efficient as possible. **Unfortunately, without this additional work it would be impossible to secure the benefits of a new \$10 vehicle registration fee that will raise \$2.2 million per year.**

In order for the RTC to have the option to place a \$10 VRF on the ballot, we request that the city pass a resolution to once again designate the RTC as the congestion management agency responsible for developing the congestion management program prior to August 2, 2012. A sample resolution is attached.

Thank you for your consideration of this request. If you have any questions or comments, please contact me or Rachel Moriconi of my staff at (831) 460-3200.

Sincerely,



George Dondero
Executive Director

enclosures

cc: City Manager
Public Works Director

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Additional information: RTC June 14, 2012 staff report

BACKGROUND

Senate Bill 83

In 2009, Senate Bill 83 was enacted by the California Legislature adding Section 65089.20 to the Government Code to provide countywide transportation planning agencies with the ability to seek voter approval of vehicle registration fees of up to \$10 for transportation-related projects and programs. However, the bill too narrowly defined "countywide transportation planning agency" as "the congestion management agency created pursuant to Chapter 2.6 (commencing with Section 65088)". By restricting the definition to Congestion Management Agencies (CMAs), over 30 counties in the state, including Santa Cruz County, were unintentionally excluded from utilizing this revenue generating tool. This is because in the year 2000 Santa Cruz County agencies opted out of the congestion management program. Working with a coalition of agencies statewide, the RTC has repeatedly sought clean-up legislation to modify the definition to more closely resemble the original intent of SB83, but has not yet been successful. Therefore, in order to utilize this revenue generating tool, the RTC would need to be re-designated as the congestion management agency for Santa Cruz County.

RTC History as the Congestion Management Agency for Santa Cruz County

In June 1990 California voters passed Proposition 111 increasing fuel taxes to raise funds for transportation improvements and creating congestion management agencies (CMAs) for California's urban counties. The chief function of a CMA (outlined in Government Code Sections 65088-65089.10) is to prepare, adopt and implement a Congestion Management Program (CMP) linking transportation, land use, air quality and regional economics. The CMA is designated by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county (Government Code Sec 65089). In Santa Cruz County, the Regional Transportation Commission was designated as the CMA from 1990 to 2000. In 1992 the Regional Transportation Commission adopted its first CMP which was updated in 1994 and in 1996. In 2000 the region opted out of the Congestion Management Program (which includes designation of the RTC as the CMA) after many of the Proposition 111 requirements for the CMP were overturned by subsequent California state legislation and the CMP had become optional. With State laws changed to weaken the enforcement power of the CMAs, in 1995 a law was passed allowing counties to choose not to prepare a CMP:

"65088.3. This chapter does not apply in a county in which a majority of local governments, collectively comprised of the city councils and the county board of supervisors, which in total also represent a majority of the population in the county, each adopt resolutions electing to be exempt from the congestion management program."

DISCUSSION

Since the authority of transportation planning agencies to place a vehicle registration fee on the ballot is currently restricted to those agencies that are designated as the congestion management agency for their county, **RTC staff recommends that the RTC request resolutions from the County of Santa Cruz and the Cities of Capitola, Santa Cruz, Scotts Valley, and Watsonville to once again designate the RTC as the Congestion Management Agency (CMA) for Santa Cruz County per Government Code section 65088.** A sample resolution is attached ([Attachment 1](#)).

Since the RTC would need to be designated as the CMA prior to adopting the ordinance to place a vehicle registration fee on the ballot and the County Board of Supervisors does not meet in July, the County has tentatively scheduled consideration of the RTC's CMA designation at its June 26, 2012 meeting. The cities would be asked to consider this action at their July meetings.

Requirements of CMAs:

The congestion management agency (CMA) is generally charged with helping to coordinate land use, air quality and transportation planning among the local jurisdictions and to prepare and implement a Congestion Management Program (CMP) that identifies how certain transportation funds will be spent. CMAs monitor levels of congestion on major roads and analyze the impacts that a proposed development will have on future traffic congestion. Many of the requirements of congestion management agencies are consistent with activities that the RTC or local jurisdictions already undertake or are conducting with the Association of Monterey Bay Area Governments (AMBAG) for the Regional and Metropolitan Transportation Plans (RTP/MTP), associated SB375-mandated Sustainable Communities Strategy (SCS), and the Regional Transportation Improvement Program (RTIP).

While many of the requirements of CMAs can or are already being done through other programs and planning efforts, designating the RTC as the congestion management program (CMP) agency once more will increase workloads for the RTC and local jurisdictions. The relevant state statutes (California Government Code Sections 65088 to 65089.10) that outline requirements for congestion management programs are attached ([Attachment 2](#)) and summarized below:

1. Develop and update a **congestion management program (CMP)** every 2 years, which includes:
 - a. Traffic **level of service standards** for state highways and major arterials (the CMP Network). This would be a new task.
 - b. Performance element that includes **performance measures** to evaluate current and future multimodal system performance. Performance measures are use for both the RTP and RTIP.

- c. A **trip reduction and travel demand element** to promote alternative transportation methods. This is consistent with work done by the RTC's Commute Solutions program.
 - d. A **program to analyze the impact of land use decisions made by local jurisdictions** on the transportation system including costs for mitigation of those impacts. The RTC does not currently have a program that calculates the cost of developments on regional travel.
 - e. A **7-year capital improvement program (CIP)**. In Santa Cruz County this is accomplished through the Regional Transportation Improvement Program (RTIP) project list. While the RTIP project list now only covers five years, rather than seven, the document could be expanded an additional two years.
2. **Uniform data base on traffic impacts.** This data is currently part of the regional transportation computer model maintained by AMBAG.
3. **Local Jurisdiction Requirements:**
- a. **Develop an alternative area-wide level of service standard** or multimodal composite or personal level of service standard that takes into account both of the following:
 - (A) The broader benefits of regional traffic congestion reduction by citing new residential development within walking distance of, and no more than one-third mile from, mass transit stations, shops, and services, in a manner that reduces the need for long vehicle commutes and improves the jobs-housing balance.
 - (B) Increased use of alternative transportation modes, such as mass transit, bicycling, and walking.
 - b. **Approve a list of flexible level of service mitigation options** that includes roadway expansion and investments in alternate modes of transportation that may include, but are not limited to, transit infrastructure, pedestrian infrastructure, and ridesharing, vanpool, or shuttle programs.
 - c. **Parking cash-out program.** The city or county in which a commercial development will implement a parking cash-out program that is included in a congestion management program or in a deficiency plan shall grant to that development an appropriate reduction in the parking requirements.
 - d. **Local Jurisdictions Deficiency Plans.** A local jurisdiction must prepare a deficiency plan when highway or roadway level of service standards are not maintained on segments or intersections of the designated system. The deficiency plan must be adopted by the city or county at a noticed public hearing.

