

City of Capitola Agenda

Mayor: Michael Termini
Vice Mayor: Jacques Bertrand
Council Members: Ed Bottorff
Stephanie Harlan
Kristen Petersen

Treasurer: Peter Wilk



CAPITOLA CITY COUNCIL REGULAR MEETING

THURSDAY, JULY 26, 2018

7:00 PM

**CITY COUNCIL CHAMBERS
420 CAPITOLA AVENUE, CAPITOLA, CA 95010**

CLOSED SESSION – 6 PM CITY MANAGER’S OFFICE

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

CONFERENCE WITH LABOR NEGOTIATOR [Govt. Code § 54957.6]

Negotiator: Dania Torres Wong

Employee Organizations: (1) Capitola Police Captains, (2) Capitola Police Officers Association

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

[Govt. Code § 54956.9(d)(4)]

1 potential case

LIABILITY CLAIMS [Gov't Code § 54956.95]

Claimant: Carol Camnitz

Agency claimed against: City of Capitola

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL – 7 PM

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

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

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Kristen Petersen, Jacques Bertrand, Ed Bottorff, Stephanie Harlan, and Mayor Michael Termini

2. PRESENTATIONS

A. Introduce New Parking Enforcement Officer

B. Introduce New Assistant Planner

3. REPORT ON CLOSED SESSION

4. ADDITIONAL MATERIALS

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

5. ADDITIONS AND DELETIONS TO AGENDA

6. PUBLIC COMMENTS

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

7. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS

City Council Members/City Treasurer/Staff may comment on matters of a general nature or identify issues for staff response or future council consideration.

8. CONSENT CALENDAR

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

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

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- A. Consider the June 28, 2018, City Council Regular Meeting Minutes
RECOMMENDED ACTION: Approve minutes.
- B. Liability Claim of Carol Camnitz
RECOMMENDED ACTION: Reject liability claim.
- C. Consider Approval of Memoranda of Understanding with Police Captains and Adopt Amended Salary Schedule for Fiscal Year 2018/19
RECOMMENDED ACTION:
 - 1. Authorize the City Manager to execute the successor agreements to existing Memoranda of Understanding (MOU) with negotiated changes from July 1, 2018, through June 30, 2020, for the following:
 - a. Police Captains
 - 2. Adopt a Resolution approving the updated salary schedule.
- D. Consider a New City Attorney Contract
RECOMMENDED ACTION: Consider the updated agreement for City Attorney Services with Atchison, Barisone, & Condotti in the amount of \$133,560 for Fiscal Year 2018/19 and authorize the City Manager to execute the agreement.
- E. Second Reading of an Ordinance Adding Chapter 5.36 of the Capitola Municipal Code Pertaining to Cannabis Retail Licenses and Amending Chapter 17.24 of the Regional Commercial Zoning District Pertaining to Conditional Land Uses to Authorize Commercial Retail Cannabis Uses in the Regional Commercial Zoning District
RECOMMENDED ACTION: Adopt an Ordinance adding Chapter 5.36 “Retail Cannabis Licenses” and amending Municipal Code Chapter 17.24 to authorize retail cannabis as a conditionally permitted use in the Regional Commercial zone.
- F. Award 2018 Slurry Seal Project Contract
RECOMMENDED ACTION: Award a contract to Graham Contractors, Inc., in the amount of \$322,991 for the construction of the 2018 Slurry Seal project. Further authorize the Public Works Director to issue change orders for paving repairs at the Community Center Parking Lot at a cost not to exceed \$60,000 and to restripe 41st Avenue at a cost not to exceed \$30,000.

9. GENERAL GOVERNMENT / PUBLIC HEARINGS

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

- A. Consider Options on Awarding a Construction Contract for the Capitola Branch Library
RECOMMENDED ACTION: Either:
 - 1. Award a contract to Otto Construction to build the Capitola Branch Library, or

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2. Reject all bids and authorize staff to amend the Project Manager contract with Bogard Construction to include the preparation of documents necessary to bid the project as a design-build project.

- B. Report on Citizen Initiative Petition Qualification
RECOMMENDED ACTION: Receive report on the certification of a petition to amend Title 8 of the Capitola Municipal Code pertaining to Health and Safety as related to the Santa Cruz Branch Line Rail Corridor and order a report pursuant to Elections Code Section 9212 for presentation at the August 9 City Council meeting.

- C. Consider a Resolution Placing a Special Transient Occupancy Tax Measure on the November 6, 2018, Election Ballot
RECOMMENDED ACTION: Adopt a resolution placing a measure on the November ballot to approve a special 2 percent increase to the Transient Occupancy Tax that would in part fund youth programs and support local businesses.

- D. Consider a Resolution Placing a Local Cannabis Tax Measure on the November 6, 2018, Election Ballot
RECOMMENDED ACTION: Adopt a resolution placing a measure on the November ballot to approve a not-to-exceed 7 percent Cannabis Business Tax.

- E. Consider a Resolution Placing a Measure on the November 6, 2018, Ballot Asking Voters to Change the Treasurer from an Elected to an Appointed Position
RECOMMENDED ACTION: Only with unanimous Council support, adopt the resolution.

- F. Introduce an Ordinance Adding Chapter 1.50 of the Capitola Municipal Code Pertaining to Electronic Filing of Campaign Statements
RECOMMENDED ACTION: Approve the first reading of an ordinance adding Municipal Code Chapter 1.50.

10. ADJOURNMENT

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

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

Agenda and Agenda Packet Materials: The City Council Agenda and the complete Agenda Packet are available for review on the City's website: www.cityofcapitola.org and at Capitola City Hall and at the Capitola Branch Library, 2005 Wharf Road, Capitola, prior to the meeting. Agendas are also available at the Capitola Post Office located at 826 Bay Avenue, Capitola. Need more information? Contact the City Clerk's office at 831-475-7300.

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

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California, during normal business hours.

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

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



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: City Manager Department

SUBJECT: Introduce New Parking Enforcement Officer

DISCUSSION: The City of Capitola welcomed its newest Parking Enforcement Officer at the June 28, 2018, swearing-in of Gabriel "Gabe" Rankin. The 21-year-old Aptos resident spent three years in the Capitola Police Department's Explorer program before his selection to join the department.

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

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

Jamie Goldstein, City Manager

7/19/2018



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: Community Development

SUBJECT: Introduce New Assistant Planner

DISCUSSION: Sascha Landry, a native of the Santa Cruz area, was hired as an Assistant Planner on July 16, 2018. Planner Landry was selected from a large pool of applicants. In 2009, she graduated with a Bachelor of Arts from UC Santa Cruz with a focus on American Studies. This past May, she earned her Master's in Urban Planning at San Jose State University. Planner Landry has successfully completed internships with the City of Santa Cruz and Santa Cruz METRO.

Report Prepared By: Katie Herlihy
Community Development Director

Reviewed and Forwarded by:

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

Jamie Goldstein, City Manager

7/19/2018



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: City Manager Department

SUBJECT: Consider the June 28, 2018, City Council Regular Meeting Minutes

RECOMMENDED ACTION: Approve minutes.

DISCUSSION: Attached for City Council review and approval are the minutes of the regular meeting of June 28, 2018.

ATTACHMENTS:

1. 6-28 draft minutes

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

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

Jamie Goldstein, City Manager

7/19/2018

**DRAFT
CAPITOLA CITY COUNCIL
REGULAR MEETING MINUTES
THURSDAY, JUNE 28, 2018**

CALL TO ORDER

Mayor Termini called the meeting to order at 6:15 p.m. with the following items to be discussed in Closed Session:

CONFERENCE WITH LABOR NEGOTIATOR [Govt. Code § 54957.6]

Negotiator: Dania Torres Wong

Employee Organizations: (1) Association of Capitola Employees; (2) Capitola Police Captains, (3) Capitola Police Officers Association, (4) Confidential Employees; (5) Mid-Management Group; and (6) Department Heads

CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION

[Govt. Code § 54956.9 (d)(1)]

City of Capitola v. Water Rock Construction, Inc.
Santa Clara Superior Court Case No. 16CV295795

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

[Govt. Code § 54956.9(d)(4)]

1 potential case

There was no public comment; therefore, the City Council recessed to Closed Session in the City Manager's Office.

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL – 7 PM

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Member Stephanie Harlan: Present, Council Member Ed Bottorff: Present, Mayor Michael Termini: Present, Vice Mayor Jacques Bertrand: Present, Council Member Kristen Petersen: Present.

Treasurer Peter Wilk was present.

2. PRESENTATIONS

A. Introduce New Sergeant

Police Chief Terry McManus presented recently promoted Sergeant Sarah Ryan, a 12-year veteran of the department. She was officially sworn in earlier today. She noted she began her career in Capitola as a community service officer and then attended the academy. She expressed her pride and gratitude for the chance to continue serving the City.

B. Community Action Board Update

Helen Ewan-Storey, assistant director of the Community Action Board (CAB), provided an overview of the mission of the nonprofit to eliminate poverty and provide related essential services. These include community building and youth services, employment, immigration assistance, and homelessness prevention.

CAB partners with Capitola to provide emergency rental assistance and help

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avoiding eviction. Staff members shared examples of a single father construction worker and a senior citizen facing breast cancer who both fell behind on rent and who were able to remain in their homes through the program.

3. REPORT ON CLOSED SESSION

Assistant City Attorney John Barisone reported that action on labor negotiation will be taken on item 10.E for most groups, and Council provided direction for ongoing negotiations with the Police Officers Association and Police Captain. For initiation of litigation, Council received information and provided direction. The Water Rock case is in arbitration and a decision is expected the end of July.

4. ADDITIONAL MATERIALS

A. Item 10.D – one public comment

B. Item 10.E – Strike-through versions of the proposed memoranda of understanding

5. ADDITIONS AND DELETIONS TO AGENDA - None**6. PUBLIC COMMENTS**

John Lieberum, Brookvale Terrace resident, expressed concern about global warming and support for a carbon fee and dividend program.

Linda Marin, Citizens Climate Action, discussed carbon fees and requested endorsement for a bipartisan solution.

Ray Cancino, Community Bridges, invited the community to "Families Belong Together" marches in Watsonville and Santa Cruz this weekend.

Dennis Norton expressed concern about the increase of often unoccupied second homes. He would also like the City to allow more accessory dwelling units and challenge the cost of water hookups.

7. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS

Treasurer Wilk noted the City purchased a new beach loader for about \$190,000.

City Manager Jamie Goldstein said that Monterey Bay Community Power celebrated the July 1 start of residential service with a ceremony earlier today. He also reported that the two-thirds tax passage state ballot initiative has been removed from the November ballot by a compromise to eliminate new soda taxes.

City Clerk Linda Fridy said that the recent Candidate Information Night in conjunction with County Elections was well attended. She also reported that the County Registrar of Voters has certified the number of signatures on the local ballot initiative, and a report will be presented at the July 26 Council meeting.

Council Member Bertrand praised the recent Jewel Box traffic workshop and expressed support for expanded accessory dwelling units.

Council Member Petersen attended this week's League of California Cities executive forums including a session on "Cannabis and Your City" that she found helpful ahead of tonight's discussion.

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8. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS

- A. Review Regional Transportation Commission Bicycle Advisory Committee Appointment
RECOMMENDED ACTION: Recommend to the RTC Board that it approve appointment of Capitola's representative to the Bicycle Advisory Committee.

MOTION:	RECOMMEND THE APPOINTMENT OF MICHAEL MOORE AS CAPITOLA'S REPRESENTATIVE ON THE REGIONAL TRANSPORTATION COMMISSION'S BICYCLE ADVISORY COMMITTEE.
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jacques Bertrand, Vice Mayor
SECONDER:	Kristen Petersen, Council Member
AYES:	Harlan, Bottorff, Termini, Bertrand, Petersen

9. CONSENT CALENDAR

MOTION:	APPROVE AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Stephanie Harlan, Council Member
SECONDER:	Kristen Petersen, Council Member
AYES:	Harlan, Bottorff, Termini, Bertrand, Petersen

- A. Consider the May 30, 2018, Joint Budget Workshop Minutes
RECOMMENDED ACTION: Approve minutes.
- B. Consider the June 14, 2018, City Council Regular Meeting Minutes
RECOMMENDED ACTION: Approve minutes.
- C. Planning Commission Action Minutes
RECOMMENDED ACTION: Receive minutes.
- D. Approval of City Check Registers Dated May 4, May 11, May 18 and May 25, 2018
RECOMMENDED ACTION: Approve check registers.
- E. Schedule Appeal of the Planning Commission Denial of Application 17-019, 4015 Capitola Road
RECOMMENDED ACTION: Schedule the appeal hearing for the regular City Council meeting of October 25, 2018.
- F. Approval of Project Plans, Specifications, and Construction Estimate and Authorization of Advertising for Bids for 38th Avenue Sidewalk
RECOMMENDED ACTION: Approve the plans, specifications, and construction estimate for the 38th Avenue Sidewalk project; authorize the Department of Public Works to advertise for construction bids; and authorize the Public Works Director to award a contract to the lowest responsive bidder in an amount not to exceed the construction estimate.

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES

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- G. Consider a Resolution Calling the Election for November 6, 2018 [560-10]
RECOMMENDED ACTION: Adopt **Resolution No. 4115** ordering an election, requesting Santa Cruz County Elections to conduct the election, and requesting consolidation of the Presidential General Election in the City of Capitola on Tuesday, November 6, 2018.
- H. Second Reading of an Ordinance Amending Chapter 5.24 of the Capitola Municipal Code Pertaining to Entertainment Permits
RECOMMENDED ACTION: Adopt an ordinance amending Municipal Code Chapter 5.24.

10. GENERAL GOVERNMENT / PUBLIC HEARINGS

- A. Consider the Fiscal Year 2018/2019 Budget and Capital Improvement Program for the City of Capitola [330-05/780-30]
RECOMMENDED ACTION: Approve **Resolution No. 4116** adopting the Fiscal Year 2018/19 City Budget and Capital Improvement Program.

Finance Director Jim Malberg reviewed the budget process to date. The proposed budget for Fiscal Year 2018-19 is balanced and carrying a fund balance forward of about \$970,000.

Priorities for the year are:

- Develop options for Council consideration to address rising pension costs
- Complete the cannabis regulatory framework
- Implement a new Neighborhood Watch Program
- Work toward Coastal Commission certification of zoning code update
- Continue working with Capitola Mall ownership group to redevelop the mall

In public comment, Ray Cancino of Community Bridges supported looking for options to pension costs.

MOTION:	APPROVE THE RESOLUTION AND BUDGET AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Kristen Petersen, Council Member
AYES:	Harlan, Bottorff, Termini, Bertrand, Petersen

- B. Review Options for Potential Ballot Measures for November 2018 General Election
RECOMMENDED ACTION: Provide direction to staff regarding items for potential placement on the November 2018 General Election ballot.

City Manager Goldstein reviewed previous topics identified as potential ballot measures: a cannabis tax (with related regulatory elements to be discussed under a different agenda item); an increased transient occupancy tax (TOT), and removal of the treasurer as an elected position.

Council Member Bottorff noted a 2014 effort to increase the TOT polled well but faced opposition and failed. He met with business members, including lodging and restaurant owners, to reach an agreement that would garner their support. The framework is as follows:

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- 2 percent increase to TOT: 10 percent to 12 percent
- Restricted measure requiring 66 percent voter approval
- 0.4 percent of TOT increase dedicated to local business groups
- Split evenly between the Business Improvement Association (BIA) and Chamber of Commerce
- Chamber funding of \$30,000 removed from General Fund
- BIA to use funding for marketing and Village enhancements
- Chamber to increase City marketing efforts
- 0.35 percent of TOT increase dedicated to youth/early childhood education, replacing Community Grant youth program funding
- 1.25 percent to General Fund

Treasurer Wilk presented the arguments in favor of eliminating the treasurer as an elected position, noting it is unnecessary and potentially dangerous because of confusing language in state code. Two elected officials already serve on the Finance Advisory Commission along with members of public and the city has several independent checks. He asked for full council support to assure and educate the public.

Council members clarified that a treasurer could be appointed by either the city manager or Council, or use language allowing for both. The treasurer can be the finance director and is in many cities.

During public comment, Ray Cansino spoke to the TOT proposal and said he was concerned about subsidizing private business over early childhood education.

Khalil Moutawakkil of Kind Peoples supports a cannabis industry within the city. As a retailer he asked the City to consider upstream costs to allow his business to compete with the black market by setting an appropriate tax level. He said the state level is already quite high, and asked if a tax could be written to pass through to the consumer.

The Council decided to discuss each item separately and vote on whether to ask staff to bring a measure forth at the next meeting.

Regarding the treasurer’s position, Council Member Bottorff thanked Treasurer Wilk for serving well and making this recommendation, which he supports.

Council Member Bertand formerly served as treasurer and opposes the plan. He said he feels that the public likes having another position that oversees finance.

Mayor Termini said he supports the effort and noted that the position often draws only one candidate.

MOTION:	DIRECT STAFF TO PREPARE A MEASURE TO PLACE ON THE NOVEMBER BALLOT ASKING VOTERS TO CHANGE THE TREASURER POSITION FROM ELECTED TO APPOINTED
RESULT:	ADOPTED [4-1]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Kristen Petersen, Council Member
AYES:	Harlan, Bottorff, Termini, Petersen
NOES:	Bertrand

Regarding the TOT increase, Council Member Harlan said while she appreciates Mr.

Attachment: 6-28 draft minutes (Approval of City Council Minutes)

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Cancino’s concern about business support, she thinks this is a good proposal and she supports the 12 percent level.

Council Member Bottorff said if a measure fails again, there will be no new money for any of the identified areas. He also said he does not view the agreement as giving money to businesses, but rather investing in the local tourism economy, which in turn would generate increased occupancy and TOT revenue.

MOTION:	DIRECT STAFF TO PREPARE A MEASURE TO PLACE ON THE NOVEMBER BALLOT ASKING VOTERS TO APPROVE A SPECIAL TAX INCREASE OF THE TRANSIENT OCCUPANCY TAX AS OUTLINED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Stephanie Harlan, Council Member
AYES:	Harlan, Bottorff, Termini, Bertrand, Petersen

Regarding the proposed cannabis tax, there was Council consensus for a lower ceiling and a recognition that similar local taxes are trending lower. In a desire to avoid any type of “bidding war” with neighboring jurisdictions regarding rates, Council Member Bottorff suggested an initial level of 7 percent. Council also supported 7 percent as the cap.

MOTION:	DIRECT STAFF TO PREPARE A MEASURE TO PLACE ON THE NOVEMBER BALLOT ASKING VOTERS TO APPROVE A NOT-TO-EXCEED 7 PERCENT TAX ON RETAIL CANNABIS WITH AN INITIAL 7 PERCENT RATE
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Kristen Petersen, Council Member
AYES:	Harlan, Bottorff, Termini, Bertrand, Petersen

C. Update on the Capitola Branch Library Project Construction Bids
RECOMMENDED ACTION: Receive report.

Public Works Director Steve Jesberg presented the brief staff report and said that value engineering identified potential cost reductions estimated at \$1.5 million. On the funding side, the Joint Powers Authority is now anticipating excess Measure S revenues because the interest on the bond is lower than projected and revenue for the first round came in higher.

Joe Pallandrani, resident and business owner, asked why the City is building such a large library.

TJ Welch, resident, expressed concerns about costs and size, and advocated for redesigning a more affordable option.