In order to enforce the CMP, the following are required:

4. **Biennial monitoring of local jurisdictions** by the CMA on all elements of the CMP to ensure conformance. The CMA must rule whether the local jurisdictions are in conformance. Local jurisdictions which are not in conformance could be at risk of losing transportation funds. Staff will work with local jurisdictions to avoid a loss of funds.
5. **Guidelines for deficiency plan** preparation and methodology for inter-jurisdictional deficiency. When a local jurisdiction fails to meet the LOS standards for a CMP intersection, a deficiency plan may be required by the CMA. The deficiency is determined after discounting interregional travel, construction impacts, etc. If a deficiency exists, a deficiency plan must be adopted to either correct the deficiency or make improvements to the transportation system as a whole.

RTC staff will work with public works and planning departments to ensure that the production and implementation of the Congestion Management Program is as efficient as possible. Unfortunately, without this additional work it would be impossible to secure the benefits of a new \$10 vehicle registration fee that will raise \$2.2 million per year for local jurisdictions' transportation projects.

SUMMARY

Senate Bill 83 (2009) authorizes the countywide transportation agency that is designated as the congestion management agency (CMA) to seek voter approval of a \$10 vehicle registration fee for transportation purposes. Staff recommends that the Regional Transportation Commission request that local jurisdictions re-designate the RTC as the congestion management agency for Santa Cruz County.

Attachment 1: Sample Resolution for Local Jurisdictions

Attachment 2: Congestion Management Agency (CMA) Roles and Responsibilities
(California Government Code Sections 6588-65089.10)

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Item #: 9.D.

CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: FINANCE DEPARTMENT

SUBJECT: CONSIDERATION OF A RESOLUTION ELECTING TO BECOME SUBJECT TO THE UNIFORM CONSTRUCTION COST ACCOUNTING ACT PROCEDURES (ALTERNATIVE BIDDING PROCEDURES) AND INTRODUCING AN ORDINANCE AMENDMENT TO TITLE 3 SECTION 16 OF THE CAPITOLA MUNICIPAL CODE PERTAINING TO PURCHASING AND PURCHASING CONTRACTS [1ST READING]

RECOMMENDED ACTION: Approve the following financial management changes:

1. Approve a Resolution adopting the Uniform Construction Cost Accounting Procedures (Alternative Bidding Procedures) as provided in Sections 22000-22045 of the Public Contract Code;
2. Introduce a proposed Ordinance amending Chapter 3.16 of the Capitola Municipal Code to pertaining to Alternative Bidding Procedures [1st reading];
3. Direct staff to amend related Council financial management policies to be consistent with the Alternative Bidding Procedures:
 - a. Purchasing and Procurement Policy
 - b. Credit Card Purchasing Program Policy

BACKGROUND: Bill Statler recently served as the Interim Finance Director. On February 23, 2012, he recommended a series of Financial Management Improvements, which included purchasing procedure and policy updates.

As directed by Council, staff has prepared the necessary documents to introduce an Ordinance to adopt the Uniform Construction Cost Accounting Procedures (Alternative Bidding Procedures). The adoption of this Ordinance will also require staff to update the Council Purchasing and Procurement Policy; and the Credit Card Purchasing Program Policy to reflect the adjusted purchasing limits, bidding procedures, and requirements detailed in Sections 22000-22045 of the Public Contract Code.

DISCUSSION: At the February 23, Council Meeting, former Finance Director Statler recommended changes to the City's purchasing policies with the goal of providing more meaningful Council involvement in the purchasing process, resolving discrepancies between the 2001 Purchasing Ordinance and the 2006 Council adopted purchasing procedures; and adjusting the purchasing authority limits for the passage of time.

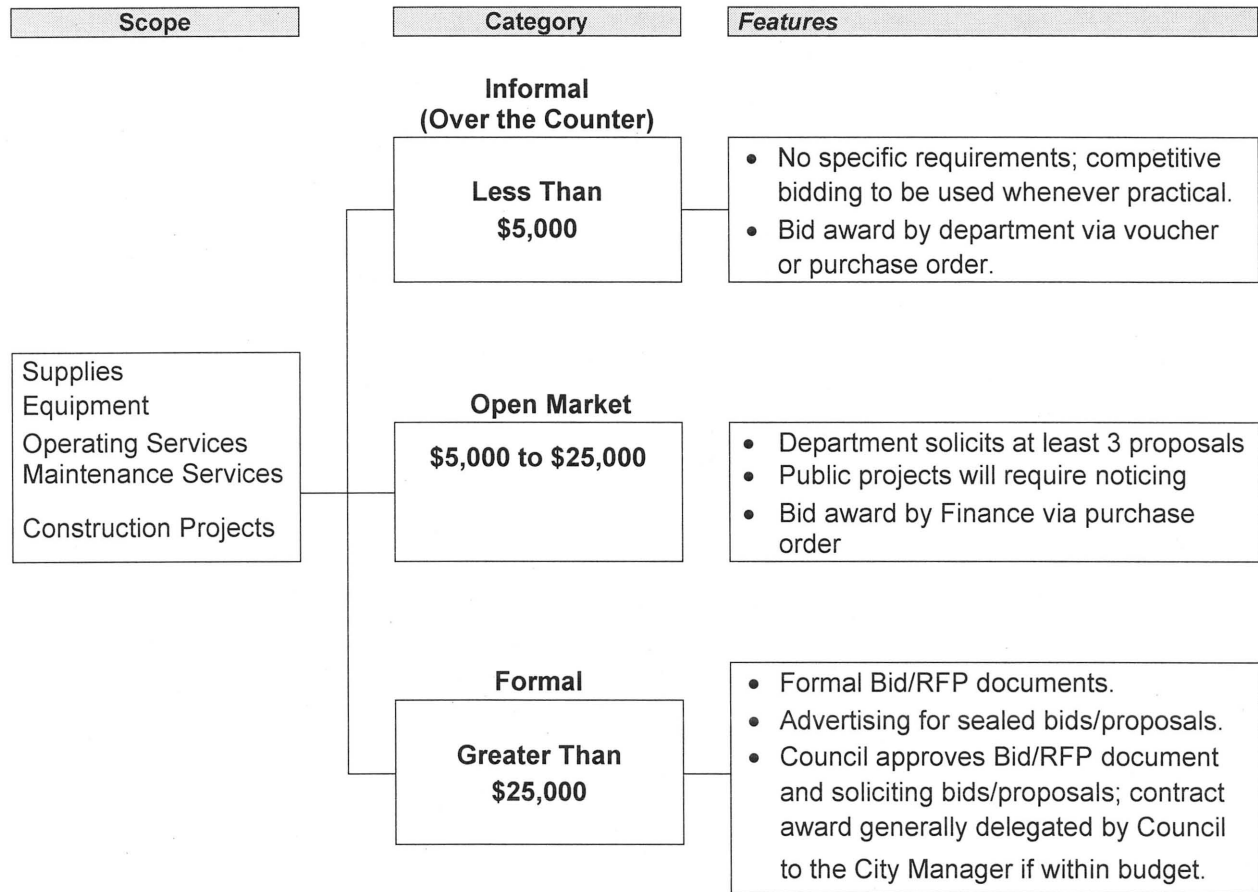
The proposed changes to the purchasing system are presented below:

- Involve Council earlier in the formal bid process
- Integrate policies and procedures for purchases: Supplies, equipment, maintenance and operation services; consultant services, and construction projects

JULY 12, 2012: UNIFORM CONSTRUCTION COST ACCOUNTING ACT PROCEDURES AND INTRODUCING AN ORDINANCE AMENDMENT PERTAINING TO PURCHASING AND PURCHASING CONTRACTS

- Establish informal (over the counter) purchases at \$5,000: This is a decrease from the \$10,000 level set in the 2001 Purchasing Ordinance and an increase in the \$2,000 level set in the 2006 procedures. Although no specific purchasing requirements are established for this level of purchase, competitive bidding should be used whenever practical. This change will clarify policies and procedures between the two documents, as well as facilitate internet purchases and small purchases from local vendors.
- Establish Open Market Procedures at \$5,000 to \$25,000: This is a decrease from the limit of \$50,000 set in the Purchasing Ordinance and the \$10,000 limit in the 2006 Procedures.
- Require formal bidding/requests for proposals are set at purchases in excess of \$25,000

A chart outlining the categories and features of the proposed purchasing system is listed below:



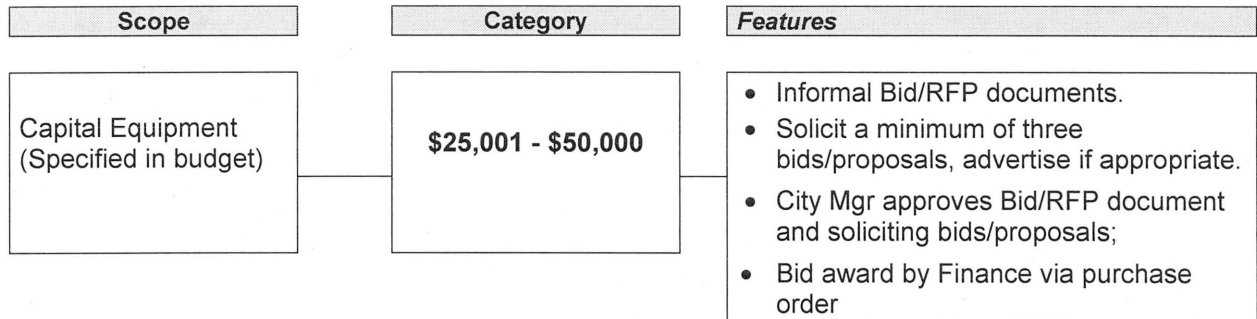
Staff would also like Council to consider providing the City Manager with the authority to enter into contracts for single capital equipment purchases between \$25,001 and \$50,000. This would allow for the expedient processing of equipment that would typically contain standard bid specifications. These items would be clearly identified in future budget documents for transparency purposes and controlled at the line item level. If there were any changes to the item description or the budgeted amount, Council approval would be required.

JULY 12, 2012: UNIFORM CONSTRUCTION COST ACCOUNTING ACT PROCEDURES AND INTRODUCING AN ORDINANCE AMENDMENT PERTAINING TO PURCHASING AND PURCHASING CONTRACTS

A sample of the budget format is attached for reference (Attachment 1). In the FY12/13 and FY13/14 budget, these items would include:

- PW Truck \$27,000
- Marked Police Vehicle: \$38,000
- Command Vehicle: \$50,000

An overview of the additional purchasing option is presented below:




The attached Ordinance and Resolution (Attachments 2 and 3), will allow the City to elect the Uniform Construction Cost Accounting procedures and implement the proposed purchasing practices.

FISCAL IMPACT: There are no direct fiscal impacts associated with the recommended changes; however the City will benefit from streamlined processes.

ATTACHMENTS:

1. Sample Budget Document
2. Draft Resolution
3. Proposed Ordinance

Report Prepared By: Tori Hannah, Finance Director

**Reviewed and Forwarded
By City Manager:** 

Capital Outlay

DRAFT

Fund	Purchase Authorization Section 3.16.050(A)(2)*	FY12/13 Budget	FY13/14 Budget
Equipment Acquisition & Replacement			
PW Truck	X	\$27,000	
Marked Police Vehicle	X	\$38,000	
Command Vehicle	X		\$50,000
Replacement Pressure Washer		\$22,000	
Unmarked Police Vehicle		\$20,000	

*The City Manager is authorized to approve informal bid/specifications and enter into contracts for purchases up to \$25,000. Section 3.16.050(A)(2) of the Capitola Municipal Code increases this limit to \$50,000 for single equipment purchases based on Council adoption of the budget. The cost listed represents the total amount requested to place the equipment into service.