Mark Cane, resident, echoed previous concerns and said construction costs are only rising.

Mayor Termini noted Measure S is only allowed to be used for building library and that money cannot be redirected. He said the current plan reflects a reduced size from the original recommendation and it could be reduced again.

Attachment: 6-28 draft minutes (Approval of City Council Minutes)

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Council Member Bottorff noted the excitement for the library, but said that from the start he did not approve of the lack of full funding. He said the building is too big and advocated for redesigning the size now.

Council Member Petersen said she is concerned that even with a redesign, bids may once again come in too high.

Staff said the bids are valid for 90 days. The item will return at the next meeting.

RESULT:	RECEIVED REPORT
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D. Introduce an Ordinance Adding Chapter 5.36 of the Capitola Municipal Code Pertaining to Cannabis Retail Licenses and Amending Chapter 17.24 of the Regional Commercial Zoning District Pertaining to Conditional Land Uses to Authorize Commercial Retail Cannabis Uses in the Regional Commercial Zoning District and Adopt a Resolution to Authorize Criminal History Information for Licensing Purposes
RECOMMENDED ACTION:

1. Direct staff on the maximum number of Cannabis Licenses to be permitted within the Regional Commercial Zoning district;
2. Approve first reading of an Ordinance adding Chapter 5.36 “Retail Cannabis Licenses” and amending Municipal Code Chapter 17.24 to authorize retail cannabis as a conditionally permitted use in the Regional Commercial zone; and
3. Adopt **Resolution No. 4117** approving an application for authorization to access State- and Federal-level summary criminal history information for licensing purposes.

Council Member Harlan noted that she lives within 500 feet of the Regional Commercial Zone and recused herself. She left the dais and did not return to the meeting.

Community Development Director Katie Herlihy presented the staff report. She noted that during its recommendation hearing the Planning Commission asked the Council to discuss a 100-foot residential buffer, and she displayed a map showing it would greatly reduce the eligible area. She identified three areas for locations based on the recommended restrictions.

The ordinance also creates a Cannabis Sales Permit and planning staff worked closely with the Police Chief on this portion of the ordinance. Keeping specific standards and regulations out of the ordinance allows them to be adjusted as best practices evolve. Staff met with local representatives concerned about marketing impacts on youth and is recommending additional language including an age portal requirement as requested.

Mayor Termini confirmed liquor stores do not have separate sign standards.

In public comment, Tara Leonard said studies have shown that tobacco advertising is particularly likely to influence youth and there have been similar results with medical marijuana. She supports restrictions as discussed with staff.

Jenna Shankman, Community Prevention Partners, echoed concerns about advertising targeting youth.

Les Forster, resident, urged consideration of the target market when setting standards.

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Mary Gaukel Forster, resident, urged proactive action regarding advertising and signage as it would impact youth.

Khalil Moutawakkil of Kind Peoples praised the proposed ordinance. He noted the state just mandated the same advertising restrictions for marijuana as alcohol, and said Colorado shows a decline of youth use. He asked if there could be exceptions to a 100-foot residential setback.

Vic Marani, former County School Board member, recommended talking with other elected officials such as local school boards. He suggested that allowing only one location can be perceived as granting a monopoly and recommended the Council support two or three. He does not feel a residential boundary is necessarily helpful.

Mayor Termini expressed concern about different sign standards for a type of business.

Council Member Petersen said she has changed her mind about allowing a green cross and can support it. At today's League of Cities panel, specialists said regulations will continue to change so any municipal action should expect to make future adjustments.

Council Member Bottorff favors two locations and could support a residential buffer. He made a motion to that effect but it died for lack of a second. Council agreed to discuss each amendment separately. He then proposed setting the limit at two locations.

MOTION:	AMEND THE PROPOSED ORDINANCE TO ALLOW TWO RETAIL CANNABIS LOCATIONS IN THE REGIONAL COMMERCIAL ZONE.
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Kristen Petersen, Council Member
AYES:	Bottorff, Termini, Bertrand, Petersen
RECUSED:	Harlan

Seeing Planning Commission members in the audience, the Council asked for information behind the split vote.

Planning Commission Chair Sam Storey explained the majority wanted a minimal size for signs and supported a discussion of a residential buffer.

TJ Welch provided a bit more background on reaching a 100-foot buffer suggestion and said he vote against recommendation was due to the number of cannabis businesses already operating in the County.

A motion by Council Member Bottorff to include a 100-foot buffer from residential zones died for lack of a second.

There was significant discussion about the size of signage and whether it would be reviewed by the Planning Commission. After reviewing the recently adopted standards and the Planning Commission recommendation, council members favored a slight increase in size from 15 to 20 square feet but otherwise supported the Planning Commission recommendation.

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MOTION:	AMEND THE PROPOSED ORDINANCE TO ALLOW 20 SQUARE FEET OF SIGNAGE AND A GREEN CROSS ONLY.
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jacques Bertrand, Council Member
SECONDER:	Kristen Petersen, Council Member
AYES:	Bottorff, Termini, Bertrand, Petersen
RECUSED:	Harlan

There was Council consensus to add the recommended language to discourage advertising targeting youth.

MOTION:	AMEND THE PROPOSED ORDINANCE TO INCORPORATE LANGUAGE LIMITING YOUTH ACCESS TO ADVERTISING.
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kristen Petersen, Council Member
SECONDER:	Ed Bottorff, Council Member
AYES:	Bottorff, Termini, Bertrand, Petersen
RECUSED:	Harlan

MOTION:	APPROVE THE RESOLUTION AS PROPOSED AND PASS THE FIRST READING OF THE ORDINANCE AS AMENDED.
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jacques Bertrand, Council Member
SECONDER:	Ed Bottorff, Council Member
AYES:	Bottorff, Termini, Bertrand, Petersen
RECUSED:	Harlan

E. Consider Approval of Memoranda of Understanding with Labor Groups and Adopt Salary Schedule for FY 2018/19

RECOMMENDED ACTION:

1. Authorize the City Manager to execute the successor agreements to existing Memoranda of Understanding (MOU) with negotiated changes from July 1, 2018, through June 30, 2020, for the following:
 - a. Association of Capitola Employees (ACE);
 - b. Mid-Management Employees' Bargaining Unit;
 - c. Confidential Employees' Bargaining Unit;
2. Approve changes to the Management Compensation Plan.
3. Approve changes to City Manager Employee Contract.
4. Adopt **Resolution No. 4119** approving the new salary schedule.

Mayor Termini read a statement that at-will management employees and the city manager are among the parties receiving the negotiated cost of living adjustment and healthcare changes, which he listed. The city manager declined the \$1,500 bonus.

Assistant to the City Manager Larry Laurent presented the staff report.

In public comment, TJ Welch noted public safety has not completed negotiations and is concerned about cannabis retail's impact on the officers.

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES
June 28, 2018

MOTION:	APPROVE THE MEMORANDA OF UNDERSTANDING
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Jacques Bertrand, Vice Mayor
AYES:	Ed Bottorff, Michael Termini, Jacques Bertrand, Kristen Petersen
ABSENT:	Stephanie Harlan

F. Consider Fee Schedule for Fiscal Year 2018/19 [390-40]

RECOMMENDED ACTION: Conduct the noticed public hearing on the proposed City Fee Schedule for Fiscal Year 2018/2019 and adopt **Resolution No. 4119** repealing Resolution No. 4077 and adopting the new fee schedule.

Finance Director Malberg presented the staff report, noting most changes are due to the 3.1 percent Consumer Price Index increase with a few exceptions for state-mandated fees.

There was no public comment.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Kristen Petersen, Council Member
AYES:	Ed Bottorff, Michael Termini, Jacques Bertrand, Kristen Petersen
ABSENT:	Stephanie Harlan

11. **ADJOURNMENT**

The meeting adjourned at 10:10 p.m.

Michael Termini, Mayor

ATTEST:

Linda Fridy, City Clerk



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: City Manager Department

SUBJECT: Liability Claim of Carol Camnitz

RECOMMENDED ACTION: Reject liability claim.

DISCUSSION: Carol Camnitz has filed a liability claim against the City in the amount of \$80.00.

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

Reviewed and Forwarded by:

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

Jamie Goldstein, City Manager

7/19/2018



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: City Manager Department

SUBJECT: Consider Approval of Memoranda of Understanding with Police Captains and Adopt Amended Salary Schedule for FY 2018/19

RECOMMENDED ACTION:

1. Authorize the City Manager to execute the successor agreements to existing Memoranda of Understanding (MOU) with negotiated changes from July 1, 2018, through June 30, 2020, for the following:
 - a. Police Captains
2. Adopt a Resolution approving the updated salary schedule.

BACKGROUND: Capitola Police Captains Memoranda of Understanding (MOU) expired on June 30, 2018. As required by state law the City has negotiated with the Police Captains on working conditions, salary, and benefit changes.

The City and the Police Captains came to a tentative agreement on June 28, 2018, but the documents were not ready for the June 28, 2018, Council meeting. The Police Captains agreed to the same structure as the groups that were approved by the Council at the June 28, 2018, regular meeting.

DISCUSSION: The City of Capitola and all the employee bargaining units began meeting in February 2018. The Police Captains came to tentative agreement with the City based on the following major economic criteria:

Term: Two-year agreement

Salary: Employees in the unit will receive a 2.25% cost of living adjustment (COLA) in July 2018 and a 2.25% COLA in July 2019.

Signing Bonus: \$1,500 one-time bonus as tentative agreement was reached by June 28, 2018

Pension: Employee contribution towards retirement 14.974% of salary for CalPERS Classic Safety Employees.

Salary and Benefit Survey: Total Compensation Study prior to end of MOU term

Medical: Group and City negotiated changes to health contribution amounts.

The Police Captains agreed to the following changes to the health contribution from the

Approve MOU
July 26, 2018

City. The City's maximum per month contribution towards medical, dental, and vision premiums inclusive of required minimum contribution as follows:

Date	Employee Only	Employee plus one dependent	Employee plus two
Year 1	800.00	1,300.00	1,700.00
Year 2	824.00	1,339.00	1,751.00

The City and the Police Captains bargaining unit agreed to reduce the cash-in-lieu amount from \$773 per month to \$250 per month for those who have other group health insurance

FISCAL IMPACT: The estimated cost of for each year of the agreement is as follows:

Fiscal Year 2018/19	\$11,000.00
Fiscal Year 2019/20	\$10,000.00

Report Prepared By: Larry Laurent
Assistant to the City Manager

Reviewed and Forwarded by:

Jamie Goldstein, City Manager

7/19/2018

Approve MOU
July 26, 2018

RESOLUTION NO. ____
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
REPEALING RESOLUTION NO. 4118 AND
AUTHORIZING AND APPROVING THE UPDATED FISCAL YEAR 2018/2019
PAY RATES AND RANGES (SALARY SCHEDULE)

WHEREAS, the City Council establishes the legal current salary range from the salary schedule for each class of position; and

WHEREAS, the California Public Employee's Retirement Law, at Section 570.5 of the California Code of Regulations Title 2, requires the City to publish pay rates and ranges on the City's internet site and the City Council to approve the pay rates and range in its entirety each time a modification is made; and

WHEREAS, the City Council Approved Resolution No. 4118 adopting the Fiscal Year 2018/2019 Salary Schedule at the June 28, 2018, regular meeting that included include a Cost of Living Adjustment (COLA) beginning the first full pay period in July 2018 of 2.25 percent to the following employee groups: Association of Capitola Employees, Mid-management, and Confidential as well as to Unrepresented Management and the City Manager; and

WHEREAS, the City and the Police Captains came to a tentative agreement on a 2.25 percent COLA on June 28, 2018, but was not included in the approved 2018/2019 salary schedule; and

WHEREAS, the attached updated salary schedule for Police Captains does not go into effect until the MOU is ratified by both the City Council and the employee group; and

WHEREAS, a salary resolution is adopted annually by the City Council upon review and recommendation of the City Manager.

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

1. Repeal Resolution No. 4118; and
2. Authorize and approve City of Capitola pay rates and ranges (salary schedule, Exhibit A) for permanent employees from July 1, 2018, through June 30, 2019.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola on the 26th day of July, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approve MOU
July 26, 2018

EXHIBIT A

Updated Fiscal Year 2018/2019 Salary Schedule

POA SALARY SCHEDULE													
JULY 1, 2018 - JUNE 30, 2019													
	Monthly						Hourly						
	Step A	Step B	Step C	Step D	Step E	Step F	Step A	Step B	Step C	Step D	Step E	Step F	
Community Service Officer	\$4,819.72	\$5,062.76	\$5,314.74	\$5,581.01	\$5,861.58	\$6,154.66	\$27.81	\$29.21	\$30.66	\$32.20	\$33.82	\$35.51	
Police Officer Trainee	\$5,799.03						\$33.46						
Police Officer	\$6,088.54	\$6,394.12	\$6,712.22	\$7,048.19	\$7,402.03	\$7,771.95	\$35.13	\$36.89	\$38.72	\$40.66	\$42.70	\$44.84	
Records Manager	\$5,554.20	\$5,832.99	\$6,124.28	\$6,429.87	\$6,753.32	\$7,091.08	\$32.04	\$33.65	\$35.33	\$37.10	\$38.96	\$40.91	
Sergeant	\$7,457.43	\$7,830.93	\$8,224.08	\$8,633.32	\$9,067.58	\$9,519.70	\$43.02	\$45.18	\$47.45	\$49.81	\$52.31	\$54.92	

JULY 1, 2018 - JUNE 30, 2019													
2.25% COLA													
	Monthly						Hourly						
	Step A	Step B	Step C	Step D	Step E	Step F	Step A	Step B	Step C	Step D	Step E	Step F	
Police Captain	\$9,133.08	\$9,590.07	\$10,069.29	\$10,574.09	\$11,103.35	\$11,659.30	\$52.69	\$55.33	\$58.09	\$61.00	\$64.06	\$67.27	

ACE SALARY SCHEDULE													
JULY 1, 2018 - JUNE 30, 2019													
2.25% COLA	Monthly					Hourly							
	Step A	Step B	Step C	Step D	Step E	Step A	Step B	Step C	Step D	Step E			
ACCOUNT TECHNICIAN	\$4,442.11	\$4,663.21	\$4,895.27	\$5,140.13	\$5,397.77	\$25.63	\$26.90	\$28.24	\$29.65	\$31.14			
ACCOUNTANT I	\$5,366.71	\$5,635.32	\$5,916.72	\$6,212.74	\$6,521.55	\$30.96	\$32.51	\$34.13	\$35.84	\$37.62			
ACCOUNTANT II	\$5,918.55	\$6,214.56	\$6,523.37	\$6,850.46	\$7,193.98	\$34.15	\$35.85	\$37.63	\$39.52	\$41.50			
ACCOUNTS CLERK	\$4,030.97	\$4,231.97	\$4,442.11	\$4,665.03	\$4,897.10	\$23.26	\$24.42	\$25.63	\$26.91	\$28.25			
ADMINISTRATIVE ASSISTANT	\$4,065.69	\$4,270.34	\$4,484.13	\$4,708.89	\$4,944.61	\$23.46	\$24.64	\$25.87	\$27.17	\$28.53			
ADMINISTRATIVE CLERK I	\$3,163.01	\$3,320.16	\$3,484.61	\$3,660.03	\$3,842.76	\$18.25	\$19.15	\$20.10	\$21.12	\$22.17			
ADMINISTRATIVE CLERK II	\$3,660.03	\$3,842.76	\$4,034.62	\$4,237.45	\$4,449.42	\$21.12	\$22.17	\$23.28	\$24.45	\$25.67			
ADMINISTRATIVE RECORDS ANALYST	\$4,800.25	\$5,039.63	\$5,289.96	\$5,556.75	\$5,832.66	\$27.69	\$29.07	\$30.52	\$32.06	\$33.65			
ASSISTANT PLANNER	\$5,182.15	\$5,439.80	\$5,712.06	\$5,997.12	\$6,296.79	\$29.90	\$31.38	\$32.95	\$34.60	\$36.33			
BUILDING INSPECTOR I	\$4,538.95	\$4,767.36	\$5,003.08	\$5,255.24	\$5,518.37	\$26.19	\$27.50	\$28.86	\$30.32	\$31.84			
BUILDING INSPECTOR II	\$5,295.44	\$5,560.40	\$5,839.97	\$6,130.51	\$6,437.49	\$30.55	\$32.08	\$33.69	\$35.37	\$37.14			
DATA ENTRY CLERK	\$3,173.98	\$3,331.12	\$3,499.23	\$3,674.65	\$3,859.21	\$18.31	\$19.22	\$20.19	\$21.20	\$22.26			
DEVELOPMENT SERVICES TECHNICIAN	\$4,270.34	\$4,484.13	\$4,708.89	\$4,944.61	\$5,191.29	\$24.64	\$25.87	\$27.17	\$28.53	\$29.95			
EQUIPMENT OPERATOR	\$4,253.90	\$4,465.86	\$4,686.96	\$4,922.68	\$5,169.36	\$24.54	\$25.76	\$27.04	\$28.40	\$29.82			
MAINTENANCE WORKER I	\$3,025.97	\$3,177.63	\$3,336.61	\$3,504.71	\$3,678.31	\$17.46	\$18.33	\$19.25	\$20.22	\$21.22			
MAINTENANCE WORKER II	\$4,051.07	\$4,253.90	\$4,465.86	\$4,690.62	\$4,924.51	\$23.37	\$24.54	\$25.76	\$27.06	\$28.41			
MAINTENANCE WORKER III	\$4,253.90	\$4,465.86	\$4,690.62	\$4,924.51	\$5,171.19	\$24.54	\$25.76	\$27.06	\$28.41	\$29.83			
MECHANIC	\$4,445.76	\$4,668.69	\$4,900.75	\$5,145.61	\$5,403.25	\$25.65	\$26.93	\$28.27	\$29.69	\$31.17			
MUSEUM CURATOR	\$4,030.97	\$4,231.97	\$4,445.76	\$4,666.86	\$4,898.93	\$23.26	\$24.42	\$25.65	\$26.92	\$28.26			
PARKING ENFORCEMENT OFFICER	\$3,669.17	\$3,850.07	\$4,043.76	\$4,246.59	\$4,458.55	\$21.17	\$22.21	\$23.33	\$24.50	\$25.72			
RECEPTIONIST	\$3,480.96	\$3,654.55	\$3,837.28	\$4,030.97	\$4,231.97	\$20.08	\$21.08	\$22.14	\$23.26	\$24.42			
RECORDS COORDINATOR	\$4,065.69	\$4,270.34	\$4,484.13	\$4,708.89	\$4,944.61	\$23.46	\$24.64	\$25.87	\$27.17	\$28.53			
RECORDS MNGNT CLERK	\$3,976.15	\$4,175.32	\$4,385.46	\$4,604.73	\$4,834.97	\$22.94	\$24.09	\$25.30	\$26.57	\$27.89			
RECORDS TECHNICIAN	\$3,919.51	\$4,115.02	\$4,321.51	\$4,537.13	\$4,763.71	\$22.61	\$23.74	\$24.93	\$26.18	\$27.48			
RECREATION ASSISTANT	\$2,976.63	\$3,124.64	\$3,283.61	\$3,446.24	\$3,618.01	\$17.17	\$18.03	\$18.94	\$19.88	\$20.87			
RECREATION COORDINATOR	\$3,850.07	\$4,041.93	\$4,244.76	\$4,458.55	\$4,679.65	\$22.21	\$23.32	\$24.49	\$25.72	\$27.00			
RECREATION FACILITY CUSTODIAN	\$2,876.13	\$3,020.49	\$3,172.15	\$3,331.12	\$3,499.23	\$16.59	\$17.43	\$18.30	\$19.22	\$20.19			
RECREATION RECEPTIONIST	\$3,226.97	\$3,387.77	\$3,557.71	\$3,734.95	\$3,923.16	\$18.62	\$19.54	\$20.53	\$21.55	\$22.63			

Approve MOU
July 26, 2018

CONFIDENTIAL SALARY SCHEDULE										
JULY 1, 2018 - JUNE 30, 2019										
2.25% COLA										
	Monthly					Hourly				
	A	B	C	D	E	A	B	C	D	E
ASSIST TO CITY MGR	\$7,145.02	\$7,501.93	\$7,876.64	\$8,271.36	\$8,684.99	\$41.22	\$43.28	\$45.44	\$47.72	\$50.11
CITY CLERK	\$6,597.96	\$6,928.20	\$7,273.99	\$7,637.58	\$8,020.07	\$38.07	\$39.97	\$41.97	\$44.06	\$46.27
EXEC ASSIST TO CITY MGR	\$5,163.62	\$5,421.58	\$5,694.00	\$5,978.64	\$6,277.74	\$29.79	\$31.28	\$32.85	\$34.49	\$36.22
INFORMATION SYSTEMS SPECIALIST	\$5,096.91	\$5,351.53	\$5,618.39	\$5,899.70	\$6,194.35	\$29.41	\$30.87	\$32.41	\$34.04	\$35.74

MID-MANAGEMENT SALARY SCHEDULE										
JULY 1 2018 - JUNE 30, 2019										
2.25% COLA										
	Monthly					Hourly				
	A	B	C	D	E	A	B	C	D	E
ASSOCIATE PLANNER	\$6,042.02	\$6,344.45	\$6,661.34	\$6,994.91	\$7,345.16	\$34.86	\$36.60	\$38.43	\$40.36	\$42.38
BUILDING OFFICIAL	\$7,989.16	\$8,389.39	\$8,808.79	\$9,248.66	\$9,711.54	\$46.09	\$48.40	\$50.82	\$53.36	\$56.03
CIVIL ENGINEER/PROJECT MANAGER	\$6,947.10	\$7,295.12	\$7,659.82	\$8,042.31	\$8,444.82	\$40.08	\$42.09	\$44.19	\$46.40	\$48.72
ENVIRONMENTAL PROJECTS MANAGER	\$6,042.02	\$6,344.45	\$6,661.34	\$6,994.91	\$7,345.16	\$34.86	\$36.60	\$38.43	\$40.36	\$42.38
MAINTENANCE SUPERINTENDENT	\$5,944.13	\$6,243.80	\$6,554.44	\$6,881.52	\$7,225.05	\$34.29	\$36.02	\$37.81	\$39.70	\$41.68
FIELD SUPERVISOR	\$5,538.47	\$5,814.39	\$6,106.76	\$6,411.91	\$6,729.86	\$31.95	\$33.54	\$35.23	\$36.99	\$38.83
RECREATION SUPERVISOR	\$5,355.74	\$5,624.35	\$5,907.58	\$6,203.60	\$6,512.41	\$30.90	\$32.45	\$34.08	\$35.79	\$37.57
SENIOR PLANNER	\$6,947.10	\$7,295.12	\$7,659.82	\$8,042.31	\$8,444.82	\$40.08	\$42.09	\$44.19	\$46.40	\$48.72
SENIOR ACCOUNTANT	\$6,947.10	\$7,295.12	\$7,659.82	\$8,042.31	\$8,444.82	\$40.08	\$42.09	\$44.19	\$46.40	\$48.72
SENIOR MECHANIC	\$5,145.61	\$5,403.25	\$5,673.69	\$5,956.92	\$6,254.76	\$29.69	\$31.17	\$32.73	\$34.37	\$36.09

MANAGEMENT SALARY SCHEDULE			
JULY 1, 2018 - JUNE 30, 2019			
2.25% COLA			
	Annually	Monthly	Hourly
Admin. Services Director	\$101,484.58	\$8,457.05	\$48.79
City Manager	\$197,712.63	\$16,476.05	\$95.05
Chief of Police	\$163,341.58	\$13,611.80	\$78.53
Director of Public Works	\$149,931.92	\$12,494.33	\$72.08
Director of Finance	\$148,270.96	\$12,355.91	\$71.28
Community Development Director	\$131,902.50	\$10,991.88	\$63.41



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: City Manager Department
SUBJECT: Consider a New City Attorney Contract

RECOMMENDED ACTION: Consider the updated agreement for City Attorney Services with Atchison, Barisone, & Condotti in the amount of \$133,560 for Fiscal Year 2018/19 and authorize the City Manager to execute the agreement.

BACKGROUND: In Fiscal Year 2001/02, the City transitioned from an in-house City Attorney to a contract City Attorney with the law firm of Atchison, Barisone & Condotti (Firm) for general and special legal services. Since that time the Firm has been providing full-time City Attorney services.

In 2017, the Firm changed the rates for special legal services. There are no proposed changes to those rates for 2018/2019.

DISCUSSION: The Firm has submitted a revised contract proposal for a term of one-year, from July 1, 2018, through June 30, 2019, at the same retainer fee of \$11,130 per month. The retainer fee includes attendance at City Council meetings and other meetings as requested; day-to-day legal work required by the various departments; assistance to the City Council; and participation in various training programs.

The Firm proposes no changes to the special legal services rates of \$265 per hour for principal attorneys, \$245 per hour for associate attorneys, and \$125 to \$145 an hour for paralegals and clerks. 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 fiscal impact would be \$133,560 as budgeted this year for general legal services. Special litigation services are budgeted separately depending upon the anticipated litigation. The adopted Fiscal Year 2018/2019 Operating Budget includes \$75,000 for special legal services.

ATTACHMENTS:

1. 2018-2019 Agreement for City Attorney Services-Capitola

New City Attorney Contract
July 26, 2018

Report Prepared By: Larry Laurent
Assistant to the City Manager

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

7/19/2018

AGREEMENT FOR CITY ATTORNEY SERVICES

THIS AGREEMENT is made and entered into this 26th day of July 2018 (the “Effective Date”) by and between the CITY OF CAPITOLA, a Municipal Corporation, hereinafter referred to as “City,” and ATCHISON, BARISONE & CONDOTTI, a Professional Corporation, hereinafter referred to as “Law Firm”;

WHEREAS, ANTHONY P. CONDOTTI (hereinafter referred to as “Attorney”) is a principal in the Law Firm and Law Firm’s members and associates (hereinafter referred to as “Law Firm Attorneys”) specialize in the field of Governmental and Municipal law; and

WHEREAS, the CITY COUNCIL of City has determined it is in the best interest of City that Attorney serve as its City Attorney and that the City provide for its legal services by this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. Law Firm shall provide through the services of Law Firm Attorneys, all of those usual legal services required by City and customarily provided by the City Attorney, in particular, but not exclusively, those legal services specified in Section 2.04.340 of the Capitola Municipal Code and section 6 of this Agreement. Attorney shall be the designated “City Attorney” for such purposes as may be required by law; provided, however, that Law Firm shall devote such time and provide such services as may be reasonably necessary to carry out the purposes of this Agreement, and each member and associate of Law Firm shall be deputized therefore, and wherever required by the circumstances, or the context of applicable laws or regulations, each shall be referred to as Deputy City Attorney, Assistant City Attorney or Associate City Attorney.

2. The term of this Agreement shall commence on July 26, 2018 and shall continue through June 30, 2019 provided, however, that upon expiration of the term this Agreement shall continue in full force and effect on a month-to-month basis unless City provides notice of termination or non-renewal. For fiscal year 2018/2019, the annual compensation amounts and rates specified herein shall remain in full force and effect.

3. City shall pay to Law Firm for all general legal services, as defined in paragraph 6 of this Agreement, the sum of \$11,130 per month, payable in monthly installments net 30 days. City shall pay Law Firm for all special legal services, as defined in paragraph 7 of this Agreement on an hourly basis at a rate of \$245 for the Law Firm’s associate attorneys, \$265 for the Law Firm’s principal attorneys and \$125-145 per hour for services provided by Law Firm Paralegals and Law Clerks. Invoices for special legal services shall be submitted monthly and be due and payable within thirty (30) days of submittal.

Attachment: 2018-2019 Agreement for City Attorney Services-Capitola (New City Attorney Contract)

4. City shall reimburse Law Firm for out-of-pocket costs incurred by Law Firm in providing general and special legal services to the City. These include: notary fees; court filing fees; charges for service of process; record reproduction costs; investigation fees; expert fees; deposition costs; arbitration costs; jury/witness and subpoena fees; publication notices; automobile parking costs; messenger/courier costs; long distance telephone charges incurred on behalf of the City; mileage costs (IRS rates) for any out-of-county automobile transportation undertaken on the City's behalf and, for special legal services, reproduction costs (25 cents per page) and outgoing facsimile transmissions (\$1.00 per page). City shall also reimburse Law Firm for food or lodging costs incurred by Law Firm in connection with the transaction of City business or, with City Manager's advance consent, the attendance at professional conferences or continuing legal education seminars.

5. This Agreement may be terminated on the following terms and conditions:
- a. By City, upon providing Law Firm with thirty (30) days written notice thereof.
 - b. By Law Firm, upon providing City with three (3) months written notice thereof.

In the event of termination, Law Firm agrees to cooperate fully with City to achieve an orderly transition and assumption of duties by any succeeding City Attorney.

6. For purposes of this Agreement, subject to the qualifications set forth in this paragraph and paragraph 7, general legal services shall include those services which the City would customarily expect to receive from a City Attorney who is employed as a City staff member. Specifically, general legal services shall include, but shall not be limited to:

- a. Attendance at all regular City Council meetings. Attendance at special City Council meetings and Planning Commission meetings on an as needed basis as determined by either the Mayor or City Council. Attorney will generally attend these meetings with other Law Firm attorneys as assigned by Attorney generally attending any such meetings in Attorney's absence;
- b. The maintenance of office hours at Capitola City Hall as requested by the City Manager or City Council immediately preceding City Council meetings on the second and fourth Thursday of each month. Other on-site office hours will be provided on an as needed basis. Law Firm Attorneys will be available for consultation by telephone at all times and, given Law Firm's proximity to Capitola, Law Firm Attorneys will generally be available to meet personally with City officials on short notice when the need arises;
- c. Day to day legal work required by the City's various departments which, among other areas of practice, encompasses contract drafting and review, public utilities work, election law, public meeting law, labor law, construction law, constitutional law, real estate transactional work, basic

bankruptcy and collection work, the review and drafting of legislation, ordinances and resolutions, and land use and environmental law;

- d. Assistance to the City Council and the City's various commissions. In this regard, in addition to the meeting attendance outlined above, Law Firm Attorneys will answer legal questions posed by City Councilmembers and Council-appointed board members and commissioners on a regular basis, provide them with advice under the Brown Act and offer conflict of interest opinions under the Political Reform Act and other applicable statutes and laws;
- e. Participation in the City Attorney component of any citizens' academy or governmental forum training programs which might be presented or sponsored by the City;

All Law Firm Attorneys will be available to provide general legal services and Attorney, in his discretion, will assign Law Firm Attorneys in connection with the provision of general legal services to the City.

7. For purposes of this Agreement, special legal services shall include:

- a. Any litigation, arbitration, mediation, code enforcement, criminal prosecution or hearing commenced or defended by the City of Capitola, or disciplinary/grievance arbitrations;
- b. Eminent domain (condemnation) work;
- c. Any legal services required by the City in connection with the enforcement or defense of rent control ordinances including the City's Mobilehome Rent Control Ordinance;
- d. Legal services provided at City's request to any independent or separate agency or entity of government where the City Council does not act as a legislative body, or which is not operated as a department or division of the City. Examples of separate agencies or entities are joint powers authorities and non-profit corporations governed by administrative or legislative bodies other than the City Council acting in its capacity as the City Council.

Special legal services shall be provided to the City by Law Firm on a case by case basis and shall only be undertaken by Law Firm upon receipt of a specific case assignment by the City Council or City Manager. All Law Firm Attorneys will be available to provide special legal services and Attorney, in his discretion, will assign Law Firm Attorneys in connection with the provision of special legal services.

8. It is understood that Law Firm will not provide legal services to the City relating to workers' compensation, municipal bond/finance work, complex transactional work on behalf of the City's Redevelopment Agency and labor contract negotiations.

9. In connection with clerical support necessitated by Law Firm's general and special legal services, Law Firm will provide all reasonable and necessary office facilities, equipment, books, supplies, secretarial services, insurance policies and other property or services necessary to carry out and provide said legal services to the City. City will provide office space and clerical support in connection with legal services provided by Law Firm Attorneys while present at City Hall or other City facilities.

10. City has determined that it is in the best interest of City that Law Firm Attorneys keep abreast of rapidly evolving developments in Municipal Law, and one or more of them shall be expected to attend conferences of the League of California Cities, conferences of IMLA, and the American Bar Association State and Local Government Section, conferences and meetings of Bay Area City Attorneys, and such other courses and seminars in Municipal Law as may be necessary to maintain current proficiency. To the extent approved in advance by the City Manager, Law Firm shall be reimbursed for reasonable out-of-pocket expenses for travel, lodging and incidental expenses in connection with attendance at such official meetings, conferences, courses and seminars.

11. This Agreement shall not be assigned by Law Firm without the consent of City, except to Attorney, or to a partnership or a professional legal corporation of which Attorney is a partner or shareholder.

12. Law Firm shall not accept private clients or cases which in the reasonable judgment of Law Firm attorneys will, or may in the future, create conflicts of interest between City and such clients or cases. Should any such conflict develop, despite efforts to avoid conflicts, then Law Firm and its attorneys will immediately notify the City Council and City Manager and appropriate measures will be agreed upon to remove the conflict or to resolve it consistent with Attorney and Law Firm's professional ethical obligations.

13. The City hereby acknowledges and understands that Law Firm has continuously provided legal services to the City of Santa Cruz and that one of Law Firm's attorneys has continuously served as the Santa Cruz City Attorney since 1964. The parties contemplate that in nearly all instances, Law Firm's simultaneous representation of Santa Cruz and Capitola will not create legal conflicts of interest or practical circumstances that preclude Law Firm's representation of Capitola with respect to a given matter. However, should such a conflict or circumstance arise, Capitola hereby consents to Law Firm's representation of the City of Santa Cruz unless it would be unethical for Law Firm to do so in which case Law Firm shall recuse itself from representing either Capitola or Santa Cruz.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

“CITY”

CITY OF CAPITOLA, a
Municipal Corporation

By: _____
JAMIE GOLDSTEIN
City Manager

“LAW FIRM”

ATCHISON, BARISONE & CONDOTTI,
a Professional Corporation

By: _____
ANTHONY P. CONDOTTI

Attachment: 2018-2019 Agreement for City Attorney Services-Capitola (New City Attorney Contract)



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: Community Development

SUBJECT: Second Reading of an Ordinance Adding Chapter 5.36 of the Capitola Municipal Code Pertaining to Cannabis Retail Licenses and Amending Chapter 17.24 of the Regional Commercial Zoning District Pertaining to Conditional Land Uses to Authorize Commercial Retail Cannabis Uses in the Regional Commercial Zoning District

RECOMMENDED ACTION: Adopt an Ordinance adding Chapter 5.36 “Retail Cannabis Licenses” and amending Municipal Code Chapter 17.24 to authorize retail cannabis as a conditionally permitted use in the Regional Commercial zone.

BACKGROUND/DISCUSSION: On June 28, 2018, the City Council adopted the first reading of the cannabis retail establishment ordinance with modifications to the ordinance as recommended by Planning Commission. The modifications included establishing a maximum limit of two cannabis retail establishments, increasing the maximum sign area to 20 square feet, and incorporating regulations to prevent advertising to youth. The City Council discussed but decided against adding a 100-foot residential buffer.

Report Prepared By: Katie Herlihy
Community Development Director

Reviewed and Forwarded by:

Jamie Goldstein, City Manager

7/19/2018

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF CAPITOLA
AMENDING CAPITOLA MUNICIPAL CODE BY ADDING CHAPTER 5.36 “RETAIL
CANNABIS LICENSES” AND AMENDING CHAPTER 17.24 “COMMERCIAL AND
INDUSTRIAL ZONING DISTRICTS” AT SECTION 17.24.020 TO AUTHORIZE RETAIL
CANNABIS SALES IN THE C-R – REGIONAL COMMERCIAL ZONING DISTRICT**

THE CITY COUNCIL OF THE CITY OF CAPITOLA DOES ORDAIN AS FOLLOWS:

Section 1: Chapter 5.36 “RETAIL CANNABIS LICENSES” of the Capitola Municipal Code is hereby added to read as follows:

“Chapter 5.36

RETAIL CANNABIS LICENSES

Sections:

5.36.010 Purpose

5.36.020 Definitions

5.36.030 Cannabis Retail Business – License Required

5.36.010 Purpose

Proposition 64, approved by the voters of California in November 2016, legalized the adult recreational use of cannabis. This chapter is designed to regulate the sale of cannabis based upon the new state law.

The city has determined to initially limit the number of cannabis retail outlets allowed to ensure that this use will not create unforeseen impacts. To provide a process that limits the number of retail establishments without tying those establishments to specific properties, this chapter creates a licensing structure for cannabis retail businesses.

5.36.020 Definitions

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

- A. “Adult use” shall refer to non-medicinal or non-medical use of cannabis by persons 21 years of age or older in conformance with the Medical and Adult-Use Cannabis Regulation and Safety Act and the provisions of state law regarding cannabis use and sale.
- B. “Collective or cooperative cultivation” means the association within California of qualified patients, persons with valid identification cards, and designated primary caregivers to cultivate cannabis for medicinal purposes as defined in strict accordance with California Health and Safety Code sections 11362.5 et seq.
- C. “Commercial cannabis activity” includes the cultivation, manufacturing, processing, packaging, distribution, and sale of cannabis and cannabis products.
- D. “Cultivate” or “cultivation” is the planting, growing, harvesting, drying, processing, or storage of one or more cannabis plants or any part thereof in any location.

Second Reading Retail Marijuana Ordinance
July 26, 2018

- E. “Medicinal cannabis” is defined in strict accordance with California Health and Safety Code sections 11362.5 et seq.
- F. “Processing” is defined as any method used to prepare cannabis or its byproducts for commercial sale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create cannabis related products and concentrates.
- G. “Primary caregiver” is defined in strict accordance with California Health and Safety Code section 11362.5 et seq.
- H. “Cannabis Retail Establishment” means a retail store in which cannabis or cannabis products are sold for Adult Use and/or Medicinal Use.