RESOLUTION NO. ____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
ELECTING TO BECOME SUBJECT TO THE UNIFORM CONSTRUCTION COST
ACCOUNTING PROCEDURES (ALTERNATIVE BIDDING PROCEDURES)**

WHEREAS, in the course of conducting City operations it is necessary to purchase a broad range of goods and services; and

WHEREAS, the City Council has adopted purchasing policies and procedures as set forth in Chapter 3.16 of the Municipal Code that specify the dollar amount of purchases and contracts requiring the use of either open market or formal bidding procedures, and the level of authority required to authorize invitations for bids (or requests for proposals) and award contracts; and

WHEREAS, the City Council would like to elect to become subject to the Uniform Construction Cost Accounting Procedures set forth in the Public Contract Code, commencing with Section 22010, as required by the State in order to use the alternate bidding procedures for construction projects set forth in Section 22032 of the Public Contract Code.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City hereby elects to become subject to the Uniform Construction Cost Accounting Procedures set forth in the Public Contract Code.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola at its special meeting held on the 12th day of July, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Michael Termini, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING CHAPTER 3.16 OF THE MUNICIPAL CODE
REGARDING PURCHASING AND PURCHASING CONTRACTS

THE CITY COUNCIL OF THE CITY OF CAPITOLA HEREBY ORDAINS AS
FOLLOWS:

Chapter 3.16 of the Municipal Code shall be amended to read as follows:

Sections:

3.16.010	Purpose.
3.16.020	Limitations.
3.16.030	General procedural requirements.
3.16.040	Definitions.
<u>3.16.045</u>	<u>Contractors List</u>
3.16.050	City Manager authority.
3.16.060	City Manager delegation of authority.
3.16.070	<u>Informal Purchases – Purchases under \$5,000</u> Purchases of general services or supplies and equipment
<u>3.16.075</u>	<u>Open Market Purchases – Between</u> for between <u>_____</u> <u>_____ \$105,000 and \$2025,000.</u>
<u>3.16.080</u>	<u>Formal Purchases – Purchases greater than \$25,000</u>

3.16.010 Purpose. The purpose of this chapter is to:

A. Provide for the authority of city officers to enter into certain contracts even without a formal city council approval of the specific contract or transaction and to set forth procedural requirements; and

B. Establish efficient procedures for the purchase of supplies, equipment and general services at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases to clearly define authority for the purchasing function, and to assure the quality or purchases; and

C. To inform those wishing to contract with the City of the authority of the city employee or official to create a binding contract; and

D. To assist the City Treasurer in carrying out his/her duties under Government Code Section 41001.

3.16.020 Limitations. The authority created by this chapter applies only to contracts, the predominant purchase of which is the purchase by the city of goods or services; and the city's primary performance under such contract is the payment of money. This chapter does not confer authority to authorize the payment of money for grants, gifts, or other expenditure that is without

consideration.

Authority conferred in this chapter upon the City Manager applies to situations in which an Interim City Manager is serving or in situations in which the City Manager has appointed an Acting City Manager.

3.16.030 General procedural requirements. All contracts must be in writing and be signed in the name of the City. They may be transmitted by facsimile or electronic mail.

3.16.040 Definitions. For the purposes of this chapter, the following definitions shall apply:

A. "Best value" means the best value to the City based on all factors, including but not limited to, the following:

1. Cost;
2. The ability, capacity, and skill of the contractor to perform the contract or provide the supplies, services or equipment required;
3. The ability of the contractor to provide the supplies, services, or equipment promptly or within the time specified without delay or interference;
4. The character, integrity, reputation, judgment, experience, and efficiency of the contractor;
5. The quality of the contractor's performance on previous purchases or contracts with the City; and
6. The ability of the contractor to provide future maintenance, repair, parts, and services for the use of the supplies purchased.
7. The contractor's ability to supply or act in a timely manner.

8. Compliance by the contractor with federal acts, executive orders, and state statutes governing nondiscrimination in employment

9. The results of any evaluation relating performance and price, such as testing, life-cycle costing, and analysis of service, maintenance, and technical data.

B. "Change order" means a change or addendum of an executed contract.

C. "Consultant or professional services" means the services of an attorney, engineer, doctor, financial consultant, planning or environmental consultant, investment advisor, bank or trustee officer, or other professional.

D. "Contract" means any agreement to do or not do a certain thing. "Contract" and

“agreement” are synonymous. The term “contract” includes, but is not limited to, a purchase order, a contract for services, an addendum or change order or a letter agreement.

E. “Emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, or proclaimed pursuant to Municipal Code §8.08.060.

F. “General services” means and includes any work performed or services rendered by an independent contractor, with or without the furnishing of materials, including, but not limited to, the following:

- ~~1. Maintenance work as defined in Section 22002 (d) of the Public Contract Code~~
~~Maintenance or nonstructural repair of city buildings, structures or improvement which does not require engineering plans, specifications or design, including, but not limited to, unscheduled replacement of broken window panes, fire extinguisher maintenance, minor roof repairs, plumbing, elevator maintenance, custodial services and pest control;~~
 - ~~a. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.~~
 - ~~b. Minor repainting~~
 - ~~c. Resurfacing of streets and highways at less than one inch~~
 - ~~d. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinklers systems~~
 - ~~e. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher~~
2. Repair, modifications and maintenance of city equipment and software;
3. Cleaning, analysis, testing, moving, removal or disposal (other than by sale) of city supplies and equipment;
- ~~4. Repainting, care or maintenance of public grounds, including, but not limited to, trees, shrubbery, flowers, lawns;~~
- ~~5~~4. Providing temporary personnel services;
- ~~6~~5. Providing other miscellaneous services to facilitate city operations;

76. Performing repair, demolition or other work required to abate nuisances under this code;

87. Licensing software;

98. Leasing or rental of equipment (personal property) for use by the City;

109. A maintenance agreement for equipment owned or leased by the City.

“General services” does not include:

(a) Work defined as public projects that must be put out to bid pursuant to Public Contract Code Section 22002 (c) 20162.

(b) Items such as meals or transportation, which personally are consumed or utilized by the individual who contracts for the item.

G. “Public project” is defined by Section 22002 (c) of the Public Contract Code as construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operating facility. It also includes painting or repainting of any publicly owned, leased, or operated facility. Section 20002 (d) does not include maintenance work included in Section 3.16.040 (F)(1):

GH. “Supplies and equipment” means and includes all such items purchased on behalf of the City except for supplies or materials finished for a public project.

3.16.045 Contractors List

A list of contractors shall be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code California

3.16.050 City Manager authority.

A. The City Manager is authorized to enter into and sign for and on behalf of the City, without the prior approval of the City Council, a contract:

1. Which contains an initial maximum compensation figure of \$1025,000 or less, or a change order not exceeding \$7,500. (Cumulative additional orders exceeding \$25,000 must be approved by the City Council); and

2. Contracts for single capital equipment purchases that do not exceed \$50,000; which are clearly defined and identified in the budget.

23. For which moneys have been appropriated; and

4. For which he determines the City has made reasonable efforts to obtain best value.

B. In an emergency (as defined in §3.16.040), the City Manager may authorize the expenditure of any unencumbered moneys in the emergency reserve fund, notwithstanding the fact that such moneys may not have been appropriated for such purpose, to the extent that other moneys have not been appropriated or are otherwise unavailable therefor.

C. Contracts wherein all the City's costs will be reimbursed pursuant to an existing separate contract.

3.16.060 City Manager delegation of purchasing authority.

Providing the City Manager first establishes written procedures, the City Manager may delegate the purchasing authority for other city employees to enter into contracts for purchases of general services or supplies and equipment for \$~~1025~~,000 or less.

3.16.070 - Informal Purchases – Purchases under \$5,000.

Purchases under \$5,000 may be made by persons authorized by Section 3.16.060 in the open market. There are no specific bidding requirements for these purchases; however competitive bidding should be used whenever practical. Quotations for these purchases may be written or verbal. All purchases subject to this section will be awarded by the department either by voucher or purchase order.

3.16.075 Open Market Purchases - Purchases of general services or supplies and equipment for between \$~~105~~,000 and \$250,000.

~~A. Quotation Requirement.~~ The purchase of supplies, equipment and general services of a value from \$~~105~~,000 to \$25,000 may be made by persons authorized by Section 3.16.060 in the open market, following the procedure prescribed in this section and the City Manager's procedures.

A. Invitation for Bids

1. Supplies, equipment, and general services between \$5,000 and \$25,000
Open-market purchases shall, whenever feasible, be based on at least three quotations. The purchasing employee shall solicit quotations by written request or telephone to prospective vendors. Telephone quotations shall be memorialized in a contemporaneous writing.

2. Public Projects between \$5,000 and \$25,000

Notices inviting bids for public projects between \$5,000 and \$25,000, shall be mailed to list of qualified contractors, identified according to categories of work, at least ten calendar days before the bids are due. Notices shall also be mailed within ten calendar days before the bids are due to all construction trade journals as required by the Commission. If the City does not have a qualified list of contractors for the particular type of work to be performed, notices inviting bids will only be sent to the construction trade journals as required by the Commission. If the product or service is proprietary in nature and can only be obtained from a certain contractor

or contractors, notices inviting bids will only be mailed to such contractor or contractors.

3. Exceptions. The quotation procedure under this section may be dispensed with for purchases between \$5,000 and \$25,000 where supplies and equipment are purchased through cooperative purchasing arrangements with the State or other group of multiple governmental entities.

B. Bids – Retention. ~~3. Quotations.~~ Quotations shall be submitted to the Finance Director who shall keep a record of all open-market orders and quotes for a period of one year after the submission of quotes or placing of orders. This record is open to public inspection. ~~For a purchase of up to \$10,000, the quotations may be verbal or written.~~ For a purchase in an amount over \$~~105,000~~ to \$~~2550,000~~, the quotations shall be written (including facsimile and electronic mail).

C. Rejection. The purchasing authority may reject:

1. Any quotations which fail to meet the specific purchase requirements in any respect; or
2. All quotations, for any reason whatsoever, and may invite new quotations.

D. ~~4.~~ Award of Contract. A contract shall be awarded to the quotation representing the best value as defined in Section 3.16.040. The basis upon which the award is made shall be in writing.

E. Public Projects – In Excess of Limit

In the event that all bids received for a construction project are more than the maximum allowed under 3.16.075, and bids were invited pursuant to the provisions of 3.16.075, the Council may, by adoption of a resolution by four-fifths of a vote, award the contract, in an amount not to exceed the maximum set forth in Section 22034 (f) of the Public Contract Code, to the lowest responsible bidder, if it determines that the cost estimate was reasonable. Otherwise, the bids shall be rejected; and if the agency decides to go forward with the project, shall be re-bid in accordance with the procedures set forth in Section 3.16.080.

~~B. Exceptions. The quotation procedure under this section may be dispensed with for purchases between \$10,000 and \$20,000 where supplies and equipment are purchased through cooperative purchasing arrangements with the State or other group of multiple governmental entities.~~

3.16.080 Formal Purchases - General; services, supplies, and equipment greater than \$25,000

A. Notice inviting bids shall include, but not be limited to, the following:

1. A general description of the item(s) or services to be purchased, or the public work to be constructed or improved;
2. The location where bid blanks and specifications may be secured;
3. The time and place assigned for the opening of sealed bids;

4. The type and character of bidder's security required, if any; and
5. The location and deadline for submission of bid

B. Notices inviting bids shall be made as follows:

1. For supplies, services, and equipment, notices inviting bids shall be published at least once in the official newspaper of the city, with the first publication occurring at least ten calendar days before the date of opening the bids.
2. For public projects greater than \$25,000, notices inviting bids distinctly describing the project be published at least once in the official newspaper of the City, with the first publication at least fourteen calendar days before the date of the opening bids. Notices inviting bids distinctly describing the project shall also be mailed at least thirty calendar days before the date of opening bids to all construction journals as required by the Commission.
3. The City may also give such other notice as it deems appropriate

C. Bids – Security requirement

Bidder's security may be required when deemed necessary by the purchasing authority. When required, the security form, amount and conditions, will be included in the bid documents. Bidders shall be entitled to return of bid security. However, a successful bidder shall forfeit his bid security upon refusal or failure to execute a contract within fifteen days after notice of award of that contract, unless the City is responsible for the delay. The contract may be awarded to the next lowest responsible bidder upon the refusal or failure of the successful bidder to execute the contract within the time herein prescribed.