5.36.030 Cannabis Retail Business – License Required

- A. It is unlawful for any person conducting, operating, owning, or in control of any premises to sell cannabis or cannabis product, whether medical (medicinal) or adult use (recreational) within the City of Capitola unless such person holds a valid Retail Cannabis License, except as outlined below in this subsection A.
 - 1. Single License. A Retail Cannabis License may be issued to a single business owner/operator for a single location.
 - 2. Maximum Licenses. No more than two Retail Cannabis Licenses shall be issued by the City of Capitola at any given time.
 - 3. Notice of Availability. When the number of active Retail Cannabis Licenses falls below the maximum number of licenses established herein, the city shall place an advertisement in at least one local newspaper of general circulation and post on the city’s website an announcement that the city will be accepting applications for Retail Cannabis Licenses. The notice shall include the location on the city’s website for the application and submittal requirements, application deadlines, and contact information for questions.
 - 4. Retail Cannabis License – Application Preparation and Filing.
 - (a) Application Contents. All license applications shall be filed on an official City Retail Cannabis License Application form available through the Police Department. The Retail Cannabis License Application shall specify all submittal requirements including documentation, plans, and materials.
 - (b) A complete application and the associated fees, including a Cannabis Retail License application fee, shall be filed with the City’s Police Department.
 - 5. Competitive, Merit-Based License Review. Retail Cannabis Licenses shall be subject to a competitive, merit-based review. The City may consider all of the following in the review of an application:
 - (a) The proposed location of the Retail Cannabis License establishment is not identified as an area of increased or high crime activity by the Chief of Police;
 - (b) Civil and Criminal background verification of business owner/operator with preference for applicant that has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices;
 - (c) Applicant’s experience in retail sales and legal cannabis sales;

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- (d) Applicant's residency and local enterprise within the region;
 - (e) For those applicants that have operated other retail cannabis establishments, the numbers of calls for police, crimes, or arrest associated with the applicant's other location(s) shall be considered; and
 - (f) The site plan, operations plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems. These features may include, but are not limited to:
 - 1. security on-site;
 - 2. procedure for allowing entry;
 - 3. best practices to minimize risk of selling cannabis products to underage individuals
 - 4. surveillance and control of the premises, the perimeter, and surrounding properties;
 - 5. reduction of opportunities for congregating and obstructing public ways and neighboring property;
 - 6. illumination of exterior areas; and
 - 7. visibility of public entryway from the street.
6. Selection Process. All complete applications received prior to the application deadline shall be reviewed by a panel of no fewer than three non-conflicted individuals as selected by the city manager. The panel shall review the applications, considering factors of importance to the community including those listed within subsection B.5. The application determined to best meet the requirements of this section and community's needs shall be selected as a potential Retail Cannabis License holder.
7. Issuance of License. The issuance of a final cannabis retail license shall be contingent upon the following:
- (a) Applicant must have been identified as a potential Retail Cannabis License holder pursuant to subsection B.6;
 - (b) Approval of a Conditional Use Permit by Planning Commission within six months of selection as a potential Retail Cannabis License holder; and
 - (c) Appropriate State License(s) for retail sales of cannabis within six months of selection as a potential Retail Cannabis License holder.
 - (d) Effective Date. The Cannabis Retail License shall be issued upon receipt of a Conditional Use License and State License(s).
 - (e) Expiration. If the business owner/operator is unable to obtain either of the requirements outlined in this subsection B.7(a)-(b) within six months from the selection date, the selection will expire immediately and a Retail Cannabis License will be made available and publicly noticed. The six months shall commence six months from the date of official selection on the same day of the month.
8. Requirements of License. A Retail Cannabis License shall include specific operational and safety requirements established by the Chief of Police.

Second Reading Retail Marijuana Ordinance
July 26, 2018

9. License Transfer to New Owner.
- (a) License Transfer to New Owner. No Licensee shall transfer ownership or control of a retail cannabis establishment to another person or entity unless and until the transferee obtains an amendment to the license from the Chief of Police stating that the transferee is now the licensee. Such an amendment may be obtained only if the transferee files all required application materials in accordance with all provision of this Chapter, pays all applicable fees, pass the background check, and independently meets the requirements of the cannabis retail license, as determined by the Chief of Police. A license shall not be transferred to an owner that has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.
 - (b) Changes in ownership of a licensee's business structure or a substantial change in the ownership of a licensee's business entity (changes that result in a change of more than 51% of the original ownership), must be approved by the City Manager or his/her designee through the transfer process contained in this subsection (a). Failure to comply with this provision is grounds for license revocation.
 - (c) A licensee may change the form of business entity without applying to the City Manager or his/her designee for a transfer of license, provided that either:
 1. The membership of the new business entity is substantially similar to the original license holder business entity (at least 51% of the membership is identical), or
 2. If the original licensee is an unincorporated association, mutual or public benefit corporation, agricultural or consumer cooperative corporation and subsequently transitions to or forms a new business entity as allowed under the MAUCRSA and to comply with Section 5.36.030.A, provided that the Board of Directors (or in the case of an unincorporated association, the individual(s) listed on the City retail cannabis license application) of the original retail cannabis licensed entity are the same as the new business entity.

Although a transfer is not required in these two circumstances, the license holder is required to notify the Chief of Police in writing of the change within ten (10) days of the change. Failure to comply with this provision is grounds for license revocation.
 - (d) No retail cannabis license may be transferred when the Chief of Police has notified the licensee that the license has been or may be suspended or revoked.
 - (e) Any attempt to transfer a retail cannabis license either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the license.
10. License Transfer to New Location. A cannabis retailer license does not run with the property. Licensees may change locations contingent upon obtaining a letter

Second Reading Retail Marijuana Ordinance
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of referral from the City's Chief of Police, a Conditional Use Permit for the new location, and approval from the state licensing agency for the new location.

11. Annual Renewal and Review of Retail Cannabis License.
 - (a) Annual Renewal. All Retail Cannabis Licenses shall be renewed annually.
 - (b) Annual Review of Retail Cannabis License. The staff of the community development department and the police department are hereby authorized to conduct an annual review of the operation of each Retail Cannabis Establishment within the city for full compliance with the requirements of the Retail Cannabis License.
 - (c) Upon verification of renewal of the state license and findings of compliance with the requirements of the Retail Cannabis License, and upon submission of required Annual Cannabis License fee, the police department may issue the annual renewal.
 - (d) Annual Cannabis Retail License Review Fee. A fee in an amount established by resolution of the City Council may be established in order to reimburse the City for the time involved in the annual review process.

12. Promulgation of Regulations, Standards and Other Legal Duties.
 - (a) In addition to any regulations adopted by the City Council, the City Manager, Chief of Police or his/her designee is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of retail cannabis license, the ongoing operation of a retail cannabis businesses and the City 's oversight, or concerning any other subject determined to be necessary to carry out the purposes of this Chapter.
 - (b) Regulations shall be published on the City 's website.
 - (c) Regulations promulgated by the City Manager or Chief of Police shall become effective upon date of publication. Retail cannabis businesses shall be required to comply with all state and local laws and regulations, including but not limited to any rules, regulations or standards adopted by the City Manager, Chief of Police or his/her designee.
 - (d) Regulations shall include advertising restrictions that specify require printing, publishing, advertising, or dissemination in any way or by any means of communication, or causing to be printed, published, advertised, or disseminated in any way or by any means of communication, other than by way of a dedicated business Internet website accessible through an age gate portal, any notice of advertisement that includes the following information: pricing of cannabis, details regarding specific cannabis products, or cannabis photography or graphics related to the cannabis plant or cannabis products.

13. Suspension and Revocation of license.

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- (a) Authority to suspend or revoke a Retail Cannabis License.
1. Any Retail Cannabis License issued under the terms of this Section may be suspended or revoked by the Chief of Police if the retail cannabis establishment is being operated in a manner not in compliance with the requirements of the Retail Cannabis License, the operational plan, the security plan, or state law, or if the cannabis establishment becomes a public nuisance.
 2. Written Notice. Except as otherwise provided in this Section, a license shall be revoked or suspended by the Chief of Police under the authority of this Section in a written notice. Such revocation or suspension notice shall state the specific reasons for the proposed suspension or revocation. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such license. Notice may be given either by personal delivery to the licensee, or by certified U.S. mail in a sealed envelope, addressed to the business owner/operator to be notified at their address as it appears in their application for a Retail Cannabis License.
14. Appeal of decision. An applicant or interested party aggrieved by any decision to approve, suspend, modify, or revoke a license under this Chapter may appeal such decision to the City Council by filing a written appeal in accordance with the requirements of Chapter 2.52 (Appeals to City Council). If an appeal is not submitted within ten working days following the review authorities' decision, the decision shall be final.

Except as expressly authorized herein, all commercial cannabis activity is prohibited in all areas of the City.”

Section 2: Retail Cannabis in the C-R Zoning District. Section 17.24.020 of the Capitola Municipal Code is hereby amended to read as follows:

“17.24.020 Land Use Regulations

- A. Permitted Land Uses.** Table 17.24-1 identifies land uses permitted in the commercial and industrial zoning districts.

TABLE 17.24-1: PERMITTED LAND USES IN COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

Key	Zoning District	
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Second Reading Retail Marijuana Ordinance
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P Permitted Use A Administrative Permit required M Minor Use Permit required C Conditional Use Permit required - Use not allowed	C-C	C-R	I	Additional Requirements
Residential Uses				
Single-Family Dwellings	-	-	-	
Multi-Family Dwellings	C	C [9]	-	
Residential Mixed Use	C	C [7]	-	Section 17.24.040
Public and Quasi-Public Uses				
Colleges and Trade Schools	C	C	C	
Community Assembly	C	C	-	
Cultural Institutions	C	C	-	
Day Care Centers	C	C	-	
Emergency Shelters	-	-	P	Section 17.96.030
Government Offices	See 17.24.020.C		C	
Medical Offices and Clinics	See 17.24.020.C		-	
Public Safety Facilities	C	C	C	
Commercial Uses				
Alcoholic Beverage Sales	C	C	C	
Banks	P [2]	P [2]	-	
Financial Institutions	P [2]	P [2]	-	Section 17.24.020.C
Business Services	P [2]	P [2]	P	
Commercial Entertainment and Recreation	M	M	-	
Drive-Through Facilities	-	C [4]	-	
Eating and Drinking Establishments				
Bars and Lounges	C	C	C	
Mobile Food Vendors	-	A [6]/C	A [6]/C	
Restaurants and Cafes	M [2]	M [2]	C	
Take-Out Food and Beverage	M [2]	M [2]	-	
Food Preparation	M [2]	-	P	
Gas and Service Stations	C	C	-	
Liquor Stores	C	C	-	
Lodging				
Bed and Breakfast	C	-	-	

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Hotel	C	C	-	
Maintenance and Repair Services	M	C	P	
Personal Services	P [1]	P [1]	-	
Professional Offices	See 17.24.020.C		P	
Salvage and Wrecking	-	-	P	
Self-Storage	C	-	C	Section 17.96.140
Retail	P	P	-	
Retail Cannabis Establishment	-	C [10]	-	Section 17.24.020.D
Vehicle Repair	C	C	P	
Vehicle Sales and Rental	C [5]	C [5]	-	
Vehicle Sales Display Room [8]	P	P	-	
Wholesaling	-	M [3]	P	
Heavy Commercial and Industrial Uses				
Construction and Material Yards	-	-	P	
Custom Manufacturing	M	M	P	
Light Manufacturing	-	-	P	
Warehousing and Distribution	-	-	P	
Transportation, Communication, and Utility Uses				
Utilities, Major	-	C	C	
Utilities, Minor	P	P	P	
Recycling Collection Facilities	C	C	C	Section 17.96.130
Wireless Communications Facilities	See 17.104			
Other Uses				
Accessory Uses	See 17.52			
Home Occupations	A	A	-	Chapter 17.96.040
Permanent Outdoor Display	C	C	C	Section 17.96.100
Temporary Uses	See 17.76.180			
Urban Agriculture				
Home Garden	P	P	-	
Community Garden	M	M	-	
Urban Farm	C	C	-	

Notes:

[1] Combination of two or more tenant suites within a multi-tenant building or greater than 5,000 sq. ft. requires Minor Use Permit

[2] Combination of two or more tenant suites within a multi-tenant building or greater than 5,000 sq. ft. requires

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July 26, 2018

Conditional Use Permit

[3] Without stock. Storage of merchandise limited to samples only.

[4] Prohibited within 100 feet of a residential zoning district or residential use including residential properties outside the City limits.

[5] Majority of vehicles for sale must be new.

[6] Mobile food vendors in one location two times or less per year are regulated as a temporary use in accordance with Section 17.96.180 and are allowed with an Administrative Permit in accordance with Municipal Code Chapter 9.36. Mobile food vendors in one location more than two times per year require a Conditional Use Permit.

[7] Residential uses are prohibited on the first story.

[8] Maximum 5,000 square feet.

[9] Allowed only as a part of a mixed-use project integrated with commercial structures located on the same development site.

[10] Requires Cannabis Retail License (Chapter 9.61) and compliance with 17.24.020.D

B. Additional Permits. In addition to permits identified in Table 17.24-1, development projects in the commercial and industrial zoning districts may also require a Design Permit pursuant to Chapter 17.120 (Design Permits). Modifications to a historic resource may require a Historic Alteration Permit pursuant to Chapter 17.84 (Historic Preservation). Development in the coastal zone may require a Coastal Permit pursuant to Chapter 17.32 (Coastal Overlay Zone) independent of and in addition to any other required permit or approval.

C. Office Uses in the C-C and C-R Zoning Districts.

- 1. New Office Uses.** In the C-C and C-R zoning districts, permits required for new office uses and conversions of non-office space to office use are shown in Table 17.24-2. Offices include professional, medical, financial institutions and governmental offices.
- 2. Existing Office Uses.** Within office building utilized exclusively for office uses as of [effective date of Zoning Ordinance], office uses may continue to occupy ground floor tenant spaces. Within such office building, a new tenant is not subject to the permit requirements in Table 17.24-2 until such time that the building is redeveloped or all office space in the ground floor level is converted to a non-office use.

TABLE 17.24-2: PERMITTED NEW OFFICE USES IN THE C-C AND C-R ZONING DISTRICTS

Key	C-C Zoning District	C-R Zoning District
P Permitted Use		
A Administrative Permit required		
M Minor Use Permit required		
C Conditional Use Permit required		
- Use not allowed		
Location and Size of Office Use		
Ground floor, less than 5,000 sq. ft.	P	-
Ground floor, 5,000 sq. ft. or more	C	-
Upper floor above a ground floor	P	P
Located within a multi-tenant site in which the office space is not located within a storefront and is setback from the front façade.	P	-

D. Retail Cannabis in the C-R Zoning District. A Retail Cannabis Establishment in the C-R zoning district must be in compliance with the following standards.

- 1. Permit Requirements.**

Second Reading Retail Marijuana Ordinance
July 26, 2018

- a. **Cannabis Retail License.** Prior to conditional use permit application, an applicant shall obtain a potential Retail Cannabis License from the City, as outlined in Chapter 9.61.
- b. **Conditional Use Permit.** A Retail Cannabis Establishment must obtain a Conditional Use Permit from the Planning Commission. The Retail Cannabis Establishment shall be in compliance with the following standards:
 - (1) **Distance from Schools and Churches.** Retail Cannabis Establishments are not permitted within a path of travel of 1,000 feet from any schools and churches. The path of travel shall be measured following the shortest path of travel along a public right-of-way from the property line of the proposed Retail Cannabis Establishment parcel to the church or school.
 - (2) **Distance between Retail Cannabis Establishments.** A retail cannabis establishment shall not be located within a path of travel of 500 feet of another retail cannabis establishment. Path of travel is measured from the retail establishment suite on a multitenant property or the structure for a single tenant property.
 - (3) **Independent Access.** A retail cannabis establishment shall have an independent exterior entrance that is not shared with any other business or residence.
 - (4) **Signs.** Notwithstanding other sections of the code for signs, a retail cannabis establishment shall be limited to one exterior building sign per business location to identify the business as a retail cannabis establishment in compliance with the following standards:
 - a) Sign may include only the name of business and one green cross.
 - b) Sign area maximum of 20 square feet, or one square foot per linear frontage of the business; whichever is less.
 - c) Sign may not have any reference, through symbols or language, to cannabis with the exception of one green cross.
 - d) Sign shall not be directly illuminated except during operating hours
 - e) Sign shall otherwise be subject to Planning Commission review through a Sign Permit Application in accordance with Section 17.132."

Section 3. Effective Date. This ordinance shall be in full force and effect thirty (30) days from the date of its adoption by the City Council or upon the certification of the passage of a ballot measure authorizing the establishment of a tax on retail cannabis sales by voters at the November 6, 2018, general election, whichever is later.

This ordinance was introduced on the 28th day of June, 2018, and was passed and adopted by the City Council of the City of Capitola on the 26th day of July, 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: Public Works Department
SUBJECT: Award 2018 Slurry Seal Project Contract

RECOMMENDED ACTION: Award a contract to Graham Contractors, Inc., in the amount of \$322,991 for the construction of the 2018 Slurry Seal project. Further authorize the Public Works Director to issue change orders for paving repairs at the Community Center Parking Lot at a cost not to exceed \$60,000 and to restripe 41st Avenue at a cost not to exceed \$30,000.

BACKGROUND: On July 11, 2018, the city received four bids for the construction of the 2018 Slurry Seal project. A summary of the bids is included as Attachment 1. The low bid, in the amount of \$322,991, was submitted by Graham Contractors, Inc., from San Jose. The engineer's construction estimate was \$241,136. The low-bid over the estimate is unfortunately consistent with the current construction market, due to increased material costs and contractor availability.

DISCUSSION: This project will complete spot pavement repairs and a slurry seal on the following street segments:

- Wharf Road from Clares Street north to the City limit
- 46th Avenue from Capitola Road to Clares Street
- Prospect Avenue from 49th Avenue to Lincoln Avenue
- Capitola Avenue from Bay Avenue north to the City limit
- Pine Street from Capitola Avenue to Rosedale Avenue
- Plum Street from Capitola Avenue to Rosedale Avenue
- Burlingame Avenue from Beulah Drive to Bay Avenue
- Del Monte Avenue from Bay Avenue to Pilgrim Avenue
- Pilgrim Drive from Burlingame Avenue to Bay Avenue

In addition, crack sealing will be completed on Bay Avenue from Oak Avenue to Highway 1.

Staff is requesting authorization to negotiate contract change orders to this project to include pavement repairs at the Community Center parking lot on Jade Street and restriping the traffic lanes on 41st Avenue. Both of these items of work are similar in nature to the contract work and need to be completed before winter. Staff estimates the repairs to the Community Center parking lot will not exceed \$60,000 and the striping costs will not exceed \$30,000. The final prices will be negotiated with the contractor.

2018 Slurry Seal Award of Contract
July 26, 2018

Work on the project will begin following the Labor Day weekend and should take three to four weeks to complete.

FISCAL IMPACT: The Capital Improvement Program budget for the 2018 Slurry Seal project has a fund balance of \$374,000 which is sufficient to cover the contract costs. An additional \$75,000 in funding for the pavement repairs at the Community Center is available in the Facilities Reserve Fund and \$30,000 is available in the Gas Tax fund for the 41st Avenue striping.