D. Bids - Opening and Retention

Sealed bids shall be submitted to the purchasing authority and shall be identified as bids on the envelope. Bids shall be opened in a public and read aloud at the time and place stated in the public notice. A tabulation of all bids received shall be available for public inspection during regular business hours for a period not less than thirty (30) calendar days after the bid opening

E. Rejection of Bids

The purchasing authority may reject:

1. Any bid that fails to meet the bidding requirements in any respect; or
2. All bids, for any reason whatsoever, and may readvertise for new bids or abandon the purchase
3. In the case of public projects, the council may, by passage of a resolution by a four-fifths vote, declare that the project can be performed more economically by employees of the City and may have the project done by force account

F. Bids-None Received

If no bids are received the purchase may be made through negotiated contract or other process approved by the Finance Director, including, in the case of public projects, performing the work by employees of the City by force account.

G. Contract Award

Subject to the approval of the City Manager, contracts shall be awarded by the purchasing authority to the bid which represents the best value to the City as defined in Section 3.16.040, except as follows:

1. If at the time of bid opening, two or more bids received are for the same total amount or unit price, quality and service being equal, and if the discretion of the purchasing authority the public interest will not permit the delay of readvertising for bids, then the purchasing authority may accept the one he or she chooses or the lowest bid obtained through subsequent negotiation with tied bidders.
2. Sellers, vendors, suppliers and contractors who maintain places of business located within the limit of the City shall be given preference, if quality, price, service, and all other factors are equal.

The basis upon which the award is made shall be in writing.

H. Requiring Bond of Successful Bidder

The purchasing authority may require as a condition to executing a contract on behalf of the City, a performance bond or a labor and material bond, or both, in such amounts as the purchasing authority shall determine appropriate to protect the best interests of the City. The form and amounts of such bond(s) shall be described in the notice inviting bids.

I. Insurance

Insurance requirements will be provided via Purchase Order terms and conditions, or Request for Proposal terms and conditions information, or City contract

-This ordinance shall take effect and be in full force thirty (30) days after its final adoption.

This ordinance was introduced on the 12th day of July, 2012, and was passed and adopted by the City Council of the City of Capitola on the _____ day of _____, 2012, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

APPROVED:

Michael Termini, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk



CITY COUNCIL AGENDA REPORT

MEETING OF JULY 12, 2012

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: FIRST READING OF AN ORDINANCE TO REDUCE SINGLE-USE PLASTIC AND PAPER CARRYOUT BAGS

RECOMMENDED ACTION: Council discretion. If the City Council wishes to consider an ordinance that imposes a ban on the use of single use plastic bags, actions to be taken include;

1. Determine the proposed Ordinance is not subject to CEQA
2. Pass a first reading of the proposed ordinance adding Section 8.07 to the Capitola Municipal Code pertaining to the reduction of single-use plastic and paper carryout bags to a second reading.

BACKGROUND: In March of 2010 the City Council supported a regional effort to implement an ordinance that would reduce the use of single use plastic and paper carryout bags. Single use bags, especially plastic bags, can have negative environmental impacts. Ordinances banning single-use bags are becoming more common as communities seek to address problems related to litter and solid waste. Because plastic takes a long time to break down or decompose, plastic litter causes a cumulatively adverse impact on both the natural and manmade environments.

As a coastal city, Capitola has a strong interest in protecting the marine environment, an element which contributes to the unique quality of life in the City. Plastic bags that find their way into the marine environment essentially remain there indefinitely since most plastic bags do not biodegrade. The proposed ordinance will significantly reduce the amount of litter generated by the use of plastic bags, and in turn, will keep our beaches, land and creeks cleaner and free from debris.

Last September, after the County of Santa Cruz adopted an ordinance to reduce the use of single-use plastic and paper carryout bags, the City Council conceptually supported a similar ordinance. The Council considered the item again in February of this year and directed staff to bring this item back at a later time after existing litigation settled and other local agencies proceeded with their ordinances. Below is a summary of the status of local jurisdictions plastic bag ban.

City/County	Plastic Bag Ban	Effective Date
Santa Cruz County	Yes	3/22/2012
City of Watsonville	Yes	9/8/2012
City of Santa Cruz	In progress (July 10)	
City of Scotts Valley	No	
City of Monterey	Yes	7/1/2012
City of Carmel	Yes	1/1/2013
18 cities in San Mateo County	In progress	
6 cities in Santa Clara County	In progress	

DISCUSSION:

The proposed ordinance which staff presented in October 2011 and in February 2012 would ban the use of single use plastic carryout bags for restaurants and retail businesses, require that all paper carryout bags have a minimum of 40% post consumer recycled content, and encourage the use of reusable carryout bags

in the City of Capitola, thereby reducing the number of bags manufactured, and the number that are released to the environment or disposed of in landfills. The proposed ordinance would have prohibited retail product stores using plastic carryout bags, and would require them to charge \$0.10 on each paper carryout bag. The ban would not apply to plastic or paper bags used to protect produce or bulk goods or otherwise used to protect items as they are put into a carryout bag at checkout.

CEQA:

The adoption of this Ordinance is not subject to the California Environmental Quality Act as this ordinance does not constitute a project, as defined by Public Resources Code Section 21065 and even if it is determined that the proposed action constitutes a project, the project would be exempt pursuant to CEQA Guidelines §15307 [exemptions for actions to protect natural resources] and §15308 [exemptions for actions to protect the environment].

The purpose of the ban is to protect the natural environment because 80% of plastic pollution that enters the ocean originates from land. Recycling plastic bags is not sustainable. The CalRecycle 2009 Statewide Recycling Rate for Plastic Carryout Bags report indicates that of the 52,765 tons of regulated bags purchased statewide, only 1,520 tons were collected for recycling, a recycling rate of about 3%.