ATTACHMENTS:

1. 2018 Slurry Seal Bid Summary

Report Prepared By: Steve Jesberg
Public Works Director

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

7/19/2018

**Project Title : 2018 Slurry Seal Project
 Bid Opening : July 11, 2018 @3:00pm**

ITEM NO.	BID ITEM	UNIT	QTY	ESTIMATE UNIT PRICE	ESTIMATE UNIT TOTAL	Bid 1		Bid 2		Bid 3		Bid 4	
						UNIT PRICE	UNIT TOTAL	UNIT PRICE	UNIT TOTAL	UNIT PRICE	UNIT TOTAL	UNIT PRICE	UNIT TOTAL
1	Mobilization & Demobilization	LS	1	\$18,000.00	\$18,000.00	\$15,000.00	\$15,000.00	\$24,457.50	\$24,457.50	\$22,999.00	\$22,999.00	\$65,000.00	\$65,000.00
2	Clearing & Grubbing & Environmental Protection	LS	1	\$5,000.00	\$5,000.00	\$1,000.00	\$1,000.00	\$7,987.50	\$7,987.50	\$5,000.00	\$5,000.00	\$45,000.00	\$45,000.00
3	Traffic Control System	LS	1	\$22,000.00	\$22,000.00	\$40,000.00	\$40,000.00	\$49,615.00	\$49,615.00	\$40,000.00	\$40,000.00	\$69,000.00	\$69,000.00
4	Public Posting & Notification	LS	1	\$6,000.00	\$6,000.00	\$5,000.00	\$5,000.00	\$566.35	\$566.35	\$5,000.00	\$5,000.00	\$20,000.00	\$20,000.00
5	Over-Excavation (Revocable Item)	CY	95	\$75.00	\$7,125.00	\$200.00	\$19,000.00	\$210.00	\$19,950.00	\$145.00	\$13,775.00	\$290.00	\$27,550.00
6	Asphalt Concrete Base Repair (4" Depth)	SF	5,701	\$6.50	\$37,056.50	\$11.00	\$62,711.00	\$10.65	\$60,715.65	\$14.00	\$79,814.00	\$12.50	\$71,262.50
7	Asphalt Concrete Base Repair (6" Depth)	SF	1,026	\$9.50	\$9,747.00	\$16.00	\$16,416.00	\$16.00	\$16,416.00	\$21.00	\$21,546.00	\$24.00	\$24,624.00
8	PCC Curb and Gutter (Standard)	LF	178	\$90.00	\$16,020.00	\$80.00	\$14,240.00	\$204.25	\$36,356.50	\$304.00	\$54,112.00	\$300.00	\$53,400.00
9	PCC Valley Gutter	SF	221	\$30.00	\$6,630.00	\$35.00	\$7,735.00	\$75.25	\$16,630.25	\$87.00	\$19,227.00	\$135.00	\$29,835.00
10	Crack Sealing	LS	1	\$13,000.00	\$13,000.00	\$20,000.00	\$20,000.00	\$18,300.00	\$18,300.00	\$29,000.00	\$29,000.00	\$23,625.00	\$23,625.00
11	Type II Slurry Seal	SY	38,300	\$2.00	\$76,600.00	\$2.40	\$91,920.00	\$2.87	\$109,921.00	\$2.00	\$76,600.00	\$1.91	\$73,153.00
12	Thermoplastic Traffic Stripe – Detail 2	LF	3,000	\$1.50	\$4,500.00	\$1.00	\$3,000.00	\$1.08	\$3,240.00	\$1.00	\$3,000.00	\$1.00	\$3,000.00
13	Thermoplastic Traffic Stripe – Detail 21	LF	160	\$1.50	\$240.00	\$1.60	\$256.00	\$1.73	\$276.80	\$2.00	\$320.00	\$1.60	\$256.00
14	Thermoplastic Traffic Stripe – Detail 22	LF	2,041	\$2.00	\$4,082.00	\$2.00	\$4,082.00	\$2.16	\$4,408.56	\$2.00	\$4,082.00	\$2.00	\$4,082.00
15	Thermoplastic Traffic Stripe – Detail 39	LF	3,776	\$1.00	\$3,776.00	\$1.00	\$3,776.00	\$1.08	\$4,078.08	\$2.00	\$7,552.00	\$1.00	\$3,776.00
16	Thermoplastic Traffic Stripe – Detail 39A	LF	185	\$1.00	\$185.00	\$1.00	\$185.00	\$1.08	\$199.80	\$1.00	\$185.00	\$1.00	\$185.00
17	Thermoplastic Traffic Stripe – 4" (White or Yellow)	LF	382	\$1.00	\$382.00	\$2.00	\$764.00	\$2.16	\$825.12	\$2.00	\$764.00	\$2.00	\$764.00
18	Thermoplastic Traffic Stripe – Stop Bar	LF	241	\$2.00	\$482.00	\$6.00	\$1,446.00	\$6.48	\$1,561.68	\$7.00	\$1,687.00	\$6.00	\$1,446.00
19	Thermoplastic Traffic Stripe – Basic Crosswalk	LF	122	\$2.00	\$244.00	\$6.00	\$732.00	\$6.48	\$790.56	\$7.00	\$854.00	\$6.00	\$732.00
20	Thermoplastic Traffic Stripe – Ladder Crosswalk	LF	603	\$2.00	\$1,206.00	\$6.00	\$3,618.00	\$6.48	\$3,907.44	\$7.00	\$4,221.00	\$6.00	\$3,618.00
21	Thermoplastic Traffic Stripe – Continental Crosswalk	LF	357	\$2.00	\$714.00	\$6.00	\$2,142.00	\$6.48	\$2,313.36	\$7.00	\$2,499.00	\$6.00	\$2,142.00
22	Thermoplastic Pavement Marking	SF	953	\$4.00	\$3,812.00	\$6.00	\$5,718.00	\$6.45	\$6,146.85	\$7.00	\$6,671.00	\$6.00	\$5,718.00
23	Blue Raised Fire Hydrant Pavement Marker	EA	18	\$20.00	\$360.00	\$25.00	\$450.00	\$27.00	\$486.00	\$29.00	\$522.00	\$25.00	\$450.00
24	Remove & Replace Raised White Tubular Markers	EA	20	\$25.00	\$500.00	\$65.00	\$1,300.00	\$71.00	\$1,420.00	\$75.00	\$1,500.00	\$65.00	\$1,300.00
25	Adjust Water Valve Boxes to Grade	EA	4	\$700.00	\$2,800.00	\$500.00	\$2,000.00	\$486.00	\$1,944.00	\$2,000.00	\$8,000.00	\$1,750.00	\$7,000.00
26	Adjust Survey Monument Boxes to Grade	EA	1	\$675.00	\$675.00	\$500.00	\$500.00	\$486.00	\$486.00	\$2,000.00	\$2,000.00	\$2,450.00	\$2,450.00
TOTAL					\$241,136.50		\$322,991.00		\$393,000.00		\$410,930.00		\$539,368.50

Attachment: 2018 Slurry Seal Bid Summary (2018 Slurry Seal Award of Contract)



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: Public Works Department

SUBJECT: Consider Options for Awarding a Construction Contract for the Capitola Branch Library

RECOMMENDED ACTION: Either:

1. Award a contract to Otto Construction to build the Capitola Branch Library, or
2. Reject all bids and authorize staff to amend the Project Manager contract with Bogard Construction to include the preparation of documents necessary to bid the project as a design-build project.

BACKGROUND: As has been previously reported, the lowest bid received for the construction of the Capitola Branch Library came in at \$12,325,000 which is \$2,334,870 over the budgeted amount for construction. Since the bids were received the staff and the project manager have developed options for the Council's consideration.

DISCUSSION: The following options have been developed for Council consideration. A decision on how to proceed on this project should be made at this Council meeting as the bid by Otto Construction to build the library will expire in mid-August and would be forfeited.

Option 1. Award Contract to Otto Construction at the bid price of \$12,325,000 and direct staff to negotiate a change order based on value engineering cost deductions, and add the concrete donation pavers bid-alternate item.

In developing this option, staff evaluated if additional non-City funding could be added to the project, and what project costs could be reduced through a value engineering process. On the funding side, Measure S special library tax revenues have exceeded estimated amounts due to several factors. First, the actual tax generated has exceeded the initial projection. In addition, the pricing and costs of the first bond issuance were lower than anticipated.

At its June meeting, the Santa Cruz Libraries Facilities Financing Authority (LFFA) formed an ad-hoc subcommittee comprised of Capitola and Santa Cruz County representatives to evaluate Measure S revenue and possible disbursement strategies. Based on the subcommittee's work, there is an estimated \$10 million to \$15 million in additional Measure S funding (a combination of additional bond proceeds and annual tax revenues) that could be distributed to member agencies, including the City of Capitola, over a period of time.

Conceptually, subcommittee members agreed the additional funding should be distributed based on the original Measure S formula, which would result in Capitola receiving \$1.3 million to

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\$2 million in additional revenue. Distributing this additional funding would require an amendment to the LFFA agreement, which must be approved by the Capitola, Santa Cruz and Scotts Valley City Councils, and the Santa Cruz County Board of Supervisors. While the subcommittee is recommending this distribution of the additional funding, final approval of an amended LFFA agreement would likely occur in the fall.

On the cost side, the project manager, architect, and others on the project team have completed a value engineering and cost reduction study that has identified a list of changes that could be made to reduce the costs without affecting the library programs and operations. If the additional Measure S funding comes in at \$1.3 million, construction costs will need to be reduced by \$1.03 million to proceed with the project. Attachment 1 is a list of potential cost saving changes. The first column of figures lists recommended changes totaling an estimated at \$1.1. If Measure S funding increases by \$2 million, the second column lists the recommended changes which total \$757,000. Contingency funds are increased in both scenarios while the furniture budget is only increased in the second scenario.

Implementing any changes in the project plans will involve some level of redesign, redrawing, and resubmittal to the Building Department. All architectural and engineering fees associated with revision items identified in the attachment are dependent on which items are accepted and will be funded from the fund balances.

Under either funding level staff is recommending the construction contract include the concrete donation pavers bid-alternate item at a cost of \$18,000. This item will provide fund-raising opportunities that will easily exceed the added cost.

The advantage for Option 1 is that it builds the library as designed and has been shown to the public and used for fundraising. Choosing this option as this time also locks in the costs, removing that uncertainty in the project, and allowing the project to proceed immediately into construction.

The disadvantage to this option is the final savings of the value engineering and cost savings still need to be negotiated with the contractor, and the additional Measure S funds will not be finalized for a few months.

If Council direction is to proceed with this option, staff will enter a contract with Otto Engineering and immediately begin work to negotiate a change order to reflect the value engineering and cost savings identified.

If the savings or additional revenue do not meet the above projections, the City can terminate the contract. In terminating the contract after award, the City would owe the contractor any costs incurred on the project plus a \$50,000 termination fee. Council action would be required to terminate the contract.

Option 2 Reject all bids and authorize staff to amend the Project Manager contract with Bogard Construction to include the preparation of documents necessary to bid the project as a design-build project.

Under this option the building would be redesigned and reduced in size. This option would include a "design-build" project delivery method where an architect and contractor team up to design and build the project, thus reducing the unknown building cost factor.

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To proceed with a design-build project, the City would prepare what are known as “bridging documents” that establish project details, such as room requirements, HVAC requirements, office space, site improvements, budget amounts, etc. The project is then advertised and a contract awarded to the lowest complying proposal. The basis of the award could potentially be overall costs, or cost per square foot of building, or other factors.

To proceed with a design-build option, staff would recommend the City engage in a focused public process to ensure the redesigned library met community expectations. In addition, the project would need revised land use permits from the Planning Commission.

Working with Bogard Construction, staff estimates that the size of the redesigned library building would be between 7,000 to 8,000 square feet. If the additional Measure S funds are realized, the building could increase in size to between 8,000 and 9,500 square feet.

The advantage to this option would be a project that meets budget with limited uncertainty. The design-build process would also expedite the entire project redesign cycle, rather than starting over with a new building design.

The disadvantage would be that the building would fall below the size identified in the needs assessment, which may affect programs and operations. Also in a design-build process the final look and feel of the building remain relatively unknown until after the contract has been awarded and the city’s ability to control the design is limited by the nature of the contract. Finally, the fees paid to date for the existing design would be lost (estimated at \$1.5 million), new building permits would be needed, and the project construction would be delayed approximately six to nine months compared to Option 1. This delay will further escalate the costs.

Option 3 Reject all bids and direct staff to amend the contract with the architect, Noll and Tam, to change the existing plans pursuant to the identified value engineering study and re-advertise for construction bids.

Under this scenario the city would rebid the existing project with the value-engineered changes built-in and attempt to receive bids at a reduced price.

The advantages to this option would be retaining the existing design and removing the risks in Option 1 of having to negotiate a change order with the contractor relative to the value-engineered savings and the uncertainty of waiting for confirmation on the additional Measure S funding.

The disadvantage would be the uncertainty that the new bids would reflect the full anticipated changes and the likelihood that fewer contractors will re-bid on the project.

Past experiences of staff and the project manager are that the present contractors and sub-contractors will most likely not re-bid and that cost reductions are typically not full realized when value engineering changes are made to the plans. The construction would be delayed approximately four to six months under this option, again escalating the costs.

Staff does not recommend proceeding with this option.

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FISCAL IMPACT: See details above. Final impact depends on direction from the City Council.

ATTACHMENTS:

1. Library Cost Saving Measures

Report Prepared By: Steve Jesberg
Public Works Director

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

7/20/2018

Capitola Library - Cost Savings Spreadsheet 7/19/2018			
	Apparent Low Bid (Otto Construction)	\$ 12,325,000	
Item		Cost Saving Measures with Measure S= \$1.3m	Cost Saving Measures with Measure S= \$2m
1	Consider using a pre-manufactured ceiling system (Rulon). - See attachment	\$ 52,000	\$ 52,000
2	Change to slab on grade foundation	\$ 413,604	\$ 413,600
3	Relocate storm water detention to allow use of slab-on-grade system.	\$ (50,000)	\$ (50,000)
4	Delete donor wall woodwork	\$ 96,850	
5	Simplify acoustical north wall	\$ 21,753	
6	Delete full-height tile and maintain tile floor and wainscot.	\$ 39,650	\$ 39,650
	Consider fireplace substitution to "Da Vinci." Review "Cool Glass." Make one-sided only.	\$ 20,000	
	Remove hearth and simplify tile at fireplace.	\$ 5,962	
7	Change/simplify glass door between Community Room and Children's Area.	\$ 3,200	
8	Delete security partitions and related casework.	\$ 5,500	
9	Delete butt-glazing and "grasses" film - use mullions, delete glazing at Meeting Room and Friends Area (use wood door and sidelight), use wood doors and storefront systems, and related hardware.	\$ 13,050	
10	Change composite siding to cedar.	\$ 18,000	
11	Review a change from exterior tile to other material (Prodema?) - simplify layout and detailing.	\$ 25,000	
12	Reduce plant and boulder quantity by 10%.	\$ 25,000	
13	Do not add parking along Clares - existing to remain.	\$ 29,339	
14	Simplify Railing at Ramp.	\$ 5,630	
15	Change selected concrete curbs within the parking lot to asphalt curbs.	\$ 4,000	
16	Delete Children's Deck and replace with concrete path.	\$ 27,400	
17	Reduce Overhang by 12 inches.	\$ 18,000	
18	Allow alternate light fixture package.	\$ 100,000	\$ 100,000
19	Delete automated window and their connection to BMS	\$ 94,750	\$ 94,750
20	Reduce and/or eliminate conduit runs for data cabling in ceiling - use j-hooks (ring and string).	\$ 7,500	\$ 7,500
20a	Reduce size of main electrical service.	\$ 11,000	\$ 11,000
21	Reduce size of inverter.	\$ 10,000	\$ 10,000
22	Allow use of rectangle ducts to round ducts.	\$ 20,000	\$ 20,000
23	Delete voice evacuation requirement for fire alarm system.	\$ 5,000	\$ 5,000
24	Simplify signage package (10%).	\$ 9,000	
25	Delete window shades.	\$ 7,000	\$ 7,000
26	Delete Marker boards.	\$ 20,000	
27	Replace Kynar coated with anodized aluminum finish on the curtain wall system (\$4k)		
30	City Carries Builder Risk Insurance	\$ 65,000	\$ 65,000
31	Note: Implementing any revision items above will involve some level of redesign, redrawing and resubmittal to the Building Department. All architectural and engineering fees associated to revision items above are dependent on which items are accepted and therefore to be determined.		
32	Add in Bid Alt for concrete donation pavers	\$ (18,000)	\$ (18,000)
	Total Cost Savings	\$ (1,105,188)	\$ (757,500)
	Otto Bid	\$ 12,325,000	\$ 12,325,000
	Estimated cost with value engineering	\$ 11,219,812	\$ 11,567,490
	Original Construction Budget	\$ 10,000,330	\$ 10,000,330
	Reestablish Contingency	\$ (80,000)	\$ (150,000)
	Reestablish Original Furniture Budget	\$ -	\$ (100,000)
	Additional Measure S Revenue	\$ 1,300,000	\$ 2,000,000
	Revised estimated construction budget	\$ 11,220,330	\$ 11,750,330
	Projected Fund Balance	\$ 518	\$ 182,830

Attachment: Library Cost Saving Measures (Library Project Update)



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: City Manager Department

SUBJECT: Report on Citizen Initiative Petition Qualification

RECOMMENDED ACTION: Receive report on the certification of a petition to amend Title 8 of the Capitola Municipal Code pertaining to Health and Safety as related to the Santa Cruz Branch Line Rail Corridor and order a report pursuant to Elections Code Section 9212 for presentation at the August 9 City Council meeting.

BACKGROUND: On April 2, 2018, the City Clerk received a Notice of Intent from a Capitola resident with language for an initiative measure to amend Chapter 8 of the Capitola Municipal Code, Health and Safety, related to use of the Santa Cruz County Regional Transportation Commission's rail corridor and trestle (Attachment 1). As required by state elections code, the City Attorney prepared a title and summary (Attachment 2), and after proper notice the proponents began circulating petitions to place the initiative on the November 2018 ballot. Elections code requires signatures of 10 percent of the City's registered voters, which at the date designated by code was 618 signatures.

On June 1, the proponents submitted the petition and staff conducted a prima facie count that determined more than 1,000 residents had signed the petition, and accepted it for filing. The petition was then submitted to the Santa Cruz County Registrar of Voters for certification of the signatures.

During the circulation and certification period, the City received public communication expressing concern about the proposed Municipal Code amendment (Attachments 3, 4).

DISCUSSION: On June 27, the County Elections Official certified that the petition was signed by 827 registered voters of Capitola (Attachment 5), representing more than the required 10 percent to compel the City Council, under state elections code, to do one of the following:

- Adopt the ordinance, without alteration
- Submit the ordinance, without alteration, to the voters
- Order a report pursuant to Elections Code Section 9212. The report shall be presented to the legislative body within the time prescribed by the legislative body, but no later than 30 days. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election.

Section 9212 of the Elections Code allows request of a report related to the initiative's impacts on the following:

Report on Citizen Initiative Petition Qualification
July 26, 2018

- (1) Its fiscal impact.
- (2) Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.
- (3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs.
- (4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
- (5) Its impact on the community's ability to attract and retain business and employment.
- (6) Its impact on the uses of vacant parcels of land.
- (7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
- (8) Any other matters the legislative body requests to be in the report.

FISCAL IMPACT: The fiscal impact of the proposed amendment is uncertain at this time. The City is responsible for the cost of putting the measure on the November 2018 ballot.

ATTACHMENTS:

1. Greenway Notice of Intent
2. Ballot Title Summary.FINAL
3. Ballot initiative public communication
4. Letter to CCC - Greenway Capitola Petition 2018 06 11
5. Greenway petition certification summary

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

7/19/2018

March 29, 2018

Linda Fridy, City Clerk
City of Capitola
420 Capitola Ave, Capitola, California 95010

Re: Initiative Measure to be Submitted to Voters

Dear Linda,

Please find enclosed an Initiative Measure, Notice of Intent to Circulate Petition, Certification Regarding Use of Signatures, and a check for the filing fee. Please transmit the measure to the City Attorney for Title and Summary pursuant to Elections Code section 9203.

I am the proponent of the measure and am a registered voter in the City of Capitola. If you have any questions, please call me at 831-419-2125.

Sincerely,



4/2/2018

Juan Escamilla

750 47th Ave #10, Capitola, CA 95010

NOTICE OF INTENT TO CIRCULATE PETITION

Notice is hereby given by the persons whose names appear hereon of their intention to circulate a petition within the City of Capitola for the purpose of improving safety and reducing traffic congestion by keeping the Monterey Bay Sanctuary Scenic Trail (Trail) in the Santa Cruz Branch Line Rail Corridor (Corridor) within the City of Capitola while protecting the Capitola Trestle (Trestle). A statement of the reasons of the proposed action as contemplated in the petition is as follows:

- 1) The Santa Cruz County Regional Transportation Commission has proposed routing the Trail off the Trestle and onto the streets and sidewalks of the Capitola Village. Such a route will be unsafe and increase traffic congestion.
- 2) The Corridor and Trestle provide a level, direct path for people riding and walking to get from one side of Capitola to the other.
- 3) Capitola taxpayers and children deserve an off-street Trail that crosses the Trestle and remains in the Corridor to provide safe routes to school and other destinations.
- 4) A Trail that uses existing infrastructure will be more affordable, environmentally sensitive, and much simpler to build than one that requires numerous major engineering projects.

<u>Juan Escamilla</u>	<u>750 47th Ave #10, Capitola, CA 95010</u>
Proponent's name	Address

 4/2/2018

Attachment: Greenway Notice of Intent (Report on Citizen Initiative Petition Qualification)

CERTIFICATION REGARDING USE OF SIGNATURES

I, Juan Escamilla, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.


Proponent JUAN ESCAMILLA

Dated this 2 day of APRIL, 2018

Attachment: Greenway Notice of Intent (Report on Citizen Initiative Petition Qualification)

TITLE 8 – HEALTH AND SAFETY
Chapter 8.72
GREENWAY CAPITOLA CORRIDOR

8.72.010 Purpose.

It is the purpose of this chapter to improve safety and reduce traffic by keeping the Monterey Bay Sanctuary Scenic Trail (Trail) in the Santa Cruz Branch Line Rail Corridor (Corridor) within the City of Capitola while protecting the Capitola Trestle (Trestle).

8.72.020 Definitions.

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

- A. “Active Transportation” means any form of human-powered transportation including walking, cycling, using a wheelchair or other mobility device, in-line skating or skateboarding. Such forms of transportation may include an electric assistance such as e-bikes, e-skateboards, or motorized wheelchairs.
- B. “Greenway” means the space within the Corridor to be used for recreation and active transportation via a continuous pathway.

8.72.030 Findings.

- A. New Public Asset. In 2012 the Santa Cruz County Regional Transportation Commission (SCCRTC) acquired the Corridor from Union Pacific. The Corridor includes the historic Trestle. For the first time, the Corridor and Trestle have the potential to be accessible for bike and pedestrian use. The SCCRTC is planning bike and pedestrian use along the majority of the Corridor.
- B. Trestle Detour. The SCCRTC has proposed making the Trestle off-limits to pedestrians, bikes, electric bikes, and skateboarders, detouring pedestrian and bike traffic from the Corridor onto bike lanes and sidewalks in the local Capitola street network and across the Stockton Avenue Bridge.

- C. **Accessibility.** A detour from the Trestle through Capitola Village would require an approximately 200 ft grade change on both ends of the trail. Keeping the Trail on the Trestle provides a flat path across Capitola, which increases accessibility for people of all ages and abilities.
- D. **Skateboarding for Transportation.** A detour would enter Capitola’s “no skateboarding zone,” inhibiting skateboarding for transportation to New Brighton Middle School and the McGregor Pump Track & Skateboard Park. In contrast, a trail that crosses the Trestle would provide safe access to both locations.
- E. **Traffic and Safety.** Capitola Village streets are often congested preventing residents and visitors from getting from one side of Capitola to the other quickly and safely. Increasing passthrough bicycle and pedestrian traffic would exacerbate the existing problem.
- F. **Safe Routes to School.** It is the stated goal of Santa Cruz County, California, Transportation Sales Tax Measure D (November 2016) to “provide safe routes to schools.” Walking and biking via the Trestle will provide safe access to New Brighton Middle School. A detour that navigates a significant grade change on narrow, busy streets will not.
- G. **Stated Preference.** 82% of residents who provided input regarding the Corridor in Vision Capitola 2016 supported using the Corridor for active transportation and recreation rather than a train.
- H. **Efficient Route.** Keeping the Trail in the Corridor as it crosses the Trestle will provide a direct pathway from one side of Capitola to the other.
- I. **Tourism.** The ability to actively use the Trestle will support the local economy by attracting tourists with a safe new way to experience breathtaking views.
- J. **Healthy Community and Sustainable Transportation.** Bicycling and walking are by far the healthiest, most sustainable forms of transportation. Building a safer Trail will encourage more people to choose these options.

8.72.040 Implementation.

- A. The City of Capitola, through its constituent departments, shall take all steps necessary to preserve and utilize the Corridor and Trestle for active transportation and recreation.
- B. No City of Capitola department, agency or employee shall expend any funds or resources related to the construction, reconstruction, operation, maintenance, financing, marketing, or signage for a detour of the Trail onto Capitola streets or sidewalks.

8.72.050 Changes.

This chapter shall not be amended or repealed except by vote of the people.

8.72.060 Effect of adoption.

Adoption of this chapter by the people shall not be construed as amending or rescinding any provisions of the general plan, local coastal program or zoning ordinances, but rather shall be construed and harmonized in a manner to strengthen and define such provisions.

8.72.070 Severability.

If any section, sentence, clause, phrase, or part of this chapter is held to be invalid, the remainder of the chapter shall be given full effect consistent with the intent and purpose of the chapter.

BALLOT TITLE

A proposed amendment to the City of Capitola Municipal Code directing the City of Capitola to undertake unspecified “steps necessary to preserve and utilize” the RTC-owned Santa Cruz Branch Rail Line, including the existing trestle over Soquel Creek in the City of Capitola, for human powered transportation, and prohibiting the use of City funds or resources for a detour of the proposed Monterey Bay Sanctuary Scenic Trail through the Capitola Village.

BALLOT SUMMARY

Background.

The Santa Cruz Branch Line Rail Corridor (Rail Corridor), a portion of which runs through the City of Capitola, is owned by the Santa Cruz County Regional Transportation Commission (SCCRTC). In 2013, after a multi-year process with public and stakeholder input, SCCRTC adopted the Monterey Bay Sanctuary Scenic Trail Master Plan (Plan), which establishes the proposed alignment for the Monterey Bay Sanctuary Scenic Trail Network, including the Coastal Rail Trail spine, and associated spur trails. In 2015, the Capitola City Council adopted the Plan. “Segment 11” of the Plan, which runs from Jade Street Park down the coast to State Park Drive, includes construction of an approximately 3.2-mile multi-use paved path along the rail right-of-way, continuing on surface streets through Capitola Village to bypass the aged wooden trestle bridge (Capitola Trestle) over Soquel Creek, and extending along the rail corridor past Monterey Avenue to State Park Drive. Although contemplated as part of a future project, the adopted Plan does not include funding for an at-grade crossing of the Capitola Trestle due to cost and existing structural conditions.

The Measure.

The stated purpose of the measure is to “improve safety and reduce traffic by keeping the [Rail Trail] in the existing [Rail Corridor] within the City of Capitola while protecting the Capitola Trestle.” It would add a new chapter to the Capitola Municipal Code, Chapter 8.72, the operative language of which is contained in proposed Section 8.72.040 entitled “Implementation,” with two provisions:

First, it directs the City of Capitola, through its “constituent departments,” to take “all steps necessary” to preserve and utilize the Rail Corridor, including the Capitola Trestle, for “active transportation and recreation.” The measure defines “active transportation” as “any form of human powered transportation,” including walking, cycling, using a wheelchair, in-line skating or skateboarding.

Second, it would prohibit the expenditure of City funds or resources related to the “construction, reconstruction, operation, maintenance, financing, marketing, or signage for a detour of the Trail onto Capitola streets or sidewalks.”

The measure expressly states that it “shall not be construed as amending or rescinding any provisions of the general plan, local coastal program or zoning ordinances, but rather shall be construed and harmonized in a manner to strengthen and define such provisions.”

MAY 07 2018

May 4, 2018

Capitola City Council420 Capitola Ave.
Capitola, CA 95010**RE: Letter to Capitola City Attorney Regarding Notice of Intent to Circulate
Petition for "Greenway Capitola Corridor"**

Dear Members of the City Council:

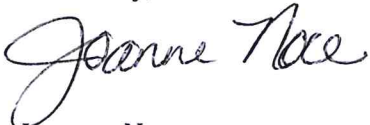
Attached please find a copy of the April 23, 2018 letter sent to Mr. Anthony Condotti regarding a Notice of Intent to Circulate a Petition for the "Greenway Capitola Corridor" submitted by Juan Escamilla on April 2, 2018. The letter outlines serious concerns about the wording and overall purpose of these materials.

I understand that an official Notice of Intent to Circulate Petition has now been authorized by Mr. Condotti and published in the Santa Cruz Sentinel.

Please add me and the Friends of the Rail & Trail, to a mailing list to receive information about any City of Capitola actions, or notice of consideration of action, regarding this initiative petition or any associated matters.

Thank you.

Sincerely,

Joanne Noce
4965 Emerald St.
Capitola, CA 95010Vice Chair, Santa Cruz County Friends of the Rail & Trail
877 Cedar St., Suite 240
Santa Cruz, CA 95060

Attachment

Cc: City Manager, Jamie Goldstein
City Clerk, Linda Fridy
Santa Cruz County Regional Transportation Commission

Attachment: Ballot initiative public communication (Report on Citizen Initiative Petition Qualification)

April 23, 2018

Anthony P. Condotti
 Atchison, Barisone & Condotti APC
 333 Chruuch Street
 Santa Cruz, CA 95060

RE: Notice of Intent to Circulate Petition for “Greenway Capitola Corridor”

Dear Mr. Condotti –

As a citizen of Capitola and vice chair of the Santa Cruz County Friends of the Rail & Trail, I’m writing to provide input into your review of this proposed City of Capitola initiative measure. Please consider the comments below.

Regarding *Notice of Intent to Circulate Petition*:

Statement 1): This statement that “such a route will be unsafe and increase traffic congestion” is faulty. Currently, all travelers, whether in cars, walking, or on bicycles use City of Capitola streets, sidewalks, paths and bike lanes when traversing Capitola Village – this situation will not change with the addition of the Rail Trail. i.e. travelers will continue to use City streets, sidewalks, paths and bike lanes. Also, the final design of the Rail Trail within the City of Capitola is not yet completed; the Regional Transportation Commission and the City are working together to understand the design requirements and potential cost of improving the existing trestle to allow for bicyclists and pedestrians as well as retaining the rail line for future transit use. Bicycle and pedestrian travel on the Capitola trestle is currently not allowed.

Statement 4): The statement “and much simpler to build than one that requires numerous major engineering projects” is faulty. Per the comments above, using the trestle for the Rail Trail would require major improvements to the trestle’s infrastructure, and the costs of this are not yet known. Routing the Rail Trail onto existing city streets, sidewalks and bike lanes would be by far a lower cost alternative; however, no alternative has yet been selected.

Regarding the proposed TITLE 8 – HEALTH AND SAFETY, Chapter 8.72, GREENWAY CAPITOLA CORRIDOR

The title is faulty. There is no such entity in any local or regional transportation plans referred to as a “greenway”. Including this nomenclature within the proposed petition is misleading.

8.72.010 Purpose

The statement of purpose is faulty and unclear. No one is proposing to divert the Trail outside of the City of Capitola. It’s not clear what “while protecting the Capitola Trestle” means: preserving it in its present state? Designating it as an historic structure? Improving it so it will be legal and safe to use as a multimodal transportation corridor?

8.72.020 Definitions

- A. Active Transportation. The definition of "active transportation" should be consistent with the requirements of the State of California.
- B. Greenway. As noted earlier, this term is not in use in any local or regional plans, and therefore meaningless.

8.72.030 Findings

- G. Stated Preference. This statement is irrelevant to the proposed initiative and based on a non-statistically valid survey. It should be deleted.

8.72.050 Changes

With large infrastructure projects such as the Rail Trail, design and funding considerations may change over time. It's probably not a good idea (and may be illegal) to limit the City Council's authority in working with the Regional Transportation Commission on this project.

Thank you very much for your consideration of our comments. Please copy the Santa Cruz County Friends of the Rail & Trail on your determination of the final version of this initiative.

Sincerely,



Joanne Noce
 4965 Emerald St.
 Capitola, CA 95010

Vice Chair, Santa Cruz County Friends of the Rail & Trail
 877 Cedar St, Suite 240
 Santa Cruz, CA 95060

Cc: Santa Cruz County Regional Transportation Commission



Advocating for the Coastal Rail & Trail since 2002

June 11, 2018

Susan Craig, Central Coast District Manager

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Greenway Capitola Corridor Initiative Measure

Dear Ms. Craig,

I am writing on behalf of the Santa Cruz County Friends of the Rail & Trail (FORT) regarding a citizen lead petition in the City of Capitola. Greenway Capitola recently submitted sufficient signatures to the City Clerk of Capitola to qualify the Initiative Measure titled "Greenway Capitola Corridor" to go directly to City voters on the November ballot (see attached for a copy of the Initiative Measure).

FORT understands the City of Capitola has an approved Local Coastal Plan. It appears that if the Greenway Capitola Corridor Initiative Measure qualifies and receives voter approval on the November ballot, the proposed measure will add a new chapter to the Capitola Municipal Code, Chapter 8.72, the provisions of which would conflict with many of the existing provisions of Capitola's approved Local Coastal Plan (LCP) especially as it limits implementation of the already approved Monterey Bay Sanctuary Scenic Trail Network Master Plan and would reduce coastal access. Could you kindly review the language of the proposed new Chapter 8.72 and the potential conflicts with the existing provisions of Capitola's approved LCP? While this proposed initiative is working its way through the local election process, we believe an environmental assessment of the measure's conflicts with the LCP should be included in any citizen driven ballot measure before it is placed on a city ballot. Please advise us and the City of Capitola at once, as time is of the essence in this matter.

Should you wish to discuss this matter in more detail, please contact me.

Respectfully yours,

Mark Mesiti-Miller, P.E.

Board Chair, Santa Cruz County Friends of the Rail and Trail

cc: Jamie Goldstein, Capitola City Manager
George Dondero, RTC Executive Director
FORT Board of Directors

Attachment: Letter to CCC - Greenway Capitola Petition 2018 06 11 (Report on Citizen Initiative Petition Qualification)



Petition Result Breakdown

9.B.5

Capitola Greenway
Capitola Greenway

Signatures Required	618		
Raw Count	1,127		
Sample Size	1,111	<i>Percent of Sigs</i>	<i>Percent of</i>
Sigs Checked	1,111	<i>Checked</i>	<i>Sample Size</i>
Sigs Not Checked	0		0.0 %
Sigs Valid	827	74.4 %	74.4 %
Sigs Invalid	284	25.6 %	25.6 %
Duplicated	26	2.0 %	2.3 %
Non-duplicate Invalids	258	23.0 %	23.2 %

RESULT ABBR	RESULT DESCRIPTION		
Badaffcir	Unacceptable because of circulato	4	0.4 %
Approved	Approved	827	74.4 %
NotReg	Not Registered	122	11.0 %
Noinownhand	Name and address not printed by :	2	0.2 %
nocity/zip	correct street address no city zip	2	0.2 %
OutOfDist	Out of District	26	2.3 %
Duplicate	Signed more than once	26	2.3 %
RegLate	Registered Late	8	0.7 %
RegDiffAdd	Registered at a Different Address	60	5.4 %
CantIdntfy	Cannot Identify	12	1.1 %
NoResAdd	No Residence Address Given	18	1.6 %
NoSig	No Signature	1	0.1 %
SigNoMatch	Signatures Don't Match	2	0.2 %
RawCountOnly	Only counted in raw count - incom	1	0.1 %

STATISTICS SUMMARY	Value	% Raw	% Req	
Pages Processed	325	100.0 %		
Total Checked	1111	98.6 %	179.8 %	
Uncorrected Valid	839	74.4 %	135.7 %	
Duplicate Adjustment	0			Min Required (95%): 587.1
Estimated Valid	839	74.4 %	135.7 %	Min Required to pass Based on Sample (110%): 679.8

Attachment: Greenway petition certification summary (Report on Citizen Initiative Petition Qualification)



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: Finance Department

SUBJECT: Consider a Resolution Placing a Special Transient Occupancy Tax Measure on the November 6, 2018, Election Ballot

RECOMMENDED ACTION: Adopt a resolution placing a measure on the November ballot to approve a special 2 percent increase to the Transient Occupancy Tax that would in part fund youth programs and support local businesses.

BACKGROUND: The City currently imposes a Transient Occupancy Tax (TOT) on hotel rooms and other short-term rentals at a rate of 10 percent. A measure to raise the rate to 11 percent in 2014 polled well with prospective voters in Capitola, but failed to pass after receiving opposition.

Currently the County, Santa Cruz City, and Watsonville each have a TOT of 11 percent; Scotts Valley has a TOT of 10 percent with a planned ballot measure in November to increase to 11 percent and Watsonville is considering a measure to increase its TOT to 12 percent.

DISCUSSION: The proposed ballot measure, which is being supported by some local lodging, restaurant and retail business owners, will increase the TOT from its current rate of 10 percent to 12 percent.

This item was initially presented to City Council on June 28, when Council unanimously directed staff to prepare the necessary resolution and ordinance to place this item on the November ballot.

Under the previously presented proposal, the two percent increase will be divided as follows: 0.4 percent will be dedicated to local business groups for marketing and community improvements, 0.35 percent will be dedicated to youth and early childhood programs, and 1.25 percent to the City's General Fund.

Because a portion of the tax will be restricted to specific uses, the ballot measure will require approval of a minimum of two-thirds of the voters in November. Implementation of the new rate, if approved, would begin January 1, 2019.

If approved by voters, this measure would provide local business groups and youth/early childhood programs with a dedicated source of revenue that should grow over time and could only be changed by the voters at a future election. The specific marketing and improvements focus for the dedicated business portion is intended to support local businesses, thereby

Transient Occupancy Tax Resolution
July 26, 2018

increasing overall tax revenue.

FISCAL IMPACT: The City currently receives approximately \$1.55 million of TOT revenue annually, which translates into each 1 percent of TOT generating about \$155,000. An increase of 2 percent would generate approximately \$310,000 (based on current room count, rates and occupancy), which would then be divided between local business groups, youth/early childhood education programs and the General Fund.

Local business groups would receive \$62,000, which is proposed to be split evenly between the Chamber and the BIA. In addition, the City currently provides \$30,000 of funding annually from the General Fund to the Chamber and this dedicated TOT revenue would replace that contribution. Youth and early childhood education programs would receive \$54,000 annually and, as proposed, this would replace the Community Grant youth program funding from the General Fund, which accounted for \$32,000 in requests in the recently opened grant cycle.

ATTACHMENTS:

1. Muni Code 3.32 (PDF)

Report Prepared By: Jim Malberg
Finance Director

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

7/20/2018

RESOLUTION NO. ____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA REQUESTING SUBMISSION TO THE VOTERS OF A LOCAL BALLOT MEASURE REGARDING AN INCREASE IN THE CITY’S VISITOR SERVICES FEE (TRANSIENT OCCUPANCY TAX) FOR INCLUSION ON THE NOVEMBER 6, 2018, CONSOLIDATED GENERAL ELECTION BALLOT

WHEREAS, pursuant to Elections Code Section 10002, the governing body of any city may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the city relating to the conduct of an election; and

WHEREAS, on June 28, 2018, the Capitola City Council passed Resolution No. 4115 calling the General Municipal Election and requesting such services of Santa Cruz County; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot acknowledging that the consolidation election will be held and conducted in the manner prescribed in Section 10418.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Santa Cruz County Elections Department shall conduct the election for the following measure to be voted on at the November 6, 2018, election:

<i>To help fund youth programs, protect parks, beaches and open space, and support local businesses, shall a special tax measure paid only by hotel and short-term rental guests be approved increasing transient occupancy taxes from 10% to 12% until ended by voters, providing approximately \$310,000 annually, and allocating dedicated portions to youth and early childhood programs, and local business groups for marketing and community improvements, and the balance to fund core City functions?</i>	Yes	
	No	

Santa Cruz County Elections Department is requested to: [Check one of the following]

- Print the attached measure text exactly as filed or indicated on the filed document in the Voter’s Information Pamphlet section of the Sample Ballot for the November 6, 2018,

Transient Occupancy Tax Resolution
July 26, 2018

election. Cost of printing and distribution of the measure text will be paid for by the city/district, attached hereto as Exhibit "A".

- Not to print the measure text in the Voter's Information Pamphlet of the Sample Ballot but send a copy to voters upon request at the cost of said city/district.

BE IT FURTHER RESOLVED AND ORDERED that the City Clerk of the City of Capitola is hereby ordered and directed to cause said proposed ordinance and notice of election to be published in accordance with the provisions of the California State Elections Code.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at a regular meeting held on the 26th day of July, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Michael Termini, Mayor

ATTEST: _____
Linda Fridy, City Clerk

EXHIBIT A

Measure to be voted on: November 6, 2018

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA

**AMENDING SECTION 3.32.030 OF THE CAPITOLA MUNICIPAL CODE PERTAINING TO
THE CITY OF CAPITOLA VISITOR SERVICES FEE (TRANSIENT OCCUPANCY TAX)**

THE PEOPLE OF THE CITY OF CAPITOLA, CALIFORNIA, DO ORDAIN AS FOLLOWS:

WHEREAS, it is the purpose of this Ordinance to amend the City of Capitola Municipal Code Section 3.32.030 entitled Fee/Tax Imposed, to increase the Visitor Services Fee (Transient Occupancy Tax) from 10% to 12%; and

WHEREAS, this Ordinance shall be known as the City of Capitola Visitor Services Fee (Transient Occupancy Tax) Increase. The City of Capitola hereinafter shall be called "City". This Ordinance shall be applicable in the incorporated territory of the City.

WHEREAS, this Ordinance is adopted to achieve the following, among other purposes, and directs the provisions hereof be interpreted in order to accomplish those purposes:

NOW, THEREFORE BE IT HEREBY ORDAINED as follows:

SECTION 1. Section 3.32.030 "Fee/Tax Imposed" of Chapter 3.32 "Visitor Services Fee and Fund" of the City of Capitola Municipal Code is hereby amended to read as follows:

"3.32.030 Fee/tax imposed.

A. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a general tax in an amount of ~~ten~~ twelve percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city which is extinguished only by payment by the operator to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax is not paid to the operator of the hotel, the fee administrator may require that such tax shall be paid directly to the fee administrator. The general tax revenues of 11.25% shall be placed in the city's general fund, 0.40% shall be allocated exclusively to local business groups for marketing and community improvements, and 0.35% shall be allocated exclusively to youth and early childhood programs.

SECTION 2. It is the purpose of this Ordinance to amend the City of Capitola Municipal Code Section 3.32.030 of the Chapter entitled Fee/Tax Imposed, to increase the Visitor Services Fee (Transient Occupancy Tax) from 10% to 12%.

SECTION 3. This Ordinance shall be considered as adopted upon the date that the vote is declared by the City Council, and shall go into effect on January 1, 2019.

3.32.030 Fee/tax imposed.

A. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a general tax in an amount of ten percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city which is extinguished only by payment by the operator to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax is not paid to the operator of the hotel, the fee administrator may require that such tax shall be paid directly to the fee administrator. The general tax revenues shall be placed in the city's general fund.

B. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a special tax of one percent of the rent charged by the operator on the same terms and conditions set forth in subsection (A). The special tax revenues shall be placed in a segregated "Conference and Visitors Promotion Fund" account.

* Editor's note: Because the provision of Measure W proposing the special tax called for by this subsection (B) did not receive a two-thirds vote of the electorate at the city's November 5, 2002, General Municipal Election, this subsection (B) shall have no force or effect and shall not be applied, enforced or assessed.

C. All tax revenue deposited in the conference and visitors promotion fund shall be used exclusively for the promotion of tourism in the county of Santa Cruz and for no other purpose. In order to achieve this objective, the city shall annually contract with the Santa Cruz county conference and visitors council, a non-profit corporation doing business in the city of Capitola and county of Santa Cruz established for the purpose of promoting tourism within the city and county, provided that the Santa Cruz County conference and visitors council continues to satisfactorily promote tourism in the city and county and otherwise complies with all applicable laws pertaining to the operation and governance of non-profit corporations. The city shall require the Santa Cruz County conference and visitors council to submit an annual accounting for the use of funds provided pursuant to this section. The annual accounting, at a minimum, shall set forth with particularity and in accordance with generally accepted accounting standards the amount and nature of all expenditures made with conference and visitor promotion fund moneys. The Santa Cruz County conference and visitors council shall make all of its books, records, and accounts which in any manner relate to the expenditure of conference and visitors

promotion fund moneys available to the city's finance director for examination or audit upon reasonable notice.

- * Editor's note: Because the provision of Measure W Proposing the special tax which would have generated the revenue referenced in this subsection (C) did not receive a two-thirds vote of the electorate at the city's November 5, 2002, General Municipal Election, this subsection (C) shall have no force or effect and shall not be applied or enforced.

(Ord. 843 § 1, 2002; Ord. 702 § 2, 1990; Ord. 513 (part), 1982)



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: Finance Department

SUBJECT: Consider a Resolution Placing a Local Cannabis Tax Measure on the November 6, 2018, Election Ballot

RECOMMENDED ACTION: Adopt a resolution placing a measure on the November ballot to approve a not-to-exceed 7 percent Cannabis Business Tax.

BACKGROUND: Capitola waited for state regulatory framework to take shape before allowing commercial marijuana businesses after voters statewide approved recreational marijuana in 2016. In early 2018, City Council directed staff to present options to allow limited retail cannabis sales, and staff work began preparing the necessary land use and regulatory ordinances for Council consideration. In the spring, staff presented an overall cannabis regulatory structure, that included voter consideration of a cannabis tax, which would also serve as a voter referendum regarding whether or not to allow retail cannabis sales in Capitola.

At its June 28 meeting the Council passed its first reading of an ordinance amending the Capitola Municipal Code by adding Chapter 5.36 "Retail Cannabis Licenses" and amending Chapter 17.24 "Commercial and Industrial Zoning Districts" to authorize retail cannabis sales in the C-R-Regional Commercial Zoning District. The second reading of that ordinance is also on the City Council Agenda this evening and, if the ordinance is approved, it will only go into effect with voter approval of the cannabis tax on the consolidated November 6, 2018, ballot.

At that same meeting Council unanimously directed staff to bring forward a ballot measure, attached, establishing the maximum cannabis business tax at 7 percent and setting the initial cannabis business tax at 7 percent.

DISCUSSION: The proposed ballot measure will establish the maximum cannabis business tax at 7 percent as well as set the initial cannabis business tax at 7 percent. Currently both Santa Cruz County and the City of Santa Cruz have voter approved not-to-exceed 10 percent cannabis business taxes. The County currently has its tax set at 7 percent, while the City of Santa Cruz increased its tax to 8 percent on January 1, 2018. The tax is a general tax that will fund essential City services such as sidewalks, streets, and emergency response.

If approved by voters, the Cannabis Business Tax will be reviewed annually during the budget preparation and approval process. The City Council will have the ability to adjust the amount of the tax to any amount lower than 7 percent.

Cannabis Tax Resolution
July 26, 2018

FISCAL IMPACT: Staff estimates that each retail cannabis establishment could generate \$200,000 to \$300,000 in annual revenue. If two establishments are licensed, the estimated annual revenue will be between \$400,000 and \$600,000.

Report Prepared By: Jim Malberg
Finance Director

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

7/20/2018

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
 ESTABLISHING NOVEMBER 6, 2018, AS THE DATE FOR A MUNICIPAL ELECTION
 ON A PROPOSED BALLOT MEASURE SEEKING VOTER APPROVAL OF A
 CANNABIS BUSINESS TAX TO MAINTAIN FISCAL STABILITY AND
 PROTECT ESSENTIAL CITY FACILITIES AND SERVICES**

WHEREAS, pursuant to Elections Code Section 10002, the governing body of any city may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the city relating to the conduct of an election; and

WHEREAS, the resolution of the governing body of the City shall specify the services requested; and

WHEREAS, on June 28, 2018, the Capitola City Council passed Resolution No. 4115 calling the General Municipal Election and requesting such services of Santa Cruz County; and

NOW, BE IT RESOLVED AND ORDERED that the Santa Cruz County Elections Department shall conduct the election for the following Measure to be voted on at the November 6, 2018, election:

To protect the quality of life in the City of Capitola and to fund essential City services such as sidewalks, streets, and emergency response, shall Capitola voters enact an ordinance establishing a tax of no more than 7% on cannabis businesses in the city, generating estimated revenue of up to \$300,000 annually per cannabis business, to remain in effect until changed or ended by voters, with all funds staying local?	Yes	
	No	

BE IT FURTHER RESOLVED AND ORDERED THAT Santa Cruz County Elections Department is requested to: [Check one of the following]

- Print the attached measure text exactly as filed or indicated on the filed document in the County Voter Information Guide for the November 6, 2018 election. Cost of printing and distribution of the measure text will be paid for by the city.
- Do NOT print the measure text in the County Voter Information Guide. Instead, send a copy to voters upon request at the cost of said city/district.

BE IT FURTHER RESOLVED AND ORDERED that the City Clerk of the City of Capitola is hereby ordered and directed to cause said proposed ordinance and notice of election to be published and posted in accordance with the provisions of the California State Elections Code.

BE IT FURTHER RESOLVED AND ORDERED that the City Clerk is hereby directed to submit to the City Attorney a certified copy of the measure pursuant to Elections Code § 9280. The City Attorney is hereby authorized and directed to prepare an impartial analysis of the ballot measure showing the effect of the measure on the existing law and operation of the measure, said analysis to be submitted by the City Attorney to the County of Santa Cruz elections office, or other appropriate office, for printing by the date set by the County of Santa Cruz elections official for the filing of arguments for and against the measure. The impartial analysis shall not

Cannabis Tax Resolution
July 26, 2018

exceed five hundred (500) words in length and shall otherwise comply in all respects with the applicable provisions of the Elections Code.

BE IT FURTHER RESOLVED AND ORDERED that the City Clerk is hereby authorized and directed to execute any other documents and to perform all acts necessary to place the Measure on the ballot, including making alterations to the abbreviated text of the Measure in order to comply with the requirements of law and the Santa Cruz County Registrar of Voters.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola on the 26th day of July, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Michael Termini, Mayor

ATTEST: _____
Linda Fridy, City Clerk

EXHIBIT "A"

Measure to be voted on: Cannabis Business Tax

ORDINANCE NO. _____
AN ORDINANCE OF THE PEOPLE OF THE CITY OF CAPITOLA
ADDING CHAPTER 5.07 "CANNABIS BUSINESS TAX" TO
TITLE 5 "BUSINESS TAXES, LICENSES AND REGULATIONS"
OF THE CITY OF CAPITOLA MUNICIPAL CODE

THE PEOPLE OF THE CITY OF CAPITOLA, CALIFORNIA, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 5.7 entitled "Cannabis Business Tax" is hereby added to Title 5 "Business Taxes, Licenses and Regulations" of the City of Capitola Municipal Code to read as follows:

"Chapter 5.07

CANNABIS BUSINESS TAX

5.07.010 Purpose of Chapter.

This chapter shall be known as the "cannabis business tax" and is enacted solely to raise revenue for the general governmental purposes of the city and not for purposes of regulation or of raising revenues for regulatory purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the city's general fund and used for any lawful municipal purpose in the discretion of the City.

5.07.020 Tax Imposed.

There is established and imposed a cannabis business tax at the rate set forth in this chapter.

5.07.030 Definitions.

The definitions set forth in this section shall govern the application and interpretation of this chapter.

- A. "Business" shall include all activities engaged in or caused to be engaged in within the city, including any commercial or industrial enterprise, trade, profession, occupation, vocation, services, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.
- B. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission or room and board.
- C. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the city or coming into the city from an outside location to engage in such activities. A person shall be deemed engaged in business within the city if:
 1. Such person or person's employee maintains a fixed place of business within the city

Cannabis Tax Resolution
July 26, 2018

- for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the city for business purposes;
 3. Such person or person's employee regularly maintains a stock of tangible personal property in the city for sale in the ordinary course of business;
 4. Such person or person's employee regularly conducts solicitation of business within the city;
 5. Such person or person's employee performs work or renders services in the city on a regular and continuous basis involving more than five working days per year;
 6. Such person or person's employee utilizes the streets within the city in connection with the operation of motor vehicles for business purposes.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

- D. "Evidence of doing business" means whenever any person shall, by use of signs, circulars, cards or any other advertising media, including the use of Internet or telephone solicitation, represent that such person is engaged in cannabis business in the city then these facts may be used as evidence that such person is engaged in business in the city.
- E. "Gross receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:
 1. Cash discounts allowed and taken on sales;
 2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
 3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
 4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
 5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
 6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

Cannabis Tax Resolution
July 26, 2018

7. Cash value of sales, trades or transactions between departments or units of the same business;
 8. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
 9. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.
 10. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such pipes, pipe screen, vape pen batteries (without cannabis) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 5.07.190 shall not be subject to the cannabis business tax under this chapter. However, any retail sales not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax under Chapter 5.04 or any other Chapter or Title as determined by the Tax Administrator.
- F. "Gross receipts" subject to the business tax shall be that portion of gross receipts relating to business conducted within the city.
- G. "Cannabis" means all parts of the plant *Cannabis sativa* Linneaus, *Cannabis indica*, or *Cannabis ruderalis*, as defined under the California Medical Marijuana Regulation and Safety Act at Health and Safety Code Section 19300.5(f), as may be amended.
- H. "Cannabis business" or "marijuana business" means any business activity related to or concerning cannabis which entails the production, distribution, delivery, dispensing, exchanging, bartering or sale of either medical or nonmedical cannabis, including but not limited to cultivating, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and/or retail sales of cannabis and any ancillary products in the city, whether or not carried on for gain or profit.
- I. "Cannabis business tax", "business tax" or "cannabis tax" means the tax due for engaging in cannabis business in the city.
- J. "Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.
- K. "Operator" shall mean any person conducting, operating, or maintaining in whole or in part as principal, agent, officer, employee or independent contractor any cannabis business or medical marijuana business as defined in this chapter, taxable under this chapter.
- L. "Sale" means and includes any sale, exchange, or barter.
- M. "Tax administrator" or "administrator" means the finance director or such other administrator designated by the city manager to administer this chapter.

5.07.040 Other licenses, permits, taxes, fees, or charges.

Nothing contained in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit required by, under or by virtue of any

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provision of any other title or chapter of this code or any other ordinance or resolution of the city, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this code or any other ordinance or resolution of the city.

5.07.050 Payment of tax does not authorize unlawful business.

- A. The payment of a business tax required by this chapter, and its acceptance by the city, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any cannabis business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such cannabis business is in violation of any law.
- B. No tax paid under the provisions of this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any ordinance of the city.

5.07.060 Payment – location.

The tax imposed under this chapter shall be paid to the administrator in lawful money of the United States at the offices of the finance director in Capitola, California. “Lawful money” shall mean any coin, currency or negotiable instrument, exchangeable for said coin or currency, which the United States Congress has declared to be a national legal tender.

5.07.070 Amount of business tax owed.

- A. Every person engaged in cannabis business in the city shall pay a business tax at a rate of up to seven percent of gross receipts.
- B. Notwithstanding the maximum tax rate of seven percent of gross receipts imposed under subsection (A), the city council may, in its discretion, at any time by ordinance, implement a lower tax rate for all cannabis businesses or establish differing tax rates for different categories of cannabis businesses, as defined in such ordinance, subject to the maximum rate of seven percent of gross receipts. The city council may, by ordinance, also increase any such tax rate from time to time, not to exceed the maximum tax rate of seven percent of gross receipts established under subsection (A).
- C. Subject to modification by ordinance adopted by the City Council pursuant to subsection (B), the initial cannabis business tax rate is set at seven percent of gross receipts. Commencing on the operative date of this chapter, every person engaged in cannabis business in the city shall pay a cannabis business tax at the rate of seven percent of gross receipts.

5.07.080 Payment – time limits.

The business tax imposed by this chapter shall be due and payable as follows:

- A. Each person owing a tax under this chapter shall, on or before the tenth day of each calendar month, prepare a tax statement to the administrator of the total gross receipts and the amount of tax owed for the preceding calendar month. At the time the tax statement is filed, the full amount of the tax owed for the preceding calendar month shall be remitted to the administrator. If the 10th falls on a weekend or Holiday observed by the City, the due date will be the next business day.

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- B. All tax statements shall be completed on forms provided by the administrator.
- C. Tax statements and payments for all outstanding taxes owed the city are immediately due to the administrator upon cessation of business for any reason.

5.07.090 Payments and communications made by mail – proof of timely submittal.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the City Hall building at 420 Capitola Avenue, Capitola is open to the public.

5.07.100 Payment – when taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified in Section 5.07.080.

5.07.110 Notice not required by city.

The administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

5.07.120 Payment – penalty for delinquency.

- A. Any person who fails or refuses to pay any business tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:
 1. A penalty equal to ten percent of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax; and
 2. An additional penalty equal to ten percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and on the unpaid penalties.
 3. In addition to the penalties imposed, any person who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of tax, exclusive of penalties, from the last day of the month following the monthly period for which the amount or any portion thereof should have been paid until the date of payment.
 4. Only payments for the full amount due shall be accepted unless an alternate payment agreement is reached with the administrator.
- B. Whenever a check is submitted in payment of a business tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus the return check fee; penalties and interest as provided for in this section; and any amount allowed under state law.
- C. The business tax due shall be that amount due and payable from the first date on which the person was engaged in cannabis business in the city, together with applicable penalties and interest calculated in accordance with subsection (A).

5.07.130 Waiver of penalties

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The administrator may waive the first and second penalties imposed upon any person if:

- A. The person provides evidence satisfactory to the administrator that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the city prior to applying to the administrator for a waiver.
- B. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax.
- C. A request for relief from the first and second penalties must be filed within thirty days of the date the remittance was due to the city, but no later than ten days of the city's notice, if sent, to the operator of the amount past due.

5.07.140 Refunds – credits.

- A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 5.07.150.
- B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution or other termination of a business.
- C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against such person's business taxes for the next calendar month.

5.07.150 Refunds and procedures.

- A. Whenever the amount of any business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded to the claimant who paid the tax.
- B. The administrator or the administrator's authorized agent shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the administrator to do so.
- C. In the event that the business tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain an amount from the refund reasonably calculated to cover expenses in verifying the error.
- D. A written claim for refund pursuant to this section shall be filed with the administrator within one year of the date the tax was originally due and payable.

5.07.160 Exemptions – application – issuance conditions.

Any person desiring to claim exemption from the payment of the tax set forth in this chapter shall make application upon forms prescribed by the administrator and shall furnish such information and make such affidavits as may be required by the administrator.

5.07.170 Exemptions – general.

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Except as may be otherwise specifically provided in this chapter, the terms hereof shall not be deemed or construed to apply to any person when imposition of the tax upon that person would violate the Constitution of the United States or that of the state of California or preemptive federal or state law.

5.07.180 Enforcement – Duties of tax administrator and police chief.

It shall be the duty of the administrator to enforce each and all of the provisions of this chapter, and the police chief shall render such assistance in the enforcement of this chapter as may from time to time be required by the administrator.

5.07.190 Rules and regulations.

For purposes of apportionment as may be required by law and for purposes of administration and enforcement of this chapter generally, the administrator, with the concurrence of the city attorney, may from time to time promulgate administrative rules and regulations.

5.07.200 Apportionment.

- A. None of the tax provided for by this chapter shall be applied so as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitutions of the United States or the state of California.
- B. If any case where a business tax is believed by a taxpayer to place an undue burden upon interstate commerce or be violative of such constitutional clauses, the taxpayer may apply to the administrator for an adjustment of the tax. It shall be the taxpayer's obligation to request in writing for an adjustment within one year after the date of payment of the tax. If the taxpayer does not request in writing within one year from the date of payment, then taxpayer shall be conclusively deemed to have waived any adjustment for that year and all prior years.
- C. The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the administrator may deem necessary in order to determine the extent, if any, of such undue burden or violation. The administrator shall then conduct an investigation, and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the administrator shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter.
- D. Should the administrator determine that the gross receipt measure of tax to be the proper basis, the administrator may require the taxpayer to submit a sworn statement of the gross receipts and pay the amount of tax as determined by the administrator.

5.07.210 Audit and Examination of Records and Equipment.

- A. The administrator shall have the power to audit and examine all books and records of persons engaged in cannabis business including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis business, and, where necessary, all equipment of any person engaged

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in cannabis business in the city for the purpose of ascertaining the amount of business tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such person, after written demand by the administrator, refuses to make available for audit, examination or verification such books, records or equipment as the administrator requests, the administrator may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment in the manner provided in Sections 5.07.250 through 5.07.270 of any taxes estimated to be due.

- B. It shall be the duty of every person liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of at least four years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the city, which records the administrator shall have the right to inspect at all reasonable times.

5.07.220 Tax deemed debt to city.

The amount of any tax, penalties and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person carrying on any cannabis business without first having paid such tax shall be liable in an action in the name of the city in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such business and for attorneys' fees in the enforcement of this chapter.

5.07.230 Lien – recordation.

If any amount required to be paid to the city under the ordinance codified in this chapter is not paid when due, the administrator, upon expiration of the second delinquency period referenced in Section 5.07.120(A)(2), may, within four years after the amount is due, record in the office(s) of the county recorder(s) of any county in the state of California a certificate specifying the amount of tax, penalties and interest due, the name and address of the operator liable for the same and the fact that the administrator has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of the recording, the amount required to be paid together with penalties and interest shall constitute a lien upon any and all real property in any county owned by the operator or thereafter acquired by the operator. The lien shall have the force, effect and priority of a judgment lien and shall continue for ten years from the time of filing of the certificate unless sooner released or otherwise discharged.

5.07.240 Warrant for collection of tax.

At any time within four years after any operator is delinquent in the payment of any amount herein required to be paid off after the last recording of a certificate of lien under Section 5.07.230, the administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the city under this chapter. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The administrator may pay or advance to the sheriff, marshal or constable the same fees, commissions and

expenses for his or her services as are provided by law for similar services pursuant to a writ of execution.

5.07.250 Seizure and sale.

At any time within four years after any operator is delinquent in the payment of any amount, the administrator may forthwith collect the amount in the following manner: The administrator shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall be only of property of the operator not exempt from execution under the provisions of the California Code of Civil Procedure.

5.07.260 Successor's and assignee's responsibility.

If any operator, while liable for any amount under this chapter, sells, assigns or otherwise transfers the business, whether voluntarily or involuntarily, the operator's subsequent successor, assign or other transferee, or other person or entity obtaining ownership or control of the business, shall satisfy any tax liability owed to the city associated with the business. Failure to do so for the benefit of the city will result in being personally liable to the city for the full amount of the tax liability, which includes interest and penalties.

The successor operator, assign, purchaser, transferee, or other person or entity seeking to obtain ownership or control of the business shall notify the administrator of the date of transfer at least thirty days prior to the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than thirty days prior to the date of transfer, notice shall be provided immediately.

The successor operator, assign, purchaser, transferee, or other person or entity who obtains ownership or control of the business shall be deemed to have complied with the requirement of this section to satisfy the unpaid tax liability if that person or entity has requested and received a "tax clearance certificate" from the administrator showing that it has been paid and stating that no amount is due through the date of transfer. The issuance of such a tax clearance certificate shall be in accordance with the procedures set forth in California Revenue and Taxation Code Section 7283.5 as applicable to transient occupancy taxes.

The administrator, within ninety days of receiving a written request from a successor operator, assign, purchaser, transferee, or other person or entity who obtains or attempts to obtain ownership or control of the business, may issue a "tax clearance certificate" stating either the amount of tax liability due and owing for the property, or stating that there is no tax liability due and owing for the property. The administrator may also request financial records from the current or former owner or operator to conduct an audit of the tax that may be due and owing. After completing the audit within ninety days after the date that the records were made available, the administrator may issue a tax clearance certificate within thirty days of completing the audit, stating the amount of the tax liability owed, if any. If the city determines that the records provided for an audit are insufficient, the administrator may rely on the facts and information available to estimate any tax liability associated with the property. The administrator may issue a tax clearance certificate stating the amount of the tax liability, if any, based on such facts and information available. A written application for a hearing on the amount assessed on

the tax clearance certificate must be made within ten days after the serving or mailing of the certificate. The hearing provision of Section 5.07.300 shall apply. If an application for a hearing is not made within the time prescribed, the tax clearance certificate shall serve as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.

5.07.270 Deficiency determinations.

If the administrator is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 5.07.280 through 5.07.300.

5.07.280 Tax assessment – authorized when – nonpayment – fraud.

- A. Under any of the following circumstances, the administrator may make and give notice of an assessment of the amount of tax owed by a person under this chapter at any time:
1. If the person has not filed any statement required under the provisions of this chapter;
 2. If the person has not paid any tax due under the provisions of this chapter;
 3. If the person has not, after demand by the administrator, filed a corrected statement, or furnished to the administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter;
 4. If the administrator determines that the nonpayment of any business tax due under this chapter is due to fraud, a penalty of forty percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.
- B. The notice of assessment shall separately set forth the amount of any tax known by the administrator to be due or estimated by the administrator, after consideration of all information within the administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

5.07.290 Tax assessment – notice requirements.

The notice of assessment shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the administrator for the purpose of receiving notices provided

under this chapter; or, should the person have no address registered with the administrator for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

5.07.300 Tax assessment – hearing – application and determination.

Within ten days after the date of service the person may apply in writing to the administrator for a hearing on the assessment. If application for a hearing before the city is not made within the time herein prescribed, the tax assessed by the administrator shall become final and conclusive. Within thirty days of the receipt of any such application for hearing, the administrator shall cause the matter to be set for hearing before him or her not later than thirty-five days after the receipt of the application, unless a later date is agreed to by the administrator and the person requesting the hearing. Notice of such hearing shall be given by the administrator to the person requesting such hearing not later than five days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the administrator should not be confirmed and fixed as the tax due. After such hearing the administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.07.290 for giving notice of assessment. The amount determined to be due shall be payable after fifteen days.

5.07.310 Conviction for chapter violation – taxes not waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.

5.07.320 Violation deemed misdemeanor - penalty.

Any person violating any of the provisions of this chapter, or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

5.07.330 Severability.

Should any provision of this chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this chapter or the application of this chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

5.07.340 Effect of state and federal reference/authorization.

A. Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time; provided, that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would

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otherwise be required or a tax decrease would result, the prior version of the statute, or interpretation thereof, shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute, or new interpretation thereof, shall be applicable to the maximum possible extent.

- B. To the extent that the city's authorization to collect or impose any tax imposed under this chapter is expanded as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

5.07.350 Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

5.07.360 Amendment or repeal.

This chapter of the Capitola Municipal Code may be repealed or amended by the city council without a vote of the people. However, as required by Chapter XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this chapter. The people of the city of Capitola affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than the maximum ten percent tax rate set by this chapter, if the city council has previously acted to reduce the rate of the tax;
- B. The city council's adoption of an ordinance, as authorized by Section 5.07.070(A), to raise the tax rate provided the tax rate is not raised to a rate higher than ten percent.
- C. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;
- D. The establishment of a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); or
- E. The collection of the tax imposed by this chapter, even if the city had, for some period of time, failed to collect the tax.

Section 2. Severability. If any section, subsection, clause or phrase of this Ordinance is for any reason declared invalid, such declaration shall not affect the validity of the remaining portion or sections of the Ordinance. The people of the City of Capitola hereby declare that they would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 3. Effective Date. This ordinance shall be in full force and effect upon certification

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of its passage after approval by the voters, provided, however, that the tax approved hereby shall be imposed and fully in effect on and after January 1, 2019.



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: City Manager Department

SUBJECT: Consider a Resolution Placing a Measure on the November 2018 Ballot Asking Voters to Change the Treasurer from an Elected to an Appointed Position

RECOMMENDED ACTION: With unanimous Council support, approve the resolution.

BACKGROUND: The position of a city treasurer is required by state law, and was initially an elected position at many cities throughout the state. However, as professionally trained staffs have become commonplace, many jurisdictions have switched to appointing a treasurer, usually the finance director, rather than electing one. The City of Capitola took a similar approach to the city clerk position, with voters approving an appointed clerk in 1994. Today, all of Santa Cruz County's other jurisdictions and approximately two-thirds of the state's cities have appointed treasurers.

At the June 28, 2018, regular meeting, current elected Treasurer Peter Wilk presented the case for transitioning his position from elected to appointed. Among his arguments are the potential for conflict with the finance director and city manager positions given the nebulous state language describing the treasurer's position and the many checks and balances the City has in place for financial oversight. He also noted that two other elected officials serve on the City's Finance Advisory Committee, making the treasurer redundant.

At that same meeting, by a 4-1 vote, City Council directed staff to prepare the documents necessary to place the question of transitioning the Treasurer position from elected to appointed.

DISCUSSION: In order to assure and educate the public that switching to an appointed treasurer is appropriate, staff and Treasurer Wilk recommend the potential ballot item only go forward with a unanimous vote of the City Council.

FISCAL IMPACT: None.

Report Prepared By: Linda Fridy
City Clerk

Consider Appointed Treasurer Resolution
July 26, 2018

Reviewed and Forwarded by:

A handwritten signature in blue ink, appearing to be 'JG', is written above a horizontal line.

Jamie Goldstein, City Manager

7/19/2018

Consider Appointed Treasurer Resolution
 July 26, 2018

RESOLUTION NO. ____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
 REQUESTING SUBMISSION TO THE VOTERS OF A LOCAL BALLOT MEASURE
 REGARDING CHANGING THE POSITION OF TREASURER FROM ELECTED TO
 APPOINTED FOR INCLUSION ON THE NOVEMBER 6, 2018,
 CONSOLIDATED GENERAL ELECTION BALLOT**

WHEREAS, pursuant to Elections Code Section 10002, the governing body of any city may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the city relating to the conduct of an election; and

WHEREAS, on June 28, 2018, the Capitola City Council passed Resolution No. 4115 calling the General Municipal Election and requesting such services of Santa Cruz County; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot acknowledging that the consolidation election will be held and conducted in the manner prescribed in Section 10418; and

WHEREAS, the City of Capitola is the only jurisdiction within Santa Cruz County that elects its treasurer rather than appointing the position.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Santa Cruz County Elections Department shall conduct the election for the following measure to be voted on at the November 6, 2018, election:

In order to assure that the City of Capitola’s finances are overseen by a trained and qualified individual, shall the office of City Treasurer be changed from elective to appointive?	Yes	
	No	

BE IT FURTHER RESOLVED AND ORDERED that the City Clerk of the City of Capitola is hereby ordered and directed to cause said notice of election to be published in accordance with the provisions of the California State Elections Code.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at a regular meeting held on the 26th day of July, 2018, by the following vote:



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JULY 26, 2018

FROM: City Manager Department

SUBJECT: Introduce an Ordinance Adding Chapter 1.50 of the Capitola Municipal Code Pertaining to Electronic Filing of Campaign Statements

RECOMMENDED ACTION: Approve first reading of an ordinance adding Municipal Code Chapter 1.50.

BACKGROUND: The state of California has implemented many requirements overseen by the Fair Political Practice Commission as part of its continuing efforts to make the election process and government more transparent. These include several types of forms that candidates must file related to campaign spending, and requirements that elected officials continue to file while they remain in office. The state also requires elected and specific staff positions to file annual conflict of interest statements (Form 700), and requires cities to identify other positions that file this form locally.

Capitola approved electronic filing of Form 700 through NetFile in 2016. The current fiscal year budget includes funding to expand electronic filing to campaign forms. Electronic filing provides many benefits. As the local filing official, the City Clerk is responsible to receive, review, store, and provide public access to campaign disclosure information. E-filing supports the City's ongoing green efforts to reduce the paper waste necessary to print and store campaign documents. It also offers an initial review process that alerts the filer of errors at the time he or she is entering information, thereby helping assure that forms are correct with the initial filing. The system also increases transparency as documents will be available on the City's website immediately upon filing.

DISCUSSION: Although the state supports electronic filing, it does require that local jurisdictions take certain actions to assure that the process is done correctly. The amended Online Disclosure Act (Government Code §84615(a)) states that "The legislative body for the local government agency shall adopt an ordinance approving the use of online or electronic filing, which shall include a legislative finding that the online or electronic filing system will operate securely and effectively and would not unduly burden filers." The required ordinance, adding Chapter 1.50 to the Municipal Code, is attached.

The City will offer electronic filing free of charge, as required. The NetFile system also provides online public access and meets the requirements relating to electronic signatures.

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The City chose to make electronic filing of Form 700 recommended but not required, and staff is recommending the same approach for campaign filing in the short term. The proposed ordinance will make make electronic campaign filing mandatory starting with the 2020 election cycle.

The first filing deadline for most fall candidate campaign committees is September 26, 2018, for the period from July 1 through September 22. Completing the first reading of the proposed ordinance on July 26 and the adoption on August 9 will have the ordinance in effect ahead of that deadline. Implementation and training can begin prior to the ordinance effective date.

FISCAL IMPACT: The \$2,000 annual fee is included in the Fiscal Year 2018-19 Adopted Budget.

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

7/19/2018

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Ordinance No. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA ADDING CHAPTER
1.50 "ELECTRONIC FILING OF CAMPAIGN STATEMENTS" TO TITLE 1 "GENERAL
PROVISIONS" OF THE CITY OF CAPITOLA MUNICIPAL CODE**

The City Council of the City of Capitola does ORDAIN as follows:

Section 1. Findings and Declarations.

The City Council finds and declares as follows:

A. California Government Code Section 84615 provides that a local agency may require an elected officer, candidate, committee, or other person required to file statements, reports, or other documents, except an elected officer, candidate, committee, or other person who receives contributions totaling less than one thousand dollars (\$1,000), and makes expenditures totaling less than one thousand dollars (\$1,000), in a calendar year, to file those statements, reports, or other documents online or electronically with the local filing officer.

B. The City has entered into an agreement with Westcoast Online Information Systems, Inc. dba NetFile, a vendor approved by the California Secretary of State, to provide an online electronic filing system ("System") for campaign disclosure statements and statements of economic interest forms.

C. The System will operate securely and effectively and will not unduly burden filers. Specifically: (1) the System will ensure the integrity of the data and includes safeguards against efforts to temper with, manipulate, alter, or subvert the data; (2) the System will only accept a filing in the standardized record format developed by the Secretary of State and compatible with the Secretary of State's system for receiving an online or electronic filing; and (3) the System will be available free of charge to filers and to the public for viewing filings.

Section 2. Chapter 1.50 Added. Title 1 "General Provisions" of the City of Capitola Municipal Code is hereby amended to add Chapter 1.50 "Electronic Filing of Campaign Statements" to read as follows:

**"Chapter 1.50
ELECTRONIC FILING OF CAMPAIGN STATEMENTS**

1.50.010 Electronic Filing of Campaign Statements.

A. Any elected officer, candidate, or committee required to file statements, reports or other documents ("Statements") as required by Chapter 4 of the Political Reform Act California Government Code Section 84100 et seq.) may file such Statements using the City Clerk's online system according to procedures established by the City Clerk. These procedures shall ensure that the online system complies with the requirements set forth in Section 84615 of the Government Code. From and after January 1, 2020, elected officers, candidates and committees required to file Statements must file such Statements using the City Clerk's online system, unless exempt from the requirement to file online pursuant to Government Code

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Section 84615(a) because the officer, candidate or committee receives less than \$ 1,000 in contributions and makes less than \$ 1,000 in expenditures in a calendar year.

B. Once an elected officer, candidate, committee, or other person files a statement, report, or other document electronically pursuant to subsection A, all future statements, reports, or other documents on behalf of that filer shall be filed electronically.

C. In any instance in which an original statement, report, or other document must be filed with the California Secretary of State and a copy of that statement, report, or other document is required to be filed with the City Clerk, the filer may, but is not required to file the copy electronically.

D. If the City Clerk’s electronic system is not capable of accepting a particular type of statement, report, or other document, an elected officer, candidate, committee, or other person shall file that document with the City Clerk in an alternative format.

Section 3. Severability. If any section, subsection, clause or phrase of this Ordinance is for any reason declared invalid, such declaration shall not affect the validity of the remaining portion or sections of the Ordinance. The Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 4. Effective Date. This ordinance shall be effective on the thirty-first day after the date of its adoption.

This ordinance was introduced on the 28th day of July, 2018, and was passed and adopted by the City Council of the City of Capitola on the ___ day of ___, 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

Michael Termini, Mayor

ATTEST:

Linda Fridy, City Clerk