According to Save Our Shores, a Santa Cruz-based marine conservation non-profit that conducts beach, river, and inland cleanups in the coastal regions of Santa Cruz, San Mateo, and Monterey Counties, from June 2007 to May 2011, over 400 cleanups were conducted in our region where volunteers removed a total of 26,000 plastic bags. Unchecked, this material would have likely entered the marine environment of the Monterey Bay National Marine Sanctuary.

The Department of Resources Recycling and Recovery (CalRecycle) estimates that Californians use nearly 20 billion single-use plastic bags per year and discard over 100 hundred plastic bags per second. Further the Environmental Protection Agency estimates that only 5 percent of the plastic bags nationwide are currently recycled. Because the Ordinance includes a fee on paper bags, the Ordinance will not just shift consumers from plastic to paper bags, but instead increase the use of reusable bags.

FISCAL IMPACT: Existing funds to conduct a public out-reach campaign will be utilized to inform the public.

ATTACHMENT

1. Draft Ordinance

Report Prepared By: Lisa G. Murphy
Administrative Services Director

**Reviewed and Forwarded
By City Manager:** 

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
ENACTING A NEW CHAPTER 8.07 OF THE CAPITOLA MUNICIPAL CODE RELATING TO
THE REDUCTION OF SINGLE-USE PLASTIC AND PAPER CARRYOUT BAGS**

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

Section 1. Chapter 8.07 is hereby added to the Capitola Municipal Code to read as follows:

"CHAPTER 8.07"

SINGLE-USE PLASTIC AND PAPER CARRYOUT BAG REDUCTION

Sections:

- 8.07.010 Purpose and Findings
- 8.07.020 Definitions
- 8.07.030 Ban on Plastic Carryout Bags and Store Charge for Single-Use Paper Carryout Bags
- 8.07.040 Implementation
- 8.07.050 Exemptions Allowing Single Use Bags
- 8.07.060 Enforcement
- 8.07.070 Violations
- 8.07.080 Severability
- 8.07.090 Effective Date
- 8.07.100 No Conflict With Federal or State Law
- 8.07.110 Preemption

8.07.010 Purpose and Findings.

A. It is the intent of the City of Capitola, in enacting Chapter 8.07 to eliminate the common use of plastic single-use carryout bags, encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single-use bags in general.

B. Whereas the City of Capitola has an obligation to protect the environment, the economy, and public health. The City of Capitola has a 75 percent waste reduction goal, which is to be reached by waste reduction, reuse, recycling, and composting. The City of Capitola makes the following findings:

1. The Department of Resources Recycling and Recovery (CalRecycle) estimates that Californians use nearly 20 billion single-use plastic bags per year and discard over 100 hundred plastic bags per second. Further the Environmental Protection Agency estimates that only 5 percent of the plastic bags in California and nationwide are currently recycled.
2. According to Save Our Shores, a Santa Cruz based marine conservation non-profit that conducts beach, river, and inland cleanups in the coastal regions of Santa Cruz, San Mateo, and Monterey Counties, from June 2007 to May 2011, over 400 cleanups were conducted where volunteers removed a total of 26,000 plastic bags. Unchecked, this material would have likely entered the marine environment of the Monterey Bay National Marine Sanctuary.

3. Plastic bags returned to supermarkets may be recycled into plastic lumber; however, a very low percentage of bags are actually returned. Recycling bags into lumber does not reduce the impact of making new plastic carryout bags. The CalRecycle 2009 Statewide Recycling Rate for Plastic Carryout Bags report indicates that of the 52,765 tons of regulated bags purchased statewide, only 1,520 tons were collected for recycling, a recycling rate of about 3%.

4. The City of Capitola currently has a plastic bag recycling component to the residential curbside recycling program.

5. Improperly prepared plastic bags create equipment problems at the Material Recovery Facility. Loose bags wrap around the bearings and shafts of the material separator. The equipment must be stopped and the bags removed before they cause permanent damage. This results in slower production times for the sorting crew, as well as increased processing and repair costs.

6. Compostable plastic carryout bags, as currently manufactured, do not solve the problems of wildlife damage, litter, or resource use addressed by this ordinance. Compostable carryout bags are designed to remain intact until placed in a professional compost facility, so they do not degrade quickly as litter or in a marine environment. Producing compostable bags consumes nearly as much fossil fuel as noncompostable bags. Mixing compostable bags with regular plastic bags prevents recycling or composting either of them. Therefore, there is no exemption in this ordinance for compostable carryout bags.

7. According to Californians Against Waste, Californians pay up to \$200 per household each year in State and Federal taxes to clean up litter and waste associated with single-use bags, on top of the \$40 per household per year in hidden grocery costs to offset the expense of the nearly 1,000 "free" bags received from grocers.

8. Reusable bags are readily available from numerous sources and vendors. Many grocery and other retail establishments throughout the City of Capitola already offer reusable bags for sale at a price as low as 1.00 dollar.

9. Even though paper bags are recycled at a much higher rate within the City of Capitola than plastic bags, the purpose of this ordinance is to reduce all single-use bags. For this reason, a charge on paper bags is indicated as an incentive to reduce their use and encourage reusable bags.

10. Paper bags that contain a minimum of 40 percent post consumer recycled content have fewer negative impacts than virgin paper bags. Paper shopping bags with 40% post consumer recycled content are easily available, and such bags are in wide use by Capitola merchants.

11. State law currently prohibits local jurisdictions from placing fees on single-use checkout plastic bags. Therefore, several California Cities have adopted or are pursuing a ban as the most effective remaining means to eliminate the impacts these plastic bags cause. State law does not prohibit jurisdictions from placing fees on paper bags.

8.07.020 Definitions.

A. For the purposes of this Chapter, the following definitions apply:

1. "Carryout bags" means bags provided by retailers to customers at the point of sale to hold customers' purchases. "Carryout bags" do not include bags used to contain loose items prior to checkout, such as meat, produce, and bulk goods, and does not include prepackaged products.

2. "Single-use plastic bag" or "single-use plastic carryout bag" means a single-use carryout bag of any size that is made from plastic and provided at the point of sale to customers by a retail establishment. Single-use plastic bags include both compostable and non-compostable carryout bags.

3. "Single-use paper bag" means a checkout bag provided by a retail establishment at the point of sale that is made from paper and is not a reusable bag.

4. "Recyclable" means material that can be sorted, cleansed, and reconstituted using the City's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise destroying solid waste.

5. "Reusable bag" means any bag with handles that is specifically designed and manufactured for multiple reuse, and is either 1) made of cloth or other washable woven fabric, or 2) made of durable material including plastic that is at least 2.25 mils thick.

6. "Retail establishment" or "retail store" means all sales outlets, stores, shops, restaurants, vehicles, or other places of business located within the City of Capitola, which operate primarily to sell or convey goods, directly to the ultimate consumer.

7. "Exempted uses" means those point-of-purchase or delivery sales, which have received a special exemption through the City Manager or the Managers designee, that allows the use of single-use bags.

8.07.030 Ban on plastic bags and store charge for single-use paper carryout bags.

A. No retail establishment shall provide plastic carryout bags to customers at the point of sale, except as permitted in this chapter.

B. No City of Capitola contractors, special events promoters, or their vendors, while performing under contract or permit shall provide plastic carry-out bags to customers at the point of sale.

C. Single-use paper carryout bags provided to customers shall contain a minimum of 40 percent post consumer recycled paper fiber, and be recyclable in the City of Capitola's curbside recycling program.

D. Retail establishments shall charge, during the first year of implementation of this ordinance, a 10-cent charge for each single-use paper carry out bag provided to customers at the point of sale. The City Council shall review the charge amount one year from the date of adoption to judge its effectiveness and at anytime thereafter as the City Council deems necessary.

E. The charge imposed pursuant to this section shall not be applied to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, the State Department of Social Services Food Stamp program, or other government subsidized purchase programs for low-income residents.

F. The ban on single-use plastic bags and the charge on single-use paper bags would not apply to plastic or paper bags used to protect produce, meat, or otherwise used to protect items as they are put into a carryout bag at checkout. Other examples include: paper bags to protect bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, paper pharmacy bags or paper bags to protect greeting cards.

G. Retail establishments are strongly encouraged to make reusable bags available for sale to customers at a reasonable price.

H. Retail establishments shall indicate on the customer transaction receipt the number of carryout bags provided, and the total amount charged for those bags.

8.07.040 Implementation.

A. Sixty days before this ordinance takes effect, the City of Capitola shall post, mail or deliver a copy of it to retail establishments within the city limits of the City of Capitola.

B. The City of Capitola will distribute to each store a reproducible placard designed to inform shoppers of the City of Capitola policy for carryout bags.

C. The City of Capitola Finance Department shall provide a copy of this ordinance to every new retail establishment that applies for a business license in the City of Capitola.

8.07.050 Exemptions allowing single use bags.

A. The City Manager, or the manager's designee, may exempt a retail establishment from the requirement set forth in Section 8.07.030 of this chapter for a one-year period upon the retail establishment showing, in writing, that this chapter would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing, and the City Manager or the manager's designee's decision shall be final.

B. An exemption application shall include all information necessary for the City Manager or the manager's designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption.

C. The City Manager or managers' designee may approve the exemption application in whole or in part, with or without conditions.

8.07.060 Enforcement. Enforcement of this ordinance shall be as follows:

A. The City Manager, or designee, shall have primary responsibility for enforcement of this ordinance and shall have authority to issue citations for violation of this chapter. The City Manager, or designee, is authorized to establish regulations or administrative procedures to ensure compliance with this chapter.

B. A person or entity violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction.

C. The City of Capitola may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure authorized by it.

D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

E. The City Manager or designee may inspect any retail establishment's premises to verify compliance with this ordinance.

8.07.070 Violations. Violations of this ordinance shall be enforced as follows:

A. Violation of this chapter is hereby declared to be a public nuisance. Any violation described in the preceding paragraph shall be subject to abatement by the City of Capitola, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by injunction, upon a showing of violation.

B. Upon a first violation by a retail establishment, the City Manager, or designee, shall mail a written warning to the retail establishment. The warning shall recite the violation, and advise that future violations may result in fines.

C. Upon a second or subsequent violation by a retail establishment, the following penalties will apply:

1. A fine not exceeding one hundred dollars (\$100) for the first violation that occurs 30 days or more after the first warning.

2. A fine not exceeding two hundred dollars (\$200) for the second violation that occurs 60 days or more after the first warning.

3. A fine not exceeding five hundred dollars (\$500) for the third violation that occurs 90 days or more after the first warning.

4. A fine not exceeding five hundred dollars (\$500) for every 30 day period not in compliance, that occurs 90 days or more after the first warning.

D. Special events promoters and their vendors who violate this ordinance in connection with commercial or non-commercial special events shall be assessed fines as follows:

1. A fine not exceeding two hundred dollars (\$200) for an event of 1 to 200 persons.

2. A fine not exceeding four hundred dollars (\$400) for an event of 201 to 400 persons.

3. A fine not exceeding six hundred dollars (\$600) for an event of 401 to 600 persons.

4. A fine not exceeding one thousand dollars (\$1,000) for an event of 601 or more persons.

E. Remedies and fines under this section are cumulative.

8.07.080 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City of Capitola hereby declares that it would have passed this title, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional.

8.07.090 Effective date.

This ordinance shall become effective three (3) months after the date of final passage by the City of Capitola City Council.

8.07.100 No conflict with Federal or State law.

Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any Federal or State law.

8.07.110 Preemption.

The provisions of this chapter shall be null and void if State or Federal legislation, or administrative regulation, takes effect with the same or substantially similar provisions as contained in this chapter. The City Council shall determine whether or not identical or substantially similar statewide legislation has been enacted or regulations issued.”

Section 3. This ordinance shall take effect and be in full force on _____, 2012.

This ordinance was introduced on the 12th day of July, 2012, and was passed and adopted by the City Council of the City of Capitola on the ___ day of ____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

DISQUALIFIED:

Draft

APPROVED:

Michael Termini, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk