



AGENDA COVER
Regular Joint Meeting of the
**CAPITOLA CITY COUNCIL/
REDEVELOPMENT AGENCY**
MEETING DATE: THURSDAY, AUGUST 11, 2011

CITY COUNCIL CHAMBERS: 420 CAPITOLA AVENUE, CAPITOLA

CLOSED SESSION

5:30 P.M.

JOINT CITY COUNCIL/REDEVELOPMENT AGENCY REGULAR MEETING

7:00 P.M.

Elected Officials

*Dennis Norton, Mayor
Michael Termini, Vice Mayor
Stephanie Harlan, Council Member
Kirby Nicol, Council Member
Sam Storey, Council Member*

Jacques Bertrand, City Treasurer

City Staff Members

*Jamie Goldstein, City Manager
John G. Barisone, City Attorney
Pamela Greeninger, City Clerk
Mike Card, Chief of Police
Derek Johnson,
Community Development Director
Steven Jesberg, Public Works Director
Lisa Murphy,
Administrative Services Director*

Notice regarding City Council/Redevelopment Agency Meetings: The Capitola City Council and Redevelopment Agency meet jointly on the 2nd and 4th Thursday of each month at 7:00 p.m., in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

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

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

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

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

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

It is the intent of the City Council to adjourn by 11:30 p.m.



AGENDA

Regular Joint Meeting of the CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY Thursday, August 11, 2011

5:30 P.M. - CLOSED SESSION - 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/Redevelopment Agency Directors on closed session items only.

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

Surf and Sand, LLC vs. City of Capitola, et al. (Surf & Sand Mobile Home Park) [Superior Court of the State of California for County of Santa Cruz, Case #CV 167716]

Surf and Sand, LLC vs. City of Capitola, et al. (Surf & Sand Mobile Home Park) [U.S. District Court N.D., Case No. C09-05542 RS (Judge Richard Seeborg)]

Los Altos/El Granada Investors vs. City of Capitola, et al. (Castle Mobile Estates) [U.S. District Court N.D., Case No. CV 04-05138 JF (Judge Jeremy Fogel)]

Veronica Shepardson, et al. (residents of Surf & Sand Mobile Home Park) vs. City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case No. CV 171269]

Bill Newman, et al. (residents of Surf & Sand Mobile Home Park) vs. Surf and Sand, LLC, Ronald Reed, et al. [Superior Court County of Santa Cruz, Unlimited Jurisdiction, Case No. CV 171783]

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9:
One Case – Alice Hanratty vs. City of Capitola (Pacific Cove Mobile Home Park flood claim)

Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9:
One Case – Noble Gulch Storm Drain Failure in Pacific Cove Mobile Home Park

Initiation of litigation pursuant to subdivision (c) of Section 54956.9:
One Case – City's Joinder in Town of Fairfax California Public Utility Petition regarding SmartMeter Opt Out Regulations

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Government Code §54957)

Title: City Manager

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: Howard & Dottie DeMera
Agency claimed against: City of Capitola

**7:00 P.M. - REGULAR JOINT MEETING
OF THE CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY**

ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members/Directors Harlan, Termini, Nicol, Storey,
and Mayor/Chairperson Norton

1. REPORT ON CLOSED SESSION

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda

B. Public Comments

Oral Communications allows time for members of the Public to address the City Council/Redevelopment Agency 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.

C. Staff Comments

D. City Council/RDA Director/Treasurer Comments/Committee Reports

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

E. Committee Appointments

Council Members/RDA Directors/Committee Representatives may present oral updates from standing committees at this time. Committee appointments may also be made by the City Council/Redevelopment Agency at this time.

F. Approval of Check Register Reports

1) City: Approval of City Check Register Reports dated July 22 and July 29, 2011.

2) RDA: Approval of Redevelopment Agency Check Register Reports dated July 8 and July 29, 2011.

3. CONSENT CALENDAR

All matters listed under “Consent Calendar” are considered by the City Council/Redevelopment Agency to be routine and will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time the Council votes on the action unless members of the public or the Council request specific items to be discussed for separate review. Items pulled for separate discussion will be considered following “Other Business.”

- A. Approve Reading by Title of all Ordinances and Resolutions and declare that said Titles which appear on the Public Agenda shall be determined to have been read by Title and Further Reading Waived.
- B. City/RDA: Approve Minutes of the Regular Joint Meeting of the City Council/Redevelopment Agency of July 28, 2011.
- C. Receive Planning Commission Action Minutes for the Regular Meeting of August 4, 2011.
- D. Accept update report on the Rispin Property Hazard Abatement Project and, by 4/5 vote approval, make the determination that all hazards at the Rispin Property have not been eliminated and there is need to continue action.
- E. Adopt Ordinance repealing Chapter 3.34 of the Capitola Municipal Code pertaining to the Mobile Home Park Administrative Service Fee [2nd Reading].
- F. Deny liability claim of Howard and Dottie DeMera in the amount of \$23,638.08 and forward to the City’s liability insurance carrier.
- G. Award Contract for the Cherry Avenue Street Rehabilitation Project to Earthworks Paving Contractors, Inc., of Capitola, in the amount of \$79,407.
- H. Receive City Treasurer’s Report for Month Ended June 30, 2011 (Unaudited).

4. PUBLIC HEARINGS

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

4. PUBLIC HEARINGS - Continued

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.

- A. Public Hearing to consider adoption of an Ordinance Repealing Capitola Municipal Code Chapter 2.18 pertaining to Mobile Home Park Rent Stabilization. [1st Reading] Presentation: City Manager.
- B. City/RDA: Joint City Council/Redevelopment Agency Public Hearing to Consider adoption of an Urgency Ordinance and necessary City/Agency Resolutions determining the City will comply with the Voluntary Alternative Redevelopment Program pursuant to Part 1.9 of Division 24 of the California Health and Safety Code in order to permit the continued existence and operation of the Redevelopment Agency of the City of Capitola. Presentation: Community Development Department.

5. OTHER BUSINESS

- A. Consider adoption of an Ordinance Amending Sections 12.52.010 and 12.52.030 of the Municipal Code pertaining to Skateboarding Regulations [1st Reading]. Staff recommendation: adopt ordinance.
- B. Transfer of Cable Franchise Agreement. (Continued from July 14, 2011 meeting.) Staff recommendation: adopt Resolution Consenting to and Approving of the Assignment of the Cable Franchise Agreement and System with Charter Communications Properties, LLC, to CCO SoCal I, LLC.
- C. Consider adoption of an Ordinance Amending Section 13.04.010 of the Municipal Code pertaining to Discharge to Sanitary Sewer and Adding a new Section 13.04.060 to the Municipal Code pertaining to Greywater Use [1st Reading]. Staff recommendation: adopt ordinance.

5. OTHER BUSINESS – Continued

- D. RDA: Legal Services for Redevelopment Agency Housing Programs. Staff recommendation: approve contract with Goldfarb and Lipman, LLP, for legal services related to Redevelopment Agency Housing Programs and miscellaneous Redevelopment legal services for FY2011-2012 in an amount not to exceed \$15,000.
- E. Consider response to the 2010-2011 Santa Cruz County Grand Jury Report, Back to the Future: Regional Gridlock and Local Planning Paralysis. Staff recommendation: authorize staff to submit response on behalf of the City of Capitola.

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

6. COUNCIL/RDA DIRECTOR/STAFF COMMUNICATIONS**7. ADJOURNMENT**

Adjourn to the next Regular Joint Meeting of the City Council/ Redevelopment Agency to be held on Thursday, August 25, 2011, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: FINANCE DEPARTMENT

DATE: August 3, 2011

SUBJECT: APPROVAL OF CITY CHECK REGISTER REPORTS

Recommended Action: By motion and roll call vote, that the City Council approve the attached Check Register Reports for July 22 and July 29, 2011.

DISCUSSION

The attached Check Registers for:

Date	Starting Check #	Ending Check #	Total Checks	Amount
7/22/11	66956	67036	81	\$81,633.62
7/29/11	67037	67116	80	\$890,441.17
7/29/11 Payroll				\$216,584.04
Total				\$1,188,658.83

The check register of 7/15/11 ended with check #66955.

Wires issued, and a brief description of the expenditure:

Date	Issued to:	Dept.	Purpose	Amount
8/1/11	PERS Payment	CM	CALPERS – Payroll Contr for 7/29/11 payroll	\$53,367.47
7/29/11	Millenium Housing Corp	CM	Castle Mobile Home Park Purchase	\$160,000.00

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

Check	Issued to:	Dept.	Purpose	Amount
67040	Atchison, Barisone & Condotti	CM	Jun2011 Contract Legal Services	\$18,045.09
67048	CalPERS Health Ins	CM	Aug11 Health Ins, Employee Funded	\$53,198.49
67055	Design, Comm, & Environment	CDD	GenPlan/Green/CapMall, fund 1350(CDBG)	\$18,982.22
67060	Garden City Construction	PW	Rispin Project, Fund 1200 (CIP)	\$73,468.67
67061	Geo H Wilson, Inc.	PW	PD HVAC Sys, Fund 1200 (CIP)	\$21,273.00
67063	Granite Constructions	PW	Storm Drain Repair	\$484,319.29
67078	Monterey Bay Self Ins Fund	CM	¼ Work Comp, ½ Liab Ins Prem (Funds 2214 and 2213)	\$132,669.00
67084	Pacific Gas & Electric	PW	Monthly Elec	\$12,545.88
67094	SCC Auditor Controller	PD	Jun2011 Citation Charges	\$10,784.50
67110	Watsonville PD	PD	Avoid the Nine DUI Enf, Grant Funded	\$15,838.86

On March 28, 2002, Council adopted Ordinance 838, which amended the City Municipal Code as follows:

"3.28.010 Auditing. All claims for salaries and wages of officers and employees and payroll-related withholdings, assessments, and attachments against the treasury of the City and all other claims for payment may be audited and allowed by the City Manager or his/her designee prior to payment thereof."

"3.28.050 Approval. All claims against the City treasury are to be allowed for payment by the City Manager or his/her designee and are to be presented to the City Council as an informational item as part of their regularly scheduled meetings after their issuance for ratification."

RESOLUTION NO. 2683 On September 22, 1994, Resolution No. 2683 was passed and adopted by the City Council. This resolution includes the following text:

Be it hereby resolved by the City Council of the City of Capitola that the City Manager is authorized, as cash shortages arise, to make temporary cash loans between and among the General Fund and all other City funds except the Redevelopment Agency; Special Assessment District funds; and The Village and Beach Parking Fund; and

Be it further resolved that such inter-fund loans shall be repaid by the borrowing fund to the lending fund as soon as, in the opinion of the City Manager, it is fiscally prudent to do so; and

Be it further resolved that the City Manager shall report to the City Council at its next regularly scheduled meeting, the amounts of such Interfund loans actually made; the funds from which and to which such Interfund loans were made; and the anticipated date the loans will be repaid.

The bank statement reconciliation has not been completed for the month. Bank reconciliation is completed and reported in conjunction with the monthly Treasurer's report. All checks on these registers have been deducted from the corresponding fund's cash balance. Interfund loans are not recorded on the financial records on a regular basis, except at year-end for financial reporting purposes.

There are several significant timing issues that create cash flow shortages:

- Triple flip delay of Sales Tax from monthly to December and April (~\$500,000/2x year)
- One quarter of the annual Worker's Compensation premium is due in July (\$100,000)
- One half of the Self Insurance/Liability annual payment is due in July (\$32,669)
- One third of the Police Communication JPA annual payment is due in July (\$146,121)

As of 8/3/11 the total cash available is \$2,339,418. The General Operating Fund has a negative cash balance of (\$677,609). Internal Service Funds (#2210 through #2214) were created for City budget purposes and are reclassified for financial reporting into the General Fund. The Compensated Absences Fund (#2216) has a positive cash balance of \$36,114. The Capital Improvement Projects has a positive cash balance of \$1,045,146. By Council direction the Emergency Reserves Fund (#1020) may not participate in cash loans; the Emergency Reserves Fund has a fund balance of \$ 158,750.

For cash flow purposes these funds are available to the General Fund. A consolidation of these cash balances results in a cash position of \$2,339,418.

The following table shows the funds that are consolidated:

CASH POSITION - CITY OF CAPITOLA 8/3/11

	<u>Temporary Loan</u>	<u>Net Balance</u>
General Fund		(677,609)
<i>Loan from Contingency Reserve</i>		677,609
Worker's Comp. Ins. Fund		74,779
Self Insurance Liability Fund		248,598
Stores Fund		13,931
Information Technology Fund		166,194
Equipment Replacement		305,933
Compensated Absences Fund		36,114
Contingency Reserve Fund	934,896	
<i>Loan to General Fund</i>	677,609	
<i>Net Contingency Reserve Fund Balance</i>		257,287
Public Employee Retirement - PERS		191,181
Open Space Fund		256
Capital Improvement Projects		1,045,146
TOTAL GENERAL FUND & COUNCIL DESIGNATED FUNDS		2,339,418

Negative Fund Balances: Periodically, the balance(s) above may be negative during the fiscal year for numerous reasons including timing differences and especially the State Triple-Flip. (The State Triple Flip defers approximately \$1 million of City sales tax revenue each year.)

These negative fund balances are temporarily paid for first by the General Fund, if available, then by the Contingency Reserve Fund and finally by the Internal Service Funds.

The Emergency Reserve Fund balance is \$158,749.53 and is not included above.

ATTACHMENTS

Check Registers for July 22 and July 29, 2011.

Report Prepared By: Linda Benko
AP Clerk

Reviewed and Forwarded
by City Manager: _____

Checks dated 7/22/11 numbered 66956 to 67036 for a total of \$81,633.62 have been reviewed and authorized for distribution by the City Manager and City Treasurer.

As of 7/22/11 the unaudited cash balance is \$2,843,206


CASH POSITION - CITY OF CAPITOLA 7/22/11

	<u>Temporary Loan</u>	<u>Net Balance</u>
General Fund		(448,425)
<i>Loan from Contingency Reserve</i>		448,425
Worker's Comp. Ins. Fund		174,779
Self Insurance Liability Fund		281,267
Stores Fund		16,624
Information Technology Fund		166,611
Equipment Replacement		305,933
Compensated Absences Fund		36,114
Contingency Reserve Fund	934,896	
<i>Loan to General Fund</i>	<u>(448,425)</u>	
<i>Net Contingency Reserve Fund Balance</i>		486,471
Public Employee Retirement - PERS		232,202
Open Space Fund		256
Capital Improvement Projects		1,142,950
TOTAL GENERAL FUND & COUNCIL DESIGNATED FUNDS		<u><u>2,843,206</u></u>


Negative Fund Balances: Periodically, the balance(s) above may be negative during the fiscal year for numerous reasons including timing differences and especially the State Triple-Flip. (The State Triple Flip defers approximately \$1.3 million of City sales tax revenue each year.)

These negative fund balances are temporarily paid for first by the General Fund, if available, then by the Contingency Reserve Fund and finally by the Internal Service Funds.

The Emergency Reserve Fund balance is \$643,068.82 and is not included above.



 Jamie Goldstein, City Manager



 Jacques J.J. Bertrand, City Treasurer

 7/22/11
 Date

 8.7.11
 Date

Payment Register

From Payment Date: 7/22/2011 - To Payment Date: 7/22/2011

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
66956	07/22/2011	Open			A TOOL SHED	\$400.00
	Invoice		Date	Description	Amount	
	767414-5		07/05/2011	Stadium lights - 4th of July	\$400.00	
66957	07/22/2011	Open			ACME ROTARY BROOM SERVICE	\$705.96
	Invoice		Date	Description	Amount	
	3998		06/29/2011	Sweeper brooms 1310-Gas Tax Fund	\$705.96	
66958	07/22/2011	Open			AICPA/AMERICAN INSTITUTE OF	\$215.00
	Invoice		Date	Description	Amount	
	01702162		07/07/2011	AICPA MEMBERSHIP - LISA SALDANA	\$215.00	
66959	07/22/2011	Open			ALLIANT INSURANCE SERVICES	\$2,935.40
	Invoice		Date	Description	Amount	
	38321		06/23/2011	FY11/12 Insurance Policy 2213-Self Ins Liability	\$2,935.40	
66960	07/22/2011	Open			ALLSAFE LOCK COMPANY	\$54.00
	Invoice		Date	Description	Amount	
	42346		06/27/2011	Lock repair -Wharf Restroom 1311-Wharf Fund	\$54.00	
66961	07/22/2011	Open			ASSOCIATION OF MONTEREY BA	\$3,275.00
	Invoice		Date	Description	Amount	
	2869		07/01/2011	FY11/12 Dues & Meeting Allowance	\$3,275.00	
66962	07/22/2011	Open			BANK OF AMERICA	\$5,112.70
	Invoice		Date	Description	Amount	
	CC-JUN/JUL2011		07/06/2011	JUN/JUL CREDIT CARD CHARGES 2211-IT Fund=\$2,943.95	\$5,112.70	
66963	07/22/2011	Open			BOWMAN & WILLIAMS, INC.	\$1,620.00
	Invoice		Date	Description	Amount	
	6648		07/06/2011	Invstgtn & Dsgn of Rprs-Slope Failures-Pac Cc 1020-Emer.Fund	\$1,620.00	
66964	07/22/2011	Open			BRINKS AWARDS & SIGNS	\$39.06
	Invoice		Date	Description	Amount	
	61802		07/15/2011	JG Awards	\$39.06	
66965	07/22/2011	Open			CA DEPARTMENT OF JUSTICE	\$32.00
	Invoice		Date	Description	Amount	
	858067		06/30/2011	Fingerprinting	\$32.00	
66966	07/22/2011	Open			CADILLAC DESIGNS	\$133.60
	Invoice		Date	Description	Amount	
	1577		07/11/2011	General Plan Banners 1313-Gen Plan Update	\$133.60	
66967	07/22/2011	Open			Charter Communications	\$129.99
	Invoice		Date	Description	Amount	
	5646-JUL		07/11/2011	INTERNET SERVICES 2211-IT Fund	\$129.99	

Payment Register

From Payment Date: 7/22/2011 - To Payment Date: 7/22/2011

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
66968	07/22/2011	Open			CLEAN BUILDING MAINTENANCE	\$3,542.00
	Invoice		Date	Description		Amount
	8525		06/30/2011	Jun2011 Janitorial Services 1311-Wharf Fund=\$145.00		\$3,542.00
66969	07/22/2011	Open			CLEAN SOURCE	\$1,341.52
	Invoice		Date	Description		Amount
	1381115		06/24/2011	Cleaning supplies		\$1,341.52
66970	07/22/2011	Open			COASTAL WATERSHED COUNCIL	\$5,813.70
	Invoice		Date	Description		Amount
	1090		06/30/2011	Storm Water Education and Outreach Services		\$2,902.65
	1089		06/30/2011	Urban Watch/First Flush 05/01-06/30/11		\$2,911.05
66971	07/22/2011	Open			CVS PHARMACY INC.	\$43.16
	Invoice		Date	Description		Amount
	7/11/11		07/18/2011	Supplies		\$30.17
	July 18 2011		07/18/2011	Office supplies		\$12.99
66972	07/22/2011	Open			D & G SANITATION	\$282.79
	Invoice		Date	Description		Amount
	188171		06/30/2011	Portable toilets - Wharf 1311-Wharf Fund		\$282.79
66973	07/22/2011	Open			DEPARTMENT OF INDUSTRIAL RI	\$225.00
	Invoice		Date	Description		Amount
	20110627		06/27/2011	Conveyance Invoice		\$225.00
66974	07/22/2011	Open			EVANS PHOTOGRAPHY	\$2,413.99
	Invoice		Date	Description		Amount
	CTJG_1087900		07/13/2011	11X17 Group Photos-Jr Guards-Funded		\$2,413.99
66975	07/22/2011	Open			EXTRA SPACE STORAGE OF SC I	\$262.00
	Invoice		Date	Description		Amount
	July 2011		07/08/2011	July 2011 evidence storage		\$262.00
66976	07/22/2011	Open			FELLOWS, LESLIE	\$405.00
	Invoice		Date	Description		Amount
	JUL182011		07/18/2011	JULY 17 EVENT COMPENSATION		\$405.00
66977	07/22/2011	Open			HOPE REHABILITATION SERVICE	\$1,925.00
	Invoice		Date	Description		Amount
	S139710a		06/30/2011	Crew Services 6/16 -6/30/11		\$1,925.00
66978	07/22/2011	Open			KIMLEY-HORN AND ASSOCIATES	\$3,388.95
	Invoice		Date	Description		Amount
	4493305		05/31/2011	Parking Technology Equipment Specifications 1316-Prkng Reserve Fund		\$3,388.95
66979	07/22/2011	Open			MOFFATT & NICHOL	\$2,167.00
	Invoice		Date	Description		Amount
	57006		06/28/2011	Capitola Flume Rehabilitation Engineering Proj 1200-Cap Imprvmnt Fund		\$2,167.00

Payment Register

From Payment Date: 7/22/2011 - To Payment Date: 7/22/2011

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
66980	07/22/2011	Open			NELLA OIL COMPANY	\$2,626.00
	Invoice		Date	Description		Amount
	11-625513		07/08/2011	Fuel		\$2,626.00
66981	07/22/2011	Open			ORCHARD SUPPLY HARDWARE	\$50.33
	Invoice		Date	Description		Amount
	6005-2431201		06/30/2011	Office Supplies		\$28.37
	6013-9872216		07/01/2011	Landscape Supplies		\$33.06
	6011-3594329		07/02/2011	Office Supplies		\$15.95
	959375		07/08/2011	Return Safety Grab Bar		(\$27.05)
66982	07/22/2011	Open			PALACE ART & OFFICE SUPPLIES	\$304.21
	Invoice		Date	Description		Amount
	913358-0		07/14/2011	Office supplies		\$74.92
	913725-0		07/18/2011	Office supplies		\$86.65
	913567-0		07/18/2011	OFFICE SUPPLIES		\$131.72
	913411		07/15/2011	OFFICE SUPPLIES		\$10.92
				2210-Stores Fund=\$142.64		
66983	07/22/2011	Open			PHIL ALLEGRI ELECTRIC, INC.	\$340.00
	Invoice		Date	Description		Amount
	16070		06/30/2011	Electrical repair		\$340.00
66984	07/22/2011	Open			RBF CONSULTING	\$960.00
	Invoice		Date	Description		Amount
	11050873		06/24/2011	Burlingame Traffic Analysis		\$960.00
66985	07/22/2011	Open			REPUBLIC ITS INC.	\$6,110.51
	Invoice		Date	Description		Amount
	RI-113416		06/12/2011	Signal Call Outs		\$1,365.17
	RR-112087		06/12/2011	Traffic Signal Maintenance		\$698.24
	RI-113696		06/30/2011	Signal Damage Repair		\$4,047.10
				1310-Gas Tax Fund		
66986	07/22/2011	Open			ROBERT SEELEY & ASSOCIATES	\$70.00
	Invoice		Date	Description		Amount
	7/711		07/07/2011	Apr May June 2011		\$70.00
66987	07/22/2011	Open			SANTA CRUZ COUNTY DEPT OF I	\$33.74
	Invoice		Date	Description		Amount
	20110707		07/07/2011	Survey Maps, Prints & Copies-May/June		\$33.74
66988	07/22/2011	Open			SWIFT, STEVE	\$29.15
	Invoice		Date	Description		Amount
	PB-07-06-11		07/06/2011	Reimburse - ProBuild Paint Purchase		\$29.15
66989	07/22/2011	Open			UNITED STATES POSTAL SERVIC	\$2,840.61
	Invoice		Date	Description		Amount
	6246		07/18/2011	Postage for Early Fall brochure		\$2,840.61

Payment Register

From Payment Date: 7/22/2011 - To Payment Date: 7/22/2011

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
66990	07/22/2011	Open			WESTERN ALLIED MECHANICAL	\$306.00
	Invoice		Date	Description	Amount	
	59818		06/30/2011	HVAC repair - server room	\$306.00	
66991	07/22/2011	Open			Bay Creek LLC	\$430.00
	Invoice		Date	Description	Amount	
	2012-00000088		07/18/2011	Planner Cost Recovery Deposit Refund#09-07	\$430.00	
66992	07/22/2011	Open			Bixler Family LLC	\$783.75
	Invoice		Date	Description	Amount	
	2012-00000101		07/18/2011	Planner Cost Recovery Deposit Refund#05-02	\$783.75	
66993	07/22/2011	Open			Brownfield, Robin	\$570.00
	Invoice		Date	Description	Amount	
	2012-00000092		07/18/2011	Planner Cost Recovery Deposit Refund#06-06	\$570.00	
66994	07/22/2011	Open			Capitola Crossroads LLC	\$1,195.00
	Invoice		Date	Description	Amount	
	2012-00000069		07/18/2011	Planner Cost Recovery Deposit Refund#05-04	\$1,195.00	
66995	07/22/2011	Open			Capitola Gayle's, Inc.	\$212.50
	Invoice		Date	Description	Amount	
	2012-00000063		07/18/2011	Planner Cost Recovery Deposit Refund#07-02	\$212.50	
66996	07/22/2011	Open			Capitola Hotel LLC	\$1,555.00
	Invoice		Date	Description	Amount	
	2012-00000064		07/18/2011	Planner Cost Recovery Deposit Refund#07-04	\$1,555.00	
66997	07/22/2011	Open			Carlton, D.D. S., Michael	\$1,252.50
	Invoice		Date	Description	Amount	
	2012-00000095		07/18/2011	Planner Cost Recovery Deposit Refund#06-06	\$1,252.50	
66998	07/22/2011	Open			Cartwright, Jake	\$97.50
	Invoice		Date	Description	Amount	
	2012-00000074		07/18/2011	Camp Jr. Leader payment Session 2	\$97.50	
66999	07/22/2011	Open			Chapelle, Olivier	\$39.00
	Invoice		Date	Description	Amount	
	2012-00000057		07/05/2011	Refund citation #11131377	\$39.00	
67000	07/22/2011	Open			Clinger, Karl	\$1,495.00
	Invoice		Date	Description	Amount	
	2012-00000071		07/18/2011	Planner Cost Recovery Deposit Refund	\$1,495.00	
67001	07/22/2011	Open			Doherty, David	\$85.50
	Invoice		Date	Description	Amount	
	2012-00000075		07/18/2011	Camp Jr. Leader payment Session 2	\$85.50	

Payment Register

From Payment Date: 7/22/2011 - To Payment Date: 7/22/2011

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
67002	07/22/2011	Open			Gary Lindeke Construction, Inc.	\$1,608.75
	Invoice		Date	Description	Amount	
	2012-00000094		07/18/2011	Planner Cost Recovery Deposit Refund#07-05	\$1,608.75	
67003	07/22/2011	Open			Greenfield, Bianca	\$119.50
	Invoice		Date	Description	Amount	
	2012-00000076		07/18/2011	Camp Jr. Leader payment Session 2	\$119.50	
67004	07/22/2011	Open			Gruys, Samantha	\$90.00
	Invoice		Date	Description	Amount	
	2012-00000077		07/18/2011	Camp Jr. Leader payment Session 2	\$90.00	
67005	07/22/2011	Open			Gullo, Kathy	\$2,117.50
	Invoice		Date	Description	Amount	
	2012-00000099		07/18/2011	Planner Cost Recovery Deposit Refund#05-01	\$2,117.50	
67006	07/22/2011	Open			Horton, Madeline	\$124.50
	Invoice		Date	Description	Amount	
	2012-00000078		07/18/2011	Camp Jr. Leader payment Session 2	\$124.50	
67007	07/22/2011	Open			Jolin, Jeff	\$1,441.75
	Invoice		Date	Description	Amount	
	2012-00000100		07/18/2011	Planner Cost Recovery Deposit Refund#05-05	\$1,441.75	
67008	07/22/2011	Open			Joseph, Melissa	\$30.00
	Invoice		Date	Description	Amount	
	2012-00000073		07/18/2011	Class Refund - Rec	\$30.00	
67009	07/22/2011	Open			Mac Farlance, Barbara	\$938.75
	Invoice		Date	Description	Amount	
	2012-00000096		07/18/2011	Planner Cost Recovery Deposit Refund#06-05	\$938.75	
67010	07/22/2011	Open			Maddy, Michelle	\$201.00
	Invoice		Date	Description	Amount	
	2012-00000058		07/18/2011	Class refund - Rec	\$201.00	
67011	07/22/2011	Open			Maridon, Brian	\$651.25
	Invoice		Date	Description	Amount	
	2012-00000066		07/18/2011	Planner Cost Recovery Deposit Refund#06-01	\$651.25	
67012	07/22/2011	Open			Martin, Tracy	\$341.25
	Invoice		Date	Description	Amount	
	2012-00000098		07/18/2011	Planner Cost Recovery Deposit Refund	\$341.25	
67013	07/22/2011	Open			Metro PCS	\$1,030.25
	Invoice		Date	Description	Amount	
	2012-00000097		07/18/2011	Planner Cost Recovery Deposit Refund#06-03	\$1,030.25	

Payment Register

From Payment Date: 7/22/2011 - To Payment Date: 7/22/2011

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
67014	07/22/2011	Open			Nasr, Nicolette	\$201.00
	Invoice		Date	Description		Amount
	2012-00000059		07/18/2011	Class refund - Rec		\$201.00
67015	07/22/2011	Open			O'Brien, Michael	\$440.00
	Invoice		Date	Description		Amount
	2012-00000087		07/18/2011	Planner Cost Recovery Deposit Refund#10-00:		\$440.00
67016	07/22/2011	Open			Permit Place	\$973.75
	Invoice		Date	Description		Amount
	2012-00000062		07/18/2011	Planner Cost Recovery Deposit Refund#06-04:		\$973.75
67017	07/22/2011	Open			Piyaei, Tara	\$57.50
	Invoice		Date	Description		Amount
	2012-00000079		07/18/2011	Camp Jr. Leader payment Session 2		\$57.50
67018	07/22/2011	Open			Regan, Emily	\$105.00
	Invoice		Date	Description		Amount
	2012-00000080		07/18/2011	Camp Jr. Leader payment Session 2		\$105.00
67019	07/22/2011	Open			Regan, Matt	\$106.00
	Invoice		Date	Description		Amount
	2012-00000081		07/18/2011	Camp Jr. Leader payment Session 2		\$106.00
67020	07/22/2011	Open			Richey, Krystal	\$97.50
	Invoice		Date	Description		Amount
	2012-00000082		07/18/2011	Camp Jr. Leader payment Session 2		\$97.50
67021	07/22/2011	Open			Rogers, Kenny	\$198.00
	Invoice		Date	Description		Amount
	2012-00000060		07/18/2011	JG refund		\$198.00
67022	07/22/2011	Open			Russell, William	\$1,268.75
	Invoice		Date	Description		Amount
	2012-00000070		07/18/2011	Planner Cost Recovery Deposit Refund #05-04		\$1,268.75
67023	07/22/2011	Open			Santa Cruz County Bank	\$763.75
	Invoice		Date	Description		Amount
	2012-00000089		07/18/2011	Planner Cost Recovery Deposit Refund#07-00:		\$763.75
67024	07/22/2011	Open			Savadkhai, Jayne	\$111.00
	Invoice		Date	Description		Amount
	2012-00000083		07/18/2011	Camp Jr. Leader payment Session 2		\$111.00
67025	07/22/2011	Open			Sherer, Michele	\$173.00
	Invoice		Date	Description		Amount
	2012-00000061		07/18/2011	JG refund		\$173.00
67026	07/22/2011	Open			Shoreline Community Church	\$755.00
	Invoice		Date	Description		Amount
	2012-00000067		07/18/2011	Planner Cost Recovery Deposit Refund#06-00:		\$755.00

Payment Register

From Payment Date: 7/22/2011 - To Payment Date: 7/22/2011

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount	
67027	07/22/2011	Open			Snyder, Owen	\$936.25	
	Invoice		Date	Description		Amount	
	2012-00000068		07/18/2011	Planner Cost Recovery Deposit Refund#05-05		\$936.25	
67028	07/22/2011	Open			Spangler, Katie	\$111.50	
	Invoice		Date	Description		Amount	
	2012-00000084		07/18/2011	Camp Jr. Leader payment Session 2		\$111.50	
67029	07/22/2011	Open			Sperry, Stacia	\$37.00	
	Invoice		Date	Description		Amount	
	2012-00000072		07/18/2011	Class Refund - Rec		\$37.00	
67030	07/22/2011	Open			Sprague, Christian	\$106.00	
	Invoice		Date	Description		Amount	
	2012-00000085		07/18/2011	Camp Jr. Leader payment Session 2		\$106.00	
67031	07/22/2011	Open			Sprague, Christian	\$75.50	
	Invoice		Date	Description		Amount	
	2011-00000870		06/24/2011	Camp Jr. Leader payment Session 1 (Reissue)		\$75.50	
67032	07/22/2011	Open			T-Mobile	\$3,075.00	
	Invoice		Date	Description		Amount	
	2012-00000091		07/18/2011	Planner Cost Recovery Deposit Refund#09-05		\$3,075.00	
67033	07/22/2011	Open			Turner Lane Homeowners Associati	\$3,855.00	
	Invoice		Date	Description		Amount	
	2012-00000093		07/18/2011	Planner Cost Recovery Deposit Refund#06-05		\$3,855.00	
67034	07/22/2011	Open			VeVang, Leilani	\$1,170.00	
	Invoice		Date	Description		Amount	
	2012-00000065		07/18/2011	Planner Cost Recovery Deposit Refund#06-04		\$1,170.00	
67035	07/22/2011	Open			Welch, Troy and Coni	\$360.00	
	Invoice		Date	Description		Amount	
	2012-00000090		07/18/2011	Planner Cost Recovery Deposit Refund#10-06		\$360.00	
67036	07/22/2011	Open			Wood, Justin	\$113.50	
	Invoice		Date	Description		Amount	
	2012-00000086		07/18/2011	Camp Jr. Leader payment Session 2		\$113.50	
Check Totals:				Count	81	Total	\$81,633.62

Checks dated 7/29/11 numbered 67037 to 67116 for a total of \$1,050,441.17 have been reviewed and authorized for distribution by the City Manager and City Treasurer.

As of 7/29/11 the unaudited cash balance is \$2,387,107

CASH POSITION - CITY OF CAPITOLA 7/29/11

	<u>Temporary Loan</u>	<u>Net Balance</u>
General Fund		(684,935)
<i>Loan from Contingency Reserve</i>		684,935
Worker's Comp. Ins. Fund		74,779
Self Insurance Liability Fund		248,598
Stores Fund		14,942
Information Technology Fund		166,194
Equipment Replacement		305,933
Compensated Absences Fund		36,114
Contingency Reserve Fund	934,896	
<i>Loan to General Fund</i>	<u>(684,935)</u>	
<i>Net Contingency Reserve Fund Balance</i>		249,961
Public Employee Retirement - PERS		245,185
Open Space Fund		256
Capital Improvement Projects		<u>1,045,146</u>
TOTAL GENERAL FUND & COUNCIL DESIGNATED FUNDS		<u><u>2,387,107</u></u>

Negative Fund Balances: Periodically, the balance(s) above may be negative during the fiscal year for numerous reasons including timing differences and especially the State Triple-Flip. (The State Triple Flip defers approximately \$1.3 million of City sales tax revenue each year.)

These negative fund balances are temporarily paid for first by the General Fund, if available, then by the Contingency Reserve Fund and finally by the Internal Service Funds.

The Emergency Reserve Fund balance is \$158,749.53 and is not included above.



 Jamie Goldstein, City Manager

7/29/11

 Date



 Jacques J.J. Bertrand, City Treasurer

8.3.11

 Date

City of Capitola
City Checks Issued 7/29/11

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
67037	07/29/2011 Invoice K-761	Open	Date 07/26/2011	Description Astro Jump for Camp carnival	ASTRO EVENTS OF SAN JOSE	\$562.50 \$562.50
67038	07/29/2011 Invoice AFMC-11-0810	Open	Date 07/25/2011	Description Aug 10th Twilight Artist, Fred McCarty Band	A FULLTIME MUSIC COMPANY, INC.	\$1,000.00 \$1,000.00
67039	07/29/2011 Invoice 24324	Open	Date 06/29/2011	Description Recycled Totes, City of Capitola-Grant Fund	AMERIMARK DIRECT	\$1,761.52 \$1,761.52
67040	07/29/2011 Invoice JUNE 2011 1040E-June2011	Open	Date 06/30/2011 06/30/2011	Description ATTORNEY SERVICES June 2011 Legal Services Fund 1321, BIA = \$587.08	ATCHISON, BARISONE, & CONDOTTI	\$18,045.09 \$11,130.00 \$6,915.09
67041	07/29/2011 Invoice 37657 37658	Open	Date 07/22/2011 07/22/2011	Description July 2011 Wharf Meter Reading (Fund 1311); July 2011 Pacific Cove MHP Meter Reading	AUTOMATED TEST ASSOCIATES	\$92.00 \$25.00 \$67.00
67042	07/29/2011 Invoice 246111	Open	Date 07/12/2011	Description Filler cap for pole saw	B & B SMALL ENGINE REPAIR	\$12.27 \$12.27
67043	07/29/2011 Invoice 2012-00000123	Open	Date 07/27/2011	Description Softball Umpires July 16 to July 23 2011	BEYERS, FRED, C	\$66.00 \$66.00
67044	07/29/2011 Invoice 2012-00000120	Open	Date 07/27/2011	Description Paul's Private Lessons, 7/27/11	BRESLIN-KESSLER, PAUL	\$877.50 \$877.50
67045	07/29/2011 Invoice FY10/11 Q3	Open	Date 07/26/2011	Description Strong Motion Instrumentation & Seismic Ha	CA DEPARTMENT OF CONSERVATION	\$700.18 \$700.18
67046	07/29/2011 Invoice 2012-00000115	Open	Date 07/26/2011	Description Sports Officials Soccer and Basketball	CALERO, VICTOR	\$88.00 \$88.00
67047	07/29/2011 Invoice 10/11 Q1 10/11 Q2 10/11 Q3 10/11 Q4	Open	Date 07/21/2011 07/21/2011 07/21/2011 07/21/2011	Description Building Standards Administration Special R Building Standards Administration Special R Building Standards Administration Special R Building Standards Administration Special R	CALIF BUILDING STANDARDS COMMIS	\$513.90 \$140.40 \$88.20 \$185.40 \$99.90

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
67048	07/29/2011 Invoice H2011-Aug11	Open	Date 07/25/2011	Description Employee Health Ins, Aug 2011, Employee f	CalPERS Health Insurance	\$53,198.49
67049	07/29/2011 Invoice 10	Open	Date 07/01/2011	Description Nautical Parade Sponsorship, Begonia Festi	CAPITOLA BEGONIA FESTIVAL	\$5,000.00
67050	07/29/2011 Invoice POA-7-29-11	Open	Date 07/27/2011	Description POA Dues, Employee Funded	CAPITOLA PEACE OFFICERS ASSOC	\$716.08
67051	07/29/2011 Invoice Reimb-Jul11	Open	Date 07/25/2011	Description Reimb RDA for Rispin Exp After Mar2011	CAPITOLA REDEVELOPMENT AGENCY	\$163.59
67052	07/29/2011 Invoice 1450677	Open	Date 07/01/2011	Description Cleaning supplies	CLEAN SOURCE	\$1,731.77
67053	07/29/2011 Invoice 28750-20	Open	Date 07/28/2011	Description General Plan webhosting 7/23/11-8/22/11 Fund 1313, Gen Plan	CRUZIO THE INTERNET STORE INC.	\$39.95
67054	07/29/2011 Invoice 2012-00000116	Open	Date 07/26/2011	Description Sports Officials Soccer and Basketball	DAUERMAN, MIKE	\$87.00
67055	07/29/2011 Invoice 11209A 11209B 11209C	Open	Date 06/30/2011 06/30/2011 06/30/2011	Description General Plan Update-Fund1313 Green/Environment Economic Analysis 41st Avenue/Capitola Mall Revisioning Study Fund 1350, CDBG = \$18313.92	DESIGN, COMMUNITY & ENVIRONMENT	\$18,982.22
67056	07/29/2011 Invoice 291948 291941 291944	Open	Date 06/30/2011 06/30/2011 06/30/2011	Description May2011 Surf & Sand Legal Services Feb2011 El Granada legal Service Feb2011 Surf & Sand Legal Services	ENDEMAN, LINCOLN, TUREK & HEATER	\$1,598.17
67057	07/29/2011 Invoice 39484	Open	Date 06/30/2011	Description EPO live search-PD	ENTERSECT CORP	\$42.50
67058	07/29/2011 Invoice 3541408	Open	Date 07/08/2011	Description Irrigation supplies	EWING IRRIGATION	\$15.49
67059	07/29/2011 Invoice 2207815	Open	Date 07/08/2011	Description Aqua Green	FERGUSON ENTERPRISES, INC.	\$308.49
67060	07/29/2011 Invoice G10330-2	Open	Date 06/30/2011	Description Rispin Mansion Hazard Elimination Project Fund 1200, CIP	GARDEN CITY CONSTRUCTION INC.	\$73,468.67

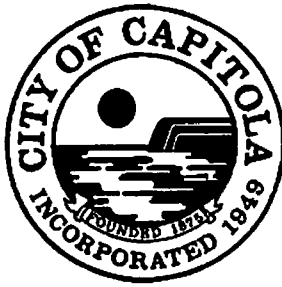
Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
67061	07/29/2011	Open			Geo. H. Wilson, Inc.	\$21,273.00
	Invoice		Date	Description		Amount
	8624		07/20/2011	Police Dept HVAC System Fund 1200, CIP		\$21,273.00
67062	07/29/2011	Open			GOMEZ, VINCE	\$50.00
	Invoice		Date	Description		Amount
	2012-00000112		07/26/2011	Sports Officials Soccer and Basketball		\$50.00
67063	07/29/2011	Open			GRANITE CONSTRUCTION COMPANY	\$484,319.29
	Invoice		Date	Description		Amount
	RI221459		06/20/2011	Nobel Gulch/Pac Cove MHP Storm Drain Re Fund 1020, Emergency Reserves		\$484,319.29
67064	07/29/2011	Open			HERNANDEZ, JAMIE	\$36.00
	Invoice		Date	Description		Amount
	2012-00000114		07/26/2011	Sports Officials Soccer and Basketball		\$36.00
67065	07/29/2011	Open			HOPE REHABILITATION SERVICES	\$1,750.00
	Invoice		Date	Description		Amount
	S139911		07/15/2011	Litter Abatement & Street Cleaning, Jul 1-18		\$1,750.00
67066	07/29/2011	Open			HOUSING AUTHORITY OF SCC	\$103.00
	Invoice		Date	Description		Amount
	11-12CREHAB		07/11/2011	Jun2011 Mobile Home Rehab Program Fund 1372, Housing Trust Fund		\$103.00
67067	07/29/2011	Open			HOWARD, CHARLIE	\$1,410.00
	Invoice		Date	Description		Amount
	07/11-07/15/11		07/25/2011	Weekly Mechanic		\$680.00
	07/18-07/22/11		07/25/2011	Weekly Mechanic		\$730.00
67068	07/29/2011	Open			JOBS AVAILABLE	\$280.00
	Invoice		Date	Description		Amount
	A15006		07/05/2011	Ad for Finance Director		\$280.00
67069	07/29/2011	Open			KERKO, BRYAN, T.	\$3,062.50
	Invoice		Date	Description		Amount
	004		07/09/2011	Rispin Mansion Hazard Elimination Project Fund 1200, CIP		\$3,062.50
67070	07/29/2011	Open			LABOR READY SOUTHWEST INC.	\$1,534.58
	Invoice		Date	Description		Amount
	58621559		07/08/2011	Temporary Staff-PW		\$591.99
	58951559		07/15/2011	Temporary Staff-PW		\$942.59
67071	07/29/2011	Open			LIUNA PENSION FUND	\$726.00
	Invoice		Date	Description		Amount
	PenDues7-29-11		07/27/2011	Union Pension Dues, Employee Funded		\$726.00
67072	07/29/2011	Open			LUICH, JAY	\$66.00
	Invoice		Date	Description		Amount
	2012-00000121		07/27/2011	Softball Umpires July 16 to July 23 2011		\$66.00
67073	07/29/2011	Open			MAMBO TROPICAL	\$1,400.00
	Invoice		Date	Description		Amount
	001		07/25/2011	Aug 3rd Twilight Concert Artist		\$1,400.00
67074	07/29/2011	Open			MARCHESE, HELEN	\$392.08
	Invoice		Date	Description		Amount
	Jul2011		07/25/2011	Petty Cash Replenishment		\$392.08

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
67075	07/29/2011	Open			McMENAMIN, GEORGE	\$637.50
	Invoice		Date	Description		Amount
	11/12-2		07/28/2011	Riparian Restoration FY 11/12		\$637.50
67076	07/29/2011	Open			MID COUNTY POST	\$221.80
	Invoice		Date	Description		Amount
	264362		06/06/2011	Misc Credit		(\$8.20)
	032596		06/30/2011	Ad for Camp		\$230.00
67077	07/29/2011	Open			MID-COUNTY AUTO SUPPLY	\$116.93
	Invoice		Date	Description		Amount
	267241		07/01/2011	auto parts-Beach Sand Sifter		\$8.69
	267570		07/05/2011	auto parts, K-2-1000 Motorcycle		\$108.24
67078	07/29/2011	Open			MONTEREY BAY AREA SELF INSURANC	\$132,669.00
	Invoice		Date	Description		Amount
	11-12Prem		07/01/2011	1/4 Work Comp Ins Premium-Fund 2214		\$100,000.00
				1/2 Liability Ins Premium-Fund 2213		\$32,669.00
67079	07/29/2011	Open			MONTEREY BAY SYSTEMS	\$740.93
	Invoice		Date	Description		Amount
	110412		07/05/2011	Copier maint, PD Copier		\$484.20
	110411		07/05/2011	Copier Exp, PD Copier		\$161.73
	110405		07/05/2011	City hall Copier maint-Fund 2211, IT		\$95.00
67080	07/29/2011	Open			NELLA OIL COMPANY	\$2,468.06
	Invoice		Date	Description		Amount
	11-626260		07/15/2011	Coaxial Hose		\$147.88
	11-628889		07/14/2011	361 Gal Ethanol, 200 Gal Diesel		\$2,320.18
67081	07/29/2011	Open			NORTH BAY FORD	\$416.55
	Invoice		Date	Description		Amount
	FOCS268611		07/18/2011	Keys for 2000-Ford Truck F150		\$65.00
	FOCS268677		07/20/2011	Keys for 2002 Ford F150		\$65.00
	FOCS268655		07/20/2011	Vehicle Repair, PW 2000 Ford F150		\$141.93
	221781		07/20/2011	PD Taurus keys		\$43.13
	221726		07/18/2011	PW 2000 Ford F150 keys		\$39.06
	221629		07/13/2011	Parks Ford F-250 dump parts		\$40.67
	221475		07/06/2011	Parks 1999 Ford F250-handle		\$21.76
67082	07/29/2011	Open			ORCHARD SUPPLY HARDWARE	\$140.41
	Invoice		Date	Description		Amount
	6010-1039684		07/06/2011	Rat traps		\$25.54
	6008-2434118		07/07/2011	Misc.		\$40.24
	6007-1387723		07/07/2011	Red paint		\$4.32
	6009-3465997		07/08/2011	Safety bar		\$29.22
	6010-1430730		07/12/2011	Lawn rakes		\$21.63
	6009-1387189		07/14/2011	Top soil		\$19.46
67083	07/29/2011	Open			OUTDOOR WORLD	\$8.52
	Invoice		Date	Description		Amount
	Rcpt #875595		06/27/2011	Supplies		\$8.52

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
67084	07/29/2011 Invoice 2012-00000117	Open	Date 07/15/2011	Description Monthly Elec Fund 1000, Gen Fund = \$3,345.95 Fund 1300, SLESF = \$228.92 Fund 1310, Gas Tax = \$6948.53 Fund 1311, Wharf = \$2022.48	PACIFIC GAS & ELECTRIC	\$12,545.88
67085	07/29/2011 Invoice 2012-00000118	Open	Date 07/15/2011	Description Pac Cove MHP Elec and Gas	PACIFIC GAS & ELECTRIC	\$534.13
67086	07/29/2011 Invoice 912654	Open	Date 07/08/2011	Description Paper-PD	PALACE ART & OFFICE SUPPLIES	\$45.36
67087	07/29/2011 Invoice 21092	Open	Date 07/07/2011	Description Beach Trash Can Liners	PARK N' POOL CORP	\$724.78
67088	07/29/2011 Invoice 366318	Open	Date 07/03/2011	Description Rental Period 4/1/11-6/30/11 Fund 2210, Stores	PITNEY BOWES INC.	\$209.76
67089	07/29/2011 Invoice 2012-00000125	Open	Date 07/27/2011	Description Softball Umpires July 16 to July 23 2011	QUARTARARO, ROD, V.	\$99.00
67090	07/29/2011 Invoice 1456612 1456613	Open	Date 07/01/2011 07/01/2011	Description Internet Access, Jul2011-Fund2211, IT Internet Access, Jul 2011, PD	RED SHIFT INTERNET SERVICES	\$115.11
67091	07/29/2011 Invoice 2012-00000124	Open	Date 07/27/2011	Description Softball Umpires July 16 to July 23 2011	REED, DANIEL, H.	\$66.00
67092	07/29/2011 Invoice Aug 2011	Open	Date 07/25/2011	Description Monthly Rent, PD Annex	ROBERT DEACON	\$2,010.13
67093	07/29/2011 Invoice 2012-00000122	Open	Date 07/27/2011	Description Softball Umpires July 16 to July 23 2011	RODGERS, PETER, A	\$66.00
67094	07/29/2011 Invoice Citations-Jun11	Open	Date 07/07/2011	Description Citations Surcharges, June 2011	SCC AUDITOR-CONTROLLER	\$10,784.50
67095	07/29/2011 Invoice 07/13/11	Open	Date 07/13/2011	Description 12 Tires, PD	SCC G.S.D. WAREHOUSE	\$1,533.00
67096	07/29/2011 Invoice June 2011	Open	Date 07/01/2011	Description June 2011 Booking fees	SCC SHERIFF-CORRECTIONS	\$729.64

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
67097	07/29/2011	Open			SANTA CRUZ SENTINEL	\$209.26
	Invoice		Date	Description		Amount
	11300009371-12		07/05/2011	Jul 11-Jul12 Subscription, City Hall		\$209.26
67098	07/29/2011	Open			SENTINEL PRINTERS, INC.	\$215.83
	Invoice		Date	Description		Amount
	292487		06/29/2011	Business Cards, Murphy		\$108.41
	292509		07/05/2011	Business Cards, Nichols		\$107.42
67099	07/29/2011	Open			SoyPrint Inc.	\$145.00
	Invoice		Date	Description		Amount
	71895		06/30/2011	Printer Ink-Fund 2211, IT		\$145.00
67100	07/29/2011	Open			SPORT ABOUT	\$394.36
	Invoice		Date	Description		Amount
	3761		07/05/2011	Camp T-shirts		\$394.36
67101	07/29/2011	Open			SWIFT, CAROLYN	\$311.45
	Invoice		Date	Description		Amount
	2343788		07/19/2011	Smugmug Prints, Museum Exp.		\$311.45
67102	07/29/2011	Open			THE HARTFORD -PRIORITY ACCOUNTS	\$1,684.69
	Invoice		Date	Description		Amount
	5495053-0		07/25/2011	Aug2011 Employee Life and Disability Ins		\$1,684.69
67103	07/29/2011	Open			THE INTERNET CONNECTION INC.	\$150.00
	Invoice		Date	Description		Amount
	3917-15487		07/01/2011	Website Hosting, Jul 2011		\$150.00
67104	07/29/2011	Open			TRI-COUNTY BUSINESS SYSTEMS INC.	\$1,377.97
	Invoice		Date	Description		Amount
	CNIN008734		06/30/2011	Mar-Jun2011 Copier Maint, City Hall		\$1,377.97
				Fund 2210, Stores		
67105	07/29/2011	Open			UNION BANK OF CALIFORNIA	\$3,127.29
	Invoice		Date	Description		Amount
	PARS7-29-11		07/27/2011	PARS Contr, Employee Funded		\$3,127.29
67106	07/29/2011	Open			UNITED WAY OF SANTA CRUZ COUNTY	\$40.00
	Invoice		Date	Description		Amount
	UW-Jul2011		07/27/2011	United Way Contr, Employee Funded		\$40.00
67107	07/29/2011	Open			US BANCORP EQUIPMENT FINANCE, IN	\$250.06
	Invoice		Date	Description		Amount
	181514167		07/14/2011	C4540 copier		\$250.06
67108	07/29/2011	Open			VERIZON WIRELESS-ACCT#572015869-	\$112.08
	Invoice		Date	Description		Amount
	0991551086		07/03/2011	Wireless Service, Jun 2011		\$112.08
				Fund 2211, IT		
67109	07/29/2011	Open			WATER SAMPLING SERVICES	\$160.00
	Invoice		Date	Description		Amount
	110713-JB1		07/13/2011	Water Sampling, Pac Cove MHP		\$160.00
67110	07/29/2011	Open			WATSONVILLE POLICE DEPT	\$15,838.86
	Invoice		Date	Description		Amount
	2011-1		01/12/2011	Avoid the Nine, 12/17/10 to 1/1/11 DUI Enfo		\$15,838.86

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
67111	07/29/2011	Open			WELLS FARGO BANK	\$1,500.00
	Invoice		Date	Description		Amount
	774465		07/15/2011	POB Trustee Fee, FY11/12 Fund 1410, Pension Obl Bond		\$1,500.00
67112	07/29/2011	Open			WHITLOW CONCRETE, INC.	\$1,200.00
	Invoice		Date	Description		Amount
	5181		07/22/2011	Install 4" concrete curbing with footing at Fai Fund 1310, Gas Tax		\$1,200.00
67113	07/29/2011	Open			WITMER-TYSON IMPORTS INC.	\$500.00
	Invoice		Date	Description		Amount
	T8703		07/01/2011	June 2011 K-9 Training		\$500.00
67114	07/29/2011	Open			YAHYA, IB	\$39.00
	Invoice		Date	Description		Amount
	2012-00000113		07/26/2011	Sports Officials Soccer and Basketball		\$39.00
67115	07/29/2011	Open			Bailey, Charlie	\$492.50
	Invoice		Date	Description		Amount
	2012-00000111		07/26/2011	Food for Regionals team - separate fee		\$492.50
67116	07/29/2011	Open			Hickey, John	\$336.00
	Invoice		Date	Description		Amount
	2001017-002		07/26/2011	JG refund		\$336.00
EFT	7/29/2011	Open			Millennium Housing Corp	160,000.00
	Invoice		Date	Description		Amount
	Jul-11		7/29/2011	Millennium/Castle MHP Program (\$160K of \$1M)		160,000.00
Check Totals:				Count	80	Total \$890,441.17
EFT Total:				Count	1	EFT Total \$160,000.00
				Total Disbursements		<u>\$1,050,441.17</u>



CAPITOLA REDEVELOPMENT AGENCY AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: FINANCE DEPARTMENT
DATE: August 3, 2011
SUBJECT: APPROVAL OF RDA CHECK REGISTER REPORT

Recommended Action: By motion and roll call vote, that the RDA Board approve the Check Register Reports dated July 8 and July 29, 2011 as submitted.

DISCUSSION

The attached Check Registers for the referenced date:

Date	Starting Check #	Ending Check #	Total Checks	Amount
7/8/11	2975	2980	6	\$14,311.50
7/29/11	2981	2985	5	\$18,939.86

The prior RDA check register report of June 24, 2011 ended with check number 2974. Above listed checks pay FY10/11 obligations.

There were no checks issued for more than \$10,000.00:

Wires issued, and a brief description of the expenditure:

Date	Issued to:	Dept.	Purpose	Amount
7/29/11	Millennium Housing Corp	CM	Castle Mobile Home Park Purchase	\$840,000.00

As of 8/3/11 the unaudited cash balance in the RDA account is \$2,315,216 allocated as follows:

RDA Operating Fund	\$2,282,616.71
RDA Low/Mod Housing Fund	\$32,599.70

ATTACHMENTS

Check Register Reports dated:
July 8, 2011 and July 29, 2011

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

Reviewed and Forwarded
By Executive Director:

RDA Checks Issued 7/8/11

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
2975	07/08/2011 Invoice 061411	Open	Date 06/14/2011	Description May11 Rental Asst Program	COMMUNITY ACTION BOARD OF SCC	\$1,410.50 \$1,410.50
2976	07/08/2011 Invoice CBF-6-2011-1H	Open	Date 06/28/2011	Description Affordable Housing Plan Assist/RDA Low	FLYNN, CAROLYN	\$260.00 \$260.00
2977	07/08/2011 Invoice 101707	Open	Date 06/17/2011	Description May 2011 RDA legal services	GOLDFARB & LIPMAN, LLP	\$772.00 \$772.00
2978	07/08/2011 Invoice 13901a	Open	Date 06/13/2011	Description Clares Street Traffic Calming Project	HARRIS & ASSOCIATES	\$5,470.00 \$5,470.00
2979	07/08/2011 Invoice 4	Open	Date 07/01/2011	Description Rispin Mansion Building Inspections-Jun11	KOSTELEK, DANIEL	\$1,380.00 \$1,380.00
2980	07/08/2011 Invoice 1311023-0511	Open	Date 06/16/2011	Description Rispin Park Public Workshop	RRM DESIGN GROUP, A CALIFORNIA	\$5,019.00 \$5,019.00
Check Totals:				Count	6	Total \$14,311.50


The above listed checks have been printed and released under the RDA Executive Director's approval. Included are checks numbered 2975 through 2980 for \$14,311.50.

These checks has been reviewed and authorized for distribution.

The unaudited cash balance in the RDA account as of 7/8/11 is \$3,174,149.46

RDA Operating Fund	\$2,299,340.85
Low/Mod Housing Fund	\$874,808.61


 Jamie Goldstein, City Manager

7/8/11
 Date 
 Debbie Johnson, Treasurer – RDA

7/8/11
 Date

RDA Checks Issued 7/29/11

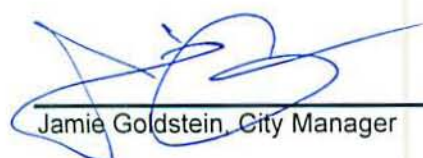
Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
2981	07/29/2011 Invoice ABA-1	Open	Date 07/20/2011	Description Library Project Planning & Architectural De	ANDERSON BRULE ARCHITECTS, INC	\$8,533.58
2982	07/29/2011 Invoice 656259z	Open	Date 07/08/2011	Description Jun2011 Legal Services, RDA Matters	BEST BEST & KRIEGER LLP	\$98.28
2983	07/29/2011 Invoice 6667z	Open	Date 07/11/2011	Description Jun2011 Capitola Library Proj prof service	BOWMAN & WILLIAMS, INC.	\$6,120.00
2984	07/29/2011 Invoice 11-12CSD 11-12CGPS	Open	Date 07/11/2011 07/11/2011	Description Jun2011 Sec Dep Program Prof Svcs Jun2011 Prof Services	HOUSING AUTHORITY OF THE COUN'	\$2,210.00
2985	07/29/2011 Invoice FY11/12CEDS	Open	Date 05/25/2011	Description Comp. Econ. Dev. Strategy MOU, FY 11/1	SANTA CRUZ COUNTY HUMAN SERVI	\$1,978.00
Check Totals:						\$18,939.86
<u>EFT</u>						
3	07/29/2011 Invoice Jul2011-RDA	Open	Date 07/29/2011	Description Millennium/Castle MHP Program (\$840K o	MILLENNIUM HOUSING CORPORATIO	\$840,000.00
Type EFT Totals:						\$840,000.00
Combined Check/EFT Total						\$858,939.86

The above listed checks have been printed and released under the RDA Executive Director's approval. Included are checks numbered 2981 through 2985 for \$18,939.86.

These checks has been reviewed and authorized for distribution.

The unaudited cash balance in the RDA account as of 7/29/11 is \$2,315,216.41

RDA Operating Fund	\$2,282,616.71
Low/Mod Housing Fund	\$32,599.70


 Jamie Goldstein, City Manager

7/29/11
Date


 Debbie Johnson, Treasurer – RDA

7/29/11
Date



Item #: **3.B.**

CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: OFFICE OF THE CITY CLERK/REDEVELOPMENT AGENCY SECRETARY

DATE: AUGUST 3, 2011

SUBJECT: **CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY MINUTE APPROVAL:**
MINUTES OF THE JOINT REGULAR MEETING OF THE CAPITOLA CITY COUNCIL/
REDEVELOPMENT AGENCY OF JULY 28, 2011

Recommended Action: By motion, that the City Council/Redevelopment Agency Directors approve the subject minutes as submitted. *[NOTE: Council Member/Director Termini should abstain from voting on the minutes, since he was absent.]*

DISCUSSION

Attached for City Council/Redevelopment Agency review and approval are the Minutes to the Joint Meeting of July 28, 2011.

ATTACHMENTS

July 28, 2011 Minutes

Report Prepared By: Pamela Greeninger, MMC
City Clerk/RDA Secretary

Reviewed and Forwarded by
City Manager/Executive Director: _____

**CITY OF CAPITOLA
CITY COUNCIL/REDEVELOPMENT AGENCY**

July 28, 2011
Capitola, California

MINUTES OF A REGULAR JOINT MEETING

5:30 P.M - CLOSED SESSION - CITY MANAGER'S OFFICE

At 5:33 p.m. in the City Hall Council Chambers, Mayor/Chairperson Norton noted that all Council Members/Redevelopment Agency Directors were present, with the exception of Council Member/Director Termini. He made an announcement regarding the items to be discussed in Closed Session, as follows:

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

- Surf and Sand, LLC vs. City of Capitola, et al. (Surf & Sand Mobile Home Park)
[Superior Court of the State of California for County of Santa Cruz, Case #CV 167716]
- Surf and Sand, LLC vs. City of Capitola, et al. (Surf & Sand Mobile Home Park)
[U.S. District Court N.D., Case No. C09-05542 RS (Judge Richard Seeborg)]
- Los Altos/El Granada Investors vs. City of Capitola, et al. (Castle Mobile Estates)
U.S. District Court N.D., Case No. CV 04-05138 JF (Judge Jeremy Fogel)]
- Veronica Shepardson, et al. (residents of Surf & Sand Mobile Home Park) vs. City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case #CV 171269]

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

- Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9:
One Case – Alice Hanratty vs. City of Capitola (Pacific Cove Mobile Home Park flood claim)

- Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9:
One Case.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Government Code Section 54957)

Title: City Manager

Mayor/Chairperson Norton noted there was no one in the audience; therefore, the Council/Redevelopment Agency recessed at 5:34 p.m. to the Closed Session in the City Manager's Office.

7:00 P.M. – OPEN SESSION

REGULAR JOINT MEETING OF THE CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY

Mayor/Chairperson Norton called the Regular Joint Meeting of the Capitola City Council/Redevelopment Agency to order at 7:11 p.m. on Thursday, July 28, 2011, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

- PRESENT:** Council Members/Directors Stephanie Harlan, Kirby Nicol, Sam Storey, and Mayor/Chairperson Dennis Norton
- ABSENT:** Council Member/Director Michael Termini; City Treasurer Jacques Bertrand and Redevelopment Agency Treasurer Debbie Johnson
- STAFF:** City Manager/Executive Director Jamie Goldstein, Deputy City Attorney/Deputy RDA General Counsel Celestial Cassman, Chief of Police Michael Card, Public Works Director Steve Jesberg, and City Clerk/Secretary Pamela Greeninger

*** * * PRESENTATIONS * * ***

**Presentation by Celia Goeckermann,
Executive Director of the Parents Center [330-30]**

Celia Goeckermann thanked the city council for trusting the City's money to help the Parents Center serve members of the Capitola community. Using a PowerPoint Presentation, she discussed the agency's background and said they have been serving families for over 34 years. Their organization specializes in the treatment and prevention of child abuse, including adult counseling, children's counseling, individual and family counseling and parenting classes. They also have an after-hours parental support hotline. Ms. Goeckermann said the success rate of their clients receiving three months of counseling shows 96% improvement.

Council Member Storey asked for the after-hours hotline phone number, which is: 426-7322.

Mayor Norton thanked Ms. Goeckermann for her presentation and for the service Parents Center provides to Capitola.

**Presentation by Bruce Arthur, President of the
Capitola Public Safety & Community Service Foundation
Reporting on the Foundation's Activities and Accomplishments [485-10]**

Bruce Arthur thanked the council for the opportunity to report on the Capitola Public Safety & Community Service Foundation. He announced that the Foundation is assisting the Police Department with the annual National Night Out, which will be held next Tuesday evening at Jade Street Park. He discussed the activities being planned for the entire family and encouraged everyone to attend.

Using a PowerPoint Presentation, Mr. Arthur provided background information on the origin of the Foundation as an independent, non-profit, charitable corporation founded in 2005, and he discussed the various local groups benefitting from donations from the Foundation.

The Foundation has helped fund several programs within the Capitola Police Department, including the canine program, emergency lights and siren for the police's Harley motorcycle, and uniforms for the Volunteers in Police Services (VIPS).

In addition, the Foundation administers the Capitola Junior Lifeguard scholarship program and, after the March floods, administered the Disaster Relief Fund Program. They also support the Capitola Begonia Festival, Advocacy, Inc., the Santa Cruz SPCA, the Core, and the Capitola Soquel Chamber of Commerce.

Mr. Arthur then discussed the Foundation's participation in the Capitola Rod & Custom Car Show, the Annual Golf Tournament (he noted the 6th Annual tournament would be held next week, and openings are still available), and then announced a new raffle fundraising effort for a week's stay in Costa Rica. The raffle tickets are \$100 each. The prize includes a week's stay at a 2-bedroom condominium, transfers from the airport to the condo, plus \$2,000 for transportation. He announced that the drawing will take place at the City Council meeting to be held on September 8, 2011. Other money prizes will also be awarded. He encouraged everyone to participate and support the Foundation's raffle.

Mr. Arthur also announced that the Foundation Board approved the donation of funds to help purchase lockers for the remodeled Police Department; since the anticipated money from the insurance company did not materialize.

PRESENTATIONS – Continued

Mr. Arthur then asked Police Officer Chris Thompson to come forward. Mr. Arthur said it was Chris, who, at that time was a local businessman, brought forth the idea of the Foundation and used his own funds to front the initial start-up of the Foundation. A few years later Chris enrolled in the Police Academy, and the city luckily was able to hire him following his graduation. On behalf of the Foundation Board, Mr. Arthur presented a check in the amount of \$5,000 to Chris for all he has done for the Foundation.

Mayor Norton thanked Bruce Arthur for his presentation and said the Foundation has done quite a lot in its 6 years of service.

1. REPORT ON CLOSED SESSION [520-25]

Deputy City Attorney Cassman reported that the City Council/Redevelopment Agency Directors met in Closed Session commencing at 5:33 p.m. in the City Manager's Office. All members were present, with the exception of Council Member/Director Termini, as were Deputy City Attorney Adair Paterno and City Manager Jamie Goldstein.

The City Council received an update from legal counsel regarding the two existing litigation matters between the City and Surf and Sand LLC (Surf & Sand Mobile Home Park). No reportable action was taken.

The City Council received a status report regarding existing litigation between the City and Los Altos/El Granada Investors pertaining to Castle Mobile Home Estates. Judge Fogel signed the Dismissal Order today, conditioned upon eminent close of escrow on Castle Mobile Home Estates by August 31, 2011.

With respect to existing litigation case Veronica Shepardson vs. City of Capitola, the Council received a status update, discussed the case, and took no reportable action.

The Council then met with its legal counsel regarding two cases of significant exposure to litigation. With respect to the first matter, Alice Hanratty vs. City of Capitola, the City Council authorized the City Manager to settle all flood and relocation claims and purchase of unit at space #46 located at Pacific Cove Mobile Home Park for \$20,000. Deputy City Attorney Cassman reported that the City Manager received assurance from the claimant that the settlement agreement would be executed.

The City Council received an update from legal counsel on potential litigation resulting from the pipe failure at Pacific Cove Mobile Home Park. No reportable action was taken.

The last item discussed in closed session was regarding the Public Employee Performance Evaluation of the City Manager. No reportable action was taken.

2. ORAL COMMUNICATIONS**A. Additions and Deletions to Agenda**

Item 3.F. was removed from the Consent Calendar.

B. Public Comments

1) Jeff Nordahl, property owner in Capitola, addressed the City Council on the matter of SmartMeters. He discussed an email he sent to the council this week requesting that they consider participating jointly with other cities in a CPUC Protest filing with *pro bono* legal representation. Mr. Nordahl believes residents should have a choice as to whether or not they want to have a SmartMeter installed. He said the attorney would be happy to talk to staff or to the city's attorney.

2. B. ORAL COMMUNICATIONS (Continued)

2) An unidentified man from the city of Santa Cruz commented on an incident that occurred at a local skate shop, where the owner kicked him out of the shop when he asked if they knew about the incident in Capitola, where a woman was hit and killed by a skateboarder. He said this was a tragic incident, and he is concerned about skateboarders disregarding the safety of others.

3) Diane Nichol shared a video-clip from her laptop of a woman measuring the radio frequency radiation from a SmartMeter. She discussed research that has and is being done regarding the effects of SmartMeters. Ms. Nichol said she has looked at the Public Utilities Code and read an excerpt regarding the duty of municipal corporations to supervise and regulate the relationship between the public utilities and the general public in matters affecting the health, convenience, and safety of the general public.

4) Marilyn Garrett addressed the SmartMeter issue and provided copies of a flyer regarding an Emergency Santa Cruz Townhall Forum to be held at Loudon Nelson Community Center, 301 Center Street, Santa Cruz, on Wednesday, August 3, at 7 p.m. Ms. Garrett said SmartMeters are being installed in Capitola. She provided a phone number that residents can call to opt out. That number is the PG&E delay line at 877-743-7378. She also encouraged residents to declare a “SmartMeter Free Zone” in their neighborhoods.

5) Sandy Erickson, Cabrillo Street resident, commented on the following matters:

- The article in the Capitola Currents Newsletter about a proposed art project on 41st Avenue. She said we need a sidewalk on Park Avenue before we need an art project for \$200,000 on 41st Avenue. She discussed the dangerous situation that exists along Park Avenue for pedestrians, especially the safety of students.
- She also expressed safety concerns regarding the two open trenches on Capitola Road, and the city’s potential liability. She commented on the double-lighted crosswalk on Capitola Road, saying it was a good idea, but she is not sure it works the way it was intended.
- Ms. Erickson expressed her concerns regarding the lack of enforcement on skateboarding. She urged the Council to immediately ban all skateboards and bicycles on the sidewalks in the Village.
- She also expressed her concern about the money that is being spent on the Rispin Mansion when there is nothing there to protect.

C. Staff Comments

1) City Manager Goldstein said he has been working with the Finance Advisory Committee in looking at the long-term revenue/expenditure picture for the City. The committee will be taking a hard look at those projections and will be preparing recommendations for the city council. He thanked the committee for their efforts.

Finance Advisory Committee Chair Bob Begun stated that he would like to publicly congratulate the members of the Finance Advisory Committee, especially Gary Wetsel, for the outstanding job done in preparing the report for council. Mr. Begun said the committee looks forward to receiving an informal response from the council regarding the preliminary report.

2. C. ORAL COMMUNICATIONS (Continued)

2) City Manager Goldstein reported the city's claim for flood damages was denied by the insurance company. As a result, he asked that Item 3.F. be removed from Consent, delaying purchase of a new pressure washer. In addition, he noted Item 3.D., pertaining to Community Tree and Forest Management Funds, is authorizing an appropriation only, and that staff plans to time significant expenditures after the December cash low point.

City Manager Goldstein also stated staff may also bring an item to council seeking authorization to make short-term inter-fund loans between city accounts and to submit an application for a TRAN (Tax Revenue Anticipation Note). He said he believes it would be prudent to plan on receiving no assistance for the flood damage and move forward.

3) Public Works Director Jesberg reported that the contractor for the Capitola Road Project did not show up on site this week as promised, and he is working with the attorney's office to determine what the city's contract options are in order to proceed as quickly as possible.

D. City Council/RDA Director/Treasurer Comments/Committee Reports

1) Mayor Norton said the council received a report from the Finance Advisory Committee, but the Council does not have a response at this time. Council Member Storey said he has not had a chance to read the entire report from the Finance Advisory Committee. Council Member Nicol said he would defer comment on the Finance Advisory Committee report, since he serves on that committee.

2) Council Member Storey asked that the city attorney be directed to investigate the possibility of the city's joining the litigation regarding SmartMeters brought forth by Jeff Nordahl.

3) Mayor Norton commented on the renovated council chambers.

E. Committee Appointments – NoneF. Approval of Check Register Reports

1) **City: Approval of City Check Register Reports dated July 8 and July 15, 2011. [300-10]**

ACTION: Council Member Harlan moved, seconded by Council Member Storey, to approve the Check Register Reports dated July 8 and July 15, 2011, including checks numbered 66808 through 66855 in the amount of \$241,534.14, checks numbered 66856 through 66955 in the amount of \$124,223.60, respectively; and payroll disbursements for the July 15, 2011, payroll in the amount of \$132,828.83, for a Grand Total of \$498,586.57, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None. (*Note: Mayor Norton abstained from voting on Check #66841 in the amount of \$146,120.80 to Santa Cruz Regional 911.*)

2) **RDA: Approval of Redevelopment Agency Check Register Report - NONE**

3. CONSENT CALENDAR

Mayor/Chairperson Norton asked if there were any items on the Consent Calendar that members of the public or the City Council/Redevelopment Agency Directors wished to pull for separate discussion. Council Member/Director Harlan pulled Item 3.E., and Council Member Storey pulled Item 3.D.

Mayor/Chairperson Norton advised Items 3.D. and E. would be discussed at the end of the meeting following Other Business Item 5.D. (*See discussion and action on Page 12038.*)

He also noted that, pursuant to City Manager Goldstein's comments under Oral Communications, Item 3.F. pertaining to the purchase of a new pressure washer, trailer and accessories, was removed from the agenda. (*See discussion under Oral Communications Item 2.C.2) on Page 12033.*)

CONSENT CALENDAR ACTION: Council Member/Director Harlan moved, seconded by Council Member/Director Nicol, to approve the Consent Calendar as recommended, with the exception of Items 3.D. and 3.E., and the removal of Item 3.F. The motion carried on the following vote: AYES: Council Members/Directors Harlan, Nicol, Storey, and Mayor/Chairperson Norton. NOES: None. ABSENT: Council Member/Director Termini. ABSTAIN: None.

A. Approve Reading by Title of all Ordinances and Resolutions and declare that said Titles which appear on the Public Agenda shall be determined to have been read by Title and Further Reading Waived.

ACTION: The City Council/Redevelopment Agency Directors unanimously approved the reading by title of all Ordinances and Resolutions and declared that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

B. City/RDA: Approve Minutes of the Regular Joint Meetings of the City Council/Redevelopment Agency of June 23 and July 14, 2011.

ACTION: Council Member/Director Harlan moved, seconded by Council Member/Director Nicol, to approve the Minutes of the Regular Joint City Council Meetings of June 23 and July 14, 2011, as submitted. The motion carried on the following vote: AYES: Council Members/Directors Harlan, Nicol, Storey, and Mayor/Chairperson Norton. NOES: None. ABSENT: Council Member/Director Termini. ABSTAIN: None.

C. Accept update report on the Rispin Property Hazard Abatement Project and, by 4/5 vote approval, make the determination that all hazards at the Rispin Property have not been eliminated and there is need to continue action. [275-60]

ACTION: Council Member Harlan moved, seconded by Council Member Nicol, to accept the update report on the Rispin Property Hazard Abatement Project and made the determination that all hazards at the Rispin Property, as detailed in the March 1, 2011, Notice of Summary Abatement Order to Abate Dangerous Buildings and Grounds, have not been eliminated, and there is a need to continue action. The motion carried on the following vote: AYES: Council Members Harlan, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

D. Adopt Resolution amending the FY2011-2012 Budget appropriating \$25,000 in the Community Tree and Forest Management account for expenses for tree removal and replacement along Monterey Avenue and Lawn Way and for the development and implementation of tree replacement at City Hall.

This item was pulled for separate discussion. (*See discussion and action on Page 12038.*)

3. CONSENT CALENDAR (Continued)

- E. Adopt a Resolution approving the new classification and job description for Administrative Records Analyst in the Police Department; approve filling the position; approve hiring a 20-hour per week Records Clerk; and adopt a Resolution amending the FY 2011-12 Budget to reflect the personnel changes.**

This item was pulled for separate discussion. *(See discussion and action on Page 12039.)*

- F. Approve the purchase of a new pressure washer, trailer, and accessories for the Public Works Department at a cost of \$19,611.72. [370-40]**

This item was removed from the consent agenda pursuant to comments made by City Manager Goldstein under Oral Communications Item 2.C.2).

4. PUBLIC HEARINGS - None

5. OTHER BUSINESS

- A. Report from Police Department regarding Skateboarding and Bicycling in Capitola Village. Staff recommendation: receive report. [485-10]**

Chief of Police Card and Police Officer Chris Thompson jointly presented a report to the City Council regarding skateboarding and bicycling in Capitola Village, as directed by the Council following the tragic death of a woman by a skateboarder on Wharf Road. Chief of Police Card reviewed the four sections in the City's Municipal Code pertaining to skateboard regulations, as well as a map of the no skateboarding zone pursuant to Section 12.52.010 of the Municipal Code. He discussed the police department's outreach program at New Brighton Middle School and the Junior Lifeguard Program, teaching the students and Junior Guards about the city's skateboarding regulations. Following their presentation, Chief of Police Card and Officer Thompson responded to questions of council members.

Council members expressed individual concerns about skateboarding in Capitola, including discussion of several incidents involving skateboarders, including the death of Maryann Slettehaugh. There was interest in expanding the no skateboarding area to include the roadways and sidewalks beginning at the top of the hills leading into the Village (Wharf Road, Cliff Drive and Monterey Avenue). Council Member Nicol suggested banning skateboarding south of the railroad tracks in Capitola. It was noted that skateboards do not have breaks, and if a skateboarder comes down a hill at 30 mph, he/she cannot stop. There was discussion about the city's responsibility to eliminate this known dangerous activity, as well as the impact on the police force if the area is expanded.

At 8:41 p.m., Mayor Norton asked if anyone from the public would like to address the council on this item. The following people spoke:

Ted Mendoza, a businessman whose office is situated at the David Lyng building in Capitola Village, said he has witnessed bicyclists and skateboarders going so fast they could not stop at the intersection adjacent to his office, so they cut through the David Lyng parking lot. He said pedestrians need to be protected, the skateboarding laws must be enforced, and he hopes the city takes action to increase pedestrian safety in the Village.

Bob Edgren, Capitola resident, asked if it would be practical to paint something on the street saying, "No skateboarding."

5. A. OTHER BUSINESS (Continued)

Bruce Arthur, Capitola resident, said he has been working at the beach rental trailer in Esplanade Park this summer. He has witnessed skateboarders using the park as a skate park. Mr. Arthur said the skaters know they are not supposed to skate there, because as soon as they see a parking enforcement officer or police officer, they stop skateboarding. He, too, is concerned about safety and encouraged the council to look into an alternative for skating, such as a skate park.

Daniel Wooten, www.Patch.com, commented that in San Francisco they are having a debate regarding proposed speed limits for bicyclists. He suggested the council may want to consider speed limits on bicycles and periodic patrols at the bottom of hills, just as is done with cars, where riders are cited for running stop signs, etc.

Sandy Erickson, Cabrillo Street resident, suggested that the “no skateboarding zone” be expanded to include Monterey Avenue from New Brighton Middle School, as well as on Hill Street. She doesn’t think the city owes skateboarders a skate park. She also recommended a hefty fine be imposed for not adhering to the law.

Joan Wagner said she walks and also rides her bike through Capitola Village. She believes skateboarders need options for transportation. She suggested having a speed limit, raised crosswalks at the bottom of the hills coming into the Village, and signage, especially for visitors. Ms. Wagner said a skate park is a good idea where skateboarders could participate in a healthy activity, rather than playing with computers and video games.

Kathy Howard, Capitola resident, said she questions the constitutionality of restricting skateboards and also expressed concerns about bicyclists. She believes parents need to educate their children on the rules.

Mayor Norton closed the matter to the public at 9:01 p.m.

Chief of Police Card and Officer Thompson responded to comments of the public and questions of council members. There was discussion regarding the definition of a skateboarder. Police Officer Thompson said the vehicle code defines a skateboarder as a pedestrian.

Council Member Storey noted California Vehicle Code §21967 gives local jurisdictions the ability to regulate and prohibit skateboards on sidewalks and roadways. That section gives the city the constitutional and regulatory authority to prohibit skateboarding activity on either sidewalks and/or roadways.

Considerable Council discussion was followed by this action:

ACTION: Council Member Storey moved to: 1) direct the Police Department to enforce the city’s skateboarding ordinance as it stands now (Capitola Municipal Code Chapter 12.52) and to continue its education efforts to emphasize enforcement of the City’s skateboarding regulations; 2) direct staff to redraft the skateboard regulation ordinance to prohibit skateboarding, as proposed by Council Member Nicol, south of the railroad tracks going into the Village, as well as the back side of Monterey Avenue going down toward Bay Avenue and Pacific Cove Parking lot; and 3) directed staff to come back with an analysis of other area in our community where there are intersections at hills and pedestrian walkways the city council could consider expanding into prohibited locations.

Council Member Harlan seconded the motion. She also

5. A. OTHER BUSINESS (Continued)

There was additional council discussion regarding the ambiguity of the ordinance and the need to make the ordinance clear and to include geographic areas where skateboarding is prohibited. Council Member Storey would like staff to survey other dangerous locations and intersections for skateboarders and pedestrians and to report back to council.

Mayor Norton asked for a friendly amendment to the motion to include direction to staff to review possible locations for a skateboard park in Capitola. Council Member Storey said he would be happy to add that amendment to his motion. Council Member Harlan agreed.

There was further discussion about adding prohibition of skateboarding starting at the railroad tracks in the revised ordinance language. Council Member Storey clarified that the no skateboarding zone would begin at the top of Wharf Road, not from where the railroad trestle crosses the street.

Council Member Storey commented on the need for additional signage. Council Member Harlan would like to direct public works to install new signs as soon as possible; especially at the top of Monterey Avenue, Cliff Drive, and Wharf Road.

Mayor Norton clarified that the motion includes returning to the Council at the next meeting with a signage plan that could be implemented immediately. The motion carried on the following vote: AYES: Council Members Harlan, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

B. Post Operations Police Report regarding the July 4, 2011, Public Safety Operations for Capitola Beach and the Fireworks. Staff recommendation: receive report. [485-10]

Chief of Police Card summarized the written agenda report and recapped the operations for Capitola Beach on the 4th of July.

Council members commented it was one of the calmest July 4th holidays they remember in Capitola. Several members expressed concerns regarding the orange fencing that was erected around the beach.

Mayor Norton informed the council that he plans to take this issue to the Mayor's Select Committee. He is interested in working cooperatively with other jurisdictions in planning community fireworks to bring back the celebration of Independence Day.

ACTION: It was the consensus of the City Council to receive the Post Operations Police Report regarding the July 4, 2011, Public Safety Operations for Capitola Beach and the Fireworks, as submitted.

C. Ordinance repealing Chapter 3.34 of the Capitola Municipal Code pertaining to the Mobile Home Park Administrative Service Fee [1st reading]. Staff recommendation: adopt ordinance. [750-25/390-40]

City Manager Goldstein summarized the written agenda report regarding the repeal of the city's Mobile Home Park Administrative Service Fee ordinance, and responded to questions of council members.

ACTION: Council Member Nicol moved, seconded by Council Member Storey, to pass the proposed Ordinance Repealing Chapter 3.34 of the Capitola Municipal Code (Ordinance No. 857) Pertaining to Mobile Home Park Administrative Service Fee to a second reading, as submitted.

5. C. OTHER BUSINESS (Continued)

Under discussion of the motion, Council Member Harlan said this was an excellent idea brought to the city by residents of the mobile home parks, and she thanked them for their participation in the program.

Mayor Norton said he is uncomfortable with not refunding the fees that were paid this year, but he intends to go along with the motion.

The motion carried on the following vote: AYES: Council Members Harlan, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

D. Designation of Voting Delegate and Alternate for the League of California Cities Annual Conference in San Francisco, California, from September 21 to 23, 2011. Staff recommendation: designate a Voting Delegate and Alternate to the Annual League Conference. [150-50]

Mayor Norton asked if any Council Members would be attending the conference. Council Member Harlan said she would be happy to serve as the city's voting delegate as she plans to attend the conference. She mentioned there is a council meeting on Thursday night, so she may not attend the entire conference. No one else was planning to attend the conference.

ACTION: It was the consensus of the City Council to designate Council Member Harlan as the City's Voting Delegate for the 2011 League of California Cities Annual Conference to be held in San Francisco from September 21 to 23, 2011.

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

3. CONSENT CALENDAR (*Items pulled for separate discussion.*)

D. Adopt Resolution amending the FY2011-2012 Budget appropriating \$25,000 in the Community Tree and Forest Management account for expenses for tree removal and replacement along Monterey Avenue and Lawn Way and for the development and implementation of tree replacement at City Hall. [1030-60/330-10]

Public Works Director Jesberg provided a brief report and responded to questions of council members.

Council Member Storey said he pulled this item as he believes the work would benefit Soquel Creek Water District and wonders if they had been contacted to participate in the project, since the trees keep breaking their main. He expressed concern about undertaking this project under the city's current budget situation. In addition, Council Member Storey is concerned about replacing the pines at City Hall with palm trees.

Council discussion was followed by this action:

ACTION: Council Member Nicol moved, seconded by Council Member Harlan, to **adopt Resolution No. 3881, Resolution Amending the 2011/2012 Budget to Appropriate \$25,000 of the Community Tree and Forest Account for Tree Improvement Projects on Monterey Avenue Lawn Way and at City Hall**, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Nicol, and Mayor Norton. NOES: Council Member Storey. ABSENT: Council Member Termini. ABSTAIN: None.

3. CONSENT CALENDAR *(Items pulled for separate discussion - continued.)*

- E. Adopt a Resolution approving the new classification and job description for Administrative Records Analyst in the Police Department; approve filling the position; approve hiring a 20-hour per week Records Clerk; and adopt a Resolution amending the FY 2011-12 Budget to reflect the personnel changes. [600-10/330-10]**

Council Member Harlan said she was not aware of the need for a part-time Records Clerk in addition to the new position. She expressed her concerns about adding another position at this time and said the city needs to be cautious about hiring people.

Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Council Member Nicol, to approve the recommended action, as follows:

1. Adopted **Resolution No. 3882, Resolution Approving a New Classification and Job Description for the Position of Administrative Records Analyst and Amending the Memorandum of Understanding Between Laborers International of North America-Association of Capitola Employees Bargaining Unit and the City of Capitola to Add the Administrative Records Analyst Position and Related Salary Effective July 28, 2011;**
2. Approved filing the new position with a Finance Department employee and reducing the Finance Department by one (1) Full Time Equivalent (FTE);
3. Approved hiring a 20-hour week Records Clerk; and
4. Adopted **Resolution No. 3883, Resolution Amending the FY 2011/2012 Budget by Reducing the Finance Department Salaries and Benefits Budget by \$25,000 and Increasing Police Department Salaries Budget by \$25,000 for Personnel Related Expenses,** as submitted.

The motion carried on the following vote: AYES: Council Members Harlan, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

6. **COUNCIL/RDA DIRECTORS/STAFF COMMUNICATIONS**

Mayor Norton reminded everyone that the speed limit in Capitola is 25 miles per hour and to Shop Capitola.

7. **ADJOURNMENT**

The City Council/Redevelopment Agency Meeting was adjourned at 10:00 p.m. to its next Regular Joint Meeting to be held on Thursday, August 11, 2011, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

Dennis R. Norton, Mayor
Redevelopment Agency Chairperson

ATTEST:

_____, MMC
Pamela Greeninger, City Clerk
Redevelopment Agency Secretary



CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: COMMUNITY DEVELOPMENT DIRECTOR
DATE: AUGUST 4, 2011
SUBJECT: PLANNING COMMISSION ACTION MINUTES OF AUGUST 4, 2011

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Commissioners: Graves, Newman, Routh, Smith and Chairperson Ortiz
Staff: Community Development Director Johnson
Senior Planner Bane
Minute Clerk Uharriet

2. ORAL COMMUNICATIONS

- A. Additions and Deletions to Agenda - NONE
- B. Public Comments - NONE
- C. Commission Comments - NONE
- D. Staff Comments - NONE

3. APPROVAL OF MINUTES

- A. July 7, 2011 Regular Planning Commission Meeting

APPROVED 5-0

4. CONSENT CALENDAR

- A. **1820 41st AVENUE** #11-076 APN: 034-131-22

Sign Permit to install a multi-tenant monument sign (Capitola Station) in the CC (Community Commercial) Zoning District.
Environmental Determination: Categorical Exemption
Property Owner: Sue Vaudagna/Bank Bay Properties
Representative: Mike Terron/Northwest Signs, filed 7/12/11

APPROVED 5-0

B. 429 CAPITOLA AVENUE #11-073 APN: 035-093-14

Design Permit and a setback Variance to expand an existing second floor deck for a single-family residence in the CN (Neighborhood Commercial) Zoning District.
Environmental Determination: Categorical Exemption
Property Owner: Jeanne Seeley, filed 6/30/11
Representative: TD Construction/ Ted Egner

APPROVED 4-0, COMMISSIONER GRAVES RECUSED, STATING HE LIVED WITHIN 500 FEET OF THE SUBJECT PARCEL.

5. PUBLIC HEARINGS

A. 1066 41st AVENUE, A105 #11-062 APN: 035-0711-01

Sign Permit for a take-out restaurant use (Amazon Juice) with outdoor seating in the CC (Community Commercial) Zoning District.
Environmental Determination: Categorical Exemption
Property Owner: Joao Luiz Freta, filed 6/7/11
Representative: Steve Elmore

CONTINUED TO THE SEPTEMBER 1, 2011 MEETING, 5-0

B. 1750 41st AVENUE #11-077 APN: 034-131-16

Amendment to a Conditional Use Permit to allow an existing retail store and drive-thru pharmacy to operate 24 hours a day, 7 days a week in the CC (Community Commercial) Zoning District.
Environmental Determination: Categorical Exemption
Property Owner: Longs Drug Stores California LLC, filed 4/28/11
Representative: Fancher Development Services/ Nina Raey

APPROVED 5-0

6. ZONING ORDINANCE DISCUSSION

- A. Chapter 17.03 DEFINITIONS
- B. Chapter 17.06 ESTABLISHMENT AND DESIGNATION OF DISTRICTS
- C. Chapter 17.09 ZONING MAPS
- D. Chapter 17.11 ARCHAEOLOGICAL/PALEONTOLOGICAL RESOURCES DISTRICT
- E. Chapter 17.12 MHE MOBILE HOME EXCLUSIVE DISTRICT

7. DIRECTOR'S REPORT

8. COMMISSION COMMUNICATIONS

9. ADJOURNMENT

Adjourn to a Regular Meeting of the Planning Commission to be held on Thursday, September 1, 2011 at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Item #: **3.D.**

CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: DEPARTMENT OF PUBLIC WORKS
DATE: AUGUST 3, 2011
SUBJECT: RISPIN PROPERTY HAZARD ABATEMENT UPDATE NO. 11

Recommended Action: By motion and roll call vote, take the following actions:

1. Accept this update report on the Rispin Property Hazard Abatement Project, and
 2. By 4/5 approval, make the determination that all hazards at the Rispin Property as detailed in the March 1, 2011, Notice of Summary Abatement Order to Abate Dangerous Buildings and Grounds have not been eliminated and that there is a need to continue action.
-

BACKGROUND

On March 10, 2011 the City Council adopted Resolution No. 3859 declaring that an emergency condition exists as a result of the receipt of an Order to Abate a Hazardous Conditions at the Rispin Mansion Property. Pursuant to Public Contracting Code Section 22050 the City Council must review this action at each subsequent regularly scheduled meeting and by 4/5 vote authorize work to continue under the emergency declaration.

DISCUSSION

Project status:

The well house has been secured. Delivery of roof trusses and tiles are expected mid-August for completion of the new roof on the mansion. Upon completion of the roof, lighting will be installed inside the mansion and fences and rails installed per plan.

FISCAL IMPACT

Contracts in the amount of \$650,000 have been issued. As of August 3, 2011, there has been \$315,245 in invoices paid.

ATTACHMENTS - None

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

**Reviewed and Forwarded
By City Manager:**



Item #: **3.E.**

CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: OFFICE OF THE CITY CLERK

DATE: AUGUST 1, 2011

SUBJECT: ORDINANCE REPEALING CHAPTER 3.34 OF THE CAPITOLA MUNICIPAL CODE (ORDINANCE NO. 857) PERTAINING TO THE MOBILE HOME PARK ADMINISTRATIVE SERVICE FEE [2nd READING]

Recommended Action: By motion and roll call vote, adopt the proposed Ordinance Repealing Chapter 3.34 of the Capitola Municipal Code pertaining to the Mobile Home Park Administrative Service Fee, as submitted.

BACKGROUND

In 2003 the City adopted Ordinance No. 857 which implemented a Mobile Home Park Administrative Service Fee. Residents of Capitola mobile home parks under rent control paid this annual fee to offset the city's litigation costs relating to the defense of its mobile home park rent stabilization ordinance. At its meeting of July 28, 2011, the City Council considered a draft ordinance to repeal Chapter 3.34 of the Municipal Code pertaining to the Mobile Home Park Administrative Service Fee.

DISCUSSION

On July 28, the City Council received a report from the City Manager regarding the proposed ordinance. There were no comments from the public. After limited discussion, the City Council took the following action with respect to the proposed ordinance:

ACTION: Council Member Nicol moved, seconded by Council Member Storey, to pass the proposed Ordinance Repealing Chapter 3.34 of the Capitola Municipal Code (Ordinance No. 857) Pertaining to Mobile Home Park Administrative Service Fee to a second reading, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

The proposed ordinance is before the City Council for its second reading and final adoption. If adopted, the ordinance will take effect in thirty (30) days; on September 10, 2011.

ATTACHMENT

Draft Ordinance

Report Prepared By: Pamela Greeninger, MMC
City Clerk

**Reviewed and Forwarded
By City Manager:** _____

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA REPEALING CHAPTER 3.34 OF THE CAPITOLA MUNICIPAL CODE (ORDINANCE NO. 857) PERTAINING TO MOBILE HOME PARK ADMINISTRATIVE SERVICE FEE

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

Section 1. Chapter 3.34 of the Capitola Municipal Code (Ordinance No. 857 adopted on the 11th day of September, 2003) pertaining to a "Mobile Home Park Administrative Service Fee" is hereby repealed in its entirety.

Section 2. The City's Fee Schedule Resolution shall be amended accordingly to remove the "Mobile Home Park Administrative Service Fee" from Miscellaneous Fees.

Section 3. This ordinance shall take effect and be in full force thirty (30) days after its final adoption.

This ordinance was introduced on the 28th day of July, 2011, and was passed and adopted by the City Council of the City of Capitola on the 11th day of August, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

DISQUALIFIED:

APPROVED:

Dennis R. Norton, Mayor

ATTEST:

Pamela Greeninger, City Clerk, MMC



Item #: 3.F.

CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: CITY MANAGER'S DEPARTMENT
DATE: AUGUST 2, 2011
SUBJECT: CLAIM OF HOWARD & DOTTIE DEMERA

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

DISCUSSION

Howard & Dottie DeMera have filed a liability claim against the City of Capitola. The claim is in the amount of \$23,638.08.

ATTACHMENTS: None

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

**Reviewed and Forwarded
By City Manager:** _____



Item #: **3.G.**

CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: DEPARTMENT OF PUBLIC WORKS
DATE: AUGUST 1, 2011
SUBJECT: CHERRY AVENUE STREET REHABILITATION PROJECT
AWARD OF CONTRACT

Recommended Action: By motion and a roll call vote award a contract to Earthworks Paving Contractors, Inc. of Capitola for the Cherry Avenue Street Rehabilitation Project in the amount of \$79,407.

BACKGROUND

On July 27, 2011 the City received seven bids for the Cherry Avenue Street Rehabilitation Project. The apparent low bid was from Monterey Peninsula Engineering with a bid in the amount of \$72,973. Subsequent to the bid opening, they notified the City that they had made a clerical error on the bid and requested relief from their proposal. The next lowest bid was from Earthworks Paving based in Capitola with a bid in the amount of \$79,407.

DISCUSSION

Staff recommends granting Monterey Peninsula Engineering's request for relief and awarding the contract to Earthworks Paving. In awarding the contract to Earthworks, the City will be supporting a locally owned business while avoiding potentially protracted negotiations over Monterey Peninsula Engineering's original proposal.

Due to current financial constraints of the City, Earthworks has agreed to delay the start of the project to a future date when the City is prepared to move forward. In agreeing to this delay, the City and the contractor agree to negotiate contract changes based on current material prices at the time of construction. At this time it is anticipated that the project will not proceed until later this winter or possibly even next spring.

FISCAL IMPACT

\$99,600 in funding is available in the Capital Improvement Program to cover the \$79,407 contract price, leaving \$20,193 in contingencies for the project.

ATTACHMENTS

1. Bid Summary
2. Letter for Bid Relief from Monterey Peninsula Engineering

Report Prepared By: Steven Jesberg
Public Works Director

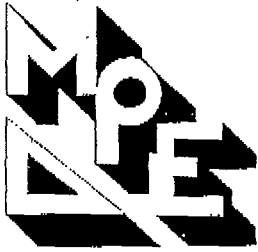
**Reviewed and Forwarded
By City Manager:**

Project: Cherry Avenue Street Rehabilitation Project

Date: 27-Jul-11

BID ITEM NO.	BID ITEM DESCRIPTION	QTY	UNIT	Estimate		Monterey Peninsula Eng.		Earthworks			
				UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT		
1	Traffic Control and Construction Area Signs	1	LS	\$7,450.00	\$7,450.00	\$5,000.00	\$5,000.00	\$6,500.00	\$6,500.00		
2	Grind Pavement	1,836	SY	\$2.00	\$3,672.00	\$2.00	\$3,672.00	\$5.00	\$9,180.00		
3	Remove and Replace Pavement	1,232	SF	\$7.00	\$8,624.00	\$7.00	\$8,624.00	\$6.50	\$8,008.00		
4	Hot Mix Asphalt Leveling Course (Type A)	105	TON	\$101.00	\$10,605.00	\$150.00	\$15,750.00	\$134.00	\$14,070.00		
5	Geotextile Pavement Interlayer	1,615	SY	\$11.50	\$18,572.50	\$2.00	\$3,230.00	\$3.00	\$4,845.00		
6	Hot Mix Asphalt Overlay (Type A)	178	TON	\$101.00	\$17,978.00	\$135.00	\$24,030.00	\$126.00	\$22,428.00		
7	Pavement Conform	222	SY	\$16.00	\$3,552.00	\$6.00	\$1,332.00	\$9.00	\$1,998.00		
8	Tack Coat (Asphaltic Emulsion)	0.62	TON	\$985.00	\$610.70	\$4,000.00	\$2,480.00	\$1.61	\$1.00		
9	Tack Coat (Asphalt Binder)	0.28	TON	\$985.00	\$275.80	\$4,000.00	\$1,120.00	\$3.57	\$1.00		
10	Adjust Manhole Frame and Cover to Grade	4	EA	\$805.00	\$3,220.00	\$300.00	\$1,200.00	\$650.00	\$2,600.00		
11	Adjust Water Valve Cover to Grade	10	EA	\$420.00	\$4,200.00	\$100.00	\$1,000.00	\$500.00	\$5,000.00		
12	Survey Monumentation	1	LS	\$1,320.00	\$1,320.00	\$2,100.00	\$2,100.00	\$2,500.00	\$2,500.00		
13	Remove Pavement Marking - STOP	66	SF	\$2.50	\$165.00	\$5.00	\$330.00	\$5.00	\$330.00		
14	Remove Pavement Marking - Stop Line	48	SF	\$2.50	\$120.00	\$5.00	\$240.00	\$3.00	\$144.00		
15	Remove Pavement Marking - Arrow	15	SF	\$2.50	\$37.50	\$5.00	\$75.00	\$4.00	\$60.00		
16	Remove Pavement Marking - Parking Stall	21	EA	\$17.00	\$357.00	\$11.00	\$231.00	\$20.00	\$420.00		
17	Remove Pavement Marker	1	EA	\$6.00	\$6.00	\$3.00	\$3.00	\$5.00	\$5.00		
18	Thermoplastic Pavement Marking - Parking Stall	21	EA	\$17.00	\$357.00	\$22.00	\$462.00	\$25.00	\$525.00		
19	Thermoplastic Pavement Marking - STOP	66	SF	\$5.00	\$330.00	\$16.00	\$1,056.00	\$8.00	\$528.00		
20	Thermoplastic Pavement Marking - Stop Line	48	SF	\$4.00	\$192.00	\$16.00	\$768.00	\$3.00	\$144.00		
21	Thermoplastic Pavement Marking - Type IV (L) Arrow	15	SF	\$5.00	\$75.00	\$16.00	\$240.00	\$7.00	\$105.00		
22	Pavement Marker - Blue, Two-Way Reflective (Fire Hydrant)	1	EA	\$20.00	\$20.00	\$30.00	\$30.00	\$15.00	\$15.00		
SUB-TOTAL					\$81,739.50	Bid		\$72,973.00	Bid		\$79,407.00
CONTINGENCY (10%)					\$8,173.95	Note: MPE bid rejected per their letter dated 27-Jul-11					
TOTAL					\$89,913.45						
SAY					\$90,000.00						

Norcal Const.		J.A. Gonsalves		O'Grady Paving		Don Chapin Co.		Granite Rock/Pavex	
UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
\$8,100.00	\$8,100.00	\$4,033.00	\$4,033.00	\$10,000.00	\$10,000.00	\$6,000.00	\$6,000.00	\$15,200.00	\$15,200.00
\$5.00	\$9,180.00	\$7.00	\$12,852.00	\$9.00	\$16,524.00	\$13.00	\$23,868.00	\$9.00	\$16,524.00
\$10.20	\$12,566.40	\$8.00	\$9,856.00	\$9.00	\$11,088.00	\$10.00	\$12,320.00	\$20.00	\$24,640.00
\$144.00	\$15,120.00	\$115.00	\$12,075.00	\$137.00	\$14,385.00	\$126.00	\$13,230.00	\$125.00	\$13,125.00
\$4.10	\$6,621.50	\$6.00	\$9,690.00	\$3.00	\$4,845.00	\$5.00	\$8,075.00	\$2.80	\$4,522.00
\$124.00	\$22,072.00	\$158.00	\$28,124.00	\$150.00	\$26,700.00	\$122.00	\$21,716.00	\$122.00	\$21,716.00
\$17.70	\$3,929.40	\$11.00	\$2,442.00	\$30.00	\$6,660.00	\$30.00	\$6,660.00	\$35.00	\$7,770.00
\$6,500.00	\$4,030.00	\$3,000.00	\$1,860.00	\$1,200.00	\$744.00	\$1,500.00	\$930.00	\$2,500.00	\$1,550.00
\$5,600.00	\$1,568.00	\$4,000.00	\$1,120.00	\$1,200.00	\$336.00	\$1,500.00	\$420.00	\$1,200.00	\$336.00
\$530.00	\$2,120.00	\$750.00	\$3,000.00	\$700.00	\$2,800.00	\$900.00	\$3,600.00	\$1,000.00	\$4,000.00
\$460.00	\$4,600.00	\$700.00	\$7,000.00	\$300.00	\$3,000.00	\$400.00	\$4,000.00	\$750.00	\$7,500.00
\$1,600.00	\$1,600.00	\$1,800.00	\$1,800.00	\$2,500.00	\$2,500.00	\$500.00	\$500.00	\$2,500.00	\$2,500.00
\$4.20	\$277.20	\$4.00	\$264.00	\$5.00	\$330.00	\$4.00	\$264.00	\$4.00	\$264.00
\$4.20	\$201.60	\$4.00	\$192.00	\$5.00	\$240.00	\$4.00	\$192.00	\$4.00	\$192.00
\$4.20	\$63.00	\$4.00	\$60.00	\$5.00	\$75.00	\$4.00	\$60.00	\$4.00	\$60.00
\$10.50	\$220.50	\$10.00	\$210.00	\$11.00	\$231.00	\$10.00	\$210.00	\$10.00	\$210.00
\$2.10	\$2.10	\$2.00	\$2.00	\$3.00	\$3.00	\$2.00	\$2.00	\$2.00	\$2.00
\$21.00	\$441.00	\$20.00	\$420.00	\$22.00	\$462.00	\$20.00	\$420.00	\$20.00	\$420.00
\$15.75	\$1,039.50	\$15.00	\$990.00	\$16.00	\$1,056.00	\$15.00	\$990.00	\$15.00	\$990.00
\$15.75	\$756.00	\$15.00	\$720.00	\$16.00	\$768.00	\$15.00	\$720.00	\$15.00	\$720.00
\$15.75	\$236.25	\$15.00	\$225.00	\$16.00	\$240.00	\$15.00	\$225.00	\$15.00	\$225.00
\$26.25	\$26.25	\$25.00	\$25.00	\$30.00	\$30.00	\$25.00	\$25.00	\$25.00	\$25.00
Bid	\$94,770.70	Bid	\$96,960.00	Bid	\$103,017.00	Bid	\$104,427.00	Bid	\$122,491.00



MONTEREY PENINSULA ENGINEERING

ATTACHMENT 2

CONTRACTORS & ENGINEERS
 P.O. BOX 2317
 MONTEREY, CA 93942
 (831) 384-4081

July 27, 2011

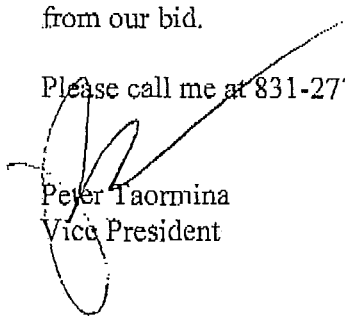
Steven Jesberg
 Department of Public Works
 City of Capitola
 420 Capitola Ave
 Capitola Ca, 95010

Re: Cherry Ave Proposal -Bid Relief Request

We have discovered a clerical error in our bid for the above referenced project. The error occurred while we were entering the final unit prices into our estimating software. The error involves bid item #2 -Grind Pavement where we inadvertently entered \$2.00 per square yard instead of our intended price of \$12.00 per square yard. The software automatically extended the total and the error went unnoticed.

Based on the incorrectly entered unit price we have an error equal to nearly 20% of our base bid. Due to the magnitude of this error relative to the project size, we must regretfully request relief from our bid.

Please call me at 831-277-6112 if you have any questions



Peter Taormina
 Vice President

Post-it® Fax Note	7671	Date	# of pages
To	STEVE	From	PETER TAORMINA
Co./Dept.	P.WORIS	Co.	
Phone #		Phone #	2776112
Fax #	4798879	Fax #	



CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: CITY TREASURER

DATE: AUGUST 2, 2011

SUBJECT: TREASURER'S REPORT FOR THE MONTH ENDED JUNE 30, 2011
(PRELIMINARY & UNAUDITED)

Recommended Action:

By motion, that the City Council accept the June 2011 Treasurer's Report (unaudited) for the City of Capitola.

BACKGROUND

California Government Code Section 41004 requires that the City Treasurer submit to the City Clerk and the legislative body a written report and accounting of all receipts, disbursements, and fund balances.

The attachment provides various financial data and analysis for the City of Capitola funds, and the State Treasurer's Office (Local Agency Investment Fund) "LAIF" interest rates.

DISCUSSION - EXECUTIVE SUMMARY AT JUNE 30, 2011

The City Cash Position at June 30, 2011 totals \$5,610,400. LAIF deposits include \$4,765,200 of City and Assessment District Funds. The LAIF investment return as of June 30, 2011 was .448%.

The General Fund Balance Sheet consists of:

Total Assets	\$2,446,800 (includes Rispin receivable of \$1,350,000)
Total Liabilities	\$1,765,300
Total Fund Balance	\$ 681,600 (includes Rispin receivable of \$1,350,000)

Fund Balance

General Fund	\$ 681,600
Designated Reserves:	1,158,400
Capital Improv. Projects	1,066,700
Special Revenues:	1,158,200
Debt Service	252,900
Internal Services:	1,428,000
Total	\$ 5,745,800

FISCAL IMPACT: None.

ATTACHMENTS - 1) June 30, 2011 City Treasurer's Report and 2) LAIF rates

Report Prepared By:

Reviewed and Forwarded By:

Lisa Saldana
Supervising Accountant

Jacques Bertrand, City Treasurer

cc: cdiac_investments@treasurer.ca.gov (June & December reports only, within 60 calendar days)
R:Agenda Staff Report/8-11-11/City Treasurer Report for Month Ended 6-30-11



Treasurer's Report for Month Ended June 30, 2011 (PRELIMINARY & UNAUDITED)

BACKGROUND

California government code section 41004 requires that the City Treasurer submit to the City Clerk and the legislative body a written report and accounting of all receipts, disbursements, and fund balances. Additionally with the passage of Chapter 687, Statutes of 2000 (AB 943 Dutra), effective January 1, 2001 cities are now required to forward copies of their second and fourth quarter calendar year investment portfolio reports to the California Debt and Investment Advisory Commission (CDIAC) within 60 days.

The CDIAC will use the report as an additional opportunity to examine public investment practices in a more consistent basis than before.

Cities, such as the City of Capitola, that are 100 percent invested in the Local Agency Investment Fund (LAIF) are exempt from the new investment portfolio reporting requirements and are only required to send a letter to CDIAC indicating the total and composition of their investments. This Treasurer's Report will satisfy our reporting requirement to the CDIAC.

The following pages provide various financial data and analysis for the City of Capitola's Funds collectively as well as specifically for the City's General (Operating) Fund, with an attachment from the State Treasurer's Office of quarterly LAIF rates from the 1st quarter of 1977 to present.

DISCUSSION

The following information is for the month ended June 30, 2011. Such information is preliminary and unaudited.

CASH BALANCE BY FUND

As of June 30, 2011, the LAIF deposits include \$4,765,200 of City and Assessment District funds. The LAIF investment return as of June 30, 2011 was .448%. The following summarizes the City's total cash balance of \$5,610,400 at June 30, 2011 amongst the funds:

		June 30, 2011
<u>General Fund</u>		(198,900)
<u>Special Revenues</u>	S L E S F	1,100
	SCC NARCOTICS ENFORCEMENT TEAM	(14,300)
	GAS TAX	(39,200)
	WHARF FUND	53,600
	DEVELOPMENT FEES FUND	-
	PEG CABLE TV ACCESS FUND	86,500
	CAPITOLA VILLAGE & WHARF BIA	400
	GREEN BUILDING	48,700
	PARIING RESERVE FUND	191,700
	TECHNOLOGY FEE FUND	11,300
	CDBG - GRANTS	7,000
	CDBG PROGRAM INCOME	(11,900)
	CDBG PROGRAM INCOME 07-08 RLF	-
	HOUSING PROGRAM LOAN FUND	5,100
	HOME GRANT FUND	5,200
	AFFORDABLE HOUSING TRUST FUND	343,800
	BEGIN GRANT FUND	60,000
	PUBLIC ART FUND	134,400
	OPEN SPACE PURCHASE	300
	GENERAL PLAN UPDATE	337,200
<u>Internal Service</u>	WORIER'S COMPENSATION	174,800
	SELF INSURANCE	284,200
	STORES	19,200
	INFORMATION TECHNOLOGY	177,700
	EQUIPMENT REPLACEMENT	305,900
	PUBLIC EMPLOYEE RETIREMENT	527,200
<u>Reserves</u>	EMERGENCY RESERVES	645,800
	CONTINGENCY RESERVES	934,900
	COMPENSATED ABSENCES	64,700
<u>Capital Projects</u>	VARIOUS CAPITAL PROJECTS	1,198,800
<u>Debt Service</u>	DEBT SERVICE FUND	255,200
TOTAL ALL FUNDS		<u>5,610,400</u>
	General Fund	(198,900)
	Internal Services	1,489,000
	Reserves	1,645,400
		<u>2,935,500</u>

GENERAL FUND SUMMARY BALANCE SHEET

The following is the General Fund summary balance sheet:

General Fund: Summary Balance Sheet	6/30/2010	Incr/Decr	6/30/2011
Cash	274,700	(473,600)	(198,900)
Prepaid Expenditures	5,300	(1,500)	3,800
Accounts Receivable	72,100	21,600	93,700
Accounts Receivable - Intergovernmental ¹	43,100	537,100	580,200
Accounts Receivable for Year End ²	1,149,300	(1,149,300)	-
Accounts Receivable - RDA (Rispin)	1,350,000	-	1,350,000
Short Term Loans - RDA	-	-	-
Long Term Loans - RDA	618,000	-	618,000
TOTAL ASSETS	\$ 3,512,500	\$(1,065,700)	\$ 2,446,800
Accounts Payable	383,800	(200,900)	182,900
Payroll Related Liabilities	329,300	6,500	335,800
Other Deposits and Other Liabilities	188,200	71,700	259,900
Deferred Revenue -- RDA	618,000	-	618,000
Deferred Revenue	346,800	21,900	368,700
Due to Contingency Reserve Fund	-	-	-
TOTAL LIABILITIES	\$ 1,866,100	\$ (100,800)	\$ 1,765,300
FUND BALANCE³			
Rispin Mansion Transaction	1,350,000	-	1,350,000
Fund Balance Reserves	15,200	-	15,200
Available Fund Balance:			
Prior Year Fund Balance	393,000	-	393,000
Current Year Operating Results	-	(1,076,600)	(1,076,600)
Net, Available Fund Balance	\$ 393,000	\$(1,076,600)	\$ (683,600)
TOTAL FUND BALANCE	\$ 1,758,200	\$(1,076,600)	\$ 681,600

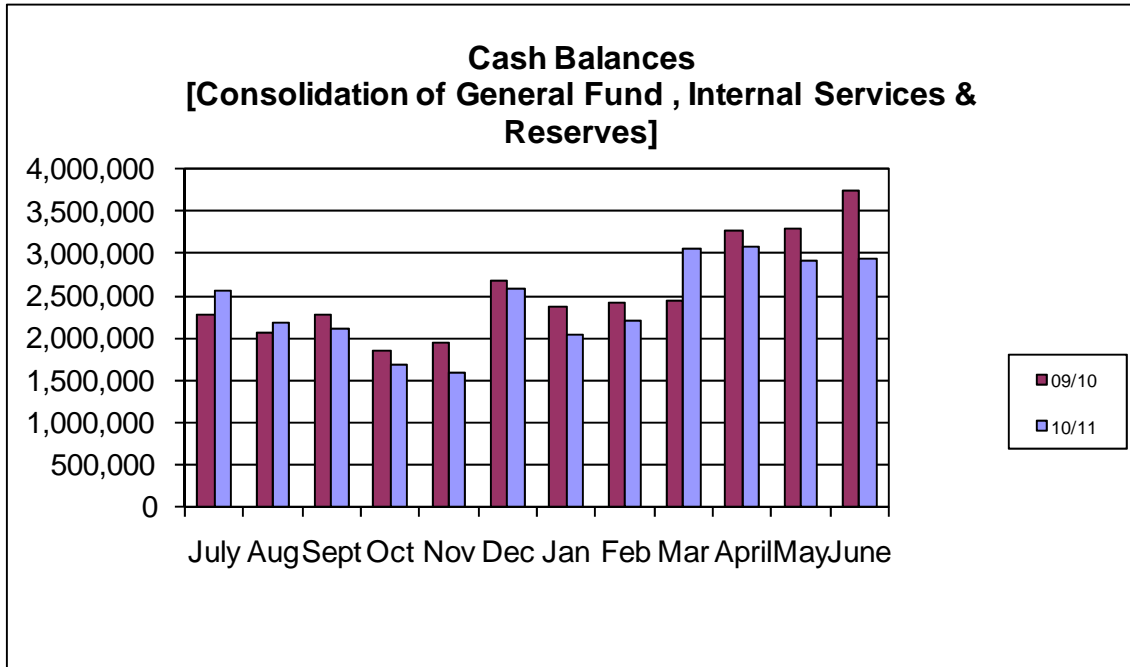
¹ A/R-Intergovernmental is primarily for State Mandated Cost Reimbursements.

² A/R for Year-End is for prior year-end revenues with cash received in July or August 2010 of new fiscal year.

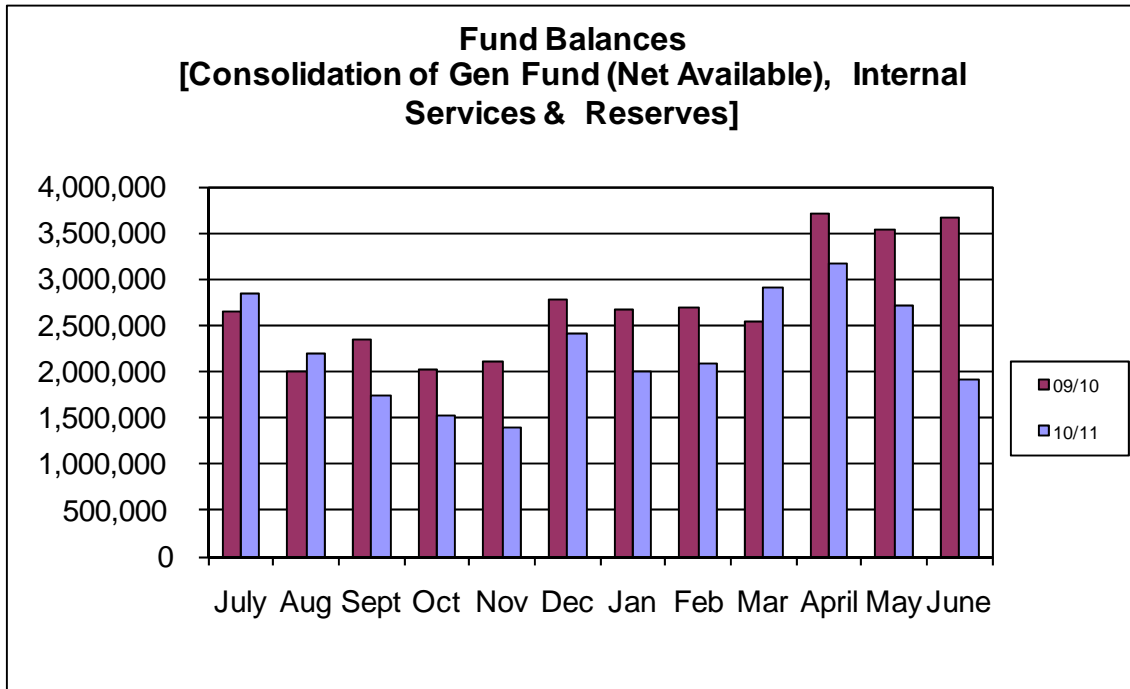
³ Fund Balance is segregated for the amounts related to the Rispin Mansion Note Payable to the City and amount available.

CASH BALANCE & FUND BALANCE

The following graphs compare the monthly Cash and Fund Balance totals in the consolidated General Fund, Internal Service Funds, and Reserves for FY 09/10 and FY 10/11.



June 30, 2011 Total= \$2,935,500: Gen Fund= (\$198,900), Internal Service= \$1,489,000, Reserves= \$1,645,400



June 30, 2011 Total= \$1,902,800: Gen Fund= (\$683,600), Internal Service= \$1,428,000, Reserves= \$1,158,400

CHANGES IN TOTAL FUND BALANCE

This table presents the ending Fund Balances for the City's major fund types. (It excludes agency funds where the City acts merely as a third party custodian of an outside party's funds.)

	Beginning Fund Balance: 7/01/10	Incr/(Decr) July-May	Revenue	Expenditure	Interfund Transfers	Unaudited Fund Balance: 6/30/11
General Fund: Rispin	1,350,000	-		-	-	1,350,000
General Fund: Reserved	15,200	-		-	-	15,200
General Fund: Available	393,000	(441,400)	905,400	(1,540,600)	-	(683,600)
Designated Reserves:	-					-
Emergency Reserves @ 5%	627,100	(290,700)	312,300	(489,900)	-	158,800
Compensated Absences	116,900	(9,400)	0	(42,800)	-	64,700
Contingency Reserves @10%	1,247,200	-	0	(312,300)	-	934,900
	-					-
Capital Improv. Projects:	418,600	901,200	0	(253,400)	-	1,066,400
Open Space Purchase	300	-	0	0		300
Special Revenues:	-					-
Gas Tax	64,600	(133,500)	45,300	(22,500)	-	(46,100)
Law Enforcement Grants	1,100	4,700	3,600	(10,800)		(1,400)
PEG Cable TV Access	82,800	3,600	0	(4,700)	-	81,700
Capitola & Wharf BIA	7,500	(1,300)	300	(1,000)		5,500
Development Fees	(1,400)	-	3,400	0		2,000
Wharf Fund	38,100	13,700	0	(5,300)		46,500
Green Building	45,400	2,400	900	0		48,700
Parking Reserve Fund	78,700	90,500	22,900	(3,800)	-	188,300
Technology Fee Fund	3,900	6,500	900	0		11,300
CDBG-Grants (Reimburseme	34,000	(11,700)	0	(35,700)	-	(13,400)
CDBG - Program Income	(17,800)	2,400	0	0		(15,400)
CDBG - Prog Inc 07-08 RLF	5,200	(5,200)	0	0		-
HOME Program Re-Use	5,100	(1,000)	1,000	0	-	5,100
HOME Grant Fund	(7,500)	12,700	0	0		5,200
Affordable Housing Trust	367,800	(22,400)	0	(2,300)		343,100
Begin Grant Fund	60,000	-	0	0		60,000
Public Art Program	162,800	(25,300)	0	(3,000)		134,400
General Plan Maintenance	599,300	(261,300)	5,900	(41,200)	-	302,700
Debt Service:POB	468,100	(266,000)	50,800	0	-	252,900
Internal Services:	-					-
Equipment Replacement	282,500	25,000	25,000	(26,600)	-	305,900
Information Technology	141,400	12,800	28,800	(9,700)	-	173,300
Public Employee Retirement	520,400	(26,000)	164,200	(184,800)	-	473,800
Self-Insurance Liability	253,900	(3,600)	35,700	0		286,000
Stores	25,200	(11,700)	7,100	(6,400)	-	14,200
Worker's Compensation	174,900	(118,400)	118,300	0	-	174,800
	-					-
	-					-
TOTAL CITY	7,564,300	(553,400)	1,731,800	(2,996,800)	-	5,745,800

General Fund Balance: Fund Balance is segregated for: the amounts related to the Rispin Mansion Note Payable to the City, the amount reserved for disabled parking, and amount available. Because many revenues and expenditures are accrued back to June, this report is preliminary and won't be finalized until after the financial audit is complete.

General Fund Revenues: For the month ending June 30, 2011, total revenues were \$905,400 which included Sales Tax of \$604,600 (66%), Transient Occupancy Tax of \$88,900 (9%), and Parking Meter Revenue of \$70,300 (7%).

General Fund Expenditures: For the month ending June 30, 2011, total expenditures were \$1,540,600 which includes Staffing for (3.5) pay periods of \$964,800 (62%), Internal Service transfers of \$214,900 (13%), Contract Services of \$212,800 which includes \$23,400 in legal services, (13%), and Community Grants of \$68,800 (4%).

CDBG Grant Fund: This fund operates on a reimbursement basis. Therefore the balance will be negative as expenditures are incurred prior to reimbursement.

Internal Services: Internal Service Fund transactions consist of quarterly General Fund transfers and budgeted expenditures in the amount of \$214,900.

ATTACHMENT 2



Bill Lockyer
California State Treasurer

Pooled Money Investment Account

PMIA Average Monthly Effective Yields

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1977	5.770	5.660	5.660	5.650	5.760	5.850	5.930	6.050	6.090	6.090	6.610	6.730
1978	6.920	7.050	7.140	7.270	7.386	7.569	7.652	7.821	7.871	8.110	8.286	8.769
1979	8.777	8.904	8.820	9.082	9.046	9.224	9.202	9.528	9.259	9.814	10.223	10.218
1980	10.980	11.251	11.490	11.480	12.017	11.798	10.206	9.870	9.945	10.056	10.426	10.961
1981	10.987	11.686	11.130	11.475	12.179	11.442	12.346	12.844	12.059	12.397	11.887	11.484
1982	11.683	12.044	11.835	11.773	12.270	11.994	12.235	11.909	11.151	11.111	10.704	10.401
1983	10.251	9.887	9.688	9.868	9.527	9.600	9.879	10.076	10.202	10.182	10.164	10.227
1984	10.312	10.280	10.382	10.594	10.843	11.119	11.355	11.557	11.597	11.681	11.474	11.024
1985	10.579	10.289	10.118	10.025	10.180	9.743	9.656	9.417	9.572	9.482	9.488	9.371
1986	9.252	9.090	8.958	8.621	8.369	8.225	8.141	7.844	7.512	7.586	7.432	7.439
1987	7.365	7.157	7.205	7.044	7.294	7.289	7.464	7.562	7.712	7.825	8.121	8.071
1988	8.078	8.050	7.945	7.940	7.815	7.929	8.089	8.245	8.341	8.397	8.467	8.563
1989	8.698	8.770	8.870	8.992	9.227	9.204	9.056	8.833	8.801	8.771	8.685	8.645
1990	8.571	8.538	8.506	8.497	8.531	8.538	8.517	8.382	8.333	8.321	8.269	8.279
1991	8.164	8.002	7.775	7.666	7.374	7.169	7.098	7.072	6.859	6.719	6.591	6.318
1992	6.122	5.863	5.680	5.692	5.379	5.323	5.235	4.958	4.760	4.730	4.659	4.647
1993	4.678	4.649	4.624	4.605	4.427	4.554	4.438	4.472	4.430	4.380	4.365	4.384
1994	4.359	4.176	4.248	4.333	4.434	4.623	4.823	4.989	5.106	5.243	5.380	5.528
1995	5.612	5.779	5.934	5.960	6.008	5.997	5.972	5.910	5.832	5.784	5.805	5.748
1996	5.698	5.643	5.557	5.538	5.502	5.548	5.587	5.566	5.601	5.601	5.599	5.574
1997	5.583	5.575	5.580	5.612	5.634	5.667	5.679	5.690	5.707	5.705	5.715	5.744
1998	5.742	5.720	5.680	5.672	5.673	5.671	5.652	5.652	5.639	5.557	5.492	5.374
1999	5.265	5.210	5.136	5.119	5.086	5.095	5.178	5.225	5.274	5.391	5.484	5.639
2000	5.760	5.824	5.851	6.014	6.190	6.349	6.443	6.505	6.502	6.517	6.538	6.535
2001	6.372	6.169	5.976	5.760	5.328	4.958	4.635	4.502	4.288	3.785	3.526	3.261
2002	3.068	2.967	2.861	2.845	2.740	2.687	2.714	2.594	2.604	2.487	2.301	2.201
2003	2.103	1.945	1.904	1.858	1.769	1.697	1.653	1.632	1.635	1.596	1.572	1.545
2004	1.528	1.440	1.474	1.445	1.426	1.469	1.604	1.672	1.771	1.890	2.003	2.134
2005	2.264	2.368	2.542	2.724	2.856	2.967	3.083	3.179	3.324	3.458	3.636	3.808
2006	3.955	4.043	4.142	4.305	4.563	4.700	4.849	4.946	5.023	5.098	5.125	5.129
2007	5.156	5.181	5.214	5.222	5.248	5.250	5.255	5.253	5.231	5.137	4.962	4.801
2008	4.620	4.161	3.777	3.400	3.072	2.894	2.787	2.779	2.774	2.709	2.568	2.353
2009	2.046	1.869	1.822	1.607	1.530	1.377	1.035	0.925	0.750	0.646	0.611	0.569
2010	0.558	0.577	0.547	0.588	0.560	0.528	0.531	0.513	0.500	0.480	0.454	0.462
2011	0.538	0.512	0.500	0.588	0.413	0.448						



CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: CITY ATTORNEY

DATE: AUGUST 3, 2011

SUBJECT: CONSIDERATION OF AN ORDINANCE REPEALING CHAPTER 2.18 OF THE CAPITOLA MUNICIPAL CODE PERTAINING TO MOBILE HOME PARK RENT STABILIZATION

Recommended Action: Council discretion. Should the City Council determine the proposed ordinance necessary; then, by motion and roll call vote, adopt a first reading of the proposed Ordinance Repealing Chapter 2.18 of the Capitola Municipal Code pertaining to Mobile Home Park Rent Stabilization, and pass the ordinance to a second reading at its Regular Meeting on August 25, 2011.

BACKGROUND

On August 3, Castle Mobile Home Estates was purchased by the nonprofit Millennium Housing using a loan from the City's Redevelopment Agency. This purchase, coupled with the settlement agreement reached with the owner of Surf and Sand Mobile Home Park and the successful park tenant/park owner negotiations for a park-wide long term lease agreement for tenants at Cabrillo Mobile Home Park marks the end of nearly a decade of litigation between the City of Capitola and mobile home park owners regarding the City's rent control ordinance. That litigation threatened lower income residents living in privately owned parks and endangered the City's ability to provide essential services, such as police, roads, and other vitally important programs.

The City's rent stabilization ordinance was adopted in 1979 to protect lower-income park residents from unreasonable rent increases in the City's nine privately owned mobile home parks. With the nonprofit acquisition of Castle, all but three of those nine parks are now under direct resident control or are owned by a nonprofit. Of those three parks, one is owned by the City, and the other two have already or are expected to offer leases pursuant to the settlement agreement and the City's Rent Stabilization Ordinance, thereby exempting those parks from rent control. As a result, no tenants in the privately owned parks would be directly affected by the repeal of the Rent Stabilization Ordinance. Rents in Pacific Cove Mobile Home Park would remain set at the discretion of the City Council.

A group of tenants at Surf and Sand have filed a lawsuit against the City regarding that Ordinance implementing the settlement agreement, contending that the amended Rent Stabilization Ordinance should also benefit part time park residents and tenants who own other residential real property, and offer them the same protections as low income full time residents. The City, for legal reasons previously explained to these tenants, strongly disagrees with their interpretation of the state law. The first phase of the lawsuit is scheduled for trial on August 26, 2011. The City can expect to incur significant litigation defense costs in defending the lawsuit which will be payable out of the General Fund.

DISCUSSION

There is no requirement that a jurisdiction have rent control. Repealing the Mobile Home Park Rent Stabilization Ordinance at this time would in all likelihood have the effect of mooted the lawsuit, thereby minimizing future legal expenses.

If, prior to the second reading of the ordinance scheduled for August 25, the lawsuit is dropped, or if ordinance-qualifying leases have not been offered to tenants in all privately-owned parks, City Council may reconsider the proposed Ordinance at that time.

FISCAL IMPACT

Costs associated with proceeding with the Surf and Sand tenant's lawsuit are unknown at this time.

ATTACHMENTS

Draft Ordinance

Report Prepared By: John Barisone
City Attorney

**Reviewed and Forwarded
by City Manager: _____**

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA REPEALING CHAPTER 2.18 OF THE CAPITOLA MUNICIPAL CODE PERTAINING TO MOBILE HOME PARK RENT STABILIZATION

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

Section 1. Chapter 2.18 of the Capitola Municipal Code pertaining to Mobile Home Park Rent Stabilization is hereby repealed in its entirety.

Section 2. This ordinance shall take effect and be in full force thirty (30) days after its final adoption.

This ordinance was introduced on the 11th day of August, 2011, and was passed and adopted by the City Council of the City of Capitola on the ____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Dennis R. Norton, Mayor

ATTEST:

_____, MMC
Pamela Greeninger, City Clerk



CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

DATE: AUGUST 3, 2011

SUBJECT: JOINT PUBLIC HEARING TO CONSIDER ADOPTION OF AN URGENCY ORDINANCE AND NECESSARY RESOLUTIONS TO IMPLEMENT ABX1 27 - THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM ESTABLISHED AS PART OF STATE'S FY 2011-2012 BUDGET

Recommended Action: By motion and roll call vote, that the City Council/Redevelopment Agency Directors take the following actions:

CITY Actions:

1. Adopt the proposed Urgency Ordinance implementing ABX1 27 and Voluntary Alternative Redevelopment Program established as part of the State FY 2011-2012 budget, and authorize the City Manager to notify the Department of Finance, State Controller's Office and the Office of the County Auditor-Controller of the City's participation in the Voluntary Alternative Redevelopment Program (**requires a 4/5 vote of the City Council**); and
2. Adopt the proposed City Council Resolution Approving and Authorizing the City Manager to Execute an Agency Transfer Payment Agreement with the Redevelopment Agency; and
3. Adopt the proposed City Council Resolution to Approving and Authorizing the City Manager to execute a Loan and Repayment Agreement with the Redevelopment Agency of the City of Capitola to ensure that FY2011-2012 Agency housing programs are fully funded.

RDA Actions:

1. Adopt the proposed Agency Resolution Approving and Authorizing the Executive Director to execute the Agency Transfer Payment Agreement with the City of Capitola; and
 2. Adopt the proposed Agency Resolution reducing its deposit to the Low and Moderate Income Housing Fund for 2011-2012 Fiscal Year by \$150,000 and authorizing the Executive Director to transfer \$150,000 from the Housing Trust Fund for Housing Programs for FY2011-2012 and make certain findings and determinations; and
 3. Adopt the proposed Agency Resolution Approving and Authorizing the Executive Director to execute a Loan and Repayment Agreement with the City of Capitola to ensure that FY2011-2012 Agency housing programs are fully funded.
-

BACKGROUND

On January 11, 2011, Governor Brown released a proposed FY2011-2012 budget that included a proposal to abolish all California Redevelopment Agencies as of June 30, 2011. In the preceding months, the legislature, CRA and the California League of Cities worked to develop an alternative proposal. Two bills were ultimately passed and signed into law as part of the state's budget.

ABX1 26 immediately limits agencies' ability to operate and dissolves all California redevelopment agencies effective October 1, 2011. However, ABX1 27 allows California redevelopment agencies to avoid dissolution by having the City Council adopt an ordinance to participate in an alternative "voluntary" redevelopment program (Voluntary Program) requiring annual contributions to local schools and special districts. The State Legislature anticipates that if all California redevelopment agencies opted to join the Voluntary Program in 2011-12, statewide payments would total \$1.7 billion.

As of June 28, 2011, ABX1 26 froze all Agency activity except for actions required to carry out "enforceable obligations," such as payments required by contracts previously entered into (i.e. Millennium Castle Mobile Estates Loan Agreement) and reimbursement agreements for staffing. However, the Agency has not been able to make even minor changes in existing agreements. The legislation allows the Agency to return to normal operations upon enactment of an ordinance agreeing to the Voluntary Program.

If the City does not opt into the Voluntary Program, the Redevelopment Agency will be dissolved as of October 1, 2011, and all of its assets will be transferred to a "Successor Agency." The City may choose to be the Successor Agency, but its activities would be subject to approval by an Oversight Board composed of seven members appointed by: the County Board of Supervisors, the Superintendent of Education, the Chancellor of the California Community Colleges, and the City of Capitola (only 2 members). The City could also choose to carry out the housing obligations of the Agency, but any Housing Fund balances would go to the successor agency, and the City would receive no future tax increment revenue to use for housing. If the Agency is to dissolve, the City must decide whether or not to act as the successor agency by September 1.

With the Oversight Board composition, there is no guarantee the interests of a particular community would be reflected. In fact, the Board's primary purpose is quickly to dissolve an Agency and to dispose of its assets. The proceeds from the sale of assets, and the Agency fund balances, would be transferred to the County Auditor-Controller for disbursement to other taxing entities such as school and fire districts.

While ABX1 26 allows cooperation agreements and reimbursement agreements for staffing to remain in effect until October 1, 2011, after that date nearly all agreements between the City and the Agency will be considered invalid, unless the Agency enters into the Voluntary Program. The Oversight Board could direct that any agreements between the former Agency and other public agencies be terminated and even require that agreements with private parties be terminated after payment of any required compensation.

ABX1 26 declares that any transfer of assets from the redevelopment agency after January 1, 2011 is unauthorized, and grants the State Controller authority to order the City or any other public agency that received property from the Agency after January 1, 2011 to return the transferred funds or property back to the Successor Agency.

While ABX1 26 will result in the dissolution of the Agency, ABX1 27 allows the Agency to continue if an ordinance is adopted and payments as published by the State Department of Finance are paid each fiscal year. Technically, the Agency would pay the City who then in turn would pay the County Auditor-Controller, who would distribute the funds to taxing entities.

On July 18, CRA and the League of California Cities filed a petition with the California Supreme Court to overturn both ABX1 26 and ABX1 27 as unconstitutional. The Cities of San Jose and Union City joined the plaintiffs against the State of California. The outcome of the litigation is uncertain and may take months if not years to resolve.

If the City intends to continue its Agency it must adopt a resolution stating its intent to make the voluntary payments by October 1, 2011, and adopt an ordinance by November 1, 2011. However, the Agency will not be able to take any actions until it adopts such an ordinance.

DISCUSSION

The choice given to the City is to cease Agency operations and risk the loss of funding for important programs and financial transactions between the City and Agency or adopt an ordinance allowing participation in the Voluntary Program. Given these two options, staff recommends the City adopt an Ordinance to participate in the Voluntary Program. Without such an Ordinance, a number of negative effects would occur following October 1, 2011:

1. All assets would be transferred to the Successor Agency, approximately \$2.5 million¹ as of June 30, 2011. In addition, multi-year capital projects (i.e. Clares Road and Rispin Mansion) would be unfunded.
2. No affordable housing tax increment (~\$480,000 annually), assuming the City/Agency Cooperation Agreement is invalidated, would be available for housing programs and projects, including the newly developed Home Park Rental Assistance Program administered through the Housing Authority.
3. The State Controller would likely order the City to turn the Rispin property over to the Successor Agency, as ABX1 26 directs the Controller to reverse all transfers since January 1, 2011.
4. No new economic development, infrastructure or other projects could be initiated by the Agency.
5. Library payments to the County for the new library could be subject to challenge, however staff and legal review believe that this agreement is more likely to remain in effect.

While the Voluntary Program payments will impact the Agency's ability to fund new projects for the foreseeable future, any new property tax increment will continue to be directed towards Capitola projects and programs, and control will remain with the City Council rather than a new Oversight Board. In addition, the Agency's affordable housing funds will remain intact and available to fund local affordable housing activities. Adopting the Ordinance will allow the Agency's activities to continue during the coming court challenges and allow the timely implementation of already budgeted projects and activities.

The proposed Urgency Ordinance contains language that will suspend participation in the Voluntary Program if ABX1 26 and/or ABX1 27 are ruled unconstitutional.

Current estimates anticipate the Agency has the cash and ongoing revenues necessary to participate in the Voluntary Program and continue existing projects and programs, service debt, make required pass-thru payments and continue programs.

It should be noted there are also drawbacks to participation in the Voluntary Program. Specifically:

- If the Voluntary Program is found to be overly burdensome, the City Council may later rescind participation in the program; however the first year's Voluntary Payment would use a substantial amount of the Agency's cash reserves and limit the Agency's ability to repay the existing City loans.

¹ Total assets were \$3.3 million, with \$840,000 of RDA money contractually committed to Millennium Housing for the acquisition of Castle Mobile Home Estates.

- Based on cash flow projections, the City would never be fully repaid for the Agency debt. However, the final principal payments, coupled with the annual interest payments, would result in a total repayment of \$2.8 million² to the General Fund over the next 10-years for repayment of debt.
- It appears unlikely the Agency could fully fund the existing agreement with Macerich for Mall redevelopment, without further reducing the amount of funding the Agency ultimately transfers to the City General Fund for debt repayment. However, given the importance of the Mall to the economic viability of the City, the City may wish to consider funding public improvements necessary to facilitate Mall redevelopment through the CIP and General Fund in the future.
- In future years, the State could increase the financial payments due to the state, further impairing the Agency's ability to meet its obligations, most notably the debt payments due to the City.

Nevertheless, even factoring in these potential drawbacks, staff recommends the Council participate in the Voluntary Program to maintain control of the significant financial resources and assets described above, while also gaining some time to carefully tailor future redevelopment activities.

EMERGENCY ORDINANCE

The staff recommends that the Council adopt the attached ordinance as an emergency ordinance. The Agency cannot now enter into contracts for any purpose until an Ordinance is enacted. For instance, the City owns property located at 2000 & 2005 Wharf Road that was recently given to the City and through a cooperative agreement, the Agency committed to repairs. This building was declared by the Building Official to be unfit for human occupancy and requires extensive repairs. Adoption of the Ordinance as an emergency ordinance will allow the City to quickly resolve documented health and safety issues at the Rispin Mansion and will permit the Agency/City to continue these efforts immediately. Section 11 of the proposed ordinance presents the relevant findings in detail.

FISCAL IMPACT

The Agency provides funding for critical City infrastructure and programs that eliminate blight and preserve affordable housing; including the Clares Street improvements and Rispin Project both address blight. Absent the Agency's commitment of \$665,000 in funding for 2010-11, these projects would not be completed. Moreover, the Agency's annual funding and commitment to housing programs helps preserve and develop lower income housing throughout the City, helping the City meet its RHNA obligation.

Staff has prepared a preliminary estimate of the impacts associated with making the Voluntary Program payments. The payment for 2011-2012 is currently estimated to be \$798,547. Current calculations indicate the Agency has sufficient funds to enter into the Voluntary Program. If annual Voluntary Program payments remain at forecasted amounts, it is estimated the Agency could meet its current level of pass throughs, debt obligations, library trust fund payments, affordable housing programs and minimal operational expenditures.

In addition to approving the Urgency Ordinance, participation in the program also includes the approval of both an Agency and City agreement so that the Agency provides sufficient funds to make the annual remittance required under the Voluntary Program. If some reason, Agency funds are not available for the City to make the payment, the prevailing legal opinion is that Voluntary

² \$1.9 million of principal is owed to the City

Payment does not become an obligation of the General Fund, and if funds are not available for payment, the Agency is simply dissolved.

ABX1 27 provides that the agency can suspend or reduce 2011-2012 payments to the Redevelopment Housing Fund. As Attachment 7 shows, the Agency has insufficient funds to make the 2011-2012 payments unless it reduces its deposits into the Redevelopment Housing Fund. Staff proposes the Agency reduce payments to the Housing Fund in 2011-2012 and simultaneously offset this reduction with funding from the City's Housing Trust Fund. This would result in no reduction in the funding for housing programs for this and future years, but would provide the Agency the fund balance to maintain a positive fund balance and meet future debt obligation payments due in FY2013-14 and 2020-21. The proposed Resolution makes the necessary findings to reduce the 2011-2012 contribution to the LMHF. Agency and City Resolutions authorize and approve a loan from the Housing Trust Fund to maintain housing assistance program levels approved in the 2011-2012 budget.

The Agency's two debt obligations to the City provide interest payments of \$152,500 per fiscal year to the General Fund. Additionally, the City receives approximately \$275,000 per fiscal year in funding to administer the Agency and manage affordable housing programs and projects. Should the Agency elect to dissolve and the Cooperation Agreements are determined to be invalid, General Fund revenues would be reduced by \$427,500/yr. and no further payments would be made on the entire outstanding \$1.9 million dollars in loans due to the City. By electing to participate in the Voluntary Program, the City would receive the annual loan interest payments plus partial principal payments and fund library trust fund and affordable housing programs. The attached cash flow projected through the projected end date of the Agency is included as Attachment 7.

ATTACHMENTS

1. Draft Urgency Ordinance
2. City Resolution authorizing Agency Transfer Payment Agreement
3. City Resolution authorizing a Loan and Repayment Agreement
4. Agency Resolution authorizing Agency Transfer and Payment Agreement
5. Agency Resolution reducing its FY2011-2012 deposit to the Low and Moderate Income Housing Fund
6. Agency Resolution authorizing a Loan and Repayment Agreement
7. Loan and Repayment Agreement
8. Transfer and Payment Agreement
9. Projected Agency cash flow
10. Notification of Participation in Voluntary Program

Report Prepared By: Derek Johnson
Community Development Director/
Deputy Executive Director

Reviewed and Forwarded by
City Manager/Executive Director:

DRAFT

ORDINANCE NO. _____

**AN UNCODIFIED URGENCY ORDINANCE
OF THE CITY COUNCIL OF THE CITY OF CAPITOLA, CALIFORNIA,
DETERMINING IT WILL COMPLY WITH THE VOLUNTARY ALTERNATIVE
REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24
OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT
THE CONTINUED EXISTENCE AND OPERATION OF THE
REDEVELOPMENT AGENCY OF THE CITY OF CAPITOLA**

WHEREAS, the City Council of the City of Capitola (“City”) approved and adopted the Redevelopment Plan on June 24, 1982 Redevelopment Project (“Redevelopment Plan”) covering certain properties within the City (the “Project Area”); and

WHEREAS, the City adopted amendments to the Redevelopment Plan for the Capitola Redevelopment Project Area on February 14, 1985, January 1, 1995 and July 22, 2004; and

WHEREAS, the Redevelopment Agency of the City of Capitola (“Agency”) is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) (“CRL”); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with the private sector to create jobs and expand the local economy; and

WHEREAS, over the next few years, the Agency will implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, improve transportation safety and alleviate traffic congestion, stimulate and expand the Project Area’s economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, implement housing programs to preserve affordable housing; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature has recently enacted and the Governor has signed, companion bills AB 1X 26 and AB 1X 27, requiring that each redevelopment agency be dissolved unless the agency that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, specifically, AB 1X 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, because the City Council does not wish to immediately suspend activities of the Redevelopment Agency and wishes to continue to promote economic development and affordable housing, and to eliminate blight in the Project Area, the City Council has determined it is the public interest of the City of Capitola to take immediate action to participate in the SBX1 27 Alternative Voluntary Redevelopment Program; and

WHEREAS, the immediate suspension of the activities of the Redevelopment Agency under the provisions of SBX1 26 in the City of Capitola would result in the immediate suspension of the development of affordable housing and programs that maintain the City's stock of affordable housing and the immediate elimination of Agency programs which are assisting in the recovery of the City from the financial crisis and recession currently affecting the City and the State of California and thereby result in severe and unwarranted social and economic hardship to City residents, workers and businesses, the adverse effects of which will be disproportionately experienced by the most vulnerable of said City residents, workers and businesses; and

WHEREAS, AB 1X 27 provides that a agency may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, the Alternative Voluntary Redevelopment Program requires that the agency agree by ordinance to remit specified annual amounts to the county auditor-controller; and

WHEREAS, under the threat of dissolution pursuant to AB 1X 26, and upon the contingencies and reservations set forth herein, through the adoption and enactment of this Ordinance, it is the intent of the City Council to enact the ordinance described in Section 34193(a) of the CRL and to participate for itself and on behalf of the Agency in the Alternative Voluntary Redevelopment Program set forth in Part 1.9 of the CRL; and

WHEREAS, pursuant to Section 34193.2(b) of the CRL, the City Council understands that participation in the Alternative Voluntary Redevelopment Program requires remittance of certain payments as set forth in AB 1X 27 and also constitutes an agreement on the part of the City, in the event the City fails to make such remittance payments, to assign its rights to any payments owed by the Agency, including, but not limited to, payments from loan agreements, to the State of California; and

WHEREAS, the City reserves the right to appeal the California Director of Finance's determination of the amount of any community remittance, as provided in Health and Safety Code Section 34194; and

WHEREAS, City understands and believes that an action challenging the constitutionality of AB 1X 26 and AB 1X 27 will be filed on behalf of cities, counties and redevelopment agencies; and

WHEREAS, while the City currently intends to make these community remittances, they shall be made under protest and without prejudice to the City's right to recover such amounts and interest thereon, to the extent there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional; and

WHEREAS, the City reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27; and

WHEREAS, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of AB 1X 26 and AB 1X 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

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

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Participation in the Alternative Voluntary Redevelopment Program. In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the City Council hereby determines that the City shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.

Section 3. Payment Under Protest. Except as set forth in Section 4, below, the City Council hereby determines that the City shall make the community remittances set forth in Health and Safety Code Section 4194 *et seq.*

Section 4. Effect of Stay or Determination of Invalidity. City shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 1X 26 and AB 1X 27 or determines that AB 1X 26 and AB 1X 27 are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the City's right to recover such amount and interest thereon in the event that there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional. If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 5. Implementation. The City Council hereby authorizes and directs the City Manager to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Santa Cruz County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the City's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27 and to appeal the California Director of Finance's determination of the amount of any community remittance.

Section 6. Additional Understandings and Intent. It is the understanding and intent of the City Council that, once the Agency is again authorized to enter into agreements under the CRL, the City will enter into an agreement with the Agency as authorized pursuant to Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the City in amounts not to exceed the annual community remittance payments to enable the City, directly or indirectly, to make the annual remittance payments. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the remittance payments.

Section 7. CEQA. The City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Cruz in accordance with CEQA Guidelines.

Section 8. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings are based are located at the City Clerk's office located at 420 Capitola Ave. Capitola, Ca 95010. The custodian for these records is the City Clerk's Office.

Section 9. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 10. Certification; Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City Capitola, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code § 36933.

Section 11. Findings. The adoption of this Urgency Ordinance is necessary for the immediate protection of the public peace, health and safety. In accordance with California Government Code Section 36937 and in order to protect the public peace, health and safety, the City Council of the City of Capitola finds and determines as follows:

(a) AB 1X 26 prohibits agencies from taking numerous actions, until the City Council adopts an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code, including but not limited to incurring any new monetary or legal obligations or expanding any existing monetary or legal obligations, entering into agreements with any person for any purpose or amending or modifying any existing agreements and taking any action with respect to a redevelopment plan;

(b) Prior to the enactment of an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code, the Agency will be unable to continue efforts to eliminate and prevent blight (including remediation of buildings and structures which are unhealthy or unsafe to occupy or properties with hazardous waste), stimulate and expand the Project Area's economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure;

(c) The City Council adopted Resolution 3859 on March 10, 2011 declaring that emergency conditions exists as a result of a receipt of an order to abate a hazardous condition at the Rispin Mansion Property and an interruption of the work effort to abate the nuisance will interrupt the elimination of blight and cause a hazard to persist and adoption of this Urgency Ordinance will permit the Agency to continue these efforts immediately;

(d) Blighting conditions in the Project Area constitute substantial threats to public peace, health and safety, and are so prevalent they cannot be eliminated without Agency action, including but not limited to the use of Agency funds and authorization of redevelopment projects and programs;

(e) During the current economic crisis, the Agency must have the ability to act and continue the efforts set forth in (b) above. The Agency must have all tools available in order to eliminate and prevent blighting conditions, including implementation of the Agency's economic development programs;

(f) The Agency is actively engaged in efforts to rehabilitate housing units, to provide assistance for property improvements and to provide safe and affordable housing. Adoption of this Urgency Ordinance will permit the Agency to continue these efforts immediately.

Section 12. Effective Date. The City Council hereby declares, on the basis of the findings set forth above, that an emergency exists and that this Ordinance is necessary to preserve the public peace, health and safety. Accordingly, this Ordinance is adopted as an emergency ordinance and shall take effect and be in force immediately upon its adoption.

This ordinance was passed and adopted by the City Council of the City of Capitola on the 11th day of August, 2011, as an Urgency Ordinance to be effective immediately, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Dennis R. Norton, Mayor

ATTEST:

_____, MMC
Pamela Greeninger, City Clerk

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
APPROVING AND AUTHORIZING THE EXECUTION OF THE AGENCY
TRANSFER PAYMENT AGREEMENT WITH THE REDEVELOPMENT
AGENCY OF THE CITY OF CAPITOLA PURSUANT TO PART 1.9 OF THE
REDEVELOPMENT LAW**

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council (the "City Council") of the City of Capitola (the "City") adopted in accordance with the Redevelopment Law, Ordinance No. 533 on June 24, 1982 adopting the Redevelopment Plan For the Capitola Redevelopment Project (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Agency of the City of Capitola (the "Agency") is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law; and

WHEREAS, ABX1 27 (the "Voluntary Program Act") through the addition of Part 1.9 to the Redevelopment Law ("Part 1.9"), establishes a voluntary alternative redevelopment program whereby the Agency is authorized to continue to exist upon the enactment of an ordinance by the City to comply with Part 1.9, including payment of an annual remittance to the County-Auditor Controller (the "Continuation Ordinance"); and

WHEREAS, the City has enacted the Continuation Ordinance prior to consideration of this Resolution; and

WHEREAS, Section 34194.2 of the California Redevelopment Law authorizes the Agency to enter into an agreement with the City whereby the Agency agrees to transfer a portion of its tax increment to the City, in an amount equal to the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law to the County Auditor-Controller; and

WHEREAS, for reasons further set forth in the staff report accompanying this Resolution (the "Staff Report"), the City and the Agency desire to enter into an agreement, whereby the Agency will transfer to the City sufficient funds to make the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law, and the City will make the annual remittances to the County Auditor-Controller in satisfaction of the requirements under Chapter 3 of Part 1.9 of the Redevelopment Law (the "Agency Transfer Payment Agreement"); and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4) the approval of the Agency Transfer Payment Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program; and

WHEREAS, the City Council has reviewed and duly considered the Staff Report, documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program. The City Council therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Cruz in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the City Council hereby approves the Agency Transfer Payment Agreement and authorizes the City Manager or the City Manager's designee to execute on behalf of the Agency the Agency Transfer Payment Agreement, substantially in the form on file with the City Clerk and Agency Secretary and with such revisions thereto as may be approved by the City Attorney.

BE IT FURTHER RESOLVED, that the City Council authorizes the City Manager or the City Manager's designee to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Agency Transfer Payment Agreement on behalf of the City.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 11th day of August, 2011, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Dennis R. Norton, Mayor

ATTEST:

_____, MMC
Pamela Greeninger, City Clerk

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
APPROVING AND AUTHORIZING THE EXECUTION OF THE LOAN AND
REPAYMENT AGREEMENT WITH THE REDEVELOPMENT AGENCY OF THE
CITY OF CAPITOLA**

WHEREAS, the Community Redevelopment Law (Health & Safety Code Section 33000, et seq.; "Redevelopment Law") requires the Redevelopment Agency of the City of Capitola (the "Agency") to deposit a specified percentage of the taxes allocated to the Agency pursuant to Section 33670 of the Redevelopment Law ("Tax Increment") into its Low and Moderate Income Housing Fund ("Housing Fund") for use to increase, improve and preserve the community's supply of low and moderate income housing; and

WHEREAS, AB x1 27, through the addition of Part 1.9 to the Redevelopment Law ("Part 1.9"), established a voluntary alternative redevelopment program whereby the Agency is authorized to continue to exist upon the enactment of an ordinance by City of Capitola (the "City") to comply with Part 1.9, including payment of an annual remittance to the County Auditor-Controller ("Opt-In Ordinance"); and

WHEREAS, the City has enacted the Opt-In Ordinance on August 11, 2011; and

WHEREAS, Part 1.9 authorizes the Agency to enter into an agreement with the City whereby the Agency agrees to transfer a portion of its Tax Increment to the City in an amount not to exceed the amount of the City's annual remittance to the County Auditor-Controller ("Agency Transfer Payment Agreement"); and

WHEREAS, the Agency and the City entered into the Agency Transfer Payment Agreement on August 11, 2011; and

WHEREAS, Section 34194.3 of the Redevelopment Law exempts the Agency from making the full amount of the required deposit into the Housing Fund for the 2011-12 fiscal year, if the City complies with the provisions of Part 1.9, and if the Agency finds that there are insufficient other moneys to meet its debt and other obligations, current priority needs, or its obligations under the Agency Transfer Payment Agreement; and

WHEREAS, the staff report presented to the City Council and Agency Board on August 11, 2011 demonstrates that there are insufficient other moneys to meet the Agency's debt and other obligations, current priority needs and its obligations under the Agency Transfer Payment Agreement without reducing its Housing Fund deposit by One Hundred Fifty Thousand Dollars (\$150,000); and

WHEREAS, to ensure that the Housing Fund is able to meet its existing commitments for provision of affordable housing, the City is willing to loan the Housing Fund of the Agency the sum of One Hundred Fifty Thousand Dollars (\$150,000) from the City's Housing Trust Fund (the "City Housing Loan"); and

WHEREAS, the City and Agency desire to enter into a Loan and Repayment Agreement to memorialize the Agency's obligation to repay the City Housing Loan to the City; and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4) the approval of the Loan and Repayment Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the provision of financing for commitments already entered into for use of the Housing Fund; and

WHEREAS, the City Council has reviewed and duly considered the Staff Report, documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that the Loan and Repayment Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the provision of financing for commitments already entered into for use of the Housing Fund. The City Council therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Cruz in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the City Council hereby approves the Loan and Repayment Agreement and authorizes the City Manager or the City Manager's designee to execute on behalf of the City the Loan and Repayment Agreement, substantially in the form on file with the City Clerk and Agency Secretary and with such revisions thereto as may be approved by the City Attorney.

BE IT FURTHER RESOLVED, that the City Council authorizes the City Manager or the City Manager's designee to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Loan and Repayment Agreement on behalf of the City.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 11th day of August, 2011, by the following vote:

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

Dennis R. Norton, Mayor

ATTEST:

_____, MMC
Pamela Greeninger, City Clerk

AGENCY RESOLUTION NO. 2011-___

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF CAPITOLA
APPROVING AND AUTHORIZING THE EXECUTION OF THE AGENCY
TRANSFER PAYMENT AGREEMENT WITH THE CITY OF CAPITOLA
PURSUANT TO PART 1.9 OF THE REDEVELOPMENT LAW**

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the "Redevelopment Law"), the City Council (the "City Council") of the City of Capitola (the "City") adopted in accordance with the Redevelopment Law, Ordinance No. 522 on June 24, 1982 adopting the Redevelopment Plan For the Capitola Redevelopment Project (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Agency of the City of Capitola (the "Agency") is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law; and

WHEREAS, ABX1 27 (the "Voluntary Program Act") through the addition of Part 1.9 to the Redevelopment Law ("Part 1.9"), establishes a voluntary alternative redevelopment program whereby the Agency is authorized to continue to exist upon the enactment of an ordinance by the City to comply with Part 1.9, including payment of an annual remittance to the County-Auditor Controller (the "Continuation Ordinance"); and

WHEREAS, the City has enacted the Continuation Ordinance prior to consideration of this Resolution; and

WHEREAS, Section 34194.2 of the California Redevelopment Law authorizes the Agency to enter into an agreement with the City whereby the Agency agrees to transfer a portion of its tax increment to the City, in an amount equal to the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law to the County Auditor-Controller; and

WHEREAS, for reasons further set forth in the staff report accompanying this Resolution (the "Staff Report"), the City and the Agency desire to enter into an agreement, whereby the Agency will transfer to the City sufficient funds to make the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law, and the City will make the annual remittances to the County Auditor-Controller in satisfaction of the requirements under Chapter 3 of Part 1.9 of the Redevelopment Law (the "Agency Transfer Payment Agreement"); and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4) the approval of the Agency Transfer Payment Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program; and

WHEREAS, the Agency Board has reviewed and duly considered the Staff Report, documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the Agency Board finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the Agency Board finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program. The Agency Board therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Cruz in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the Agency Board hereby approves the Agency Transfer Payment Agreement and authorizes the Agency Executive Director or the Executive Director's designee to execute on behalf of the Agency the Agency Transfer Payment Agreement, substantially in the form on file with the City Clerk and Agency Secretary and with such revisions thereto as may be approved by the Agency Counsel.

BE IT FURTHER RESOLVED, that the Agency Board authorizes the Agency's Executive Director or the Executive Director's designee to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Agency Transfer Payment Agreement on behalf of the Agency.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the Board of Directors of the Redevelopment Agency of the City of Capitola at its regular meeting held on the 11th day of August, 2011, by the following vote:

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

Dennis R. Norton, Chairperson

ATTEST:

Pamela Greeninger, Secretary

DRAFT

AGENCY RESOLUTION NO. _____

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF CAPITOLA
REDUCING ITS DEPOSIT TO THE LOW AND MODERATE INCOME
HOUSING FUND FOR THE 2011-12 FISCAL YEAR AND
MAKING CERTAIN FINDINGS AND DETERMINATIONS**

WHEREAS, the Community Redevelopment Law (Health & Safety Code Section 33000, et seq.; "Redevelopment Law") requires the Redevelopment Agency of the City of Capitola ("Agency") to deposit a specified percentage of the taxes allocated to the Agency pursuant to Section 33670 of the Redevelopment Law ("Tax Increment") into its Low and Moderate Income Housing Fund ("Housing Fund") for use to increase, improve and preserve the community's supply of low and moderate income housing; and

WHEREAS, AB x1 27, through the addition of Part 1.9 to the Redevelopment Law ("Part 1.9"), establishes a voluntary alternative redevelopment program whereby the Agency is authorized to continue to exist upon the enactment of an ordinance by the City of Capitola ("City") to comply with Part 1.9, including payment of an annual remittance to the County Auditor-Controller ("Opt-In Ordinance"); and

WHEREAS, the City has enacted the Opt-In Ordinance on August 11, 2011; and

WHEREAS, Part 1.9 authorizes the Agency to enter into an agreement with the City whereby the Agency agrees to transfer a portion of its Tax Increment to the City in an amount not to exceed the amount of the City's annual remittance to the County Auditor-Controller ("Agency Transfer Payment Agreement"); and

WHEREAS, the Agency and the City entered into the Agency Transfer Payment Agreement on August 11, 2011; and

WHEREAS, Section 34194.3 of the Redevelopment Law exempts the Agency from making the full amount of the required deposit into the Housing Fund for the 2011-12 fiscal year, if the City complies with the provisions of Part 1.9, and if the Agency finds that there are insufficient other moneys to meet its debt and other obligations, current priority needs, or its obligations under the Agency Transfer Payment Agreement; and

WHEREAS, pursuant to Part 1.9, the State Director of Finance has notified the City that the City's remittance amount for the 2011-12 fiscal year is seven hundred and ninety eight thousand five hundred and forty seven dollars (\$798,547) ("Remittance Amount"), one-half of which is due on January 15, 2012 and one-half of which is due on May 15, 2012; and

WHEREAS the Agency has agreed to provide the City funds in an amount not to exceed the Remittance Amount pursuant to the Agency Transfer Payment Agreement; and

WHEREAS, the staff report presented with this Resolution ("Staff Report") sets forth the Agency's available fund balances; the anticipated available 2011-12 Tax Increment to the Agency; and the Agency's debt and other obligations, its current priority program needs, and its obligations under the Agency Transfer Payment Agreement to be paid from such fund balances and 2011-12 Tax Increment,

demonstrating that there are insufficient other moneys to meet the Agency's debt and other obligations, current priority needs and its obligations under the Agency Transfer Payment Agreement without reducing its Housing Fund deposit by one hundred and fifty thousand dollars (\$150,000) ("Housing Fund Reduction Amount"); and

WHEREAS, the Agency has reviewed and duly considered the Staff Report, documents, and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the Agency Board finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, based upon substantial evidence, the Agency hereby finds that there are insufficient other moneys to meet the Agency's debt and other obligations, current priority needs, and its obligations under the Agency Transfer Payment Agreement without reducing its Housing Fund deposit by the Housing Fund Reduction Amount.

BE IT FURTHER RESOLVED, the Agency hereby finds and determines that it is necessary to reduce its Housing Fund deposit by the Housing Fund Reduction Amount for the 2011-12 fiscal year to meet its debt and other obligations, its current priority program needs, and its obligations under the Agency Transfer Payment Agreement.

BE IT FURTHER RESOLVED, the Agency hereby authorizes the Agency Executive Director, or designee, to take such actions as are necessary and appropriate to carry out and implement the reduction of the Agency Housing Fund deposit by the Housing Fund Reduction Amount for the 2011-12 fiscal year.

BE IT FURTHER RESOLVED, the Agency hereby amends its 2011-2012 budget to reduce the deposit into the Housing Fund by the Housing Fund Reduction Amount.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the Board of Directors of the Redevelopment Agency of the City of Capitola at its regular meeting held on the 11th day of August, 2011, by the following vote:

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

Dennis R. Norton, Chairperson

ATTEST:

Pamela Greeninger, Secretary

AGENCY RESOLUTION NO. 2011-___

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF CAPITOLA
APPROVING AND AUTHORIZING THE EXECUTION OF THE LOAN AND
REPAYMENT AGREEMENT WITH THE CITY OF CAPITOLA**

WHEREAS, the Community Redevelopment Law (Health & Safety Code Section 33000, et seq.; "Redevelopment Law") requires the Redevelopment Agency of the City of Capitola (the "Agency") to deposit a specified percentage of the taxes allocated to the Agency pursuant to Section 33670 of the Redevelopment Law ("Tax Increment") into its Low and Moderate Income Housing Fund ("Housing Fund") for use to increase, improve and preserve the community's supply of low and moderate income housing; and

WHEREAS, AB x1 27, through the addition of Part 1.9 to the Redevelopment Law ("Part 1.9"), established a voluntary alternative redevelopment program whereby the Agency is authorized to continue to exist upon the enactment of an ordinance by City of Capitola (the "City") to comply with Part 1.9, including payment of an annual remittance to the County Auditor-Controller ("Opt-In Ordinance"); and

WHEREAS, the City has enacted the Opt-In Ordinance on August 11, 2011; and

WHEREAS, Part 1.9 authorizes the Agency to enter into an agreement with the City whereby the Agency agrees to transfer a portion of its Tax Increment to the City in an amount not to exceed the amount of the City's annual remittance to the County Auditor-Controller ("Agency Transfer Payment Agreement"); and

WHEREAS, the Agency and the City entered into the Agency Transfer Payment Agreement on August 11, 2011; and

WHEREAS, Section 34194.3 of the Redevelopment Law exempts the Agency from making the full amount of the required deposit into the Housing Fund for the 2011-12 fiscal year, if the City complies with the provisions of Part 1.9, and if the Agency finds that there are insufficient other moneys to meet its debt and other obligations, current priority needs, or its obligations under the Agency Transfer Payment Agreement; and

WHEREAS, the staff report presented to the City Council and Agency Board on August 11, 2011 demonstrates that there are insufficient other moneys to meet the Agency's debt and other obligations, current priority needs and its obligations under the Agency Transfer Payment Agreement without reducing its Housing Fund deposit by One Hundred Fifty Thousand Dollars (\$150,000); and

WHEREAS, to ensure that the Housing Fund is able to meet its existing commitments for provision of affordable housing, the City is willing to loan the Housing Fund of the Agency the sum of One Hundred Fifty Thousand Dollars (\$150,000) from the City's Housing Trust Fund (the "City Housing Loan"); and

WHEREAS, the City and Agency desire to enter into a Loan and Repayment Agreement to memorialize the Agency's obligation to repay the City Housing Loan to the City; and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4) the approval of the Loan and Repayment Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the provision of financing for commitments already entered into for use of the Housing Fund; and

WHEREAS, the Agency Board has reviewed and duly considered the Staff Report, documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the Agency Board finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the Agency Board finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that the Loan and Repayment Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the provision of financing for commitments already entered into for use of the Housing Fund. The Agency Board therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Cruz in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the Agency Board hereby approves the Loan and Repayment Agreement and authorizes the Agency Executive Director or the Executive Director's designee to execute on behalf of the Agency the Loan and Repayment Agreement, substantially in the form on file with the City Clerk and Agency Secretary and with such revisions thereto as may be approved by the Agency Counsel.

BE IT FURTHER RESOLVED, that the Agency Board authorizes the Agency's Executive Director or the Executive Director's designee to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Loan and Repayment Agreement on behalf of the Agency.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the Board of Directors of the Redevelopment Agency of the City of Capitola at its regular meeting held on the 11th day of August, 2011, by the following vote:

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

Dennis R. Norton, Chairperson

ATTEST:

Pamela Greeninger, Secretary

ATTACHMENT 7

LOAN AND REPAYMENT AGREEMENT (Loan of City Housing Trust Funds to Redevelopment Agency)

This Loan Agreement (the "Agreement") is entered into as of August 11, 2011, (the "Effective Date"), by and between the City of Capitola (the "City") and the Redevelopment Agency of the City of Capitola (the "Agency"), on the basis of the following facts, understandings, and intentions of the parties:

RECITALS

WHEREAS, the Community Redevelopment Law (Health & Safety Code Section 33000, *et seq.*; "Redevelopment Law") requires the Agency to deposit a specified percentage of the taxes allocated to the Agency pursuant to Section 33670 of the Redevelopment Law ("Tax Increment") into its Low and Moderate Income Housing Fund ("Housing Fund") for use to increase, improve and preserve the community's supply of low and moderate income housing; and

WHEREAS, AB x1 27, through the addition of Part 1.9 to the Redevelopment Law ("Part 1.9"), established a voluntary alternative redevelopment program whereby the Agency is authorized to continue to exist upon the enactment of an ordinance by City to comply with Part 1.9, including payment of an annual remittance to the County Auditor-Controller ("Opt-In Ordinance"); and

WHEREAS, the City has enacted the Opt-In Ordinance on August 11, 2011; and

WHEREAS, Part 1.9 authorizes the Agency to enter into an agreement with the City whereby the Agency agrees to transfer a portion of its Tax Increment to the City in an amount not to exceed the amount of the City's annual remittance to the County Auditor-Controller ("Agency Transfer Payment Agreement"); and

WHEREAS, the Agency and the City entered into the Agency Transfer Payment Agreement on August 11, 2011; and

WHEREAS, Section 34194.3 of the Redevelopment Law exempts the Agency from making the full amount of the required deposit into the Housing Fund for the 2011-12 fiscal year, if the City complies with the provisions of Part 1.9, and if the Agency finds that there are insufficient other moneys to meet its debt and other obligations, current priority needs, or its obligations under the Agency Transfer Payment Agreement; and

WHEREAS, the staff report presented to the City Council and Agency Board on August 11, 2011 demonstrated that there are insufficient other moneys to meet the Agency's debt and other obligations, current priority needs and its obligations under the Agency Transfer Payment Agreement without reducing its Housing Fund deposit by One Hundred Fifty Thousand Dollars (\$150,000); and

WHEREAS, to ensure that the Housing Fund is able to meet its existing commitments for provision of affordable housing, the City is willing to loan the Housing Fund the sum of One

Hundred Fifty Thousand Dollars (\$150,000) from the City's Housing Trust Fund (the "City Housing Loan"); and

WHEREAS, this Agreement is intended to memorialize the Agency's obligation to repay the City Housing Loan to the City.

NOW, THEREFORE, in consideration of the recitals hereof and the mutual promises and covenants set forth in this Agreement, the Parties agree as follows:

ARTICLE 1
LOAN PROVISIONS

Section 1.1 Loan. The City hereby agrees to loan to the Agency, and the Agency hereby agrees to repay to the City, the sum of One Hundred Fifty Thousand Dollars (\$150,000).

Section 1.2 Interest. The City Housing Loan shall bear ½ percent simple interest.

Section 1.3 Use of City Housing Loan. The City Housing Loan shall be used to meet obligations of the Housing Fund.

Section 1.4 Repayment; Subordination; Indebtedness of the Agency.

(a) On January 1, 2016, the Agency shall make a payment of One Hundred Thousand Dollars (\$100,000) to the Housing Trust Fund and a payment of Fifty Four Thousand and Forty Dollars (\$54,040) on January 1, 2017.

(b) Each repayment or reimbursement obligation of the Agency pursuant to this Agreement shall be repayable solely from tax increment funds, if any, generated within the Project Area. It is understood that if tax increment funds from the Project Area fail to yield sufficient revenue to pay the repayment or reimbursement obligations of the Agency under this Agreement, the Agency is under no obligation to make such repayment or reimbursement to the extent tax increment funds are insufficient.

(c) The obligation of the Agency to repay the City Housing Loan from the Housing Fund shall constitute an indebtedness of the Agency incurred in carrying out this Agreement and a pledge of tax increment revenue received by the Agency from the Project Area to repay such indebtedness under the provisions of Article XVI, Section 16 of the Constitution of the State of California, the Redevelopment Law, and the Plans, or under any applicable constitutional provision, statute, or other provision of law now existing or adopted in the future.

(d) It is agreed by the parties hereto that all repayments and reimbursements to the City pursuant to this Agreement are hereby subordinated to any and all payments necessary to satisfy existing debt of the Agency and to any and all payments necessary to satisfy the Agency's obligations in connection with any existing or future bonded indebtedness or obligation which may be incurred by the Agency for the benefit of the redevelopment program or to the extent necessary for any bonded indebtedness for which the Agency has pledged as a security or source of repayment tax increment generated within the Project Area.

Section 1.5 Due in Full. Notwithstanding Section 1.4, the Agency shall repay the entire outstanding principal of the City Housing Loan to the City by January 1, 2020.

Section 1.6 Right to Prepay. The Agency shall have the right to prepay the City Housing Loan to the City at any time without premium or penalty.

ARTICLE 2 GENERAL PROVISIONS

Section 2.1 No Third Party Beneficiaries. No person or entity other than the Agency, the Agency and their permitted successors and assigns, shall have any right of action under this Agreement.

Section 2.2 State Law. This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 2.3 Additional Acts. The parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other party for purposes of consummating the transaction contemplated in this Agreement.

Section 2.4 Litigation Regarding Agreement Validity. In the event litigation is initiated attacking the validity of this Agreement, each party shall in good faith defend and seek to uphold the Agreement.

Section 2.5 Validity of Agreement. If any provisions of this Agreement, or the application thereof to any person, party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby.

Section 2.6 Entire Agreement; Modification and Amendment. This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement cannot be amended or modified except by written agreement of the parties.

Section 2.7 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties to this Agreement, whether by agreement or operation of law, and including, without limitation, any successor to the Agency. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 2.8 Time Of The Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth in the opening paragraph of this Agreement.

CITY OF CAPITOLA

Benjamin Goldstein, City Manager

ATTEST:

_____, MMC
Pamela Greeninger, City Clerk

REDEVELOPMENT AGENCY OF THE CITY OF
CAPITOLA

Benjamin Goldstein, Executive Director

ATTEST:

Pamela Greeninger, Secretary

AGENCY TRANSFER PAYMENT AGREEMENT

This Agency Transfer Payment Agreement (the "Agreement"), is entered into as of the 11th day of August, 2011, by and between Redevelopment Agency of the City of Capitola a public body, corporate and politic (the "Agency") and the City of Capitola, a municipal corporation (the "City") with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council (the "City Council") of the City adopted Ordinance No. [REDACTED] on August 11, 2011, declaring the need for the Agency to function in the City.

B. Also in accordance with the Redevelopment Law, the City Council adopted Ordinance No. 522 on June 24, 1982 adopting the Redevelopment Plan for the Capitola Redevelopment Project (the "Redevelopment Plan"), and the Agency is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law.

C. ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"; and together with the Dissolution Act, the "Redevelopment Restructuring Acts") have been enacted to significantly modify the Redevelopment Law generally as follows:

1. The Dissolution Act immediately suspends all new redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies effective October 1, 2011; and

2. The Voluntary Program Act, through the addition of Part 1.9 to the Redevelopment Law (the "Alternative Voluntary Redevelopment Program"), allows a redevelopment agency to avoid dissolution under the Dissolution Act by opting into an alternative voluntary redevelopment program requiring specified annual contributions to local school and special districts.

D. Specifically, Section 34193(a) of the Redevelopment Law (as added to the Redevelopment Law by the Voluntary Program Act) authorizes the City Council to enact an ordinance to comply with Part 1.9 of the Redevelopment Law, thereby exempting the Agency from the provisions of the Dissolution Act, and enabling the Agency to continue to exist and function under the Redevelopment Law, so long as the City and the Agency comply with the Alternative Voluntary Redevelopment Program set forth in Part 1.9 of the Redevelopment Law.

E. Through the adoption and enactment of Ordinance No. [REDACTED] (the "Continuation Ordinance"), the City Council, pursuant to Section 34193(a) of the Redevelopment Law, has elected to participate for itself and on behalf of the Agency in the Alternative Voluntary Redevelopment Program set forth in Part 1.9 of the Redevelopment Law.

F. Pursuant to Sections 34193.2(b) and 34195(b) of the Redevelopment Law, the City Council understands that participation in the Alternative Voluntary Redevelopment Program requires remittance of certain payments as set forth in Chapter 3 of Part 1.9 of the Redevelopment Law, and also constitutes an agreement on the part of the City, in the event the City fails to make such remittance payments, to assign to the State of California its rights to any payments owed by the Agency, including, but not limited to, payments from loan agreements and this Agreement.

G. Pursuant to Section 34194.2 of the Redevelopment Law, the City and Agency have elected to enter into this Agreement, whereby the Agency agrees to transfer a portion of the Agency's tax increment to the City, in an amount equal to the annual remittance required under Chapter 3 of Part 1.9 of the Redevelopment Law, for purposes of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals.

H. Pursuant to Section 34194.1 of the Redevelopment Law, the City may use any available funds not otherwise obligated for other uses to make the remittances to the County Auditor-Controller required pursuant Chapter 3 of Part 1.9 of the Redevelopment Law.

I. The purpose of this Agreement is to provide for the transfer of tax increment and other funds from the Agency to the City in the amounts required to make each of the annual remittances mandated under Chapter 3 of Part 1.9 of the Redevelopment Law.

J. The obligations of the Agency under this Agreement constitute an indebtedness of the Agency with respect to the redevelopment project for the Plan within the meaning of Section 16 of Article XVI of the California Constitution.

K. The City Council does not intend, by execution of this Agreement, to waive any rights of appeal regarding the amount of any remittance payments established by the California Department of Finance, as provided in the Voluntary Program Act.

L. Under Title 14 of the California Code of Regulations, Section 15378(b)(4) this Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program.

NOW, THEREFORE, in consideration of the recitals hereof and the mutual promises and covenants set forth in this Agreement, the Agency and the City agree as follows:

ARTICLE 1. OBLIGATIONS OF THE PARTIES

1.1 General Purpose. To the extent required by law to maintain the existence and powers of the Agency under the Redevelopment Law, the City and the Agency hereby enter into this Agreement whereby the Agency agrees to transfer a portion of its tax increment to the City,

in an amount equal to the annual remittances required under Chapter 3 of Part 1.9 of the Redevelopment Law, for the purpose of financing activities within the redevelopment area that are related to accomplishing the Agency’s project goals for the Project Area.

1.2 Transfers to City. The Agency shall transfer to the City, in a timely manner, funds from sources described in Section 1.3, in an amount equal to the annual remittances required under Chapter 3 of Part 1.9 of the Redevelopment Law, as such may be adjusted (the “Agency Transfer Payments”).

1.3 Source of Agency Transfer Payments. Any combination of the following shall constitute eligible sources for the Agency Transfer Payments:

a. Any tax increment funds allocated to the Agency pursuant to Section 333670 of the Redevelopment Law net of existing debt service payments and existing third-party contractual obligations, and excluding: (1) amounts required to be allocated to the Low and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and 33334.6 of the Redevelopment Law; and (2) any funds on deposit in the Agency’s Low and Moderate Income Housing Fund;

b. Any other funds previously or subsequently made available to the City by the Agency, including any unencumbered funds previously pledged to the City by the Agency under an agreement for payment of public improvements and other redevelopment activities;

c. Notwithstanding anything to the contrary, for the 2011-2012 fiscal year alone, any portion of the amount of tax increment required to be allocated to the Low and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and 33334.6 of the Redevelopment Law for the 2011-2012 fiscal year, to the extent the Agency makes the finding that there are insufficient other funds to meet its debt and other obligations, current priority program needs, or its obligations to provide the Agency Transfer Payments under this Agreement.

1.4 Payment of Remittances by City. Subject to the receipt of sufficient Agency Transfer Payments pursuant to Section 1.2 above, the City shall remit to the County Auditor-Controller the payments required pursuant to Chapter 3 of Part 1.9 of the Redevelopment Law on or before the dates prescribed in Section 34194(d)(1). The City’s obligations to make the remittances required hereunder shall be a special limited obligation of the City payable solely from the Agency Transfer Payments provided to the City pursuant to the terms of this Agreement, and such remittances shall be made exclusively from the Agency Transfer Payments or from other funds that become available as a result of the City’s receipt of the Agency Transfer Payments. Nothing in this Agreement shall be deemed to be a pledge of the City’s general fund revenues or other assets for the purposes of funding the remittances required by Chapter 3 of Part 1.9 of the Redevelopment Law.

1.5 Subordination. The City shall consider in good faith any request by the Agency to subordinate the City’s interest herein and to allow the Agency to pledge all or any portion of the tax increment revenue on a senior pledge basis to secure payments due on future indebtedness pledged with tax increment.

ARTICLE 2.
GENERAL PROVISIONS

2.1 No Third Party Beneficiaries. No person or entity other than the Agency and the City and their permitted successors and assigns, shall have any right of action under this Agreement.

2.2 State Law. This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

2.3 Additional Acts. The parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other party for purposes of implementing the actions contemplated under this Agreement.

2.4 Litigation Regarding Agreement Validity. In the event litigation is initiated attacking the validity of this Agreement, each party shall in good faith defend and seek to uphold the Agreement.

2.5 Severability. If any provisions of this Agreement, or the application thereof to any person, party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby.

2.6 Entire Agreement; Modification and Amendment. This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement cannot be amended or modified except by written agreement of the parties.

2.7 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties to this Agreement, whether by agreement or operation of law, and including, without limitation, any successor to the Agency. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

2.8 Time of the Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth in the opening paragraph of this Agreement.

REDEVELOPMENT AGENCY OF THE
CITY OF CAPITOLA

By: _____
Benjamin Goldstein
Executive Director

APPROVED AS TO FORM:

Agency Counsel

ATTEST: _____
Agency Secretary

CITY OF CAPITOLA

By: _____
Benjamin Goldstein
City Manager

APPROVED AS TO FORM:

City Attorney

ATTEST:
_____, MMC
Pamela Greeninger, City Clerk

												RDA reaches CAP	
RDA OPERATING FUND 5500	2010-11 Estimate	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	Total 2010-11 thru 2020-21	
Estimated beginning cash	\$ 2,794,200	\$ 2,107,034	\$ 901,387	\$ 946,346	\$ 79,319	\$ 219,960	\$ 357,237	\$ 458,373	\$ 224,681	\$ 700,389	\$ 1,183,090	\$ 2,794,200	\$ 2,794,200
Tax Increment	2,383,900	2,400,000	2,500,000	2,512,500	2,525,100	2,537,700	2,550,400	2,563,200	2,576,000	2,588,900	2,169,969	27,307,669	27,307,669
Tax Inc - New Area	-	-	-	-	-	-	-	-	-	-	-	-	-
LAIF interest	-	10,000	10,000	13,216	8,051	8,933	9,795	10,440	9,076	11,969	13,608	105,088	105,088
Total Sources	\$ 5,178,100	\$ 4,517,034	\$ 3,411,387	\$ 3,472,062	\$ 2,612,470	\$ 2,766,593	\$ 2,917,432	\$ 3,032,013	\$ 2,809,757	\$ 3,301,258	\$ 3,366,667	\$ 30,206,957	\$ 30,206,957
Expenditures													
Required pass thrus													
Housing Set Aside @ 20%	476,785	340,000	480,000	502,500	505,000	507,500	510,100	512,600	515,200	517,800	434,000	5,301,485	5,301,485
Additional Low/Mod contributions	-	-	60,000	40,000	30,000	-	-	-	-	-	-	130,000	130,000
Cooperative Agreement	201,090	200,000	220,980	228,000	229,125	230,220	231,375	232,485	233,625	234,765	197,590	2,439,255	2,439,255
Santa Cruz County	555,208	560,000	582,500	584,900	587,800	590,800	593,700	596,700	599,700	602,700	505,200	6,359,208	6,359,208
Central Fire Protection District	326,357	336,000	350,000	309,600	311,400	313,100	314,800	316,600	318,300	320,100	262,900	3,479,157	3,479,157
Library District AB8	64,604	62,800	65,400	68,100	68,400	68,800	69,100	69,500	69,800	70,200	58,800	735,504	735,504
Special Districts AB8	28,369	27,700	28,900	29,900	30,000	30,200	30,300	30,500	30,700	30,800	25,800	323,169	323,169
	1,652,413	1,526,500	1,787,780	1,763,000	1,761,725	1,740,620	1,749,375	1,758,385	1,767,325	1,776,365	1,484,290	18,767,778	18,767,778
Santa Cruz County Prop Tax Admin Fee	34,100	35,000	35,000	39,400	39,600	39,800	40,000	40,200	40,400	40,600	34,100	418,200	418,200
ERAF/SERAF/Continuation Pmts	144,752	798,547	189,398	190,000	190,000	190,000	190,000	190,000	190,000	190,000	190,000	2,652,697	2,652,697
Total Pass Thrus	1,831,265	2,360,047	2,012,178	1,992,400	1,991,325	1,970,420	1,979,375	1,988,585	1,997,725	2,006,965	1,708,390	21,838,675	21,838,675
Coop. Agreement Reimbursement	(133,400)	(130,000)	(143,637)	(148,200)	(148,931)	(149,643)	(150,394)	(151,115)	(151,856)	(152,597)	(128,434)	(1,588,207)	(1,588,207)
Net Pass Thrus	\$ 1,697,865	\$ 2,230,047	\$ 1,868,541	\$ 1,844,200	\$ 1,842,394	\$ 1,820,777	\$ 1,828,981	\$ 1,837,470	\$ 1,845,869	\$ 1,854,368	\$ 1,579,957	\$ 20,250,468	\$ 20,250,468
Staffing: RDA Board	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	44,000	44,000
Professional Services													
Audit	12,000	5,000	6,200	6,200	6,500	6,500	7,000	7,000	7,000	7,000	7,300	78,000	78,000
Attorney	10,000	20,000	20,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	130,000	130,000
General Professional (+supplies)	125,000	95,700	89,200	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	789,900	789,900
Construction services	100,255	10,400	10,400	-	-	-	-	-	-	-	-	121,055	121,055
Rispin Site Planning	25,000	125,000	-	-	-	-	-	-	-	-	-	150,000	150,000
Macerich	-	-	-	-	-	-	-	-	-	-	-	-	-
Library Planning	50,000	100,000	-	-	-	-	-	-	-	-	-	150,000	150,000
	\$ 322,255	\$ 356,100	\$ 125,800	\$ 76,200	\$ 76,500	\$ 76,500	\$ 77,000	\$ 77,000	\$ 77,000	\$ 77,300	\$ 77,300	\$ 1,418,955	\$ 1,418,955
Debt - Principal & Interest pmts													
\$1,350,000 City Loan (Rispin purch)	104,625	104,600	104,600	104,600	104,600	104,600	104,600	104,600	104,600	104,600	88,910	1,134,935	1,134,935
Principal - \$1,350,000											1,350,000	1,350,000	1,350,000
\$1,000,000 Chase NYC TAN Loan	47,500	47,500	47,500	1,035,600								1,178,100	1,178,100
\$618,028 City Loan (Bus. Service)	47,895	47,900	47,900	47,900	47,900	47,900	47,900	47,900	47,900	47,900	40,715	519,710	519,710
Principal - \$618,028											618,028	618,028	618,028
City Short Term Operating Loan	-	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	-	270,000	270,000
\$2,640,000 Library Trust	162,900	179,500	211,700	250,243	287,116	325,579	366,577	706,362				2,489,977	2,489,977
Library Distr Yrs 1-20 pass thru	45,910	45,900										91,810	91,810
Special District Yrs 1-20 pass thru	20,116	20,100										40,216	40,216
	\$ 428,946	\$ 475,500	\$ 441,700	\$ 1,468,343	\$ 469,616	\$ 508,079	\$ 549,077	\$ 888,862	\$ 182,500	\$ 182,500	\$ 2,097,653	\$ 7,692,776	\$ 7,692,776
Projects													
Other Redevelopment Projects	618,000	550,000	25,000	-	-	-	-	-	-	-	-	1,193,000	1,193,000
	\$ 618,000	\$ 550,000	\$ 25,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,193,000	\$ 1,193,000
Total Expenditures	\$ 3,071,066	\$ 3,615,647	\$ 2,465,041	\$ 3,392,743	\$ 2,392,510	\$ 2,409,356	\$ 2,459,058	\$ 2,807,332	\$ 2,109,369	\$ 2,118,168	\$ 3,758,910	\$ 30,599,199	\$ 30,599,199
Ending cash	\$ 2,107,034	\$ 901,387	\$ 946,346	\$ 79,319	\$ 219,960	\$ 357,237	\$ 458,373	\$ 224,681	\$ 700,389	\$ 1,183,090	\$ (392,242)	\$ (392,242)	\$ (392,242)
Project-to-date Gross Tax Increment	\$ 36,705,331	\$ 39,105,331	\$ 41,605,331	\$ 44,117,831	\$ 46,642,931	\$ 49,180,631	\$ 51,731,031	\$ 54,294,231	\$ 56,870,231	\$ 59,459,131	\$ 61,629,100		
LOW & MODERATE INCOME HOUSING FUND 5550													
Estimated beginning cash	\$ 915,200	\$ 967,735	\$ 2,035	\$ 2,935	\$ 6,335	\$ 2,235	\$ 30,935	\$ 133,195	\$ 291,995	\$ 453,395	\$ 617,395	\$ 915,200	\$ 915,200
Revenue - Housing Set Aside	476,785	340,000	480,000	502,500	505,000	507,500	510,100	512,600	515,200	517,800	434,000	5,301,485	5,301,485
Revenue - Loan from Housing Trust Fund	-	150,000	-	-	-	-	-	-	-	-	-	150,000	150,000
Revenue - Additional funds from RDA Operating	-	-	60,000	40,000	30,000	-	-	-	-	-	-	130,000	130,000
Total Sources	\$ 1,391,985	\$ 1,457,735	\$ 542,035	\$ 545,435	\$ 541,335	\$ 509,735	\$ 541,035	\$ 645,795	\$ 807,195	\$ 971,195	\$ 1,051,395	\$ 6,496,685	\$ 6,496,685
Expenditures													
Contract Services	230,050	221,500	151,500	151,500	151,500	151,500	151,500	151,500	151,500	151,500	151,500	1,815,050	1,815,050
Training and Supplies	-	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	23,000	23,000
Housing Trust Fund repayment (0.5% simple int)	-	-	-	-	-	-	100,000	54,040	-	-	-	154,040	154,040
Housing subsidies	145,000	391,900	385,300	385,300	385,300	225,000	200,000	200,000	200,000	200,000	200,000	2,917,800	2,917,800
Housing grants	49,200	840,000	-	-	-	-	-	-	-	-	-	889,200	889,200
Total Expenditures	\$ 424,250	\$ 1,455,700	\$ 539,100	\$ 539,100	\$ 539,100	\$ 478,800	\$ 407,840	\$ 353,800	\$ 353,800	\$ 353,800	\$ 353,800	\$ 5,799,090	\$ 5,799,090
Ending cash	\$ 967,735	\$ 2,035	\$ 2,935	\$ 6,335	\$ 2,235	\$ 30,935	\$ 133,195	\$ 291,995	\$ 453,395	\$ 617,395	\$ 697,595	\$ 697,595	\$ 697,595
Ending RDA cash - total	\$ 3,074,769	\$ 903,422	\$ 949,281	\$ 85,654	\$ 222,195	\$ 388,172	\$ 591,568	\$ 516,676	\$ 1,153,784	\$ 1,800,485	\$ 305,353	\$ 305,353	\$ 305,353



ATTACHMENT 10

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

August 12, 2011

Ana Matosantos, Director
Chris Hill
Department of Finance
915 L Street
Sacramento, CA 95814

John Chiang, Controller
Jones Kasonso
California State Controller's Office
P.O. Box 942850
Sacramento, CA 94250

Mary Jo Walker, Auditor -Controller
Office of the County Auditor-Controller
701 Ocean Street, Room 100
Santa Cruz , CA 95060

Subject: Notice of Enactment of a Continuation Ordinance by the City of Capitola pursuant to Health and Safety Code Section 34193(a) for the continuation of the Redevelopment Agency of the City of Capitola

To Whom It May Concern:

This communication serves as the formal notification that the City Council of the City of Capitola (the "City"), at a public meeting held on August 11 2011, acting under authority of Health and Safety Code Section 34193, enacted Ordinance No. [REDACTED] (the "Continuation Ordinance"), pursuant to which the City elected to participate in the Alternative Voluntary Redevelopment Program pursuant to Part 1.9 of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Community Redevelopment Law"). As a result of the City's adoption of the Continuation Ordinance, the Redevelopment Agency of the City Capitola will be exempt from Part 1.8 or Part 1.85 of the Community Redevelopment Law and shall be allowed to continue to operate.

This notice and the enclosed copy of Ordinance No. _____, An Uncodified Urgency Ordinance of the City Council of the City of Capitola, California, determining it will comply with the Voluntary Alternative Redevelopment Program pursuant to Part 1.9 of Division 24 of the California Health and Safety Code in Order to Permit the Continued Existence and Operation of the Redevelopment Agency of the City of Capitola, are being sent to you in satisfaction of the requirement of Health and Safety Code Section 34193.1.

August 12, 2011
Page 2

If you have questions regarding this notice or its contents, please contact Derek Johnson, the city's Community Development Director, at 831-475-7300.

Sincerely yours,

CITY OF CAPITOLA

Jamie Goldstein
City Manager

Enclosure

cc: Derek Johnson



CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: POLICE DEPARTMENT AND
DEPARTMENT OF PUBLIC WORKS

DATE: AUGUST 3, 2011

SUBJECT: PROPOSED AMENDMENTS TO MUNICIPAL CODE SECTIONS 12.52.010 AND
12.52.030 PERTAINING TO SKATEBOARDING REGULATIONS

Recommended Action: By motion and roll call vote, pass the proposed Ordinance to a second reading amending Sections 12.52.010 and 12.51.030 of the Capitola Municipal Code pertaining to Skateboarding Regulations.

BACKGROUND

On July 28, 2011 the City Council directed staff to amend the Capitola Municipal Code pertaining to skateboarding regulations to clarify the language regarding streets and areas where skateboarding is prohibited. In addition, staff was tasked to analyze additional streets that should be included in the prohibited areas, and to develop a sign plan for immediate implementation.

DISCUSSION

All streets and areas where skateboarding is currently prohibited in the code are included in this proposed amendment. In addition several new streets that have high pedestrian usage or hills leading to congested areas are also included. The added streets are: portions of Cliff Drive, Wharf Road, Monterey Avenue, Fanmar Avenue, San Jose Avenue, and Stockton Avenue. Lastly, the proposed amendment adds several new areas where skateboarding is prohibited, specifically: Lawn Way, Rispin Property, Peery Park, and the Wharf.

Staff is recommending placement of four different types of signs, which read:

- A. NO SKATEBOARDING BEYOND THIS POINT
- B. NO SKATEBOARDING ON HILL
- C. NO SKATEBOARDING
- D. NO SKATEBOARDING IN PARK

Pending approval, the signs will be installed as detailed on the attached map (Attachment 3).

FISCAL IMPACT

Cost and installation of the signs can be covered in the existing Public Works Streets materials and supply budget.

ATTACHMENTS

1. Draft Ordinance
2. Copy of existing Capitola Municipal Code Chapter 12.52 - Skateboarding Regulations
3. Map

Report Prepared By: Mike Card
Chief of Police

Steven Jesberg
Public Works Director

**Reviewed and Forwarded
By City Manager:** _____

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING SECTIONS 12.52.010 AND 12.52.030 OF THE CAPITOLA MUNICIPAL CODE
PERTAINING TO SKATEBOARDING REGULATIONS**

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

Section 1. Section 12.52.010 of the Capitola Municipal Code is amended to read as follows:

“12.52.010 Skateboarding Prohibited

Skateboarding is prohibited in the following areas:

- A. Street sections and pedestrian ways in and around Capitola Village described below. Street sections are defined as motor vehicle lanes, bike lanes, pedestrian walkways and crosswalks, driveway approaches, sidewalks, curbs and gutters.
 - 1. Cliff Drive from Stockton Avenue to Opal Cliff Drive
 - 2. Wharf Road from the Capitola Wharf to Capitola Road
 - 3. Stockton Avenue from Wharf Road to Capitola Avenue
 - 4. Esplanade, the entire length from Stockton Avenue to Monterey Avenue
 - 5. Monterey Avenue from Esplanade to Fanmar Avenue
 - 6. Monterey Avenue from Bay Avenue to Washburn Avenue
 - 7. San Jose Avenue from Esplanade to Cherry Way
 - 8. Capitola Avenue from Monterey Avenue to Fanmar Avenue
 - 9. Fanmar Avenue from Capitola Avenue to Terrace Way
 - 10. Lawn Way
- B. The Esplanade Park, including the Bandstand and restrooms
- C. The Pacific Cove Parking Lot and Pacific Cove Mobile Home Park
- D. Peery Park, Rispin Property, and the Rispin/Peery Pathway
- E. Capitola Wharf”

Section 2. Paragraph I is hereby added to Section 12.52.030 of the Capitola Municipal Code to read as follows:

- “I. Proceed with due care and at a safe speed when skateboarding.”

Section 3. This ordinance shall take effect and be in full force thirty (30) days after its final adoption.

This ordinance was introduced on the 11th day of August, 2011, and was passed and adopted by the City Council of the City of Capitola on the ____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Dennis R. Norton, Mayor

ATTEST:

Pamela Greeninger, City Clerk, MMC

Capitola Municipal Code							
Up	Previous	Next	Main	Collapse	Search	Print	No Frames
Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES							

Chapter 12.52 SKATEBOARDING REGULATIONS

12.52.010 Skateboarding—Esplanade/village.

In the Esplanade/Capitola Village area of the city, skateboarding is regulated and/or prohibited as follows:

- A. On sidewalks or curbs in an area bounded by the following: the ocean, Soquel Creek, the railroad tracks, the sidewalks on both sides of Monterey Avenue—prohibited;
- B. The Esplanade Park including restrooms—prohibited;
- C. The Pacific Cove parking lot, Pacific Cove Mobile Home Park, and pathways adjacent to these—prohibited;
- D. In the area bounded by and including the following: the sidewalks on both sides of the Esplanade; the sidewalks on Monterey Avenue to Capitola Avenue and on both sides of Monterey Avenue to the Union Pacific Railroad crossing; the sidewalk on both sides of Capitola Avenue to Stockton Avenue and both sides of Capitola Avenue to the Union Pacific Railroad Trestle; the sidewalks on Stockton Avenue to the Stockton Avenue bridge; and the sidewalk from the bridge to the sidewalk on the southerly side of the Esplanade—prohibited;
- E. The area bounded by and including the following: all sidewalks on the Esplanade; all sidewalks on Monterey Avenue south of the planter boxes located generally near the intersection of Capitola Avenue and Monterey Avenue—prohibited. (Ord. 864 § 2 (part), 2004)

12.52.020 Skateboarding—Other areas.

In areas of the city other than those referenced in Section 12.52.010, skateboarding is regulated or prohibited as follows: on any public or private property where one or more signs are conspicuously posted prohibiting such activity, skateboarding is prohibited. (Ord. 864 § 2 (part), 2004)

12.52.030 Roadway regulations.

Pursuant to Vehicle Code Section 21967, the following rules and regulations apply to riding or propelling of skateboards in roadways. Skateboarders must:

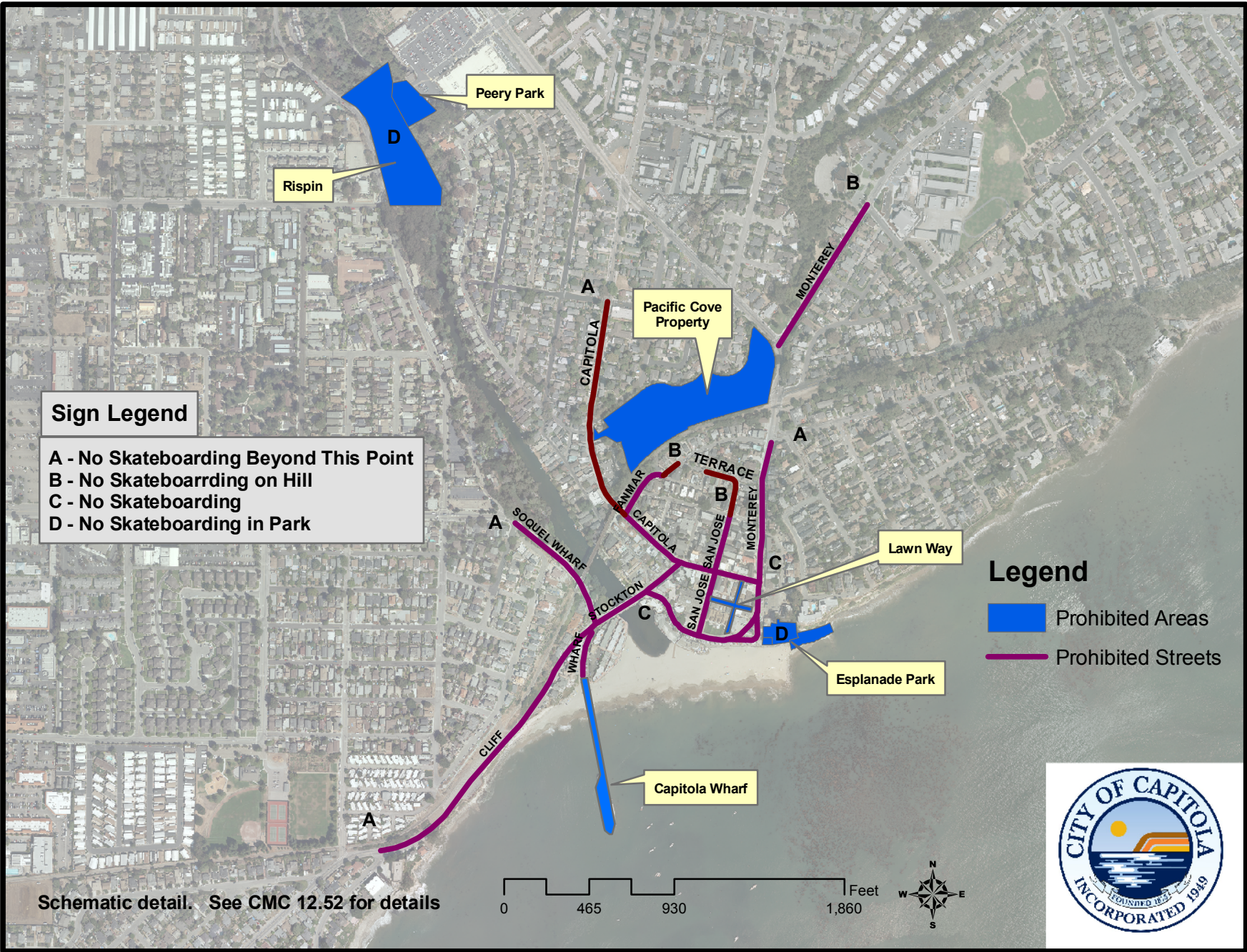
- A. Stop at all stop signs and red lights;
- B. Yield to all vehicles at yield signs;
- C. Yield to pedestrians at marked and unmarked crosswalks;
- D. Not impede traffic or interfere with the flow of vehicular traffic;
- E. Yield to approaching vehicles when entering any roadway;
- F. Not be towed by a motor vehicle of any speed or a bicycle at any unsafe speed;
- G. Yield bicycle lanes to bicycles and not use bicycle lanes in any way contrary to the free and open use of those lanes by bicyclists;
- H. Not suddenly leave a curb or other place of safety and travel into the path of a vehicle, which is so close as to constitute an immediate hazard. (Ord. 864 § 2 (part), 2004)

12.52.040 Sidewalk regulations.

When skateboarding on sidewalks in areas that are not prohibited by this chapter, persons riding or propelling skateboards shall:

- A. Yield to all other pedestrians;
- B. Proceed with due care and at a safe speed when skateboarding in the presence of pedestrians or on any sidewalk where there is a possibility of a pedestrian suddenly emerging onto the sidewalk from a business or a residence. (Ord. 864 § 2 (part), 2004)

Skateboarding Prohibition Areas and Streets





CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: CITY MANAGER'S OFFICE

DATE: AUGUST 2, 2011

SUBJECT: RESOLUTION AUTHORIZING CHARTER COMMUNICATIONS PROPERTIES, LLC, TO TRANSFER THE CABLE FRANCHISE AGREEMENT TO CCO SoCAL I, LLC

Recommended Action: That the City Council receive additional information and, by motion and roll call vote, adopt the proposed Resolution Authorizing the transfer of the Cable Franchise Agreement with Charter Communications Properties, LLC to CCO SoCal I, LLC, as submitted.

BACKGROUND

At the City Council's meeting held July 14, 2011, Council Member Storey asked that this item be continued to the August 11 meeting with additional information regarding the ability of the City to terminate the Franchise Agreement with Charter Communications.

DISCUSSION

Pursuant to Ordinance No. 816, as amended by Ordinance No. 850, which govern the cable television franchise in the City of Capitola, the City has the right to revoke the franchise under certain instances as described in **Ordinance No. 850, Article 9, Sections 901 and 902**. Specifically, Section 902.(a) "Prior to imposing any remedy or other sanction such as terminating the Franchise Agreement, the City must provide Charter notice and opportunity to be heard on the matter..." In summary, the City must find that Charter is in violation of the Franchise Agreement or Ordinance No. 816 (as amended by Ordinance No. 850), provide notice in writing of the violation and demand correction or commencement of correction within 30 days in most cases. If Charter fails to remedy the violation then the City must give notice at least 20 days in advance and hold a public hearing before the Council to consider the violation. If the City Council (or a sub-committee appointed by the Council) finds that a violation(s) exists and Charter has not corrected or began to correct the violation, the Council may impose a fine or assess liquidated damages or pursue revocation.

If Charter continues after the hearing by the Council to fail to correct a violation or commence correction, then Ordinance No. 850, Article 9, Section 901 Grantor's Power to Revoke Franchise will be applicable. This Section defines the circumstances by which the City may then proceed to revoke the franchise agreement (attachment 2). Those circumstances include but are not limited to; defaults in the performance of its material obligations under the Ordinance or Franchise Agreement and continuing to default after notice and opportunity to cure; failure to maintain insurance coverage or Security Fund; violating any order or ruling of any regulatory body having jurisdiction over Charter; fraud or deceit; failure of 3 or more times within 12 month period to remedy defaults for which lesser penalties have been imposed or Charter becomes insolvent or bankrupt.

FISCAL IMPACT

No fiscal impact to receive information.

ATTACHMENTS

1. Draft Resolution
2. Franchise Agreement
3. Ordinance No. 850
4. Ordinance No. 816
5. July 14, 2011 Agenda Report and Attachments

Report Prepared By: Lisa G. Murphy
Administrative Services Director

**Reviewed and Forwarded
By City Manager:** _____

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
CONSENTING TO AND APPROVING OF THE ASSIGNMENT OF
THE CABLE FRANCHISE AND SYSTEM TO CCO SOCIAL I, LLC**

WHEREAS, Charter Communications Properties, LLC d/b/a Charter Communications (“CCP”) currently holds a local cable franchise granted by the City of Capitola, California to own and operate a cable system in the Community (as amended to date, the “Franchise”); and

WHEREAS, on June 1, 2011, Grantee entered into an Asset Contribution Agreement (the “Agreement”) whereby Grantee will contribute certain cable system assets, including the Franchise, to CCO SoCal I, LLC (“CCO SoCal I”); and

WHEREAS, following the transactions contemplated by the Agreement, 100% of the equity interests in CCO SoCal I will be distributed to its indirect parent company, Charter Communications Operating, LLC, via a series of internal transactions (together with the contribution of the Franchise and certain cable system assets to CCO SoCal I, the “Transfer”); and

WHEREAS, CCP and CCO SoCal I have filed an FCC Form 394 with the City of Capitola, and have provided all information required by applicable law related to the Transfer to the Community (collectively, the “Application”); and

WHEREAS, the City of Capitola has reviewed the Application and has determined that CCO SoCal I meets the legal, technical, and financial criteria to operate the cable system under the Franchise and all applicable local, state and federal laws.

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

1. The City of Capitola consents to the Transfer to the extent required by the terms of the Franchise.
2. The City of Capitola confirms that (a) the Franchise is valid and outstanding and in full force and effect; (b) Grantee is in compliance with the provisions of the Franchise; (c) there are no defaults under the Franchise, or events which, with the giving of notice or passage of time or both, could constitute events of default thereunder; and (d) effective upon the transfer of the Franchise to CCO SoCal I, CCO SoCal I will be entitled to all rights and privileges granted by the City of Capitola pursuant to the Franchise.
3. The City of Capitola further authorizes CCO SoCal I to assign or transfer its assets, including the Franchise, to a parent or affiliate of CCO SoCal I and to assign or pledge, or otherwise grant or convey one or more liens or security interests in, its assets, including its rights, obligations and benefits in and to the Franchise and the cable system, to any lender providing financing to CCO SoCal I, in each case without the consent of the City of Capitola.
4. The City of Capitola releases CCP, effective upon the transfer of the Franchise and related cable system assets to CCO SoCal I from all obligations and liabilities under the Franchise that accrue on and after such date; provided that CCO SoCal I shall assume and be responsible for any obligations and liabilities under the Franchise that accrue on and after such date.

5. This Resolution shall have the force of a continuing agreement with the City of Capitola, CCP and CCO SoCal I, and the City of Cpitola shall not amend or otherwise alter this Resolution without the written consent of CCP and CCO SoCal I.
6. This Resolution shall take effect upon its passage.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 11th day of August, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dennis R. Norton, Mayor

ATTEST:

_____, MMC
Pamela Greeninger, City Clerk

FRANCHISE AGREEMENT BETWEEN CHARTER COMMUNICATIONS
PROPERTIES LLC AND THE CITY OF CAPITOLA

RECITALS

This Agreement, made and entered into this 28th day of March, 2001 at Capitola, California, by and between the City of Capitola, a duly authorized municipal corporation of the State of California ("City" or "Grantor"), and Charter Communications Properties, LLC, ("Charter" or "Grantee") d/b/a Charter Communications, owned by Paul G. Allen.

1. Charter has operated and continues to operate a Cable System in the City pursuant to a Franchise granted by City Ordinance No. 590, dated May 23, 1985.
2. On August 10, 2000, the City Council adopted Ordinance No. 816, entitled "The Capitola Municipal Code Governing Cable Television Franchises" and herein referenced as the "Ordinance." Ordinance No. 816 is applicable to all Cable Television Franchises granted or renewed subsequent to August 10, 2000.
3. Charter has requested that its Franchise be renewed by the City.
4. The City Council has determined that the public interest would be served by a renewal of the Franchise with Charter.

AGREEMENT

NOW, THEREFORE, the City and Charter do hereby agree as follows,

SECTION I: TERMS AND SCOPE OF AGREEMENT

1. Scope of Franchise. Grantee is authorized and obligated to construct, reconstruct and operate a Cable System within the public streets and rights-of-way within the City's boundaries. The authority granted herein shall include the privilege to use the Grantee's Cable System in the City for the provision of Cable Service and other lawful services to customers in the City located in residential dwelling units, hotels, motels, and commercial, industrial and governmental structures.
2. Definitions and Interpretation. All capitalized terms used in this Agreement shall have the meaning set forth in Section 101 of Ordinance No. 816, adopted by the City Council on August 10, 2000.
3. Franchise and Service Area. The Franchise and Service Areas are the entire area of the City. Grantee shall offer the standard installation and services to all residents in the City.

4. Effective Date. The Effective Date as defined in Section 101(o) of the Ordinance shall be March 9, 2001, contingent upon the prior approval of the Agreement by the City Council and the filing by Charter with the City Clerk of an original of the executed Franchise Agreement and the required Security Fund and insurance certificates by no later than April 15th, 2001. If the filing of all of the above does not occur by April 15th, 2001, the City may declare the renewal null and void.

5. Term.

A. The term of the Franchise renewal shall be ten (10) years from the Effective Date hereof at which time the Franchise shall expire and shall be of no force and effect. Renewal shall be in accordance with Section 205 of the Ordinance and applicable law.

B. If Grantee offers high-speed "cable modem" Internet access service to all residents of the City by not later than April 11, 2001, the term shall be extended by an additional three (3) years for a total term of thirteen (13) years.

6. Grant of Rights.

A. By awarding this Franchise to Grantee, Grantor grants to Grantee a non-exclusive franchise to operate a Cable System within the Franchise Area. Grantee obligates itself to construct, reconstruct and operate a Cable System within the Franchise Area.

B. If Grantor grants one or more additional Cable System Franchises, Grantor shall endeavor to make the terms and conditions of such grants competitively neutral and nondiscriminatory, when compared in their entirety (i.e., not on an individual item basis) to Grantee's Franchise.

7. Regulation of Rates. The City reserves the right to regulate rates for cable installation, disconnection, equipment and service to the full extent allowable by law.

8. Discounts. Grantee shall provide not less than a ten percent (10%) discount to monthly charges for Basic Service to senior citizens, and the handicapped, with gross annual household income below the threshold established for Supplemental Security Income (SSI) eligibility, as adjusted for inflation, including any necessary remote control device. Grantee may require subscribers to provide proof of eligibility. Senior citizens shall include those heads of household who are sixty-five (65) years or older.

9. Reservation of Rights. In approving this renewal, unless preempted by federal or state law, the City reserves any rights it may have to impose conditions regarding non-discriminatory access to Grantee's cable modem platforms by third parties for the delivery of Internet access services (commonly called open access), and City's approval of the renewal shall not be

deemed to have waived any such rights it may have to impose such conditions at a later date, regardless of whether a transfer or renewal is pending. Grantee likewise does not waive any rights it may have under federal or state law with respect to the regulation of telecommunications services or other services provided over the facilities of Grantee's Cable System. Prior to the enactment or enforcement of any such requirement, Grantee shall be provided with reasonable notice, an opportunity to be heard, and an opportunity to provide evidence on any findings made or required to be made with respect to such a requirement.

10. Franchise Fee.

A. The Grantee shall pay to the Grantor an annual Franchise Fee of five percent (5%), or the maximum permitted by law or regulation should this percentage be increased, of Gross Annual Revenues, received by the Grantee and derived from the operations of the Cable System in the City of Capitola to provide Cable Service.

B. If the Grantee provides non-video Telecommunications Services to Subscribers (such as telephone communications) through the facilities of the Cable System, and the Grantor has the regulatory authority to collect either a Franchise Fee or an in-lieu-of-Franchise-Fee payment on such services, then the Grantee shall pay a fee for revenues derived by the Grantee from such services at the rate established in the Ordinance adopted by the Council and applied in a non-discriminatory manner to all providers of such services franchised by Grantor to the extent allowable by law.

C. For the purposes of this Agreement, revenues derived from the provision of Internet access services by Grantee shall be included in Gross Annual Revenues until such time as said services are determined not to be Cable Services, by federal or state law, or a final determination by the Federal Communications Commission, or by a court with jurisdiction over both the Grantor and the Grantee.

D. For the purposes of this Agreement, revenues collected from Subscribers for the payment of Franchise Fees, and for the Public, Educational and Governmental capital provisions of Section III.3(A), shall be included in the calculation of Gross Annual Revenues, and may be recovered from subscribers pursuant to provisions of federal law.

E. In the event that the Grantee shall, during the term of the Franchise, bundle, tie or combine Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) and provide the bundled, tied or combined service at a discount from the sum of the rates for the individual services, then the discount shall be apportioned to the Cable Service in proportion to the ratio of the total bundled Cable Service and non-Cable Service price to the total unbundled Cable Service and non-Cable Service price.

F. The fee shall be payable quarterly, by no later than the first day of the second month following the end of each calendar quarter for which payment is due.

G. Grantor and Grantee expressly agree and acknowledge that the monies paid to the Grantor, or its designee, or any nonprofit corporation established by the Grantor, or expended to fund and facilitate the improvements, maintenance, studio, personnel, supplies, rent and equipment provided to the Grantor (or its designee) pursuant to this Franchise Agreement for Public, Educational, and Governmental Access programming support, and are not "Franchise Fees" within the meaning of Section 622 of the Cable Act and are thus not to be offset or offsettable against Franchise Fees or license fees due to the Grantor under this Franchise.

11. Itemization and Recovery of Expenses. Grantee shall not pass-through to Subscribers, by way of line itemization, surcharge or addition to an otherwise permissible rate, or charge to Grantor, any amounts relating to any provision of this Franchise unless expressly authorized by applicable law. Any authorized recovery of PEG Access support costs shall be allocated and amortized over the entire remaining Franchise term unless specified otherwise in this Franchise.

Grantee agrees not to itemize PEG Access support costs separately on Subscriber bills unless such costs are itemized on Subscriber bills in other Cable Systems owned or operated by Grantee, or an affiliate of Grantee, in Santa Cruz County.

12. Hold Harmless. Grantee shall indemnify, defend and hold Grantor, its officers, elected officials, agents and employees harmless from any liability, claims, damages, costs or expenses, including reasonable attorney's fees, arising from injury to persons or damages to property to the extent caused by any conduct undertaken by the Grantee, its officers, agents or employees, by reason of the Franchise. Grantee shall at its sole cost and expense, upon demand of Grantor, appear in and defend any and all suits, actions or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting Grantor, its officers, agents or employees, and/or any conduct of the Grantee, its agents or employees which is within the scope of this indemnity.

13. Franchise Not Transferable. Charter shall not sell, transfer, lease or assign this Agreement except as may be permitted under Section 208 of the Ordinance.

14. Ordinance Terms and Conditions Apply. All terms and conditions of the Ordinance shall apply to this Franchise Agreement unless otherwise specifically provided for by this Agreement or other agreements between City and Charter that may apply.

15. Force Majeure. The Force Majeure provision of Section 903 of the Ordinance shall apply to this Agreement. No other force majeure standards shall apply to this Agreement.

16. Attorney's Fees. If one party to this Agreement shall institute any court action against the other party to this Agreement to enforce, or concerning, any term or provision of the Franchise documents, the prevailing party in such action shall be entitled to recover all of its costs of litigation including, but not limited to, reasonable attorney's fees. Should the parties settle prior to the issuance of a decision in any court action, the payment of costs incurred by the parties shall be a consideration to be included in any such settlement.

17. Applicable Law. This Agreement shall be construed and applicable law applied as provided in Section 104 of the Ordinance.

18. Possessory Interest. By accepting this Franchise, Grantee acknowledges that notice is and was hereby given to Grantee pursuant to California Revenue and Taxation Code Section 107.6, that use or occupancy of any public property pursuant to the authorization herein set forth may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Grantee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes levied against Grantee's right to possession, occupancy or use created by this Franchise. Grantee shall not be barred from challenging any amounts assessed pursuant thereto.

SECTION II: CABLE SYSTEM DESCRIPTION

1. System Design and Capacity Requirements.

A. Cable Channel Capacity. The Cable System shall be reconstructed to deliver signals at frequencies up to and including a minimum bandwidth of seven hundred and fifty (750) megahertz (MHz) on the Residential Network. The Cable System will be engineered to allow simultaneous downstream delivery of no less than seventy-eight (78) analog video Cable Channels (occupying the spectrum from 54 MHz to 550 MHz) with an additional two hundred (200) MHz of spectrum (550 MHz to 750 MHz) allocated for the transmission of high-speed digital data service or other services upon completion of construction and shall be constructed with interactive fiber-to-node architecture with fiber optic trunk cable nodes serving no more than one thousand (1,000) Subscribers per node (the "rebuild").

B. Interactive Capacity Services. The Cable System shall be two-way activated in all of the distribution plant upon the rendering of service to the first Subscriber after the rebuild is complete.

C. Minimum Technical Standards

The Minimum Technical Standards shall be those adopted by the FCC from time to time. To the extent that no FCC standards exist, the standards shall be those FCC technical standards in effect on the Effective Date, or, if none, those established by the Grantor.

2. Services and Broad Categories of Video Programming. Grantee shall provide, as a minimum, the services, and programming listed below. If any broad category of services or programming shall become unavailable, or cannot be provided under FCC or other government regulations, Grantee shall provide substitute program Cable Channels of the same category. Grantee shall not reduce the number of programs on the Basic Service Tier below sixty-one (61) without prior written consent of the Grantor. Charter agrees to provide the following broad categories of programming in the Basic Service Tier, including:

- Educational programming;
- News and information;
- Sports;
- General entertainment (including movies);
- Children/family oriented;
- Arts, culture, and performing arts;
- Spanish language programming/international;
- Science/documentary;
- Weather information;
- Ethnic programming;
- Minority programming;
- National, state, and local government affairs;
- Religious programming;
- PEG Access Programming Cable Channels

3. Completion of Construction. Completion of construction shall be defined as the ability to provide no less than seventy-eight (78) analog Cable Channels of video programming, without digital compression, to all residential Subscribers, as well as satisfactory completion of any permit-specified requirements and the public building connections provided in Section II.8 of this Franchise Agreement, unless delays are caused by the City in issuing permits or other regulatory requirements, or a force majeure condition as defined in Section I.15 of this Agreement. The failure by Grantee to meet the construction schedule milestones detailed in this Section may be considered a material breach of this Agreement and subject Grantee to the remedies contained in Section IV.6 of this Agreement. Within thirty (30) days of the Effective Date of this Agreement, Charter shall proceed with due diligence to obtain all necessary permits and authorizations which are required for the Construction, including any utility joint agreements and any permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the Cable System. Completion of Construction shall take place no later than six (6)

months after the effective date of this Agreement. Construction undertaken by Charter with respect to the Cable System shall comply with all federal, state, and City laws, rules, and regulations. Upon the Completion of Construction, Charter shall file a Notice of Completion of Construction with the City Clerk. During the period of upgrade/rebuild of the Cable System and during the sixty (60) day period following filing of the Notice of Completion, all elements and components thereof shall be subject to inspection by the City, employees or authorized agents or representatives thereof, for the purpose of determining whether the Cable System complies with the Franchise Agreement. Charter shall authorize such inspection and provide such information and cooperation if required in order to permit an adequate investigation to determine the existence or non-existence of such compliance.

4. Compliance with Construction Standards. Grantee shall not construct any portion of its Cable System in streets and rights-of-way without obtaining all necessary building permits and paying all applicable fees and shall only construct said Cable System in accordance with standards for methods of construction in public rights-of-ways.

5. Reimbursement of Expense During Construction. As necessary to aid in the analysis of all matters in dispute relative to the Franchise relating to completion of the construction process, the Grantor shall be entitled to employ the services of independent technical consultants. If any such consultant claims a material deficiency in Grantee's work from the requirements of this Franchise, and such is proven by the consultant to be true, all reasonable fees of such consultant in connection with the finding of said deficiency shall be borne by Grantee.

6. Emergency Alert System. Concurrent with the completion of the Cable System upgrade, as provided in Paragraph 3 above, Charter shall provide an emergency alert system. Charter shall provide the system capability to transmit an emergency alert signal to all participating Subscribers in the form of an audio override capability to permit City or the County of Santa Cruz to interrupt and cablecast an audio message on all Cable Channels simultaneously in the event of disaster or public emergency. A location designated by the City within Charter's Service Area shall be connected without charge to the Cable System and shall be equipped to provide the capability of immediately activating the emergency alert system without intervening contact with Charter's personnel if, in the sole discretion of the City's emergency coordinator, such activation is necessary. Charter and the City agree to develop guidelines for access to the emergency alert system so as to ensure secure, legitimate and necessary access. The Grantee shall ensure that the Cable System providing service to the City is designed so as to permit an authorized official of the City to override the audio portion of all Cable Channels by touch-tone phone (or functional equivalent) from any location. In addition to any other requirements listed in this section, Grantee shall:

A. Designate a Cable Channel which shall be used for both audio and video emergency broadcasts (this Cable Channel need not be solely designated for emergency broadcasts, and may in fact be used for any other lawful purpose);

B. Inform Subscribers of the designated Cable Channel on a periodic basis (not less than once a month);

C. Maintain all Cable Channel video blanking capability to facilitate the needs of hearing and sight-impaired Subscribers;

D. Test the emergency override Cable System at least once a year but not more than quarterly, unless Grantee and City agree to testing on a more frequent basis;

E. Cooperate with the City concerning the use and operation of the emergency alert override system; and

F. Cooperate with the City to develop a plan to provide continuity of Cable Service, and response to service calls in the event of a natural or man-made emergency.

As one method of providing continuity of Cable Service in the event of a natural or man-made emergency, Grantee shall, unless exempted by the City Council, have the capacity to be automatically activated by standby power on all trunk and feeder cable, and all headends, hubs and receiver sites associated with the distribution of Cable Service to, and throughout, the City.

7. Cable Service to Public Facilities. Grantee shall, without charge to the City or Subscribers, concurrent with the completion of the Cable System upgrade, provide one (1) outlet and the highest tier of Basic Cable Service free of charge for installation and monthly service to all public schools, City Police and Fire stations, City recreation centers, public youth centers, libraries, City Hall, and such other buildings owned or occupied by the City, provided that such buildings shall be located within the Grantee's Franchise Area. Grantee shall have no obligation to provide such service to buildings owned or occupied by the City if the primary purpose for such building, as determined by the City, is to house equipment, store records or provide residential housing. Buildings currently receiving Cable Services shall continue to receive Cable Services and not be subject to the one hundred and eighty (180) days provision noted above. Services to public facilities shall include, but not be limited to the following locations:

City of Capitola Buildings:

- | | |
|---|---------------------|
| City Hall (2 nd floor offices) | 420 Capitola Avenue |
| City Hall (1 st floor Council | 420 Capitola Avenue |

Chambers)	
City Hall (1 st floor Community Room)	420 Capitola Avenue
Police Department	422 Capitola Avenue
Capitola Historical Museum	410 Capitola Avenue
Beulah House	504 Beulah Drive
Corporation Yard	430 Kennedy Drive
Capitola Branch Library	2005 Wharf Road
Jade Street Community Center	4400 Jade Street

Other Public Buildings:

Central Fire District Station #4	405 Capitola Avenue
Capitola Elementary School	504 Monterey Avenue
New Brighton Middle School	250 Washburn Avenue
Pacific Coast Manor Nursing Facility (one connection to the lobby or common viewing area only, for so long as facility remains a registered non-profit entity)	1935 Wharf Road
Golden Age Convalescent Hospital (one connection to the lobby or common viewing area only, for so long as the facility remains a registered non-profit entity)	523 Burlingame Avenue

Up to three (3) additional or replacement public facilities constructed or utilized during the term of this Agreement, as designated by Grantor.

8. Internet Service to Public Facilities. Within one hundred eighty (180) days of Grantee's introduction of interactive data services (sometimes called "High-Speed Internet Service" or "High-Speed Cable Modem Service"), to Subscribers, Grantee shall provide interactive data services capability to the public buildings listed in Section II.7. Grantee shall make interactive High-Speed Cable Modem Service available to the buildings listed in Section II.7, under the following conditions:

A. There shall be no charge for one (1) installation and the monthly High-Speed Cable Modem Service to each public building.

B. For additional connections for High-Speed Cable Modem Service to the public buildings listed in Section II.8, Grantee shall provide a discount of at least twenty five percent (25%) from its lowest available retail rate. However, in no case shall this discount result in a rate for the High-Speed Cable Modem Service, which is less than Grantee's actual cost for the service. The burden of proof shall be on the Grantee to demonstrate, to Grantor's reasonable satisfaction, that the discounted rate is less than Grantee's actual cost.

9. Governmental and Institutional Drop Policy. To the extent that it is necessary to extend Grantee's trunk or feeder cable more than one hundred fifty (150) feet to provide service to any such designated location, Grantor shall have the option of either paying Grantee's direct costs for line extensions in excess of one hundred fifty (150) feet or releasing Grantee from the obligation to provide service to such location. Interior wiring of said building shall be the responsibility of the building owner, provided that if Grantee is requested to install such wiring it shall do so within a reasonable time at its actual cost of labor and materials. Exact placement of the drops shall be determined by the institutions involved with Grantor approval and shall be designed and shall be reasonably placed, to the extent practicable, to minimize construction costs to the Grantee. The implementation of the drop policy shall not be deemed non-capital payments requiring or allowing offset against the Franchise Fee.

10. Institutional Network Capacity.

A. By no later than April 11, 2002, the Grantee shall provide to the Grantor scalable capacity on its broadband infrastructure to transmit digital data among and between the sites designated in Section II.7 above, under the following terms and conditions.

(1) A point of demarcation shall be established within each public building. Grantee shall be responsible for acquiring, installing, operating and maintaining all networking equipment and facilities on the network side of the demarcation point. Each public agency user shall be responsible for acquiring, installing and maintaining all terminal equipment on its side of the point of demarcation necessary to interface with and utilize Grantee's network. Grantee shall provide reasonable assistance at no charge to user agencies to determine and recommend the most appropriate terminal and interface equipment to meet user objectives and network compatibility. Grantee's network shall not limit the data transmission capability of any user, so long as Grantor uses equipment and installation practices recommended by Grantee to ensure maximum network capability.

(2) Grantee shall own, control and maintain its network, and shall be responsible for all network management functions. The user agencies shall own, control and maintain their individual terminal equipment. Grantor and Grantee may, if mutually desired, enter into a service agreement under which Grantee will maintain Grantor's terminal equipment.

(3) Grantor agrees that it will use the capacity only for governmental and educational purposes and not for any commercial purpose, nor shall it permit any agency or any user connected to the system or network to do so.

(4) Grantor shall not use its capacity under this provision to provide video, voice or data transmission services to City residents in their

homes, or City businesses at their places of business.

B. Grantor shall not charge any fees for use of the capacity nor shall it permit fees to be charged by any user of the capacity for any purpose. Grantor shall not separately itemize on subscriber bills any costs identified with provision of the network capacity to Grantor and/or designated public agencies.

C. Grantor shall neither use nor permit the use of the bandwidth in any manner that may subject Grantee to regulation by the State Public Utilities Commission as a telephone company, nor shall any use of the bandwidth be permitted by Grantor which may subject Grantee to any additional regulation, tax or fee of any kind, without the express written consent of Grantee.

D. Grantor, and any public agency or other user of the bandwidth, shall indemnify and hold harmless the Grantee from any and all claims, damages liability, costs and expenses, including reasonable attorney's fees and court costs, directly and solely related to the communications or materials transmitted on the network by Grantor or any public agency or other user, including but not limited to, copyright infringement, libel, slander, defamation, patent, trademark or invasion of privacy claims.

E. At Grantor's request, Grantee and Grantor may at any time commence negotiations to explore providing "full service" transfer of voice, data and video services over its broadband network, including all electronics and other devices necessary to provide such services, at competitive rates.

SECTION III: COMMITMENT TO PEG ACCESS

1. Public, Educational and Governmental (PEG) Access Cable Channels. Grantee shall provide the following support for the purpose of development and implementing public benefit uses of the Cable System. The provision of the support items listed herein shall be considered as binding commitments of the Grantee within the terms of this Franchise, and if not provided, shall subject the Grantee to applicable remedies and penalties for violations of this Franchise Agreement. Grantee shall provide the following support:

A. Cable Channel Capacity Requirements.

Once the system rebuild is complete pursuant to Section II.3 above, Grantee shall make available up to four (4) activated PEG Access Cable Channels, to be provided at no cost to Grantor or the Subscribers as follows:

(1) As used in this Agreement, "PEG Use" shall mean the use of the Cable Channels and bandwidth for Public, Educational or Governmental purposes by the City, and the governmental and educational institutions receiving interactive Cable Service.

(2) To avoid under-utilization of PEG Access Channels on the residential downstream Cable Channels, the Grantee may notify the Grantor in writing of the Cable Channels that are not being used substantially for PEG Access purposes. Unless the Grantee receives written notice within thirty (30) days that the Grantor objects to Grantee's use of Cable Channel capacity, the Grantee may use the underutilized Cable Channel capacity. Any use granted to Grantee under this procedure is temporary. Grantee must relinquish the use of Cable Channel capacity within ninety (90) days of a request by the Grantor.

(3) The Grantee may not, except as provided under the Communications Act of 1934, as amended including, but not limited to amendments in 1984 and 1992, and any regulations thereunder as promulgated by the Federal Communications Commission, pursuant to Section 10(C) of the Cable Television Consumer Protection and Competition Act of 1992, exercise any editorial control over the use of Cable Channels set aside for PEG Use.

B. Grantee shall pay a one-time grant for Public, Educational, and Governmental Access Related Facilities and Equipment to the City in the amount of seventy-five thousand dollars (\$75,000) to be utilized for PEG Access related capital improvements and equipment. Said Grant shall be paid by Grantee no later than thirty (30) days from the Effective Date of this Franchise. Grantee hereby acknowledges and agrees that any such funds may be used for any and all capital PEG purposes including the acquisition of terminal equipment in Section II.10(1) herein, and, furthermore, Grantor and Grantee agree that said funds are not Franchise Fees for the purposes of the Cable Communications Policy Act of 1984, as amended.

C. In the event that any of the support for PEG Access programming required by this Franchise is deemed by a legislative body, administrative body, or court of competent jurisdiction to constitute a payment which must or may be offset against the Franchise Fee, Grantor hereby reserves the right, but not the obligation, to terminate said program and/or requirement so as to provide the maximum allowable Franchise Fee.

Grantee shall not offset any charge, of any kind, against a Franchise Fee or other payment due to Grantor without prior written consent of Grantor.

Nothing in this Franchise is intended, or shall be so construed, to confer any third party beneficiary rights on any party(s), and no rights are created by this Agreement other than those rights in the Grantor and Grantee.

D. At no cost to the City and concurrent with the rebuild of the Cable System, the Grantee shall install dedicated fiber optic cable to the following locations in order for the City to provide local cablecast:

- (1) City Hall Council Chambers
- (2) City Hall Community Room

- (3) Jade Street Community Center.

Up to two (2) additional locations may be added during the term of the Franchise. Grantee shall install dedicated fiber optic cable to these locations within three (3) months after receiving a written City request. Grantee shall provide each of the above locations with appropriate equipment to transmit a signal to Community Television of Santa Cruz County's (CTSCC) site where CTSCC will be cablecasting on the appropriate PEG Access Cable Channel

2. Requirements Regarding Rules and Procedures for Use of PEG Access Cable Channels

A. The City will designate the method of PEG Access management established under this Agreement. The City may negotiate agreements with neighboring jurisdictions served by Charter, educational institutions, or others to share operating expenses as appropriate.

B. The City shall establish and enforce rules for use of the PEG Access Cable Channels and provide a copy of such rules to Charter.

C. Charter may not exercise any editorial control over the content of the programming on the designated PEG Access Cable Channels (except for such programming Charter may produce and cablecast when such Cable Channels are not being used for the purpose of Public, Educational, and Governmental Access), except that Charter may refuse to transmit any PEG Access program or portion of PEG program which Charter reasonably believes contains obscene or other matter unprotected by the Constitution of the United States.

3. Establishment of PEG Fund.

A. In accordance with the terms and conditions set forth below, Operator shall pay an initial PEG Access fee to the City of a monthly sum equal to sixty-four cents (\$0.64) per Subscriber. Upon ninety (90) days prior written notice from the City to Grantee and after a City Council public hearing, the amount of this PEG Access fee may be increased to an amount not to exceed one dollar (\$1.00) per Subscriber per month. The PEG Access fee shall be paid to the City of Capitola and shall be used for PEG Access services using the Cable System within the Franchise Area of the City and shall be segregated from other funds of the City. In addition, consistent with the provisions of Section 1.9(F), the Grantee shall not limit the City's use of the PEG Access funds for capital or operating expenses and such funds are not "Franchise Fees" or "license fees" within the meaning of Section 622 of the Cable Act and are thus not to be offset or offsettable against Franchise Fees or license fees due to the Grantor under this Franchise.

B. The PEG Access fee shall be paid to the City concurrent with the Franchise Fee Payments to the City.

4. Interconnection from Community Television of Santa Cruz County.

The Grantee shall interconnect its Cable System with Community Television of Santa Cruz County. The Interconnect shall be constructed pursuant to the specifications contained in Section II.1.C(8) relating to reverse or upstream transmissions or other specifications as determined by Grantor that meet or exceed the performance standards for reverse or upstream transmissions contained in Section II.1.C(8) and shall be completed no later than the completion of the rebuild as described in Section II.3. In the alternative, and subject to prior approval of any agreement by the Grantor, the Grantee may satisfy its obligations pursuant to this Section through the execution of agreement(s) with one or more franchised cable operators serving portions of the County not served by the Grantee to interconnect their systems so that programming originated at the Studios of Community Television of Santa Cruz County can be transmitted over the Grantee's system.

The interconnection requirement of this Section is contingent upon the Grantee being able to receive the Community Television of Santa Cruz County signal. It is anticipated that reception of the signal will be accomplished either by an interconnection with the cable operator currently providing cable service in Santa Cruz County (AT&T), or by Santa Cruz County permitting Grantee to install equipment in County to accomplish the interconnect directly with Community Television of Santa Cruz County. The burden of proof shall be on the Grantee to demonstrate that it has made a good faith effort to achieve the interconnection. If the Grantee is unable to successfully complete the interconnection, and if Grantee can demonstrate that it has made a good faith effort to accomplish the interconnection; then Grantee shall not be found in breach of this Agreement. In such a case, failure by the Grantee to demonstrate a good faith effort will be deemed a material breach of this Agreement.

If interconnection is not achieved initially, the Grantor reserves the right, during the term of this Agreement, to require Grantee to pursue future attempts to accomplish the interconnection.

5. PEG Access Cable Channels Location. To the extent feasible, for three (3) of the four (4) PEG Access Cable Channels, the Grantee shall provide the same PEG Access Cable Channel locations as provided by Community Television of Santa Cruz County ("CTSCC") to the Subscribers in the City of Santa Cruz area prescribed within this Franchise Agreement to the City. It is the intent of the parties that PEG Access Cable Channel assignments in the City and in the City of Santa Cruz be uniform and that PEG Access Cable Channel numbers be in sequence to accommodate the fourth PEG Access Cable Channel. In any event, however, the programming cablecast by CTSCC shall be available on the Grantee's Cable System in the City of Capitola.

6. Relocation of PEG Cable Channels. If Charter relocates any PEG Cable Channel to a different Cable Channel number, Charter shall reimburse the City for any out-of-pocket expenses incurred by the City as a result of the relocation up to a maximum of Five Thousand Dollars (\$5,000.00), unless

otherwise provided for by agreement between Charter and the City, Charter shall provide the City and all Subscribers with at least thirty (30) days written notice of the relocation of any PEG Cable Channel.

7. Promotion of PEG Access. Charter shall allow the City to promote PEG Access to Subscribers by placing bill inserts provided by the City in Charter's statements sent to its Subscribers in the Franchise Area. Charter shall be required to insert such information no more than twice per year upon the written request of the City and at such times as the placement of such materials would not effect Charter's cost for the production and mailing of such statements. Charter shall also include access information provided by the City in Subscriber packets that are given to Subscribers at the time of installation and/or such other times as information packets may be provided to Subscribers. Not more than three (3) times per year, Charter shall also distribute promotional and awareness commercial spots through its advertising insertion equipment. Such promotional and awareness commercial spots shall be produced at the City's cost and submitted by the City in a format compatible with such equipment. The distribution by Charter shall be done at no charge to the City.

SECTION IV: PERFORMANCE AND FUTURE CABLE SYSTEM UPGRADES

1. Most Favored Nation. Charter shall disclose to the City any additional service that is not available in the Franchise Area which Charter intends to provide within the City of Watsonville, the County of Santa Cruz and/or any bordering community served by Charter within a 25-mile radius of the City. Such disclosure shall be made in a timely manner. The City shall receive these services under the same terms and conditions as may be required to provide the service to the City of Watsonville, the County of Santa Cruz and/or to any community served by Charter within a 25-mile radius, unless the City affirmatively states in writing that the City does not want those services.

2. Future Cable Service and System Modifications.

A. To assure that Grantee's Cable System continues to reflect the general cable industry state-of-the-art throughout the term of the Franchise, Grantor and Grantee agree to utilize Cable Systems in the following communities as a basis for comparison. The comparison communities (also referred to as the "Comparison Group") shall be:

- | | |
|--------------------------|-----------------------------|
| (1) City of Watsonville | (5) City of Woodland |
| (2) County of Monterey | (6) City of Dixon |
| (3) County of Santa Cruz | (7) City of Auburn |
| (4) City of Salinas | (8) City of West Sacramento |

B. Grantor and Grantee agree that subsequent to the completion of the upgrade required in Section II.3, but no earlier than five (5) years after the Effective Date of this Agreement, when four (4) or more of the communities in

the Comparison Group (hereinafter the "Comparison Sub-Group") have Cable Systems that offer programming services which exceed the services provided on Grantee's System by five (5) video programming services or more, Grantor may require Grantee to provide additional programming services to meet or exceed the average provided by the Comparison Sub-Group. Grantee shall complete any modification required to meet the Comparison Sub-Group average within six (6) months of receipt of a Grantor written request.

C. No earlier than five (5) years after the Effective Date of this Agreement, when four (4) or more of the communities in the Comparison Group have Cable Systems that are offering new or advanced residential services not available to Grantee's Subscribers, Grantee shall offer comparable services in the City within twelve (12) months of receipt of a Grantor written request.

D. If any Grantor request made pursuant to (B) or (C) above, would require a substantial new investment of funds in the Cable System, Grantee may request an appropriate extension of the Franchise term. If Grantor and Grantee cannot agree upon the duration of the extension, and Grantee otherwise is unwilling to comply with Grantor's request, Grantor, after a public hearing, and with at least thirty (30) days written notice to Grantee, may shorten the existing Franchise term so that the term will expire not less than thirty-six (36) months after Grantor's notification to Grantee of Grantor's intent to shorten the term.

3. Technical Standards Testing.

A. Grantee's Cable System shall be periodically tested, at Grantee's sole expense, at the times, and pursuant to the procedures, described in the then applicable rules and regulations of the FCC or, if no such rules and regulations exist, in the manner prescribed in rules and regulations in effect on the Effective Date.

B. Reimbursement of Grantor Expenses. The Grantor shall bear all costs associated with its attendance, either directly or through an independent consultant, in the initial testing but not re-testing, procedure described herein except as provided below:

(1) For a twelve (12) month period beginning upon completion of system reconstruction and ending twelve (12) months therefrom, Grantee shall measure and report to Grantor the number of service complaints which related to customer dissatisfaction with the quality of the picture excluding partial or total system outages. The number of said complaints over a twelve month period shall be divided by twelve (12) and constitute the "base year average monthly Subscriber complaints" for the purposes of this paragraph.

(2) After a said twelve (12) month period, Grantee shall calculate and report to Grantor twice (2) annually the number of Subscriber complaints relating to the quality of the picture ("monthly Subscriber complaints"). Said information shall be provided to the Grantor within thirty (30) days or the last day of each six (6) month period.

(3) So long as monthly Subscriber complaints, as defined herein, remain within thirty percent (30%) of the base year average monthly Subscriber complaints, the Grantor shall bear all costs relating to its participation in the technical standards testing process defined herein. However, if, for any given two (2) consecutive months, or any three (3) nonconsecutive months in any six (6) month period, said complaints increase more than thirty percent (30%) over the base year average monthly Subscriber complaints, Grantee shall reimburse Grantor for Grantor's actual cost of supervising and/or participating in the technical standards testing for a three (3) quarter period commencing upon the occurrence of the contingency(ies) provided herein if the unsupervised periodic testing, as defined herein, indicates that the Grantee's system during said period is not operating in conformance with the technical performance standards provided by this Section.

(4) NOTICE TO CUSTOMERS

Charter Communications has informed the City that Charter's system reconstruction is now complete. Although federal law restricts the City's power to regulate cable television, Charter's franchise does contain certain technical standards. The City staff needs information from customers in order to enforce the technical standards and to determine if the system has been successfully reconstructed.

The Capitola City Council requests that customers log complaints not only with Charter Communications, Inc., but also with the City, especially those complaints related to the completion of the system reconstruction and quality of picture. Complaints should be filed with Charter Communications addressed as follows:

* Pursuant to letter dated July 30, 2001

Charter Communications
~~7640 Egleberry~~ 8120 Camino Arroyo
Gilroy, CA 95020
Attention: General Manager

Copies of those complaints can be sent to the City Clerk, City of Capitola, 420 Capitola Avenue, Capitola CA 95010, or they may be faxed to (831) 479-8879.

4. Customer Protection.

A. The City reserves all rights under law or regulation to establish customer service standards. The Grantee shall comply with all customer service requirements established in the Ordinance and FCC Section 76.309 (Customer Service Obligations). When the requirements conflict, the more restrictive requirement shall be implemented. Nothing in this section shall be read to limit the City's right to adopt other consumer/customer protection laws.

B. The City and the Grantee shall maintain constant vigilance with regard to possible abuses of the right of privacy of any Subscriber, programmer, or any other person resulting from any device or signal associated with the Cable System. The Grantee shall not place in the building, structure, or facility of any Subscriber any equipment capable of two-way communication without the written consent of the Subscriber, revocable at the discretion of the Subscriber, and shall not use two-way communication capability of the Cable System for unauthorized or illegal Subscriber surveillance of any kind.

C. The Grantee shall be subject to the provisions of federal law regarding limitations on the Grantee's collection and use of personally identifiable information, and other issues involving the protection of Subscriber privacy.

D. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

E. Written complaints concerning billing, employee courtesy, customer service, programming, safety, or the Grantee's operational policies, as well as all other complaints, including complaints about outages, signal quality, and service disruptions, shall be recorded. The Grantee shall maintain records of complaints for term of the Franchise a period of at least three (3) years. Copies of the complaint records shall be provided to the City on request at the sole expense of the Grantee.

F. The Grantee shall maintain a repair force of technicians sufficient to respond promptly, under normal operating conditions, to Subscriber complaints, loss of service, or requests for service. The Grantee shall have in place at all times the equipment necessary to locate and correct Cable System malfunctions.

G. All Subscribers and members of the general public in the City may direct complaints and inquiries regarding the Grantee's service or performance to the City. Upon the request of a complaining party or the Grantee, the City or its designee shall act as a board of review of a complaint or dispute, and recommend action for resolution. The Grantee's good faith or lack thereof in attempting to resolve complaints in a fair and equitable manner will be considered in connection with any renewal application filed by the Grantee.

H. In the event a complaint or dispute is directed to the City and determined by the City to be a potential violation of the Ordinance or this Franchise Agreement, and after written notification to the Grantee of that determination, the City may exercise any of its other rights and remedies under the Franchise.

I. Upon request, Grantee shall provide Subscribers with a parental control locking device or digital code or other means that permits inhibiting the viewing of parental designated Cable Channels.

5. Security Fund.

A. Charter shall establish a Security Fund as security for the faithful performance by Charter of all material provisions of this Agreement. The Security Fund shall consist of two (2) parts:

(1) The first part shall be a bond or a corporate guarantee from Charter Communications and which shall be in the amount of One Hundred Thousand Dollars (\$100,000) and maintained for the first two (2) years following the completion of the Cable System rebuild (as verified by the City), at which time the bond or guarantee shall be released.

(2) The second part shall be in the amount of at least Fifty Thousand Dollars (\$50,000) and shall be cash or in the form of an irrevocable bank letter of credit, whose wording shall be subject to the approval of the City Attorney, and shall reflect the provisions of paragraph (C) below. The letter of credit shall be maintained at the amount provided for above throughout the term of this Agreement, provided that at intervals no more often than every four (4) years, Grantor shall have the right to require that this amount be increased to reflect changes in the San Francisco-Oakland-San Jose, California Area Consumer Price Index during the prior four (4) year period.

B. The Security Fund may be assessed by Grantor for those purposes specified in the Ordinance in accordance with the procedures established in the Ordinance, provided that Grantee has received written notice, an opportunity to be heard and an opportunity to cure any material violations prior to any assessment. As long as Grantor follows the procedures specified herein and in the Ordinance for assessing and withdrawing funds from said Security Fund, Grantee shall not initiate litigation or non-City administrative action to prevent or impair Grantor from accessing those funds. Grantee's recourse, in the event Grantee believes any taking of Security Funds is improper, shall be through legal action after the security has been drawn upon. If Grantor's action or taking is found to be improper by any court or agency of competent jurisdiction, Grantee shall be entitled to a refund of the funds, including interest accrued thereon.

C. After any withdrawal from the Security Fund, Grantee shall, within thirty (30) days, cause the Security Fund to be replenished to its full value, in accordance with the provisions of the Ordinance. Any failure to replenish shall be deemed a material breach of this Agreement.

D. Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's rights-of-way.

E. At Grantee's option, Grantee may provide a letter of credit, in a form subject to the Grantor's reasonable approval and in amounts equivalent to the Security Fund described above, to satisfy the foregoing requirements.

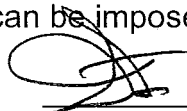
6. Procedure for Remediating Franchise Violations.

A. The procedure for remediating Franchise violations or breaches shall be consistent with the procedures of Section 902 of the Ordinance.


B. In the event the Council finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the Council may impose liquidated damages, assessable from the Security Fund, up to One Thousand Dollars (\$1,000) per day for unexcused delays in the Cable System rebuild provided in Section II.3 herein, and up to Two Hundred Fifty Dollars (\$250) per day or per incident for all other Franchise violations, provided that all violations of a similar nature occurring at the same time shall be considered one (1) incident. Breaches of customer service requirements shall not be considered on an individual basis.

If the Grantor elects to assess liquidated damages, pursuant to the provisions of this Franchise Agreement, then such election shall constitute Grantor's exclusive remedy for a period of one hundred twenty (120) days. Thereafter, if the Grantee remains in non-compliance with the requirements of this Franchise Agreement, the Grantor may pursue any available remedy as established in Article 9 in the Ordinance.

C. Validity of Liquidated Damages. Any imposition of monetary damages may be collected and retained by Grantor as liquidated damages without any reduction, offset, or recoupment whatever. The parties acknowledge that it would be impractical or extremely difficult to fix actual damages in the case of Grantee's default, and that the amount of damages specified above is a reasonable and complete estimate of Grantor's damages. Grantee recognizes that Grantee's prompt development and offering of Cable Service for which penalties can be imposed is of critical importance to Grantor.



Grantor (initials)



Grantee (initials)

SECTION V: INSURANCE

1. Insurance. Charter shall maintain in effect during the term of this Franchise, and any extension thereof, such insurance as is now required or hereafter required by the Ordinance. Insurance liability to be set forth by Section 701 of the Ordinance is initially set at One Million Dollars (\$1,000,000). Grantor reserves the right to increase the liability limit from time to time by separate Resolution of the City Council.

SECTION VI: NOTICE AND AUTHORIZATION

1. Reservation of Rights. By entering into this Franchise Agreement and accepting the Franchise under the Ordinance, neither the City nor Charter has waived any state or federal constitutional rights it may now or hereafter have.

2. Notices. Any notice required to be given by the Franchise Documents shall be presumed given upon personal delivery or three (3) days after deposit in the United States mail, postage prepaid, properly addressed as follows:

GRANTEE

Charter Communications
Attn: Director, Regulatory Affairs
203 NE Park Plaza Drive, 290
Vancouver, WA 98684
Phone (360) 891-4473
Facsimile (360) 891-4733

GRANTOR

City of Capitola
Attn: City Manager
420 Capitola Avenue
Capitola, CA 95010
Phone (831) 475-7300
Facsimile (831) 479-8879

Copy to:

Charter Communications
Attn: Vice President & Senior Counsel
12444 Powerscourt Drive, Suite 400
St. Louis, Missouri 63131-3660
Phone (314) 965-0555 ext. 437
Facsimile (314) 965-6640

Either party may change its address for the giving of notice by giving the other party notice under the provisions of this paragraph.

3. Assignment Binding. This Franchise Agreement shall be binding on the successors, transferees, assigns and trustees of the parties hereto.

4. Authorized Purpose. The Cable System herein Franchised shall be used and operated solely and exclusively for the purpose expressly authorized by Ordinance of the City of Capitola and no other purpose whatsoever.

SECTION VII: FRANCHISE PARITY

1. In the event that the Grantor grants one (1) or more Cable System Franchise(s) for the construction, operation and maintenance of any Cable System that offers services substantially similar to Cable Services offered by Grantee, the Grantor shall not make the grant on materially more favorable or less burdensome terms, when considered in the aggregate (not on an item-by-item basis).

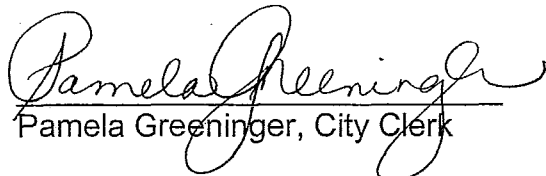
2. If the Grantee finds that the agreement(s) granting said other Franchise(s) are not, when considered in the aggregate, competitively neutral and nondiscriminatory, Grantee may petition Grantor for a modification of this Franchise Agreement. The Grantee shall bear the burden of proof to demonstrate, to the Grantor's reasonable satisfaction, that the other Franchise agreement(s) are not, in the aggregate, competitively neutral and nondiscriminatory. If the Grantee satisfies its burden of proof, Grantor and Grantee shall negotiate appropriate modifications to this Franchise Agreement.

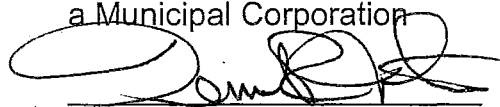
PASSED AND ADOPTED by the City Council of the City of Capitola at a regular meeting of said Council held on the 11th day of January, 2001, by the following vote of said Council:

AYES: Council Members Ortiz, Gualtieri, Harlan, Arthur and Mayor Norton
NOES: None
ABSENT: None

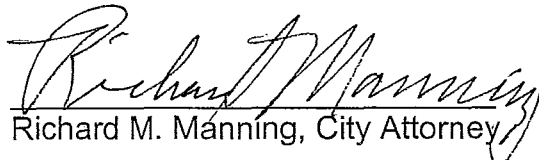
IN WITNESS WHEREOF this Franchise Agreement has been executed as of the day and year first above written by the City of Capitola pursuant to Minute Order of its City Council.

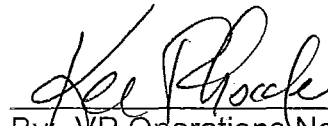
ATTEST:


Pamela Greeninger, City Clerk

CITY OF CAPITOLA
a Municipal Corporation

Dennis R. Norton, Mayor

APPROVED AS TO FORM:


Richard M. Manning, City Attorney

CHARTER COMMUNICATIONS
PROPERTIES, LLC
a Limited Liability Company

By: VP Operations Northwest Region

**EXHIBIT A
SURETY GUARANTEE**

WHEREAS, the City of Capitola (hereinafter called "Grantor") under this Franchise Agreement (hereinafter "the Agreement") effective the ____ day of _____, 2001, has granted a Franchise to Charter Communications Properties, LLC (hereinafter called "Grantee") to own, operate, and maintain a Cable System (hereinafter called "the Franchise"); and

WHEREAS, Charter Communications Holding Company LLC, (hereinafter called "Guarantor") a Delaware corporation owned by Paul G. Allen, being the parent company of the Grantee, has a substantial interest in said Franchise, the conduct of the Grantee and the Franchise Agreement between Grantor and Grantee establishing Franchise requirements, which Agreement is hereby specifically referred to, incorporated herein and made apart hereof; and

WHEREAS, Section IV.5 of the Agreement requires the Grantee, as Principal, to furnish security issued to cover the faithful performance of certain of the Grantee's obligations under the Agreement, and which security shall be in favor of the Grantor;

NOW THEREFORE, subject to the provisions of Section IV.5 of the Agreement, and the Ordinance, Guarantor hereby unconditionally guarantees the due and punctual performance of any and all obligations of Grantee contained in the Ordinance and Agreement, up to One Hundred Thousand Dollars (\$100,000). This Guarantee shall, unless terminated, substituted or canceled as hereinafter provided, remain in full force and effect for the period provided by the Agreement. Provided that, upon substitution of another Guarantor reasonably satisfactory to the Grantor, this Guarantee may be terminated, substituted or canceled upon thirty (30) days prior written notice from Guarantor to the Grantor and Grantee.

Any such notice to be given hereunder shall be addressed to Grantor, with a copy to Grantee. Such termination shall not affect liability incurred or accrued under this Guarantee prior to the Effective Date of such termination or cancellation.

COPY

ORDINANCE NO. 850

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING ORDINANCE NO. 816, ARTICLE 9, GOVERNING
CABLE TELEVISION FRANCHISES IN THE CITY OF CAPITOLA

BE IT ORDAINED by the City Council of the City of Capitola as follows:

Section 1. Article 9 of the City of Capitola's Ordinance Governing Cable Television Franchises in the City of Capitola, as adopted by Ordinance No. 816, is hereby amended to read as follows:

“Article 9. Franchise Violation Procedures and Remedies

Section 901 Grantor's Power to Revoke Franchise.

(a) The material failure of Grantee to comply with the requirements of these regulations shall be a material breach of the Grantee's Franchise Agreement to provide Cable Service.

(b) Grantor reserves the right to revoke any Franchise granted pursuant to this Chapter and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by Grantee and material breach under the Franchise Agreement:

(1) If Grantee defaults in the performance of its material obligations under this Chapter or the Franchise Agreement and continues such default after receipt of notice and a reasonable opportunity to cure the default;

(2) If Grantee fails to provide or maintain in full force and effect the insurance coverage or Security Fund as required herein;

(3) If Grantee violates any order or ruling of any regulatory body having jurisdiction over the Grantee relative to the Grantee's Franchise, unless such order or ruling is being contested by Grantee by appropriate proceedings conducted in good faith;

- (4) If Grantee attempts to unlawfully evade any provision of this Chapter or practices any fraud or deceit upon Grantor;
 - (5) If Grantee persistently fails three (3) or more times within a twelve (12) month period) to remedy defaults for which lesser penalties have previously been imposed;
 - (6) If Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt;
- (c) The termination and forfeiture of the Grantee's Franchise shall in no way affect any right of Grantor to pursue any remedy under the Franchise Agreement or any provision of law.

Section 902 Procedure for Remedying Franchise Violations.

- (a) Prior to imposing any remedy or other sanction against Grantee specified in this Chapter, Grantor shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:
 - (1) Grantor shall first notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within reasonable time, which shall not be less than five (5) days in the case of failure of the Grantee to pay any sum or other amount due the Grantor under this Chapter or the Grantee's Franchise and thirty (30) days in all other cases. If Grantee fails to correct the violation within the time prescribed or diligently commence and pursue correction of the violation thereafter, the Grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the Council. Said notice shall specify the violations alleged to have occurred and shall state whether Grantor intends to exercise one or more of the remedies set forth in Section 908, subsections (a) and (b).
- (b) The Council may designate a Cable Committee to hear and consider all relevant evidence, and thereafter render findings and its decision.

(c) If the Council or appointed Cable Committee finds that Grantee corrected the violation or diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(d) If the Council or appointed Cable Committee finds that the alleged violations occurred and that Grantee did not correct the same in a satisfactory manner or did not diligently commence corrections of such violation after notice thereof from Grantor or is not diligently proceeding to fully remedy such violation, the Council or appointed Cable Committee may impose one (1) or more of the remedies specified in Article 9 as it, in its discretion, deems appropriate under the circumstances.

(e) Council may, at its discretion, hear appeals from decisions of the Cable Committee.

Section 903 Force Majeure; Grantee's Inability to Perform.

(a) In the event Grantee's performance of any of the terms, conditions or obligations required by this Chapter or a Franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform may be excused and penalties or sanctions may be waived or reduced by Grantor. Causes or events not within the control of Grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires but shall not include financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts of omissions of Grantee, or the failure of the Grantee to secure supplies, services or equipment necessary for the installation, operation,

maintenance or repair of the Cable System where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

(b) At the expiration of the term for which the Franchise is granted, or upon its revocation or earlier termination, as provided for herein, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable System from all streets within the Franchise Area within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

Section 904 Abandonment or Removal of Franchise Property.

(a) In the event that use of any Franchise Property or a portion thereof is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that Franchise Property. Any part of the Cable System that is intended for use only when needed because it is parallel or redundant to other parts of such system, shall not be deemed to have been abandoned because of its lack of use.

(b) Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the Franchise. Unless such permission is granted or unless otherwise provided in this Chapter, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all streets and public ways and public places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the streets, public ways, public places, cables, wires, attachments and poles prior to and after such removal. The liability, indemnity and

insurance provisions of this Chapter and the Security Fund provided herein shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

(c) Upon abandonment of any Franchise property in place, the Grantee, if required by the Grantor, shall submit to the Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor ownership of the Franchise property abandoned.

Section 905 Restoration by Grantor; Reimbursement of Costs.

In the event of a failure by Grantee to complete any work required herein or by any other law or ordinance, and if such work is not completed within thirty (30) days after receipt of written notice thereof from Grantor or, if more than thirty (30) days are reasonably required therefor, if Grantee does not commence such work within such thirty (30) day period and diligently complete the work thereafter (except in cases of emergency constituting a threat to public health, safety or welfare), Grantor may cause such work to be done and Grantee shall reimburse Grantor for the costs thereof within thirty (30) days after receipt of an itemized list of such costs, or Grantor may recover such costs through the Security Fund provided by Grantee.

Section 906 Extended Operation and Continuation of Services.

Upon either expiration or revocation of a Franchise, the Grantor shall have discretion to permit Grantee to continue to operate the Cable System for an extended period of time not to exceed twelve (12) months from the date of such expiration or revocation, unless extended by resolution of Grantor. Grantee shall, as trustee for its successor-in-interest, continue to operate the Cable System under the terms and conditions of this Chapter and the Franchise and to provide the regular Subscriber service and any and all of the Cable Services that may be provided at that time. It shall be the right of all Subscribers to continue to receive all available Cable Services provided their financial and other obligations to Grantee are honored. The Grantee shall use reasonable efforts to provide continuous, uninterrupted Cable Service to its

Subscribers, including operation of the Cable System during transitional periods following Franchise expiration or termination.

Section 907 Receivership and Foreclosure.

(a) A Franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in receivership or reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (i) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the Franchise granted pursuant hereto, and the receivership or trustees within said one hundred twenty (120) days shall have remedied all the defaults under the Franchise or provided a plan for the remedy of such defaults which plan is satisfactory to the Grantor; and (ii) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise granted.

(b) In the case of a foreclosure or other judicial sale of the Franchise Property Cable System, or any material part thereof, Grantor may serve notice of termination upon Grantee and the successful bidder at such sale, in which event the Franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (i) Grantor shall have approved the transfer of the Franchise, as and in the manner that this Chapter provides; and (ii) such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the Franchise.

Section 908 Remedies for Franchise Violations.

If a Grantee fails to perform in a timely manner any obligation required by this ordinance or a Franchise Agreement granted hereunder, following notice from the Grantor and, opportunity to be heard by the Council (or a Council-designated Cable Committee) and an opportunity to cure such nonperformance in accordance with the provisions of Section 902 of this ordinance and the Franchise Agreement, Grantor may at its option and in its sole discretion apply any one or more of the following remedies:

- (a) Cure the violation and recover the actual costs thereof from the Security Fund established herein;
- (b) Assess against Grantee liquidated damages in an amount or amounts set forth in the Franchise Agreement for any such violation(s). Such assessment may be withdrawn from the Security Fund, and shall not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or applicable law, including without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including reasonable and actual attorney's fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the Franchise Agreement of this ordinance.
 - (1) For violations of Consumer Service Regulations of this ordinance or the Franchise Agreement which have materially degraded the quality of service, Grantor may order and direct Grantee to issue rebates or credits to Subscribers, in an amount to be determined by Grantor to be reasonably related to the nature and extent of the degradation in service and measured by the period of the degradation, to provide monetary relief substantially equal to the reduced quality of Cable Service resulting from Grantee's failure to perform."

Section 3. Severability. If any section, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portion of the ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase

of this ordinance irrespective of the unconstitutionality or invalidity of any section, subdivision, subsection, paragraph, sentence, clause or phrase of this ordinance.

Section 4. This ordinance shall take effect and be in force thirty (30) days after its final adoption.

This ordinance was introduced on the 13th day of March, 2003, and was passed and adopted by the City Council of the City of Capitola on the 27th day of March, 2003, by the following vote:

AYES: Council Members Norton, Ortiz, Harlan, Arthur and Mayor Gualtieri

NOES: None

ABSENT: None

ABSTAIN: None

APPROVED: Tony Gualtieri
Tony Gualtieri, Mayor

ATTEST:

Pamela Greeninger, CMC
Pamela Greeninger, City Clerk

This is to certify that the above and foregoing is a true and correct copy of Ordinance No. 850 passed and adopted by the Capitola City Council on the 27th day of March, 2003.

Pamela Greeninger
Pamela Greeninger, CMC, City Clerk 129

Pamela Greeninger
CITY CLERK

ORDINANCE NO. 816

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
REPEALING ORDINANCE NO. 590 AND ADOPTING A NEW ORDINANCE
GOVERNING CABLE TELEVISION FRANCHISES IN THE CITY OF CAPITOLA**

BE IT ORDAINED By The City Council Of The City Of Capitola As Follows:

Section 1. Ordinance No. 590 is hereby repealed.

Section 2. A new ordinance governing cable television franchises in the City of Capitola is hereby adopted to read as follows:

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CABLE TELEVISION FRANCHISES**Article 1. General****Section 101 Definitions.**

For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future; words in the plural number include the singular number; and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

- (a) "ADA" means the Americans with Disabilities Act of 1990.
- (b) "Adequate Staffing" means an adequate number of telephone lines are available within the defined Telephone Answer Time and an adequate number of trained Customer Service Representatives are present and available to respond to Subscribers.
- (c) "Basic Cable Service" means any service tier which includes at a minimum the retransmission of local television broadcast signals as defined by the Federal Communications Commission.
- (d) "Business Day" means any day during which the Grantee's business offices are open for the transaction of business. Grantee may not select to restrict the scope, force and effect of the Customer Service Regulations identified in Article 6.
- (e) "Business Hours" means the hours during which the Grantee's Customer Service or business offices are open for the transaction of business.
- (f) "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation reception, and control equipment that is designed to provide Cable Service, including video programming, and which is provided to multiple Subscribers within a community; but this term does not include:
 - (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
 - (2) a facility that serves Subscribers without using any public right-of-way;
 - (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

- (4) an open video system that complies with Section 653 of the Cable Act; or
- (5) any facilities of any electric utility used solely for operating its electric utility systems.
- (g) "Cable Service" means the total of the following:
- (1) The one-way transmission to Subscribers of audio and video programming, or other programming services offered to Subscribers by the Franchise; and
- (2) Subscriber interaction, if any, which is required for the selection of such audio and video programming, data or other programming services.
- (h) "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the Federal Communications Commission.
- (i) "Closing Date" as used herein means the calendar date through which all charges are imposed and payments and credits reflected for any given billing period.
- (j) "Collection Action" means any threatened or actual initiation of adverse credit evaluation or referral to any credit reporting agency, association or bureau and/or the threat of, or initiation of legal action.
- (k) "Customer Service Representative" is an agent, employee or contractor of the Grantee authorized and empowered to bind the Grantee as to the subject matter of the Customer Service Regulation identified within Article 6 of this ordinance.
- (l) "Customer Service Supervisor" is an agent, employee or contractor of the Grantee authorized and empowered by the Grantee to control and direct the activities of Customer Service Representatives as to the subject matter of the Regulation utilizing the latter term.
- (m) "Deposit" is the amount paid by a Subscriber, which is not credited to a current charge within twenty (20) business days after receipt thereof.
- (n) "Due Date" is a Business Day not less than twenty (20) business days after the date of the mailing of a bill for Cable Service. Said Due Date shall be the date by which, if payment is made thereby, no additional charge shall be imposed or collected by reason of the timeliness thereof.
- (o) "Effective Date" shall be the first day of the term of the Franchise.

- (p) "Franchise" means the right to operate a Cable System pursuant to a Franchise Agreement.
- (q) "FCC" means the Federal Communications Commission or its designated representatives.
- (r) "Franchise Agreement" means a Franchise approved by the Grantor pursuant to Chapter XII of the City Charter containing the specific provisions of the Franchise granted, including references, specifications, requirements and other related matters.
- (s) "Franchise Area" means an entire geographic area within the City limits of the City as it is now constituted or may in the future be constituted, unless otherwise specified in the Franchise Agreement.
- (t) "Franchise Fee" means any tax, fee or assessment of any kind imposed by the City on a Grantee or Subscriber, or both, solely because of their status as such. The term "Franchise Fee" does not include:
- (1) Capital costs which are required by the Franchise Agreement to be incurred by Grantee for PEG Access Facilities;
 - (2) Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, letters of credit, insurance, indemnification, penalties, or liquidated damages required by the Franchise Agreements; or
 - (3) Any fee imposed under Title 17 (Copyrights) of the United States Code.
- (u) "Franchise Property" means all property owned or leased within the Service Area by Grantee while in the conduct of the Cable System business under a Franchise.
- (v) "Grantee" means any Person receiving a Franchise Agreement pursuant to this Chapter, and its lawful successor, transferee or assignee.
- (w) "Grantor" means the City of Capitola.
- (x) "Gross Annual Revenues" or "Gross Annual Receipts" or "Gross Receipts" means all revenue, as determined in accordance with Generally Accepted Accounting Principles, which is received, directly or indirectly, by Grantee and by each Affiliated Person from or in connection with the distribution of any Cable Service, and any other Service which may, under now or then applicable federal law be included in the Cable Act definition for the purpose of calculating and collecting the maximum allowable Franchise fee for operation of the System, whether or not authorized by any Franchise, including, without limitation, leased or access channel revenues received, directly or indirectly from or in connection with the distribution of any Cable Service. It is intended that all revenue collected

by the Grantee, and by each Affiliated Person, from the provision of Cable Service over the System, whether or not authorized by the Franchise, be included in this definition. Gross Annual Revenue also specifically includes:

- (1) the fair market value of any non-monetary (i.e., barter) transactions between Grantee and any Person, other than an Affiliated Person, but not less than the customary prices paid in connection with equivalent transactions;
 - (2) the fair market value of any non-monetary (i.e., barter) transaction between Grantee and any Affiliated Person, but not less than the customary prices paid in connection with equivalent transactions conducted with Persons who are not Affiliated Persons; and
 - (3) any revenue received, as reasonably determined from time to time by the Grantor, through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the Grantor for the Franchise granted.
 - (4) Franchise fees collected from subscribers. Gross Annual Revenue also includes any bad debts recovered. Gross Annual Revenue also includes all advertising revenue which is received directly or indirectly by Grantee, any Affiliated Person, or any other person from or in connection with the distribution of any Service over the System or the provision of any Service-related activity in connection with the System. Gross Annual Revenue does not include:
 - (i) the revenue of any Person to the extent that said revenue is also included in the Gross Annual Revenue of Grantee;
 - (ii) taxes imposed by law on Subscribers which Grantee is obligated to collect; and
 - (iii) amounts which must be excluded pursuant to applicable law.
- (y) "Installation" means the connection of the system to Subscribers' terminals and the provision of service.
- (z) "Isolated Outage" is a loss of a cable signal for at least one channel of Cable Service to a Subscriber which is not a System Outage.
- (aa) "Person" means any corporation, partnership, proprietorship, individual, or organization authorized to do business in the State of California.
- (bb) "PEG Access Facilities" means the total of the following:
- (1) Channel capacity designated for public, educational, or governmental use; and

(2) Facilities and equipment for the use of such channel capacity.

(cc) "Poor Signal Quality" is a signal reception by a Subscriber below the standards for such a signal as adopted by the Federal Communications Commission.

(dd) "Referral Information" includes without limitation dispatch of personnel in situations affecting the health and safety of persons, information as to business hours and appropriate telephone numbers for business office contacts.

(ee) "Security Fund" means any negotiable financial instrument that is exercisable at the City's sole option and in the City's sole favor. Examples of such include, but are not limited to: corporate guarantee, or letter of credit.

(ff) "Service Area" means the area where Cable Service is available to the Subscribers at the street.

(gg) "Service Call" is any work requiring the visit of the Grantee's representative to the location at which Cable Service is provided and any appointment requiring the presence of the Subscriber, including without limitation, the installation and repair of primary and additional outlets.

(hh) "Service Tier" means a category of Cable Service or other services provided by a Grantee and for which a separate rate is charged by the Grantee.

(ii) "Subscriber" means any person who or which elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with cable system.

(jj) "System Outage" means a loss of all channels upon the Cable System simultaneously affecting at least ten (10) customers.

(kk) "Telephone Answer Time" means that period of time from the initial ring signal to the Grantee to the acknowledgment of answer by the Customer Service Representative and includes all waiting and/or "on hold" time prior to such answer and all transfer time by any automated response unit from the time of appropriate menu selection by the Subscriber to the acknowledgment of answer by the Customer Service Representative.

Section 102 Terms Not Defined.

Words, terms, or phrases not defined herein shall first have the meaning as defined in the Cable Act, and then the special meanings or connotations used in any industry, business, trade, or profession where they commonly carry such special meanings. If those special meanings are not common, they will have the standard definitions as set forth in commonly used and accepted dictionaries of the English language.

Section 103 Intent.

The City is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct Cable Systems within the City limits.

The Grantor finds that the development of a Cable Telecommunications System has the potential of having great benefit and impact upon the residents of Capitola. Because of the complex and rapidly changing technology associated with cable television, the Grantor further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which will be vested in the Grantor and be administered by such persons as the Grantor shall designate. It is the intent of this Chapter and subsequent amendments to provide for and specify the means to attain the best possible Cable System to the public and any Franchise issued pursuant to this Chapter shall be deemed to include this finding as an integral part thereof. It is the further intent of this Chapter to establish regulatory provisions that permit the Grantor to regulate Cable Systems to the extent permitted by federal and state law, including but not limited to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, applicable Federal Communications Commission regulations and applicable California law.

Section 104 Federal or State Jurisdiction.

(a) This Chapter shall be construed in a manner consistent with all applicable Federal and State laws. Whenever any State or Federal law has paramount jurisdiction over any specific provisions of this Chapter, or when such paramount jurisdiction is exercised by an individual with standing, the Federal Communications Commission (FCC) or Public Utilities Commission of the State of California (CPUC) or any other Federal or California State agency, such paramount jurisdiction shall preempt or preclude the exercise of like jurisdiction by the City. Any modification of such Federal or State law shall to the extent applicable be considered part of this Chapter as of the effective date of such law.

(b) In the event that the State or Federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal authority, Grantor may, if it so elects, adopt rules and regulations in these areas, provided that such rules and regulations shall not apply to any Franchise Agreement issued pursuant to this Chapter before the adoption of such rules and regulations to the extent they materially adversely affect such Franchise Agreement, including without limitation, requirements with respect to system rebuilds, channel capacity, system design, construction and performance requirements, PEG Access Facilities, support for any such facilities, interconnect commitments, activation of interactive capability or institutional networks. Such new municipal regulatory powers may, however, affect existing franchises with respect to franchise renewal procedures, technical standards and related provisions.

(c) This Chapter shall apply to all Franchises granted or renewed after the effective date of this Chapter. It shall also apply to the extent permitted by applicable Federal or State law to all Franchises before the effective date of this Chapter.

Article 2. Franchise Terms and Conditions

Section 201 Franchise Required.

It shall be unlawful for any person to construct, install, or operate a Cable System in the City without a Franchise awarded pursuant to this Chapter.

Section 202 Nonexclusive Franchise.

Any Franchise granted shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable System or any component thereof, as it deems appropriate, subject to applicable State and Federal law.

Section 203 Multiple Franchises.

(a) Grantor may grant any number of Franchises in the Franchise Area. Grantor may limit the number of Franchise Agreements granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:

(1) The capacity of the public rights-of-way to accommodate multiple coaxial cables, fiber, or related cable signal transmission lines in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewage.

(2) The benefits that may accrue to Subscribers as a result of competition, such as lower rates and improved service.

(3) The disadvantages that may result from competition, such as the requirement for multiple pedestals on Subscriber's property, and the disruption and damage arising from numerous excavations of the rights-of-way.

(4) Each Grantee awarded a Franchise Agreement to serve the entire City shall offer Cable Service, in accordance with construction and service schedules mutually agreed upon between Grantor and Grantee, and consistent with applicable law.

(b) Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the rights-of-way in any particular area cannot feasibly accommodate additional cables.

Section 204 Franchise Purpose.

Cable System Franchises authorized pursuant to this Chapter shall be for the following purposes:

(a) To provide that Grantee may engage in the business of providing Cable Television service to Subscribers within the designated service area.

(b) To provide that Grantee may erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain cable, lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of a Cable System in, on, over, under, upon, along, and across streets or other public places within the Franchise Area.

(c) To provide that Grantee may maintain and operate said Cable System for the origination, reception, transmission, amplification, and distribution of television and radio signals and for the delivery of Cable Services.

(d) To set forth the obligations of a Grantee under the Franchise.

Section 205 Franchise Renewal.

Franchise renewal may be allowed by the Grantor in accordance with applicable law, including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise Agreement. Grantee shall reimburse Grantor for all costs associated with processing and reviewing the application for renewal up to a maximum of Ten Thousand Dollars (\$10,000). Any amount larger than Ten Thousand Dollars (\$10,000) must be negotiated in any Franchise renewal process. This amount shall be adjusted for inflation pursuant to the San Francisco Consumer Price Index for all consumers.

Section 206 Term of the Franchise.

(a) A Franchise granted hereunder shall be for a fixed term established in the Franchise Agreement, and the term shall commence on the Grantor's adoption of an ordinance or resolution authorizing the Franchise Agreement.

(b) A Franchise granted pursuant to this Chapter may in Grantee's discretion be renewed upon application by the Grantee pursuant to the provisions of applicable State and Federal law and of this Chapter.

Section 207 Franchise Fee.

(a) Following the issuance and acceptance of the Franchise, Grantee shall pay to the Grantor a Franchise Fee in the amount set forth in the Franchise Agreement.

(b) The Grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, either audited and certified by an independent Certified Public Accountant or certified by an officer of the Grantee, reflecting the Gross Annual Receipts and all payments, deductions and computations for the period covered by the payment. Upon ten (10) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records for the 3-year period immediately preceding said notice, in accordance with Generally Accepted Auditing Standards, and if such audit indicates a Franchise Fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable costs of such an audit; if the Franchise Fee underpayment is between zero percent (0%) and two percent (2%), the Grantee will split equally with Grantor all reasonable costs of such an audit.

(c) Except as otherwise provided by law, no acceptance of any payment by a Grantee shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a Franchise Fee under this Chapter or for the performance of any other obligation of the Grantee.

(d) If any Franchise payment or recomputed amount is not paid on or before the dates specified in the Franchise Agreement, Grantee shall pay as additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to 10% or the legal rate, whichever is more during the period for which payment was due; and

(2) If a payment is late for forty-five (45) days or more, a late penalty payment of five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor by reason of delinquent payment.

(3) The Grantee shall pay all attorney's fees incurred in collecting of unpaid amount.

Section 208 Transfer of Franchise.

(a) Any Person desiring a transfer of a Cable System Franchise shall file a transfer application with the Grantor. A nonrefundable transfer application fee of an amount up to seventy-five hundred (\$7500.00) dollars established by the Grantor shall accompany the application to reimburse the Grantor for all costs associated with processing and reviewing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

(b) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the Franchise or any of the rights or privileges therein granted, without the prior consent of the Grantor and then only upon such terms and conditions as may be prescribed by the Grantor, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the Franchise without the consent of the Grantor shall be null and void. The granting of a security interest in any Grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this Section.

(c) The requirements of Subsection (a) of this Section 208 shall restrict any change in the control of Grantee. The word control as used herein is not limited

to major stockholders or partnership interests, but includes actual working control in whatever manner exercised. If Grantee is a corporation, partnership, limited liability company or other business organization, prior approval of the Grantor shall be required where ownership or control of more than ten percent (10%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of Grantee as of the effective date of the Franchise, singularly or collectively.

(d) Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the Cable System of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said Cable System. Such notifications shall be considered by Grantor as notice that a change in control of ownership of the Franchise has occurred and the provisions under this Section governing the consent of Grantor to such change in control ownership shall apply.

(e) In determining whether it shall consent to such change, transfer, or acquisition of control, Grantor may inquire into the financial and other qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in any such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the transferee completes an application in the form and substance reasonably satisfactory to Grantor, which application shall include information required under Subsections (a) through (h) of Section 302 of this Chapter. Grantee shall also provide such reasonable additional information that Grantor deems applicable. An application shall be submitted to Grantor not less than one hundred and twenty (120) days before the proposed date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the Cable System and comply with all Franchise requirements for the remainder of the term of the Franchise Agreement. If, after considering the legal, financial, character, technical and other public interest qualities of the applicant and determining that they are satisfactory, the Grantor finds that such transfer is acceptable, the Grantor may allow the transfer and assign most of the rights and obligations of such Franchise as may be in the public interest. The consent of the Grantor to such transfer shall not be unreasonably withheld.

(f) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the Franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the Cable System, if a Grantee defaults in its financial obligations. Further, said financial institution shall also submit a plan for such operation within one hundred-twenty (120) days of assuming such control that will insure continued service and compliance with all Franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year unless extended by the Grantor in its discretion and during said period of time it shall have the right to petition the Grantor to transfer the Franchise to another Grantee. The Grantor shall have the right to

terminate the Franchise at the end of the one (1) year period of time that a financial institution exercises control over the system.

Section 209 Geographical Coverage.

(a) Grantee shall design, construct and maintain the Cable System to have the capability to pass every dwelling unit in the City, subject to any service area line extension requirements of the Franchise documents.

(b) After service has been established by activating trunk and/or distribution cables for any Service Area, Grantee shall provide service to any requesting Subscriber within that Service Area within thirty (30) days from the request, provided that the Grantee is able to secure all rights-of-way and encroachment permits necessary to extend service to such Subscriber within such thirty (30) day period on reasonable terms and conditions mutually acceptable to Grantee and such subscriber.

Article 3. Application for Franchise

Section 301 Franchise Applications.

Any person desiring a Cable System Franchise shall file an application with the Grantor. A reasonable nonrefundable application fee will be established by the Grantor. The application fee shall accompany the application to cover all costs associated with processing and reviewing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. If such costs exceed the application fee, the selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

Section 302 Applications - Contents.

An application for a Franchise for a Cable System shall contain:

- (a) A description of the proposed Franchise and Service Area;
- (b) Résumé of prior history of applicant, including the expertise of applicant in the cable television field;
- (c) List of partners, general and limited, and their ownership interests, of the applicant, if a partnership, or the percentage of stock owned or controlled by each shareholder or member, if a corporation or limited liability company;
- (d) Identity of officers, directors and managing employees of applicant, together with a description of the background of each such person;
- (e) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;

- (f) An audited current financial statement of applicant verified or otherwise certified to be true by applicant's management;
- (g) Proposed construction and service schedule; and
- (h) Any reasonable additional information that the Grantor deems applicable.

Section 303 Consideration of Applications.

(a) Upon receipt of any application for a Franchise, the City Manager shall prepare a report and make a recommendation respecting such application to the City Council.

(b) A public hearing shall be set prior to approval of any proposed Franchise Agreement. Within thirty (30) days after the close of the hearing, the Grantor shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and if granted, subject to what conditions. The Council may grant one (1) or more Franchises, or may decline to grant any Franchise Agreements.

Article 4. Physical Requirements

Section 401 Design and Construction Requirements.

(a) Grantee shall not construct any portion of the Cable System until Grantee has secured necessary permits from Grantor, or other cognizant public agencies.

(b) In those areas of the Franchise Area where transmission or distribution facilities of the public utilities providing telephone, electric power, sewer or water services or the Cable Television System of Grantee(s) are underground as of the effective date of this ordinance, the Grantee likewise shall continue to construct, operate and maintain its Cable Systems underground. For the purposes of this subsection, "underground" shall include a partial underground system. When approved by the Grantor, amplifiers and other equipment in Grantee's transmission and distribution lines may be placed in appropriate housings upon the surface of the ground, provided that placement of such housings shall be in compliance with applicable federal or local access requirements, such as provided for in the Americans With Disabilities Act of 1990 ("ADA"). The Grantor shall not in any manner be responsible for any costs or liabilities incurred by Grantee in placing Grantee's Cable System facilities underground or obtaining any easements therefor.

(c) In those areas of the City where Grantee's Cable System is located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground at such public utilities' cost, then the Grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may, with approval of Grantor, continue to remain in above-ground enclosures, provided that placement of such enclosures

shall be in compliance with applicable federal or local access requirements, such as provided for in ADA.

(d) If a Grantor of a Franchise pursuant to this Chapter desires to serve new residential developments in which the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements:

(1) The developer shall be responsible for contacting all Franchises to ascertain which Franchisee is to provide Cable Service to that development. The developer may establish a reasonable deadline to receive a response. Any Tentative or other Subdivision Map shall indicate the Franchise that has agreed to serve the development.

(2) If one (1) or two (2) Franchises wish to provide service, they shall be accommodated in the joint public utilities trench on a nondiscriminatory basis.

(3) Cost of trenching, installing conduit and aerial lines and obtaining easements shall be the responsibility of the developer.

(4) The developer shall provide at least ten (10) working days' notice of the date that utility trenches will be open to the Franchisees that have agreed to serve the development. When the trenches are open, Franchisees shall have two (2) working days to begin the installation of their Cable System, and five (5) working days after beginning installation to complete installation.

(5) The Final Subdivision Map shall not be approved until the developer submits evidence to Grantor that:

(i) It has notified each Franchisee that underground utility trenches are to open as of an estimated date, and that each Franchisee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

(ii) It has received a written notification from each Franchisee that the Franchisee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually acceptable to the developer and Grantee, or has received no reply from a Grantee within ten (10) days after its notification to such Grantee, in which case the Grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.

(6) Sharing the joint utilities trench shall be subject to compliance with Public Utilities Commission and City utility standards. If such compliance is not possible, the developer shall provide a separate trench for the Cable

System. With the concurrence of the developer, the affected utilities and the Franchisees, alternative installation procedures, such as use of deeper trenches, may be utilized, subject to applicable law.

(7) If a developer has complied with the terms of this Chapter, then any Franchisee wishing to serve an area where the trenches have been closed and which has not responded in the manner required by this Section, shall be responsible for all of its own trenching and associated costs.

(8) If more than one Franchise is granted, the Grantor reserves the right to limit the number of drop cables and/or pedestals per residence.

(e) Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(f) Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Code as adopted by the City from time to time, in such manner that they will not interfere with any installations of the City or of a public utility serving the City. Grantee shall strictly adhere to all locally adopted building and zoning codes currently or hereafter in force.

(g) All structures and Cable System in, over, under, and upon streets, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(h) Grantee shall arrange its Cable System and other appurtenances on both public and private property in such manner as to cause no unreasonable interference with the use of public or private property by any person.

Section 402 Line Extensions.

The Grantee shall be required to extend Cable Service from any existing terminus of the Cable System to any area within the Franchise Area having a density of at least ten (10) existing and completed dwelling units within any one quarter (1/4) linear mile, provided that the dwelling unit nearest to the existing terminus of the Cable System in such one quarter (1/4) linear mile is within one half (1/2) mile of the existing terminus of the Cable System. Within thirty (30) days after Grantee has confirmed the existence of the density provided above, Grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required for the extension of such trunk cable, including any utility joint use agreements and any permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the Cable System. Within thirty (30) days following completion of such trunk cable extension construction, the Grantee shall proceed to render Cable Service; provided, however, that any Subscriber requesting Cable Service from the extension of the energized trunk cable shall be subject to the provisions of Section 404 herein.

Section 403 Technical Standards.

The Grantee shall construct, install, operate and maintain its Cable Television System in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any detailed standards set forth in its Franchise Agreement. In addition, the Grantee shall provide to the Grantor, upon request, a written report of the results of the Grantee's periodic proof of performance test conducted pursuant to FCC technical standards and guidelines. Failure to comply with technical standards shall constitute a material breach of any Franchise Agreement.

Section 404 Service Connections.

(a) The Grantee shall extend Cable Service to any potential Subscriber located in the Service Area served by Grantee's energized distribution cable which requires only the connection of a standard drop or tap to make such service available, including those premises serviced by underground utilities, at a standard documented rate if the owner or occupant of the premises requests such service.

(b) If the Cable Service connection requires no more than a two hundred fifty (250) feet aerial drop line, the Grantee shall provide connection to its service at no charge for the initial two hundred fifty (250) feet, other than the Grantee's standard installation fee. The Grantee may charge any prospective Subscriber for the Grantee's actual cost of all labor, equipment and materials for:

- (1) that portion of any new aerial service connection in excess of two hundred fifty (250) feet;
- (2) the length of any new Cable Service connection installed underground; and
- (3) the entire length of any new Cable Service connection to remote or relatively inaccessible Subscribers.

Prior to installing any Cable Service connection for which the Grantee will charge a prospective Subscriber on a time and materials basis, the Grantee must present the prospective Subscriber with a written statement of its estimated costs for the Cable Service connection.

Section 405 Service to Public Facilities.

With the Grantor's reasonable cooperation, Grantee shall, without charge to Grantor, within one hundred eighty (180) days of the Effective Date of any Franchise Agreement granted pursuant to this Chapter, fully wire with one or more outlets and provide all legally and contractually allowable Subscriber services of its Cable System to all public and nonprofit private schools, City police and fire stations, City recreation centers, libraries, City Hall, and such other buildings owned or controlled by the City, provided that such buildings shall be located within the Franchise Area. Grantee shall have no obligation to provide such Cable Service to buildings owned or controlled by the City if the primary purpose for such buildings is solely to house equipment, store records or provide residential housing.

Section 406 Grantee to Obtain Necessary Permits and Authorizations.

Within thirty (30) days after the effective date of any Franchise Agreement granted pursuant to this Chapter, the Grantee shall commence and proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the Cable Systems.

In connection therewith, copies of all petitions, applications and communications submitted by the Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting Grantee's cable television operations, shall also be submitted simultaneously to the City Manager.

Section 407 Deadline to Commencement of Construction.

Within ninety (90) days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, Grantee shall commence construction and installation of the Cable System.

Section 408 Deadline to Furnish or Begin Service to Subscribers.

Within one hundred eighty (180) days after the commencement of construction and installation of the Cable System, Grantee shall begin Cable Service to Subscribers, and the completion of the installation and construction shall be pursued with reasonable diligence thereafter, so that Cable Service to all of the areas designated and scheduled on the final map approved by the Grantor made part of the Franchise Agreement shall be provided as set forth therein. Grantee is required to complete construction of Cable System in a maximum of three (3) years, although a shorter time may be specified in the Franchise Agreement.

Section 409 Use of Existing Poles, Conduits and Other Components of Cable System.

Grantee shall utilize existing poles, conduits, and components of a Cable System whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or owned property unless and until first securing the written approval of the Grantor.

Whenever Grantee is permitted to use existing poles, conduits and other components of the Cable System, or whenever existing conduits and other facilities are located beneath the surface of the streets, or whenever the City shall undertake a program designed to cause conduits and other components of the Cable System to be located beneath the surface of the streets within the Franchise Area, in the exercise of its police power or pursuant to the terms hereof or any Franchise Agreement, upon reasonable notice to Grantee, any such conduits or other components of the Cable System of Grantee shall be constructed in accordance with Section 401.

Section 410 City Use of Grantee's Poles or Conduits.

The City shall have the right, free of charge, to make additional use, for any public or municipal purpose, whether governmental or proprietary, of any poles, conduits, or other similar facilities erected, controlled, or maintained exclusively by or for Grantee in any street, provided such use by City does not unreasonably interfere with the use by Grantee.

Section 411 Disconnection, Relocation or Removal of Facilities at City Request.

The Grantee at its expense shall protect, support, temporarily disconnect, relocate, or remove any property of Grantee when, in the opinion of the Grantor, the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other types of structure or improvements or governmental agencies whether acting in a governmental or a proprietary capacity, or any other structure or public improvement, including, but not limited to, movement of buildings, urban renewal and redevelopment, and any general program under which the Grantor shall undertake to cause all such properties of the Grantee to be located beneath the surface of the ground. The Grantee shall in all cases have the privilege, subject to the corresponding obligations, to abandon any real property of Grantee in place, as herein provided. Nothing under this Section shall be deemed a taking of the property of Grantee, and Grantee shall be entitled to no surcharge by reason of anything hereunder.

Section 412 Failure of Grantee to Perform Required Work.

Upon the failure, refusal, or neglect of Grantee to cause any work or other act required by law or hereunder to be done on any street within any time prescribed therefor, or upon notice given, where no time is prescribed, the Grantor may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to Grantee an itemized statement of the costs thereof. The Grantee shall, within thirty days after receipt of such statement, pay to the Grantor the entire amount thereof.

Section 413 Removal or Abandonment of Grantee's Property.

(a) In the event that :

- (1) The use of any part of the Cable System of Grantee ceases to operate for any reason for a continuous period of thirty days without prior written notice to and approval by the Grantor; or
- (2) Any part of such Cable System has been installed in any street or other area without complying with the requirements hereof; or
- (3) Any Franchise shall be terminated, canceled, or shall expire; then the Grantee shall, at the option of the Grantor, and at the expense of Grantee and at no expense to the Grantor, and upon demand of the Grantor, promptly remove from any streets or other areas all property of Grantee, and Grantee shall promptly restore the street or other area from which such property has been removed to such condition as the Grantor shall approve.

(b) Grantor may, upon written application therefor by Grantee, approve the abandonment of any of such property in place by Grantee and under such terms and conditions as the Grantor may prescribe. Upon abandonment of any of such property in place, Grantee shall cause to be executed, acknowledged, and delivered to the Grantor such instruments as the City Attorney shall prescribe and approve, transferring and conveying the ownership of such property to the Grantor.

Section 414 Compatibility and Connectivity.

All Cable System Franchisees must provide, insofar as technically and financially possible, the capability to interconnect and interoperate with other available Cable Systems within the Franchise Area and to neighboring Franchises within Santa Cruz and Monterey Counties.

Article 5. Records and Performance Requirements

Section 501 Reports – General.

(a) All reports required under this Chapter, except those which the Grantor has agreed to keep confidential, shall be available for public inspection in the City Clerk's offices during normal business hours.

(b) All reports and records required under this Chapter shall be furnished at the sole expense of Grantee, except as otherwise specifically provided in this Chapter or the Franchise Agreement.

(c) The willful refusal, failure, or neglect of Grantee to file any of the reports required as and when due under this Chapter, may be deemed a material breach of the Franchise Agreement if such reports are not provided to Grantor within thirty (30) days, and may subject the Grantee to all remedies, legal or equitable, which are available to Grantor under the Franchise or otherwise.

(d) Any materially false or misleading statement or representation made knowingly and willfully by the Grantee in any report required under this Chapter or under the Franchise Agreement is a material breach of the Franchise Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under the Franchise or otherwise.

Section 502 Records Required and Grantor's Right to Inspect.

(a) Grantee shall at all times maintain:

(1) A record of all complaints received and interruptions or degradation of Cable Service experienced for the preceding two (2) years, provided that such complaints result in or require a Service Call.

(2) A full and complete set of plans, records and "as built" maps showing the location of the Cable System installed or in use in the City, exclusive of Subscriber service drops and equipment provided in Subscriber's homes. Said plans, records and maps are trade secrets of Grantee and, as such, are exempt from disclosure to members of the

public under the Public Records Act (Government Code Section 6250 et. seq.), including Sub-paragraph (n) of Section 6254(n). Grantee agrees to assist Grantor in demonstrating that the plans, records and maps are exempt under express provisions of the Public Records Act or that on the facts of the particular case, the public interest served by not making the plans, records or maps public clearly outweighs the public interest served by disclosure of the plans, maps or records. Grantor agrees to provide Grantee with prompt notice of any request Grantor receives for public records that would include said plans, records or maps.

(3) An annual log of Service Calls, identifying the number, general nature and disposition of such calls, service log shall be submitted to the Grantor within thirty (30) days following the end of each year in a form reasonably acceptable to the Grantor. The annual log of Service Calls shall be maintained in a fashion that allows for the Grantor to check the status of Service Calls at any time during the year.

(4) Within ninety (90) days after the effective date of the Franchise Agreement the Grantee shall file with the Grantor a General Rate and Programming Disclosure as specified in Section 610.

(5) The Grantee shall maintain an Installation Record (one year written record or an equivalent stored on magnetic media capable of reproduction in printed form by the Grantee) of all service activations, including the date of request and the date of actual service activation.

(6) The Grantor may request, and upon request Grantee shall furnish additional information, records and documents, provided they reasonably relate to the scope of the Grantor's rights under this Chapter or the Grantee's Franchise Agreement.

(7) Within ninety (90) days after the end of the calendar year, the Grantee shall submit a written annual report to Grantor with respect to the preceding calendar year in a form approved by Grantor, including, but not limited to, the following information:

(i) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the Cable System, including but not limited to, services begun or discontinued during the reporting year;

(ii) A list identifying the Grantee's officers, members of its board of directors, and other principals of Grantee;

(iii) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Grantee;

(iv) An indication of any dwelling units in Grantee's Franchise Area where Cable Service is not provided, and subject to applicable line extension policies, a schedule for providing Cable Service to those dwelling units;

(v) Any other information which the Grantor shall reasonably request.

Section 503 Privacy Report.

Upon Grantor's request, but no more than annually, Grantee shall submit to Grantor a report indicating the degree of compliance with the privacy provisions contained in Section 502 and Section 505 herein and all steps taken to assure that the privacy rights of individuals have been protected.

Section 504 Public Reports.

(a) If Grantee is publicly held, a copy of each of Grantee's annual and other periodic reports and those of any parent, shall be submitted to Grantor within forty-five (45) days of issuance.

(1) Grantee shall submit to Grantor copies of all pleadings, applications and reports submitted by Grantee to any Federal, State or local court, agency or governmental body as well as copies of all decisions, correspondence and actions by any such Federal, State or local court, regulatory agency, or other governmental body which are non-routine in nature and which will materially affect its Cable System operations within the Franchise Area. Grantee shall submit such documents to Grantor simultaneously with its submission to such court, agency and/or body; or within five (5) days after its receipt from such court, agency and/or body. Information otherwise confidential by law and so designated by Grantee, which is submitted to Grantor, shall be retained in confidence by Grantor and its authorized agents and shall not be made available for public inspection.

(2) Upon reasonable notice, and during normal business hours, Grantee shall permit examination by any duly authorized representative of the Grantor, of the Cable System together with any appurtenant property and facilities of Grantee situated within or without the City, and all records relating to the Franchise, provided they reasonably relate to the scope of the Grantor's rights under this Chapter or the Franchise Agreement.

Section 505 Trade Secrets, Confidential or Proprietary Information.

Notwithstanding the foregoing, Grantee shall have no obligation to provide copies of documents to Grantor which contain trade secrets of Grantee or which are otherwise of a confidential or proprietary nature to Grantee unless it receives satisfactory assurances from Grantor that such information can and will be held in strictest confidence by the Grantor. To the extent possible, Grantee will provide Grantor with summaries of any required documents or copies thereof with trade secrets and confidential and proprietary matters deleted therefrom. The burden of proof shall be on Grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of Grantor.

Section 506 Opinion Survey.

(a) Upon request of the Grantor, but not more than once every two (2) years, the Grantee shall conduct a Subscriber satisfaction survey pertaining to Subscriber opinion as to quality of service. The survey may be transmitted to Subscribers in Subscriber statements for Cable Service. The form and content of such survey shall be reasonably acceptable to the Grantor. The cost of such survey shall be borne by the Grantee.

(b) The Grantee shall furnish to the Grantor the results of any such survey conducted by the Grantee. The results of such survey shall be furnished to the Grantor within thirty (30) days following completion of the survey. Upon request, Grantee shall furnish Grantor the actual survey forms completed by Subscriber.

(c) The Grantor and Grantee shall utilize Sec. 507(c) to resolve any Cable System performance problems identified in the opinions survey.

Section 507 System Performance Review Meetings.

(a) Every fifth year throughout the term of the Franchise, if requested by the Grantor, Grantor and Grantee shall meet to review the Cable System performance and quality of service provided by a Grantee. The Grantor may request a Council appointed committee to review the Cable System performance and quality of service and make recommendations to the Council.

(b) The various reports required pursuant to this Chapter, results of technical performance tests, the record of Subscriber complaints and Grantee's response to complaints, and the information acquired in any Subscriber surveys, shall be utilized as the basis for review of Cable System performance and quality of service. In addition, any Subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. The Grantor will also review all insurance, security fund and other performance requirements to make sure that they are up to date and in compliance with standards established in this ordinance. Within thirty (30) days after conclusion of a system performance review meeting, Grantor may issue findings with respect to the Cable System's performance and the quality of service provided by Grantee.

(c) If Grantor determines by any method that Grantee is not in compliance with the requirements of the Cable System performance identified within this ordinance or the Grantee's Franchise, Grantor may direct Grantee to comply within a period of time determined by Grantor. Failure of Grantee, after such notice, to comply within the period specified therefor or to commence compliance within such period and diligently achieve compliance thereafter, shall be considered a material breach of the Franchise, and Grantor may exercise any remedy within the scope of this Chapter and the Franchise Agreement considered appropriate.

Section 508 Special Review of System Performance.

When complaints or other evidence, in the judgment of the Grantor, casts reasonable doubt on the reliability or quality of Cable Service, the Grantor shall have the right to compel the Grantee to analyze, test and report on the performance of the Cable System in order to assure compliance with this Chapter and the Franchise Agreement. Grantor may not compel Grantee to analyze, test and report unless and until Grantor has provided Grantee with at least thirty (30) days' notice of its intention to exercise its rights under this Section and has provided Grantee with a hearing before the Council prior to its exercise of such rights. Such analysis, tests or reports shall be made and delivered to the Grantor no later than thirty (30) days after the Grantor notifies the Grantee that it is exercising such right. The analysis, tests and reports shall be made at Grantee's sole cost. Any analysis, tests, or reports shall include the following information: the nature of the complaints which precipitated the analysis and tests; what Cable System component was tested; the equipment used and procedures employed in said analysis and testing; the results of such analysis and tests; and the method by which any complaints were resolved. Any other information pertinent to the special test such as video tape, audio tape, digital data, computer data, or written details shall be recorded.

Article 6. Service Standards**Section 601 Minimum Customer Service Regulations.**

This Chapter may be cited as the "Customer Service Regulations."

Section 602 Office and Telephone Services.

(a) The Grantee shall provide a conveniently located business office within the Franchise Area. At such office the company shall provide Adequate Staffing to serve the public and Customers not less than eight (8) hours per Business Day, and to provide at least the following services to Customers at the local business office:

- (1) Accept payments;
- (2) Exchange or accept converters or other equipment;
- (3) Respond to inquiries; and
- (4) Schedule service or technical calls.

(b) There shall be a toll-free telephone access, staffed with one or more Customer Service Representative to provide twenty four (24) hours referral information, including weekends and holidays.

(c) Customer Service Representatives shall be adequately trained to have the capability to provide Referral Information without limitation.

- (1) For purposes of documenting the Subscriber's communications with the Customer Service Representative, the Customer Service Representative shall provide the Subscriber with his or her true name and/or his or her Customer Service Representative number.

(2) Under normal operating conditions, Telephone Answer Time by a Customer Service Representative shall not exceed thirty (30) seconds, and busy signals shall not occur on more than three percent (3%) of calls. If a call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These requirements shall be attained not less than 13.5 days out of any possible consecutive 15-day period.

(d) If a Subscriber requests to speak with a Customer Service Supervisor and none is available, the Customer Service Supervisor shall return the telephone call of the Subscriber within four (4) Business Hours. If the Customer Service Supervisor does not achieve a direct contact with the Subscriber on the return call, the Customer Service Supervisor shall leave, in any message for the Subscriber, a direct dial or extension number which will reach the Customer Service Supervisor for the subsequent use of the Subscriber.

(1) Grantee telephone numbers shall be listed in the directories published by all local exchange telephone companies operating within the Capitola area, as well as on all Subscriber bills and advertisements.

Section 603 Installation.

Standard installation will be performed within seven (7) Business Days after an order has been placed by a Subscriber. "Standard" installation is a connection or reconnection of cable service as defined in Article 4 of this ordinance.

Section 604 Term of Service.

(a) The Subscriber may terminate service at any time. Said termination, shall be effective upon the earlier of (a) termination of service by the Grantee and return of any equipment in possession of Subscriber or (b) the expiration of five (5) Business Days following the Subscriber's request for termination. Disabled persons and persons unable to travel to the Business Office may have the Grantee pick up cable service equipment owned by the Grantee at no charge, which pick-up shall occur within five (5) Business Days following the Subscriber's request for termination and shall occur at a time reasonably convenient to the Subscriber. The Grantee may provide the Subscriber with mailers for postage prepaid return of the equipment owned by the Grantee in lieu of the foregoing pick-up procedure.

(b) Upon the termination of Subscriber's Cable Service, the Subscriber shall have the option, in the sole discretion of the Subscriber:

(1) To require the Grantee to remove all wires and other unused Cable Service equipment installed by the Grantee in connection with the original installation.

(2) To require the Grantee to leave all Cable Service wiring in place and undisturbed, provided that the Grantee shall have the right to disable the Cable Service at the joinder of the public right-of-way (and at no other place) in order to forestall diversion of Cable Service.

Section 605 Service Call.

(a) The Grantee shall maintain a sufficient number of repair technicians and related support staff, equipment and facilities to enable the Grantee to respond to a Subscriber request for handling Service Calls in all reasonably anticipated circumstances within the following time limitations:

(1) For System Outages - response for repair shall occur within two (2) hours, including weekends and holidays, after the receipt of the first notice of a System Outage.

(2) For an Isolated Outage - response for repair shall occur within six (6) Business Hours after the receipt of a Service Call from a Subscriber.

(3) For Poor Signal Quality - response for evaluation and/or repair shall occur within twenty-four (24) Business Hours after the receipt of a request for repair and/or rectification of such Poor Signal Quality.

(b) When scheduling a Service Call, the Grantee shall identify to the Subscriber at the time of scheduling a specific date on a Business Day and either a specific appointment time or a block of time within a specified period of four (4) Business Hours. The Grantee may schedule Service Calls and other installation activities outside of Business Hours for the express convenience of the Subscriber. The Grantee may not cancel an appointment with a Subscriber after the close of business on the Business Day prior to the scheduled appointment. If the Grantee representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, Grantee shall contact the Subscriber and shall reschedule the appointment, as necessary, at a time during the Business Day which is convenient for the Subscriber.

(1) Service Call Alternative. Instead of a Service Call, the Franchise Agreement may allow for the Subscriber to return and to replace converters and/or other Cable Service equipment through the use of the Business Office at no charge to the Subscriber for a Service Call.

(2) The Grantee shall be deemed to have responded to a request for a Service Call for the purposes of determining compliance with time limitations of this section when a qualified Grantee technician arrives at the Subscriber's location and begins work in response to the request, provided that the qualified Grantee technician continues said work without cessation to completion and restoration of service. In case of a Subscriber not being home when the technician arrives, the technician shall leave written notification of who and when to call to reschedule. Two successive failures of the Subscriber to be present at the appointed time shall excuse the Grantee of the duty to respond within twenty-four (24) hours of the receipt of a call.

Section 606 Grantee Failure to Keep Appointment.

For each failure of the Grantee to meet any scheduled appointment within the parameters specified hereby, the Grantee must offer the Subscriber so affected, in the sole discretion of the Subscriber after full disclosure a choice of either:

- (a) A credit to the Subscriber's then current billing balance in an amount equal to the greater of (i) twenty dollars (\$20) or (ii) the then current rate for one (1) month of Basic Service; or
- (b) With respect to service connection or repair appointments, an opportunity to elect to seek remedies under California Civil Code Section 1722, if applicable.
- (c) The Subscriber shall not be deemed to have made an election unless and until the Grantee shall demonstrate that it has informed the Subscriber that, by his/her acceptance of the credit specified above, the Subscriber intends to waive his/her remedies under the Civil Code for the missed appointment.

Section 607 Charge for Cable Service Calls.

A Subscriber shall not be charged for a Service Call unless the service request can be demonstrated by the Grantee to be unrelated to the Grantee's Cable System or to be proximately caused by Subscriber negligence.

Section 608 Service Outages, Refunds, and Credits.

- (a) Upon notification by a Subscriber of a System or Isolated Outage, the Grantee shall provide a credit equal to at least one day's proration of the Grantee's total monthly charges (for all levels and types of service and equipment) for each day or portion thereof for (i) each System or Isolated Outage of all Cable Service exceeding twelve (12) hours accumulating within a twenty-four (24) hour period and (ii) for one day's proration of the Subscriber's monthly charge for a Premium Service for each outage of such Premium Service exceeding four (4) hours. Credits for service will be issued by the Grantee during the Subscriber's next billing cycle following the outage, or if a request is made for credit pursuant to Section 608(b), then following determination that the credit is warranted under that Section.
- (b) A Subscriber may identify a System or Isolated Outage justifying a credit when the Grantee has not otherwise identified the Isolated or System Outage. The Grantee shall respond to such an identification of System or Isolated Outage pursuant to the procedures required for resolution of disputed bills.
- (c) If a refund or deposit return is due to a Subscriber at the time of a service termination, the refund check or deposit return will be issued promptly, but no later than forty-five (45) days after service termination.

Section 609 Bills, Billing, Deposits, and Disconnections.

(a) A Subscriber may not be required to pay for Cable Service more than one (1) month in advance of receiving said service.

(b) Every Subscriber bill shall be clear, concise and understandable and shall itemize separately each fee or charge comprising the total thereof for (i) each category of service; (ii) each piece of equipment for which a charge is imposed; and, (iii) any other fees to which a Subscriber has agreed in writing and the arithmetic necessary to calculate the bill. The bill must also specify:

(1) A due date for the payment thereof;

(2) The amount of the Late Charge, if any, which may be imposed by the Grantee for payments received after the due date;

(3) The Closing Date; and the amount(s) of any payments or credits applicable through the Closing Date.

(4) The amount of any unpaid charge from any earlier bill not yet paid in full.

(c) The Grantee may disconnect service to a Subscriber for non-payment of amounts due only after Grantee has provided to the Subscriber a written notice of its intent to do so. The Grantee will attempt to make contact with the Subscriber prior to disconnection of Cable Service. The notice shall specify, at a minimum, the following:

(1) The proposed date on or after which Cable Service may be terminated;

(2) The total payment required to avoid termination.

(3) The total amount in arrears if that amount differs from the payment required to avoid termination; and

(4) The telephone number and office hours of a Customer Service Representative authorized to explain, adjust and resolve the bill to avoid termination of Cable Service.

The Grantee may not disconnect service other than during business hours.

(d) The Grantee may not disclose, refer, enter or cause, or allow to be disclosed, referred or entered ("referral"), any negative report to any consumer credit reporting agency, association or bureau relating to the payment performance of a Subscriber until the Grantee or its agent has provided a written notice of its intent to do so to the Subscriber. The notice shall specify, at a minimum, the following:

- (1) The date and nature of the proposed referral;
- (2) The total payment required to avoid disconnection or reporting;
- (3) The total amount in arrears if that amount differs from the payment required to avoid the referral;
- (4) The telephone number and office hours of a Customer Service Representative authorized to explain, adjust and resolve such proposed referral;
- (5) A pre-addressed envelope or address label with which to mail any payment or response to the Grantee.

Section 610 Notices and Identification.

(a) The Grantee shall provide each Subscriber at the times and in the circumstances specified in this ordinance with a General Rate and Programming Disclosure ("Disclosure"). The Disclosure shall contain at a minimum all of the programming bundling, tiers and combinations, equipment, and services currently available, and the rates and charges which apply thereto, including without limitation, all installation charges;

- (1) The amount(s) of any required deposit(s) and the Grantee's detailed policies and procedures relating to deductions or offsets therefrom;
- (2) The Grantee's billing policies and complaint resolution procedures;
- (3) The Grantee's telephone number, Business Hours, street address and mailing address, including without limitation, the address to which complaints and inquiries may be directed, and a telephone number;
- (4) The full extent of the Subscriber's liability for Grantee equipment in the event of loss, damage, or destruction thereof;
- (5) The charges imposed by the Grantee related to a Subscriber's account, including without limitation, fees and charges for returned checks, and late charges;
- (6) The Subscriber's right to refer problems, inquiries or complaints to the Grantor at its designated address and telephone number and to request complete copies of this ordinance from the Grantor;
- (7) Installation and service maintenance policies; and
- (8) Instructions on how to use the cable service.
- (9) The Grantee shall provide each affected Subscriber with the Disclosure prior to any binding agreement between Grantee with Subscriber and prior to any installation of Cable Service by the Grantee.

(b) Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. The Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State or the City on the transaction between the Grantee and the Subscriber.

(c) All Grantee representatives dealing with the public shall have identification badges identifying the Grantee, the representative's name with a current picture, and a telephone number to call to authenticate the representative's identity and affiliation. Field personnel shall prominently display identification badges at all times when providing Cable Service to Subscribers.

(d) Within ninety (90) days after the effective date of a Franchise, the Grantee shall file with the Grantor a copy of its written procedures for receiving, acting upon, and resolving Subscriber complaints. The procedures shall prescribe the manner in which a Subscriber may submit a complaint and the time within which the Grantee commits to investigate and resolve such complaints.

(e)

Section 611 Additional Service Standards.

Additional service consumer protection standards and responses by Grantee to Subscriber complaints not otherwise provided for in this Chapter may be established in the Franchise Agreement, and the Grantee shall comply with such standards in the operation of the Cable System. A verified and continuing pattern of material non-compliance may be deemed a breach of the Franchise.

Article 7. Insurance

Section 701 Insurance.

(a) Before any Franchise becomes effective, the Grantee shall obtain policies of commercial general liability, automobile liability, fire and property damage, and Workers' Compensation insurance from a company or companies duly authorized, admitted and qualified by the Insurance Commissioner of California and the California Secretary of State to transact business in California with a best rating of A:VII or higher.

(b) The policies of commercial general liability insurance shall:

(1) Be issued to Grantee and name Grantor, its elected and appointed officials, employees, and agents as additional insureds;

(2) Indemnify Grantee and Grantor for all liability for personal and bodily injury, illness or death and damage to property arising from activities conducted and premises used pursuant to this Chapter by providing coverage therefor, including but not limited to, coverage for:

(i) Negligent acts or omissions of Grantee and its agents, servant and employees, committed in the conduct of Franchise operations, and/or

(ii) Use of motor vehicles;

- (3) Provide a combined single limit for commercial general liability and automobile liability insurance in the amount provided for in the Franchise Agreement. The form of such insurance policy and the endorsement naming the Grantor or additional insured shall be subject to the review and approval of Grantor's legal counsel; and
 - (4) Be noncancellable without thirty (30) days prior written notice thereof directed to Grantor.
- (c) The policy of Workers' Compensation Insurance shall:
- (1) Have been previously approved as to substance and form by the California Insurance Commissioner;
 - (2) Cover all employees of Grantee who in the course and scope of their employment are to conduct the Franchise operations;
 - (3) Provide for every benefit and payment presently or hereinafter conferred by Division 4 of the Labor Code of the State (commencing with Section 3200) upon an injured employee, including vocational rehabilitation and death benefits.
 - (4) Waive all rights of subrogation against the Grantor, its officers, officials, employees, and volunteers for losses paid under the terms of the policy which arises from work performed by the named insured for the Grantor.
- (d) The policy of fire, property damage and casualty insurance shall provide insurance with extended coverage on the Franchise property used by Grantee in the conduct of Franchise operations in an amount adequate to enable Grantee to resume Franchise operations following the occurrence of any risk covered by this insurance.
- (e) Grantee shall file with Grantor prior to commencement of Franchise operations the required endorsements and either certified copies of these insurance policies or at Grantor's option a certificate of insurance for each of the required policies executed by the company issuing the policy or by a broker authorized to issue such a certificate, certifying that the policy is in force and providing the following information with respect to said policy;
- (1) The policy number;
 - (2) The date upon which the policy will become effective and the date upon which it will expire;
 - (3) The names of the named insureds and any additional insured required by this Chapter or the Franchise Agreement;
 - (4) The subject of the insurance;
 - (5) The type of coverage provided by the insurance;

- (6) Amount or limit of coverage provided by the insurance; and
 - (7) Any reserved amounts or deductible.
- (f) Conduct of Franchise operations shall not commence until Grantee has complied with the aforementioned provisions of this Section.
- (g) In the event Grantee fails to maintain any of the above-described policies in full force and effect, Grantor may upon forty-eight (48) hours notice to Grantee, procure the required insurance and recover the cost thereof from Grantee. Grantor shall also have the right, upon forty-eight (48) hours notice to Grantee, to suspend the Franchise during any period that Grantee fails to maintain said policies in full force and effect.
- (h) No more than once during any three (3) year period, Grantor shall have the right to order Grantee to increase the amounts of the insurance coverage provided herein. Such order may be made by Grantor after complying with the hearing procedure provided for in Section 507 herein. Increases in insurance coverage shall be based upon current prudent business practices of like enterprises involving the same or similar risks.

Section 702 Security Fund.

No later than the effective date of any Franchise granted hereunder, the Grantee shall establish and provide to the Grantor a Security Fund (the "Security Fund") in a form and amount as specified in the Franchise Agreement as security for the faithful performance by the Grantee of specified provisions of the Franchise Agreement. The Security Fund shall increase annually at a rate equivalent to the San Francisco-Oakland-San Jose "All Items Index" (1967-100) Consumer Price Index.

Article 8. Rights Reserved

Section 801 Rights Reserved to Grantor.

- (a) In addition to any rights specifically reserved to the Grantor by this Chapter, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the Franchise, and the Grantee by accepting a Franchise hereunder agrees to be bound thereby and to comply with any action or requirement of the Grantor in its exercise of any such right or power.
- (b) The Grantor shall have the right to waive any provision of the Franchise, except those required by Federal or State regulation, if the Grantor determines (i) that it is in the public interest to do so, and (ii) that the enforcement of such provision will impose an undue hardship on the Grantee or Subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the Grantor. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of a Franchise unless the statement so states.

Section 802 Rights of Individuals.

(a) Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations, and all executive and administrative orders, relating to nondiscrimination, including without limitation, Section 51 of the California Civil Code.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of the FCC, State and local regulations, as now written or as amended from time to time.

(c) Neither Grantee, nor any person, agency, or entity shall, without the Subscriber's consent, tap, or arrange for the tapping, of any cable, line or signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the Cable System, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(d) In the conduct of providing its Cable Services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a Subscriber's or general citizen's right of privacy or other personal rights through the use of the Cable System as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the Cable System's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

(e) No cable line, wire, amplifier, converter, or other part of the Cable System owned by Grantee shall be installed by Grantee in the Subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests Cable Service, permission to install upon Subscriber's property shall be presumed.

(f) The Grantee, or any of its agents or employees, shall not sell, or otherwise make available to any party for any purpose other than the operation or transfer of the Cable System without consent of the Subscriber pursuant to State and Federal privacy laws:

(1) Any list of the names and addresses of Subscribers which contain the names and/or addresses of Subscribers who request in writing to be removed from such list; and

(2) Any list which identifies the viewing habits of individual Subscribers, without the prior written consent of such Subscribers. This does not prohibit the Grantee from providing composite ratings of Subscriber viewing to any Party.

Article 9. Franchise Violation Procedures and Remedies

Section 901 Grantor's Power to Revoke Franchise.

- (a) The material failure of Grantee to comply with the requirements of these regulations shall be a material breach of the Grantee's Franchise Agreement to provide Cable Service.
- (b) Grantor reserves the right to revoke any Franchise granted pursuant to this Chapter and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by Grantee and material breach under the Franchise Agreement:
- (1) If Grantee shall default in the performance of its material obligations under this Chapter or the Franchise Agreement and shall continue such default after receipt of notice and a reasonable opportunity to cure the default;
 - (2) If Grantee shall fail to provide or maintain in full force and effect the insurance coverage or Security Fund as required herein;
 - (3) If Grantee shall violate any order or ruling of any regulatory body having jurisdiction over the Grantee relative to the Grantee's Franchise, unless such order or ruling is being contested by Grantee by appropriate proceedings conducted in good faith;
 - (4) If Grantee attempts to unlawfully evade any provision of this Chapter or practices any fraud or deceit upon Grantor;
 - (5) If Grantee persistently fails three (3) or more times within a twelve (12) month period to remedy defaults for which lesser penalties have previously been imposed;
 - (6) If Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt;
- (c) The termination and forfeiture of the Grantee's Franchise shall in no way affect any right of Grantor to pursue any remedy under the Franchise Agreement or any provision of law.

Section 902 Procedure for Remedying Franchise Violations.

- (a) Prior to imposing any remedy or other sanction against Grantee specified in this Chapter, Grantor shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:
- (1) Grantor shall first notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within reasonable time, which shall not be less than five (5) days in the case of failure of the Grantee to pay any sum or other amount due the Grantor under this Chapter or the Grantee's Franchise and thirty (30) days in all other cases. If Grantee fails to correct the violation within the time prescribed or if Grantee fails to commence correction of the violation

within the time prescribed and diligently remedy such violation thereafter, the Grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the Council. Said notice shall specify the violations alleged to have occurred.

(b) The Council may designate a Cable Committee to hear and consider all relevant evidence, and thereafter render findings and its decision.

(c) If the Council or appointed Cable Committee finds that Grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(d) If the Council or appointed Cable Committee finds that the alleged violations exist and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced corrections of such violation after notice thereof from Grantor and is not diligently proceeding to fully remedy such violation, the Council or appointed Cable Committee may impose one (1) or more of the remedies specified in Article 9 as it, in its discretion, deems appropriate under the circumstances.

(e) Council may, at its discretion, hear appeals from decisions of the Cable Committee.

Section 903 Force Majeure; Grantee's Inability to Perform.

(a) In the event Grantee's performance of any of the terms, conditions or obligations required by this Chapter or a Franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform may be excused and penalties or sanctions may be waived or reduced by Grantor. Causes or events not within the control of Grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires but shall not include financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts of omissions of Grantee, or the failure of the Grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the Cable System where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

(b) At the expiration of the term for which the Franchise is granted, or upon its revocation or earlier termination, as provided for herein, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable System from all streets within the Franchise Area within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

Section 904 Abandonment or Removal of Franchise Property.

(a) In the event that use of any Franchise Property or a portion thereof is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that Franchise Property. Any part of the Cable System that is intended for use only when needed because it is parallel or redundant to other parts of such system, shall not be deemed to have been abandoned because of its lack of use.

(b) Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the Franchise. Unless such permission is granted or unless otherwise provided in this Chapter, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all streets and public ways and public places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the streets, public ways, public places, cables, wires, attachments and poles prior to and after such removal. The liability, indemnity and insurance provisions of this Chapter and the Security Fund provided herein shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

(c) Upon abandonment of any Franchise property in place, the Grantee, if required by the Grantor, shall submit to the Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor ownership of the Franchise property abandoned.

Section 905 Restoration by Grantor; Reimbursement of Costs.

In the event of a failure by Grantee to complete any work required herein or by any other law or ordinance, and if such work is not completed within thirty (30) days after receipt of written notice thereof from Grantor or, if more than thirty (30) days are reasonably required therefor, if Grantee does not commence such work within such thirty (30) day period and diligently complete the work thereafter (except in cases of emergency constituting a threat to public health, safety or welfare), Grantor may cause such work to be done and Grantee shall reimburse Grantor for the costs thereof within thirty (30) days after receipt of an itemized list of such costs, or Grantor may recover such costs through the Security Fund provided by Grantee.

Section 906 Extended Operation and Continuation of Services.

Upon either expiration or revocation a Franchise, the Grantor shall have discretion to permit Grantee to continue to operate the Cable System for an extended period of time not to exceed twelve (12) months from the date of such expiration or revocation, unless extended by resolution of Grantor. Grantee shall, as trustee for its successor-in-interest, continue to operate the Cable System under the terms and

conditions of this Chapter and the Franchise and to provide the regular Subscriber service and any and all of the Cable Services that may be provided at that time. It shall be the right of all Subscribers to continue to receive all available Cable Services provided their financial and other obligations to Grantee are honored. The Grantee shall use reasonable efforts to provide continuous, uninterrupted Cable Service to its Subscribers, including operation of the Cable System during transitional periods following Franchise expiration or termination.

Section 907 Receivership and Foreclosure.

(a) A Franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in receivership or reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (i) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the Franchise granted pursuant hereto, and the receivership or trustees within said one hundred twenty (120) days shall have remedied all the faults under the Franchise or provided a plan for the remedy of such faults which plan is satisfactory to the Grantor; and (ii) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise granted.

(b) In the case of a foreclosure or other judicial sale of the Franchise Property Cable System, or any material part thereof, Grantor may serve notice of termination upon Grantee and the successful bidder at such sale, in which event the Franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (i) Grantor shall have approved the transfer of the Franchise, as and in the manner that this Chapter provides; and (ii) such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the Franchise.

Section 908 Remedies for Franchise Violations.

If a Grantee fails to perform in a timely manner any obligation required by this ordinance or a Franchise Agreement granted hereunder, following notice from the Grantor and, opportunity to be heard by the Council appointed committee and an opportunity to cure such nonperformance in accordance with the provisions of Article 10 or this ordinance, and the Franchise Agreement, Grantor may at its option and in its sole discretion apply any one or more of the following remedies:

(a) Cure the violation and recover the actual costs thereof from the Security Fund established herein if such violation is not cured within thirty (30) days after prior written notice to the Grantee, and an opportunity for Grantee to be heard, of Grantor's intention to cure and assess the Security Fund;

(b) Assess against Grantee liquidated damages in an amount or amounts set forth in the Franchise Agreement for any such violation(s) if such violation is not cured, or if Grantee has not commenced a cure, on a schedule acceptable to Grantor, within thirty (30) days after written notice to the Grantee of Grantor's intention to assess such liquidated damages. Such assessment may be withdrawn from the Security Fund, and shall not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or applicable law, including without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including reasonable and actual attorney's fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the Franchise Agreement of this ordinance.

(1) For violations of Consumer Service Regulations of this ordinance or the Franchise Agreement which have materially degraded the quality of service, Grantor may order and direct Grantee to issue rebates or credits to Subscribers, in an amount to be determined by Grantor to be reasonably related to the nature and extent of the degradation in service and measured by the period of the degradation, to provide monetary relief substantially equal to the reduced quality of Cable Service resulting from Grantee's failure to perform.

Article 10. Dispute Resolution

Section 1001 Arbitration.

Disputes arising out of the interpretation or implementation of this ordinance or matters which are expressly made subject to arbitration by either party under the provisions of a Franchise Agreement shall be determined by a panel of three arbitrators. Arbitration shall be mandatory as to both parties. Each of the parties, Grantor and Grantee, shall appoint one arbitrator. The third arbitrator shall be appointed by the Presiding Judge of the Superior Court of Santa Cruz County, California, except if the parties agree, the two arbitrators appointed by the parties shall appoint a third arbitrator. Arbitrations hereunder shall be governed by the provisions of the California Arbitration Act. The expenses of the arbitration, including the fees of the arbitrators shall be borne by the parties in such manner as the arbitrators provide in their award. The determination of a majority of the arbitrators shall be binding on the parties. The arbitrators shall be required to follow the law of California and shall be lawyers or engineers with at least five (5) years experience in telecommunications law.

Section 1002. Hold Harmless.

Grantee shall indemnify, defend and hold Grantor, its elected officials, officers, agents and employees harmless from any liability, claims, damages, costs or expenses, including reasonable attorney's fees, arising from injury to persons or damages to property to the extent caused by any conduct undertaken by the Grantee, its officers, agents or employees, by reason of the Franchise; Grantee shall at its sole cost and expense, upon demand of Grantor, appear in and defend any and all suits, actions or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting Grantor, its officers, agents or employees, and arising out of or pertaining to the granting of a Franchise to the Grantee and/or any conduct of the Grantee, its agents or employees which is within the scope of this indemnity."

Section 3. Severability. If any section, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portion of the ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subdivision, subsection, paragraph, sentence, clause or phrase of this ordinance.

Section 4. This ordinance shall take effect and be in force thirty (30) days after its final adoption.


This ordinance was introduced on the 27th day of July, 2000, and was passed for final adoption on the 10th day of August, 2000, by the following vote:

AYES: Council Members Ortiz, Gualtieri, Harlan and Vice Mayor Norton

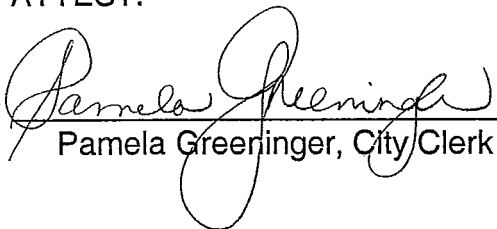
NOES: None

ABSENT: Mayor Arthur

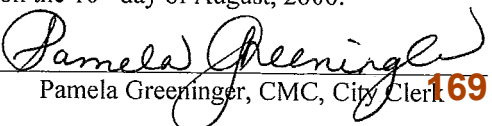
ABSTAIN: None

APPROVED: 
Dennis R. Norton, Vice Mayor

ATTEST:


Pamela Greerjinger, City Clerk, CMC/AEE

This is to certify that the above and foregoing is a true and correct copy of Ordinance No. 816 passed and adopted by the Capitola City Council on the 10th day of August, 2000.


Pamela Greerjinger, CMC, City Clerk 169



**CITY COUNCIL
AGENDA REPORT**

MEETING OF JULY 14, 2011

FROM: CITY MANAGER'S OFFICE
DATE: JULY 5, 2011
SUBJECT: RESOLUTION AUTHORIZING CHARTER COMMUNICATIONS PROPERTIES, LLC, TO TRANSFER THE CABLE FRANCHISE AGREEMENT TO CCO SoCAL I, LLC

Recommended Action: By motion and roll call vote, that the City Council adopt the proposed Resolution Authorizing the transfer of the Cable Franchise Agreement with Charter Communications Properties, LLC to CCO SoCal I, LLC, as submitted.

BACKGROUND

The City of Capitola has a Franchise Agreement with Charter Communications, LLC, (Charter) to operate the Cable System in the City until 2014. Recently, Charter Communications has requested the City authorize the transfer of the Cable Franchise Agreement to CCO SoCal I, LLC, which is another entity within the Charter organization and eventually to direct ownership by Charter Communications Operating, LLC. The transfer is to consolidate and reduce the total number of entities in the Charter organization.

DISCUSSION

Charter has submitted an application to the City requesting the transfer of the franchise agreement as per the requirements of Ordinance No. 816 (Attachment 4). The application requests the City authorize the transfer of the Franchise Agreement to CCO SoCal I, LLC. The City Attorney has reviewed the FCC Form 394 Application for Franchise Authority Consent to Assignment of Cable Television Franchise from Charter Communications Properties, LLC, to CCO SoCal I, LLC, dated June 15, 2011. The City Attorney agrees that the assignment meets the requirements of the Franchise Agreement between Charter Communications Properties, LLC, and the City of Capitola and provides the information required by Ordinance No. 816.

Staff has also confirmed that Charter is in compliance with the provisions of the franchise agreement and finds no reason to withhold approval and, therefore, recommends approval of the transfer request.

For informational purposes, once the Franchise Agreement expires in 2014, Charter will no longer be subject to a franchise agreement with the City, but rather to the State of California.

FISCAL IMPACT

Charter Communications submitted a transfer application fee in the amount of \$4,725 to the City to reimburse the City for costs associated with processing and reviewing the application.

ATTACHMENTS

1. Draft Resolution
2. Charter Letter Dated June 15, 2011
3. Application (FCC Form 394) [Note: Complete application with exhibits is on file with the City Clerk]
4. Excerpts of Ordinance No. 816 & Franchise Agreement

Report Prepared By: Lisa G. Murphy
Administrative Services Director

Reviewed and Forwarded
By City Manager. 

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
CONSENTING TO AND APPROVING OF THE ASSIGNMENT OF
THE CABLE FRANCHISE AND SYSTEM TO CCO SOCAL I, LLC**

WHEREAS, Charter Communications Properties, LLC d/b/a Charter Communications (“CCP”) currently holds a local cable franchise granted by the City of Capitola, California to own and operate a cable system in the Community (as amended to date, the “Franchise”); and

WHEREAS, on June 1, 2011, Grantee entered into an Asset Contribution Agreement (the “Agreement”) whereby Grantee will contribute certain cable system assets, including the Franchise, to CCO SoCal I, LLC (“CCO SoCal I”); and

WHEREAS, following the transactions contemplated by the Agreement, 100% of the equity interests in CCO SoCal I will be distributed to its indirect parent company, Charter Communications Operating, LLC, via a series of internal transactions (together with the contribution of the Franchise and certain cable system assets to CCO SoCal I, the “Transfer”); and

WHEREAS, CCP and CCO SoCal I have filed an FCC Form 394 with the City of Capitola, and have provided all information required by applicable law related to the Transfer to the Community (collectively, the “Application”); and

WHEREAS, the City of Capitola has reviewed the Application and has determined that CCO SoCal I meets the legal, technical, and financial criteria to operate the cable system under the Franchise and all applicable local, state and federal laws.

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

1. The City of Capitola consents to the Transfer to the extent required by the terms of the Franchise.
2. The City of Capitola confirms that (a) the Franchise is valid and outstanding and in full force and effect; (b) Grantee is in compliance with the provisions of the Franchise; (c) there are no defaults under the Franchise, or events which, with the giving of notice or passage of time or both, could constitute events of default thereunder; and (d) effective upon the transfer of the Franchise to CCO SoCal I, CCO SoCal I will be entitled to all rights and privileges granted by the City of Capitola pursuant to the Franchise.
3. The City of Capitola further authorizes CCO SoCal I to assign or transfer its assets, including the Franchise, to a parent or affiliate of CCO SoCal I and to assign or pledge, or otherwise grant or convey one or more liens or security interests in, its assets, including its rights, obligations and benefits in and to the Franchise and the cable system, to any lender providing financing to CCO SoCal I, in each case without the consent of the City of Capitola.
4. The City of Capitola releases CCP, effective upon the transfer of the Franchise and related cable system assets to CCO SoCal I from all obligations and liabilities under the Franchise that accrue on and after such date; provided that CCO SoCal I shall assume and be responsible for any obligations and liabilities under the Franchise that accrue on and after such date.

- 5. This Resolution shall have the force of a continuing agreement with the City of Capitola, CCP and CCO SoCal I, and the City of Cpitola shall not amend or otherwise alter this Resolution without the written consent of CCP and CCO SoCal I.
- 6. This Resolution shall take effect upon its passage.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 14th day of July, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dennis R. Norton, Mayor

ATTEST:

_____, MMC
Pamela Greeninger, City Clerk

June 15, 2011

Ms. Lisa Murphy
Assistant to City Manager
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

VIA FEDERAL EXPRESS

Re: Request to Transfer Cable Franchise

Dear Ms. Murphy:

As you know, Charter Communications Properties, LLC (“CCP”) currently holds a cable franchise with your community (the “Franchise”). We are in the process of consolidating some of Charter Communications’ legal entities, and CCP is one of the entities that has been selected for this consolidation. As a result, CCP intends to contribute the Franchise and the cable system associated with the Franchise to its affiliate CCO SoCal I, LLC (“CCO SoCal I”). At some point following the transfer of the Franchise and cable system to CCO SoCal I, CCO SoCal I will be distributed, via a series of internal transactions, to direct ownership by Charter Communications Operating, LLC (“CCO”). The Franchise and the cable system will remain directly held by CCO SoCal I following this distribution. We refer to the transfer of the Franchise and cable system from CCP to CCO SoCal I, LLC and the subsequent distribution of CCO SoCal I, LLC to CCO collectively as the “Transfer.” The purpose of this letter is to request your consent to the Transfer to the extent it is required by the Franchise. We intend to consummate the transfer of the Franchise and the cable system to CCO SoCal I immediately upon receiving your consent.

We do not expect that there will be any changes to the operations or management of your Franchise or the local cable system as a result of the Transfer.

We have enclosed an original and two copies of the Federal Communications Commission Form 394 “Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise” with additional information related to the Transfer. If you conclude that your consent to the Transfer is required, we would appreciate your review and adoption of the attached resolution consenting to the Transfer at your earliest possible convenience and returning a copy of the resolution to the following address:

Constance C. Kovach
Director and Senior Counsel - Corporate
12405 Powerscourt Drive
Saint Louis, Missouri 63131
Facsimile (314) 965-6640
connie.kovach@chartercom.com

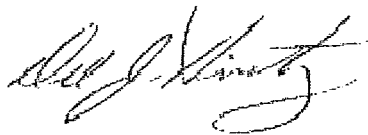
June 15, 2011

Please feel free to contact me at 626-430-3426 or Del.Heintz@chartercom.com with any questions or if you need additional information regarding this request, the FCC Form 394 or the Transfer.

Thank you for your consideration. We greatly appreciate your assistance in this matter, and we look forward to working with you.

Sincerely,

Charter Communications Properties, LLC
By: Charter Communications, Inc., its Manager

A handwritten signature in black ink, appearing to read "Del J. Heintz". The signature is stylized with a large, sweeping initial "D" and "H".

Del J. Heintz
CA/TX Director – Government Relations

Enclosures

FCC 394

**APPLICATION FOR FRANCHISE AUTHORITY
CONSENT TO ASSIGNMENT OR TRANSFER OF CONTROL
OF CABLE TELEVISION FRANCHISE**

FOR FRANCHISE AUTHORITY USE ONLY

SECTION I. GENERAL INFORMATION

DATE June 15, 2011	1. Community Unit Identification Number: CA0027
---------------------------	--

2. Application for: Assignment of Franchise Transfer of Control

3. Franchising Authority: City of Capitola, California	
4. Identify community where the system/franchise that is the subject of the assignment or transfer of control is located: City of Capitola, California	
5. Date system was acquired or (for system's constructed by the transferor/assignor) the date on which service was provided to the first subscriber in the franchise area:	N/A
6. Proposed effective date of closing of the transaction assigning or transferring ownership of the system to transferee/assignee:	Upon consent

7. Attach as an Exhibit a schedule of any and all additional information or material filed with this application that is identified in the franchise as required to be provided to the franchising authority when requesting its approval of the type of transaction that is the subject of this application.

Exhibit No.
N/A

PART I - TRANSFEROR/ASSIGNOR

1. Indicate the name, mailing address, and telephone number of the transferor/assignor.

Legal name of Transferor/Assignor (if individual, list last name first) Charter Communications Properties, LLC			
Assumed name used for doing business (if any) Charter Communications			
Mailing street address or P.O. Box 12405 Powerscourt Drive			
City Saint Louis	State MO	ZIP Code 63131	Telephone No. (include area code) 314-965-0555

2.(a) Attach as an Exhibit a copy of the contract or agreement that provides for the assignment or transfer of control (including any exhibits or schedules thereto necessary in order to understand the terms thereof). If there is only an oral agreement, reduce the terms to writing and attach. (Confidential trade, business, pricing or marketing information, or other information not otherwise publicly available, may be redacted).

Exhibit No.
1

(b) Does the contract submitted in response to (a) above embody the full and complete agreement between the transferor/assignor and the transferee/assignee?

Yes No

If No, explain in an Exhibit.

Exhibit No.
N/A

*** NOTE: The complete FCC 394 Application (including Exhibits) in
On file in the Office of the Clerk for public review.**

PART II - TRANSFEREE/ASSIGNEE

1.(a) Indicate the name, mailing address, and telephone number of the transferee/assignee.

Legal name of Transferee/Assignee (if individual, list last name first) CCO SoCal I, LLC			
Assumed name used for doing business (if any) Charter Communications			
Mailing street address or P.O. Box 12405 Powerscourt Drive			
City Saint Louis	State MO	ZIP Code 63131	Telephone No. (include area code) 314-965-0555

(b) Indicate the name, mailing address, and telephone number of person to contact, if other than transferee/assignee.

Name of contact person (list last name first) Heintz, Del			
Firm or company name (if any) Charter Communications			
Mailing street address or P.O. Box 4781 Irwindale Avenue			
City Irwindale	State CA	ZIP Code 91706	Telephone No. (include area code) 626-430-3426

(c) Attach as an Exhibit the name, mailing address, and telephone number of each additional person who should be contacted, if any.

Exhibit No. N/A

(d) Indicate the address where the system's records will be maintained.

Street address 12405 Powerscourt Drive		
City Saint Louis	State MO	ZIP Code 63131

2. Indicate on an attached exhibit any plans to change the current terms and conditions of service and operations of the system as a consequence of the transaction for which approval is sought.

Exhibit No. 2

SECTION II. TRANSFEREE'S/ASSIGNEE'S LEGAL QUALIFICATIONS

1. Transferee/Assignee is:

<input type="checkbox"/> Corporation	<table border="1"> <tr> <td>a. Jurisdiction of incorporation:</td> <td rowspan="3">d. Name and address of registered agent in jurisdiction:</td> </tr> <tr> <td>b. Date of incorporation:</td> </tr> <tr> <td>c. For profit or not-for-profit:</td> </tr> </table>	a. Jurisdiction of incorporation:	d. Name and address of registered agent in jurisdiction:	b. Date of incorporation:	c. For profit or not-for-profit:
a. Jurisdiction of incorporation:	d. Name and address of registered agent in jurisdiction:				
b. Date of incorporation:					
c. For profit or not-for-profit:					
<input type="checkbox"/> Limited Partnership	<table border="1"> <tr> <td>a. Jurisdiction in which formed:</td> <td rowspan="2">c. Name and address of registered agent in jurisdiction:</td> </tr> <tr> <td>b. Date of formation:</td> </tr> </table>	a. Jurisdiction in which formed:	c. Name and address of registered agent in jurisdiction:	b. Date of formation:	
a. Jurisdiction in which formed:	c. Name and address of registered agent in jurisdiction:				
b. Date of formation:					
<input type="checkbox"/> General Partnership	<table border="1"> <tr> <td>a. Jurisdiction whose laws govern formation:</td> <td>b. Date of formation:</td> </tr> </table>	a. Jurisdiction whose laws govern formation:	b. Date of formation:		
a. Jurisdiction whose laws govern formation:	b. Date of formation:				
<input type="checkbox"/> Individual					
<input checked="" type="checkbox"/> Other. Describe in an Exhibit.					

Exhibit No. 3

2. List the transferee/assignee, and, if the transferee/assignee is not a natural person, each of its officers, directors, stockholders beneficially holding more than 5% of the outstanding voting shares, general partners, and limited partners holding an equity interest of more than 5%. Use only one column for each individual or entity. Attach additional pages if necessary. (Read carefully - the lettered items below refer to corresponding lines in the following table.)

- (a) Name, residence, occupation or principal business, and principal place of business. (If other than an individual, also show name, address and citizenship of natural person authorized to vote the voting securities of the applicant that it holds.) List the applicant first, officers, next, then directors and, thereafter, remaining stockholders and/or partners.
- (b) Citizenship.
- (c) Relationship to the transferee/assignee (e.g., officer, director, etc.).
- (d) Number of shares or nature of partnership interest.
- (e) Number of votes.
- (f) Percentage of votes.

(a)	See Exhibit 3	
(b)		
(c)		
(d)		
(e)		
(f)		

3. If the applicant is a corporation or a limited partnership, is the transferee/assignee formed under the laws of, or duly qualified to transact business in, the State or other jurisdiction in which the system operates?

If the answer is No, explain in an Exhibit.

Yes No

Exhibit No.
N/A

4. Has the transferee/assignee had any interest in or in connection with an applicant which has been dismissed or denied by any franchise authority?

If the answer is Yes, describe circumstances in an Exhibit.

Yes No

Exhibit No.
4

5. Has an adverse finding been made or an adverse final action been taken by any court or administrative body with respect to the transferee/assignee in a civil, criminal or administrative proceeding, brought under the provisions of any law or regulation related to the following: any felony; revocation, suspension or involuntary transfer of any authorization (including cable franchises) to provide video programming services; mass media related antitrust or unfair competition; fraudulent statements to another government unit; or employment discrimination?

If the answer is Yes, attach as an Exhibit a full description of the persons and matter(s) involved, including an identification of any court or administrative body and any proceeding (by dates and file numbers, if applicable), and the disposition of such proceeding.

Yes No

Exhibit No.
N/A

6. Are there any documents, instruments, contracts or understandings relating to ownership or future ownership rights with respect to any attributable interest as described in Question 2 (including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, debentures)?

If Yes, provide particulars in an Exhibit.

Yes No

7. Do documents, instruments, agreements or understandings for the pledge of stock of the transferee/assignee, as security for loans or contractual performance, provide that: (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of any ownership rights by a purchaser at a sale described in (b), any prior consent of the FCC and/or of the franchising authority, if required pursuant to federal, state or local law or pursuant to the terms of the franchise agreement will be obtained?

If No, attach as an Exhibit a full explanation.

Yes No

Exhibit No.
5

SECTION III. TRANSFEREE'S/ASSIGNEE'S FINANCIAL QUALIFICATIONS

1. The transferee/assignee certifies that it has sufficient net liquid assets on hand or available from committed resources to consummate the transaction and operate the facilities for three months.
2. Attach as an Exhibit the most recent financial statements, prepared in accordance with generally accepted accounting principals, including a balance sheet and income statement for at least one full year, for the transferee/assignee or parent entity that has been prepared in the ordinary course of business, if any such financial statements are routinely prepared. Such statements, if not otherwise publicly available, may be marked CONFIDENTIAL and will be maintained as confidential by the franchise authority and its agents to the extent permissible under local law.

Yes No

Exhibit No.
6

SECTION IV. TRANSFEREE'S/ASSIGNEE'S TECHNICAL QUALIFICATIONS

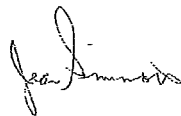
Set forth in an Exhibit a narrative account of the transferee's/assignee's technical qualifications, experience and expertise regarding cable television systems, including, but not limited to, summary information about appropriate management personnel that will be involved in the system's management and operations. The transferee/assignee may, but need not, list a representative sample of cable systems currently or formerly owned or operated.

Exhibit No.
7

SECTION V - CERTIFICATIONS

Part I - Transferor/Assignor

All the statements made in the application and attached exhibits are considered material representations, and all the Exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

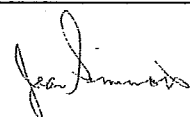
<p>I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith.</p>	<p>Signature </p>
<p>WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.</p>	<p>Date June 15, 2011</p> <p>Print full name Jean Simmons</p>
<p>Check appropriate classification:</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> General Partner <input checked="" type="checkbox"/> Corporate Officer (Indicate Title) <input type="checkbox"/> Other. Explain:</p> <p style="text-align: center;">Vice President & General Manager Charter Communications, Inc., Manager of Charter Communications Properties, LLC</p>	

Part II - Transferee/Assignee

All the statements made in the application and attached Exhibits are considered material representations, and all the Exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

The transferee/assignee certifies that he/she:

- (a) Has a current copy of the FCC's Rules governing cable television systems.
- (b) Has a current copy of the franchise that is the subject of this application, and of any applicable state laws or local ordinances and related regulations.
- (c) Will use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.

<p>I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith.</p>	<p>Signature </p>
<p>WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.</p>	<p>Date June 15, 2011</p> <p>Print full name Jean Simmons</p>
<p>Check appropriate classification:</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> General Partner <input checked="" type="checkbox"/> Corporate Officer (Indicate Title) <input type="checkbox"/> Other. Explain:</p> <p style="text-align: center;">Vice President & General Manager Charter Communications, Inc., Manager of CCO SoCal I, LLC</p>	

FRANCHISE AGREEMENT BETWEEN CHARTER
COMMUNICATIONS PROPERTIES LLC AND THE CITY OF CAPITOLA


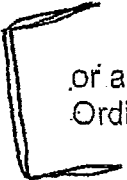
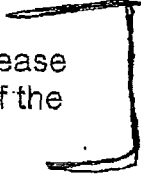
F. The fee shall be payable quarterly, by no later than the first day of the second month following the end of each calendar quarter for which payment is due.

G. Grantor and Grantee expressly agree and acknowledge that the monies paid to the Grantor, or its designee, or any nonprofit corporation established by the Grantor, or expended to fund and facilitate the improvements, maintenance, studio, personnel, supplies, rent and equipment provided to the Grantor (or its designee) pursuant to this Franchise Agreement for Public, Educational, and Governmental Access programming support, and are not "Franchise Fees" within the meaning of Section 622 of the Cable Act and are thus not to be offset or offsettable against Franchise Fees or license fees due to the Grantor under this Franchise.

11. Itemization and Recovery of Expenses. Grantee shall not pass-through to Subscribers, by way of line itemization, surcharge or addition to an otherwise permissible rate, or charge to Grantor, any amounts relating to any provision of this Franchise unless expressly authorized by applicable law. Any authorized recovery of PEG Access support costs shall be allocated and amortized over the entire remaining Franchise term unless specified otherwise in this Franchise.

Grantee agrees not to itemize PEG Access support costs separately on Subscriber bills unless such costs are itemized on Subscriber bills in other Cable Systems owned or operated by Grantee, or an affiliate of Grantee, in Santa Cruz County.

12. Hold Harmless. Grantee shall indemnify, defend and hold Grantor, its officers, elected officials, agents and employees harmless from any liability, claims, damages, costs or expenses, including reasonable attorney's fees, arising from injury to persons or damages to property to the extent caused by any conduct undertaken by the Grantee, its officers, agents or employees, by reason of the Franchise. Grantee shall at its sole cost and expense, upon demand of Grantor, appear in and defend any and all suits, actions or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting Grantor, its officers, agents or employees, and/or any conduct of the Grantee, its agents or employees which is within the scope of this indemnity.

★   13. Franchise Not Transferable. Charter shall not sell, transfer, lease or assign this Agreement except as may be permitted under Section 208 of the Ordinance. 

14. Ordinance Terms and Conditions Apply. All terms and conditions of the Ordinance shall apply to this Franchise Agreement unless otherwise specifically provided for by this Agreement or other agreements between City and Charter that may apply.

(c) Except as otherwise provided by law, no acceptance of any payment by a Grantee shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a Franchise Fee under this Chapter or for the performance of any other obligation of the Grantee.

(d) If any Franchise payment or recomputed amount is not paid on or before the dates specified in the Franchise Agreement, Grantee shall pay as additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to 10% or the legal rate, whichever is more during the period for which payment was due; and

(2) If a payment is late for forty-five (45) days or more, a late penalty payment of five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor by reason of delinquent payment.

(3) The Grantee shall pay all attorney's fees incurred in collecting of unpaid amount.

Section 208 Transfer of Franchise.

(a) Any Person desiring a transfer of a Cable System Franchise shall file a transfer application with the Grantor. A nonrefundable transfer application fee of an amount up to seventy-five hundred (\$7500.00) dollars established by the Grantor shall accompany the application to reimburse the Grantor for all costs associated with processing and reviewing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

(b) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the Franchise or any of the rights or privileges therein granted, without the prior consent of the Grantor and then only upon such terms and conditions as may be prescribed by the Grantor, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the Franchise without the consent of the Grantor shall be null and void. The granting of a security interest in any Grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this Section.

(c) The requirements of Subsection (a) of this Section 208 shall restrict any change in the control of Grantee. The word control as used herein is not limited

to major stockholders or partnership interests, but includes actual working control in whatever manner exercised. If Grantee is a corporation, partnership, limited liability company or other business organization, prior approval of the Grantor shall be required where ownership or control of more than ten percent (10%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of Grantee as of the effective date of the Franchise, singularly or collectively.

(d) Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the Cable System of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said Cable System. Such notifications shall be considered by Grantor as notice that a change in control of ownership of the Franchise has occurred and the provisions under this Section governing the consent of Grantor to such change in control ownership shall apply.

(e) In determining whether it shall consent to such change, transfer, or acquisition of control, Grantor may inquire into the financial and other qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in any such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the transferee completes an application in the form and substance reasonably satisfactory to Grantor, which application shall include information required under Subsections (a) through (h) of Section 302 of this Chapter. Grantee shall also provide such reasonable additional information that Grantor deems applicable. An application shall be submitted to Grantor not less than one hundred and twenty (120) days before the proposed date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the Cable System and comply with all Franchise requirements for the remainder of the term of the Franchise Agreement. If, after considering the legal, financial, character, technical and other public interest qualities of the applicant and determining that they are satisfactory, the Grantor finds that such transfer is acceptable, the Grantor may allow the transfer and assign most of the rights and obligations of such Franchise as may be in the public interest. The consent of the Grantor to such transfer shall not be unreasonably withheld.

(f) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the Franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the Cable System, if a Grantee defaults in its financial obligations. Further, said financial institution shall also submit a plan for such operation within one hundred-twenty (120) days of assuming such control that will insure continued service and compliance with all Franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year unless extended by the Grantor in its discretion and during said period of time it shall have the right to petition the Grantor to transfer the Franchise to another Grantee. The Grantor shall have the right to

terminate the Franchise at the end of the one (1) year period of time that a financial institution exercises control over the system.

Section 209 Geographical Coverage.

(a) Grantee shall design, construct and maintain the Cable System to have the capability to pass every dwelling unit in the City, subject to any service area line extension requirements of the Franchise documents.

(b) After service has been established by activating trunk and/or distribution cables for any Service Area, Grantee shall provide service to any requesting Subscriber within that Service Area within thirty (30) days from the request, provided that the Grantee is able to secure all rights-of-way and encroachment permits necessary to extend service to such Subscriber within such thirty (30) day period on reasonable terms and conditions mutually acceptable to Grantee and such subscriber.

Article 3. Application for Franchise

Section 301 Franchise Applications.

Any person desiring a Cable System Franchise shall file an application with the Grantor. A reasonable nonrefundable application fee will be established by the Grantor. The application fee shall accompany the application to cover all costs associated with processing and reviewing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. If such costs exceed the application fee, the selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

Section 302 Applications - Contents.

An application for a Franchise for a Cable System shall contain:

- (a) A description of the proposed Franchise and Service Area;
- (b) Résumé of prior history of applicant, including the expertise of applicant in the cable television field;
- (c) List of partners, general and limited, and their ownership interests, of the applicant, if a partnership, or the percentage of stock owned or controlled by each shareholder or member, if a corporation or limited liability company;
- (d) Identity of officers, directors and managing employees of applicant, together with a description of the background of each such person;
- (e) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;



Item #: **5.C.**

CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: CITY MANAGER'S OFFICE

DATE: JULY 25, 2011

SUBJECT: ORDINANCE AMENDING SECTION 13.04.010 OF THE MUNICIPAL CODE PERTAINING TO DISCHARGE TO SANITARY SEWER AND ADDING A NEW SECTION 13.04.060 TO THE CAPITOLA MUNICIPAL CODE PERTAINING TO GREYWATER USE [1ST READING]

Recommended Action: By motion and roll call vote, approve a first reading of the proposed Ordinance amending Section 13.04.010 of the Capitola Municipal Code pertaining to discharge to sanitary sewer and adding Section 13.04.060 to facilitate greywater use.

BACKGROUND

In January 2010, the California Building Standards Commission approved emergency regulations which added Chapter 16A "Nonpotable Water Reuse Systems" into the California Plumbing Code. These regulations were intended to conserve water by facilitating greater reuse of laundry, shower, lavatory, and similar sources of discharge for irrigation use, make legal compliance more easily achievable, and to provide guidance for avoiding potentially unhealthy conditions. The regulations apply to single and multifamily residential properties and hotel/motels.

Greywater is the term given to the untreated water that drains from residential bathtubs, showers, washing machines, or bathroom sinks. Landscape irrigation is often the most common reuse of a home's water. New regulations finalized last January now allow single family and two-unit households to install clothes washer greywater systems, also called "laundry to landscape" systems, without a plumbing permit by following certain guidelines. Permits and plans are required for two other types of greywater systems that involve alteration of building drain lines, which are classified into either "simple" or "complex" systems depending on the amount of greywater they generate.

The Commission on the Environment (COE) has reviewed the use of graywater systems to reduce potable water use. They supported amendments to the City's municipal code to allow graywater systems.

DISCUSSION

While greywater use is now authorized under the California Plumbing Code, the City's Municipal Code contains a provision that makes it technically unlawful to discharge wastewater within the City other than to the public sewer. The COE has discussed greywater systems on several occasions and supports the use of greywater systems in Capitola.

In an effort to gain a qualified review, staff has worked out an arrangement with County Environmental Health Services to provide greywater plan review and site inspections within the City limits for any greywater systems that involve a plumbing permit, similar to the manner in which it provides services and inspections for food service and other health related construction projects. City staff will review and inspect the dwelling plumbing system and verify approvals.

FISCAL IMPACT

The adopted fee schedule for 2011-2012 zeroed out the fee for greywater permits. It is expected that the City's subsidy of permits will be less than \$500 during this fiscal year.

ATTACHMENTS

Draft Ordinance

Report Prepared By: Derek Johnson
Community Development Director

**Reviewed and Forwarded
By City Manager: _____**

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA AMENDING SECTION 13.04.010 OF THE MUNICIPAL CODE PERTAINING TO DISCHARGE TO SANITARY SEWER AND ADDING SECTION 13.04.060 PERTAINING TO GREYWATER USE

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

Section 1. Section 13.04.010 of the Capitola Municipal Code is amended to read as follows:

“13.04.010 Cesspools and septic tanks prohibited– Discharge to Sanitary Sewer.

Cesspools, septic tanks, drainfields and such other means of sewage disposal in the city where there is a public sewage system available, are public nuisances and are prohibited, except as provided in this chapter and in Chapter 16A of the California Plumbing Code, as adopted by reference in Section 15.04.010 of this Code.”

Section 2. Section 13.04.060 is added to the Capitola Municipal Code to read as follows:

“13.04.060 Greywater Systems.

(1) A plumbing permit shall be obtained from the Community Development Department for all simple and complex greywater systems, as defined in Chapter 16A of the California Plumbing Code, as adopted by reference in Section 15.04.010 of this Code. Prior to issuance of said plumbing permit, an environmental health clearance shall be obtained from the County Environmental Health Services. Following construction, a field inspection of the irrigation portion of the greywater system shall be conducted by the County Environmental Health Services.

(2) A plumbing permit, environmental health clearance, and field inspection shall not be required for a clothes washer system provided it is constructed and operated in compliance with Chapter 16 A of the California Plumbing Code, as adopted by reference in Chapter 15.04.010 of this Code, and the owner signs, submits, and complies with the “Installation and Maintenance Agreement for Clothes Washer Greywater System” as published by the Community Development Department.

(3) The County Environmental Health Services, in providing any services or conducting any inspection to confirm that permitted greywater systems comply with County Environmental Health Services standards, is authorized to assess fees to the property owner for said services and inspections in accordance with the fee schedule updated by the Santa Cruz County Board of Supervisors for the provision of similar services and inspections in the unincorporated area of the county.

(4) All greywater systems shall be designed to allow the user to direct the flow to the irrigation or disposal field or to the building sewer. The means of changing the direction of the greywater shall be clearly labeled and readily accessible to the user.

(5) All greywater shall be directed to the building sewer during the winter wet season to prevent ponding or runoff.”

Section 3. This ordinance shall be in full force and take effect thirty (30) days after its final adoption.

This ordinance was introduced on the 11th day of August, 2011, and was passed and adopted by the City Council of the City of Capitola on the ____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Dennis R. Norton, Mayor

ATTEST:

Pamela Greeninger, City Clerk



Item #: 5.D.

CAPITOLA REDEVELOPMENT AGENCY AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

DATE: AUGUST 1, 2011

SUBJECT: APPROVAL OF CONTRACT WITH GOLDFARB AND LIPMAN LLP FOR LEGAL SERVICES RELATED TO THE RDA HOUSING ACTIVITIES AND ADDITIONAL MISCELLANEOUS REDEVELOPMENT LEGAL SERVICES FOR FY 2011-2012

Recommended Action: By motion and roll call vote, authorize the Executive Director to enter into a sole source contract with Goldfarb and Lipman LLP for legal services related to RDA Housing Programs and miscellaneous Redevelopment legal services for FY 2011-2012 in an amount not to exceed \$15,000.

BACKGROUND

Goldfarb and Lipman LLC has provided General Legal Services to the Agency since 1998. Goldfarb and Lipman provides legal services to the Agency related to the Bay Avenue Senior Apartment loans, the Castle Mobile Home Park loan, bond financing and acquisition and other affordable housing programs and activities.

DISCUSSION

The law firm of Goldfarb and Lipman is recognized as one of the leading law firms in California in the field of affordable housing and redevelopment law. The Agency is in need of specialized legal counsel to advise staff on legal issues that arise with various housing activities that are undertaken each year, and to prepare legal documents such as grant and regulatory agreements for housing projects receiving Agency financial assistance. In addition, legal issues often arise related to compliance with regulatory agreements entered into in prior years, such as Agency agreements binding the Wharf Road Manor Mobile Home Park, Bay Avenue Senior Apartments, Inclusionary Housing Programs, and the revision of the City's First Time Homebuyer Guidelines. Goldfarb and Lipman is currently assisting the Agency with legal issues regarding the Bay Avenue Senior Apartments, Castle Mobile Home Park and the City's new Mobile Home Park Rental Assistance Program. This contract is for an amount not to exceed \$15,000.

Because Goldfarb and Lipman has provided legal counsel and prepared legal documents for most of the Agency's current and prior housing projects and programs, this firm meets the criteria in section 2(a) of the purchasing policy regarding sole source contracts: "where a consulting firm has satisfactorily performed the previous stage of a project, or has acquired extensive background and working knowledge, the firm may be selected for follow-up work without solicitations from other firms". The proposed contract with Goldfarb and Lipman is for legal services related to Agency housing activities and other Agency legal services during FY 11-12 for an amount not to exceed \$15,000.

FISCAL IMPACT

The FY 2011-2012 adopted budget for the Agency's Operating Fund includes sufficient funding for the proposed contract as noted below:

GOLDFARB AND LIPMAN LLC

Project	Fund	Contract Amount
Goldfarb and Lipman RDA Legal Services RDA Low Mod Housing Fund	5550	\$15,000
TOTAL		\$15,000

ATTACHMENT

Sole Source Purchases Determination

Report Prepared By: David Foster
Housing and Redevelopment Project Manager

Approved by: Derek Johnson
Deputy Executive Director

Reviewed and Forwarded
By Executive Director: _____

Sole Source Purchases Determination
Goldfarb and Lipman, LLP, \$15,000.00, July 1, 2011

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

DISCUSSION: The contract with **Goldfarb and Lipman, LLP**, in the amount of **\$15,000.00**, dated **July __, 2011** is a qualified sole source purchase within the City Administrative Policy III-4 Section B2 (check one of the following)

Policy Section B1: Materials, Supplies & Equipment:

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

Policy Section B2: Consultant or General Services:

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


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

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

Goldfarb and Lipman has provided legal counsel and prepared legal documents for most of the Agency's current and prior housing projects and programs and other Agency legal matters.



Community Development Director 7/5/11
Date



City Manager 7/6/11
Date



Item #: 5.E.

CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 11, 2011

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

DATE: AUGUST 1, 2011

SUBJECT: RESPONSE TO THE 2010-2011 SANTA CRUZ COUNTY GRAND JURY REPORT,
BACK TO THE FUTURE: REGIONAL GRIDLOCK AND LOCAL PLANNING
PARALYSIS

Recommended Action: That the City Council receive, review, propose modifications to the draft responses to the 2010-2011 Santa Cruz County Grand Jury Final Report, and direct staff to submit response to the Grand Jury on behalf of the City of Capitola.

BACKGROUND

In June, the Santa Cruz County Grand Jury issued their 2010-2011 final report which includes a report devoted to regional transportation planning. The report includes a number of findings and recommendations. Both the City Council and Community Development Department are required to respond to the report.

DISCUSSION

In general, the Grand Jury report is critical of the region's approach to multijurisdictional transportation planning efforts, and makes a number of findings and recommendations suggesting the Regional Transportation Commission should play a larger role in transportation projects.

California law requires the City Council respond to Grand Jury Report within 90 days, by October 1, 2011, and that the Community Development Department respond to the report within 60 days, by September 1, 2011. Staff is proposing a unified response from the City, submitting a single response for both staff and the City Council.

The attached draft response is consistent with California law, which requires the entity to respond to findings by stating either of the following:

- a. The respondent agrees with the finding,
- b. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

Entities are required to respond to recommendations, by stating one of the following:

- a. The recommendation has been implemented, with a summary regarding the implemented action,

- b. The recommendation has not yet been implemented but will be implemented in the future, with a timeframe for implementation,
- c. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the Grand Jury report, or d. the recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

The Grand Jury recommendation to which the City has been asked to respond is in italics, and the draft response to each finding and recommendation is listed below the recommendation.

FISCAL IMPACT

None.

ATTACHMENTS

- 1. 2010-2011 Santa Cruz Grand Jury Final Report
- 2. Draft City of Capitola Response to the Grand Jury

Report Prepared By: Derek Johnson
Community Development Director

Steve Jesberg
Public Works Director

**Reviewed and Forwarded
By City Manager:** _____

Back to the Future: Regional Gridlock and Local Planning Paralysis

Summary

The lack of integrative planning between the Regional Transportation Commission and the planning departments of the county and cities has resulted in deplorable traffic congestion along the Highway 1 corridor on a daily basis. The Regional Transportation Commission has noted that one of the fundamental reasons for the congestion is a lack of consensus among the political stakeholders. The County, which is responsible for the unincorporated areas, and the cities have chosen *not* to integrate their transportation plans with those provided by the Regional Transportation Commission. Therefore, the Grand Jury recommends the transportation sections of all general plans for the county and cities should be written by the Regional Transportation Commission.

Definitions

- **AB 32:** Assembly Bill 32, the Global Warming Solutions Act of 2006.
- **AMBAG:** The Association of Monterey Bay Area Governments. A 24-member board of directors comprised of elected officials from each city and county within the region from Monterey, San Benito and Santa Cruz counties. AMBAG serves as a federally designated Metropolitan Planning Organization and Council of Governments, and is responsible for regional collaboration and problem solving. Membership and participation is voluntary.
- **Caltrans:** California Department of Transportation.
- **RTP:** Regional Transportation Plan.
- **SCCRTC (RTC):** Santa Cruz County Regional Transportation Commission. The commission is made up of the five county supervisors, one member from each of the four incorporated cities in the County and three members appointed by the Santa Cruz Metropolitan Transit District Board of Directors. Caltrans serves as a non-voting member of the commission. The RTC responsibilities include ensuring improved mobility, access and air quality; allocating funding for the transportation system; setting priorities for transportation infrastructure; and conducting programs to encourage the use of alternative transportation. The RTC develops comprehensive transportation plans for Santa Cruz County.
- **SB 375:** Senate Bill 375, passed in 2008, enhancing the ability to reach the goals promoted by AB 32.

Background

The Grand Jury initially investigated the fiscal impacts of the proposed acquisition of the rail line through Santa Cruz County by the RTC. During the course of the investigation, we found evidence that very little coordination existed between the local jurisdictions and the RTC in the development of the transportation and housing elements of general plans. Development of the general plans by local jurisdictions has ostensibly ignored the detailed Regional Transportation Plan (RTP) developed by the RTC.^[1]

The population of Santa Cruz County has grown significantly in the past four decades, from 123,790 in 1970^[2] to 262,382^[3] in 2010. Improvements to the primary transportation corridor of Highway 1 have not kept up with the population growth, resulting in congested traffic conditions between the cities of Santa Cruz and Watsonville. Although alternative means of addressing this quagmire have been discussed, no coordinated plan has been implemented by any of the local jurisdictions.

The local jurisdictions are not accepting the transporting planning leadership provided by the RTC. The RTC has produced the most robust and comprehensive regional transportation plan to date,^[1] but the other jurisdictions, such as the County of Santa Cruz^[4] and cities of Santa Cruz,^[5] Capitola,^[6] Watsonville,^[7] and Scotts Valley^[8] appear to be operating in a vacuum, without regard to how well their plans integrate with the RTP.^[1] This lack of integration across transportation plans has obstructed the implementation of the improvements to the transportation corridors that will alleviate current conditions.

Scope

The Grand Jury interviewed personnel of various planning departments, agencies, and local organizations. Although the interviews were unscripted, we did ask three key questions listed below at each interview:

- What, in your opinion, should be done with the railroad acquisition in the long-term?
- How will this affect our long-term population distribution, business location and traffic patterns?
- Which agency, in your opinion, should be developing and EXECUTING long-term development plans in order to take advantage of the railroad acquisition?

The Grand Jury observed that there was a broader issue regarding coordination of transportation planning between the local jurisdictions and the RTC. Our focus was subsequently redirected to an investigation of this lack of coordination.

Investigation

There is little disagreement that the current major transportation arteries of Santa Cruz County are congested during specific windows of time during the day. This condition will worsen in the future as the aggregate population of the county continues to grow. From the 2010 RTP:^[1]

Many drivers complain about regularly being stuck in traffic. In a September 2007 RTC poll of likely Santa Cruz County voters “traffic and transportation” tied with “affordable housing/low income housing/cost of living” as the most important problem in the region. Area residents pay for traffic congestion in a number of ways including wasted time, increased air pollution, higher stress levels, fewer visitor dollars, and the apparent trend toward more aggressive driving habits. As we plan our transportation system for the next 25 years, addressing the seemingly intractable problem of traffic congestion is one of our key challenges.

The overarching causes of this problem are straightforward - an increasing number of drivers, a relative decrease in the rate at which transportation projects are being funded and constructed,

and an ongoing lack of consensus for how to deal with congestion issues. Again, from the 2010 RTP:^[1]

There are three fundamental reasons why traffic congestion is a major issue in the county, as well as elsewhere in the state and nation. First, more people are driving more miles than ever before and per person vehicle registrations are at an all time high. Second, decreases in the amount of transportation funding available for local projects has meant that our investment in transportation facilities and services has not kept pace with growing demands for road space and transportation alternatives. Third, there has been a lack of consensus on how to invest in our transportation system. To effectively improve mobility for all Santa Cruz County residents, it is useful to understand each of these factors.

We gathered background information in an attempt to understand the possible long-term implications of the railroad purchase in the initial stages of the investigation. While looking into the environmental and fiscal impacts of different modes of transportation in the county, we also reviewed the procedural differences of transportation planning among the different jurisdictional agencies, including the Santa Cruz County Regional Transportation Commission,^[1] County of Santa Cruz Planning Department,^[4] City of Santa Cruz Planning Department,^[5] City of Capitola Community Development Department,^[6] City of Watsonville Community Development Department,^[7] and the City of Scotts Valley Planning Department.^[8]

Many of our initial interviews highlighted the importance of Assembly Bill 32^[9] and Senate Bill 375,^[10] both of which make a distinct link between the integrated planning for housing and transportation. Many of those interviewed felt that the first passed bill, AB 32 (Global Warming Solutions Act of 2006),^[9] was too weak with respect to punitive consequences for jurisdictions that did not comply with the objectives of the bill.

SB 375^[10] was passed in 2008, enhancing the ability to reach the goals promoted by AB 32,^[9] which included long range development planning that endeavored to create more sustainable communities. The bill sets timeline targets for both 2020 and 2035 for the reduction of greenhouse gas emissions from passenger vehicles. AMBAG is currently working on producing a regional planning blueprint that incorporates the goals of SB 375 and AB 32 (Envisioning the Monterey Bay Area: A Blueprint for Sustainable Growth and Smart Infrastructure)^[11]. Some interviewees stated local county and city agencies have delayed updating their transportation plans in anticipation of the production of a guiding regional planning blueprint by AMBAG. The RTC is the only county agency that has completed a comprehensive regional transportation plan^[1] that already incorporates most of the goals of both bills, ahead of final production of the AMBAG “Blueprint.”

In reviewing general plans for both the county^[4] and the four incorporated cities^{[5][6][7][8]} within the county, as well as the 2010 RTP,^[1] we observed no evidence of integrated planning between appropriate entities. For example, none of the existing general plans have substantively incorporated transportation elements outlined in the RTP.^[1] It appears conflicting, narrowly defined policy objectives are the reason for this lack of integrated planning. As stated in the 2010 RTP:^[1]

Given the reality of limited funds & the delicate balance between benefits and impacts of major and minor projects, strong disagreements about priorities have continued to divide the community. At times, public opinion is stronger in opposition of transportation options than for them, causing a community paralysis that can inhibit compromise. This lack of agreement can make it difficult for decision makers to move forward with projects acceptable to their diverse constituencies.

A critical component for the creation and implementation of transportation plans is a reliable source of funding. When the 2010 RTP^[1] was created, the RTC assumed that a half-cent sales tax would be approved by 2012.^[1] Their reasoning was that 84% of the population in California live in areas which have approved local funding measures to address their transportation needs. Sales taxes require voter approval, which makes this source of funding unreliable. In addition, fluctuating economic cycles can adversely affect future revenues. The RTC has little long-term funding for future planning without this assumed funding source.

To summarize, the citizens of Santa Cruz County are burdened with bad traffic congestion along the Highway 1 corridor on a daily basis, primarily due to the fact that the number of drivers is growing, while transportation infrastructure improvements have not kept pace. This problem is driven by a lack of integrative planning and policy consensus between the RTC and the county and city legislative bodies. The RTC is clearly providing detailed and substantive long-range transportation planning guidance to the local jurisdictions. However, absent a mandate to incorporate RTC plans, local jurisdictions do not include comprehensive, up-to-date regional transportation planning within their general plans.

Findings

- F1.** Traffic congestion on Highway 1 corridor is problematic.
- F2.** Local jurisdictions do not implement the regional transportation plan created by the RTC.
- F3.** Lack of consensus between the local jurisdictions and the RTC staff obstructs the coordination of the local transportation plans with the Regional Transportation Plan.
- F4.** Each agency's General Plan is an integrated document that includes housing and transportation as elements. There is no mandated link between the local agency's General Plans and the Regional Transportation Plan.
- F5.** No consistent long-term funding source is currently available for RTC planning.

Recommendations

- R1.** Transportation sections of all county and city general plans should be written by Regional Transportation Commission staff.
- R2.** The local jurisdictions should review the transportation sections developed by RTC staff for adequacy every two years and RTC staff should be required to revise when necessary.

- R3.** The RTC should develop cost estimates and pursue stable funding sources to implement recommendations one and two.

Commendations

The Grand Jury would like to acknowledge the exceptional work the RTC has accomplished in creating, and periodically updating, comprehensive regional transportation plans. Their plans provide a framework for jurisdictions to integrate their local transportation plans with others in the county.

Responses Required

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Santa Cruz County Board of Supervisors	F1-F4	R1-R3	90 days October 1, 2011
Santa Cruz County Regional Transportation Commission	F1-F5	R1-R3	90 Days October 1, 2011
County of Santa Cruz Planning Department	F2-F4	R1-R2	60 days September 1, 2011
City of Santa Cruz City Council	F1-F4	R1-R2	90 days October 1, 2011
City of Santa Cruz Planning Department	F2-F4	R1-R2	60 days September 1, 2011
City of Watsonville City Council	F1-F4	R1-R2	90 days October 1, 2011
Watsonville Community Development Department	F2-F4	R1-R2	60 days September 1, 2011
City of Capitola City Council	F1-F4	R1-R2	90 days October 1, 2011

Capitola Community Development Department	F2-F4	R1-R2	60 days September 1, 2011
City of Scotts Valley City Council	F1-F4	R1-R2	90 days October 1, 2011
Scotts Valley Planning Department	F2-F4	R1-R2	60 days September 1, 2011

Sources

1. Santa Cruz County Regional Transportation Commission, "RTP 2010 - Santa Cruz County Regional Transportation Plan," 2010, accessed: May 21, 2011, <http://www.sccrtc.org/rtp.html#2010RTP>
2. United States Census Bureau, "Population of Counties by Decennial Census: 1900 to 1990," 1995, accessed: May 21, 2011, <http://www.census.gov/population/cencounts/ca190090.txt>
3. United States Census Bureau, "2010 Census Results for California", 2010, accessed: May 21, 2011, <http://2010.census.gov/2010census/data/>
4. County of Santa Cruz, "1994 GENERAL PLAN and LOCAL COASTAL PROGRAM for the COUNTY OF SANTA CRUZ, CALIFORNIA," December 19, 1994, accessed: May 21, 2011, http://www.sccoplanning.com/html/policy/general_plan.htm
5. City of Santa Cruz, "City of Santa Cruz General Plan 2030," February 27, 2009, accessed: May 21, 2011, <http://www.cityofsantacruz.com/index.aspx?page=348>
6. City of Capitola, "City of Capitola General Plan," September 28, 1989, accessed: May 21, 2011, <http://www.ci.capitola.ca.us/capcity.nsf/ComDevCityGen.html>
7. City of Watsonville, "Watsonville 2005 General Plan," May 24, 1994, accessed: May 21, 2011, http://www.ci.watsonville.ca.us/departments/cdd/general_plan_05/ch.10.pdf
8. City of Scotts Valley, "General Plan - 1994," Chapter 11 – Circulation, April 23, 1993, accessed: May 21, 2011, <http://www.scottsvally.org/downloads/planning/GPCirculation.pdf>
9. State of California Assembly, "Assembly Bill No. 32," September 27, 2006, accessed: May 21, 2011, http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_32_bill_20060927_chaptered.pdf
10. State of California Senate, "Senate Bill No. 375," September 30, 2008, accessed: May 21, 2011, http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_375_bill_20080930_chaptered.pdf
11. AMBAG, "Envisioning the Monterey Bay Area: a Blueprint for Sustainable Growth and Smart Infrastructure," March 2011, accessed: May 21, 2011, http://www.ambag.org/programs/blueprint/pdf/blueprint_document.pdf

**City of Capitola Response
Santa Cruz County Grand Jury Final Report 2010-2011**

Back to the Future: Regional Gridlock and Local Planning Paralysis

Response Date Due October 1, 2011

Finding F1: Traffic congestion on Highway 1 corridor is problematic.

Response

AGREE: Congestion on Highway 1 corridor is problematic and will require federal, state, and regional coordination to address long-term solutions.

Finding F2: Local jurisdictions do not implement the regional transportation plan created by the RTC.

Response

DISAGREE: The City of Capitola includes the goals and policies of the RTP in the development of capital improvement transportation projects. Specifically, preserving and maintaining existing transportation systems, incorporating multi-modal design elements in the projects, making efficient use of very limited transportation funding, seeking broad public input on local transportation plans. Unfortunately, due to on-going financial restraints, the number of transportation related improvement projects has been quite small over the past 5 years and remain limited in the near future.

Finding F3: Lack of consensus between the local jurisdictions and the RTC staff obstructs the coordination of the local transportation plans with the Regional Transportation Plan.

Response

DISAGREE: There is no lack of consensus between the City of Capitola and RTC staff that obstructs coordination or implementation of transportation plans. The City has supported the RTC's efforts in acquiring the Union Pacific Railroad corridor; in addition the City joined and participated in the Highway 1 Construction Authority and in the Transportation Funding Task Force. City staff participates in the RTC's Integrated Technical Advisory Committee (ITAC) where local and regional transportation issues are discussed and policy recommendations are made.

Finding F4: Each agency's General Plan is an integrated document that includes housing and transportation as elements. There is no mandated link between the local agency's General Plans and the Regional Transportation Plan.

Response

PARTIALLY AGREE: General Plans are required by California Government Code Section 65300.7 to be internally consistent. California Government Code Section 65080 requires regional transportation plans to consider and incorporate as appropriate the transportation plans of cities, counties, districts, private organizations and state and federal agencies.

SB #375 has shifted the paradigm whereby impending updates of the Regional Transportation Plan (RTP) will need to achieve measured and quantifiable trip reductions with associated decreases in greenhouse gas emissions. The Regional Housing Needs Assessment (RHNA) will be likely be allocated to AMBAG jurisdictions based on greenhouse gas (GHG) and trip reduction goals. The Sustainable Communities Strategy (SCS) is required to demonstrate how the Santa Cruz region will meet its greenhouse gas reduction target through integrated land use, housing and transportation planning. Once adopted by AMBAG, the SCS will be incorporated into the region's federally enforceable RTP.

Recommendation R1: *Transportation sections of all county and city general plans should be written by Regional Transportation Commission staff.*

Response

WILL NOT BE IMPLEMENTED: The City of Capitola does not agree with this recommendation. California state law requires the "planning agency" for each city and county to adopt a general plan "for the physical development of the county or city and any land outside its boundaries which bears relation to its planning" (Gov. Code 65300). The Regional Transportation Commission ("RTC") is not a "planning agency" for purposes of the statute and the statute does not authorize the City to delegate this statutorily imposed responsibility to a non-elected regional transportation agency which is created and functions pursuant to another state statute (Gov. Code 29352) and has statutorily assigned duties which do not include the drafting of city and county general plan circulation elements (Gov. Code 65080 et seq). In addition it bears emphasis that the general plan circulation element must correlate directly with the other elements of the general plan and not just regional transportation goals. Each general plan element, including such elements as the housing element, the land use element, and the circulation element, is required to be integrated and internally consistent with the other general plan elements so as to result in a general plan that internally consistent (Gov. Code 65300.5). The circulation element thus has a direct relationship to other general plan elements that entail policy considerations for which a regional transportation commission has neither legal responsibility nor practical expertise. Accordingly we believe that City elected officials are best qualified to, and legally required to, determine whether or not a proposed general plan is consistent with the community's values and represents the most

comprehensive local expression of the general welfare for persons who live in, work in and visit the City. The RTC has been and will continue to be encouraged to participate in the City's general plan update process. The City however cannot delegate its responsibility for any portion of this process to the RTC.

Recommendation R2: *The local jurisdictions should review the transportation sections developed by RTC staff for adequacy every two years and RTC staff should be required to revise when necessary.*

Response

WILL NOT BE IMPLEMENTED: Current law, specifically California Government Code Section 65080 requires each transportation planning agency to "prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system...." Chapter One of the 2010 RTP outlines the steps that the Regional Transportation Commission has taken to integrate local and regional plans and summarizes both public and regional agency input that goes into developing the RTP. As warranted, the City of Capitola may update its Circulation Element so that it can implement regional transportation improvements. Local participation in developing the RTP has been and will continue to be important. As noted in the RTP, the biggest challenge facing the region is the availability of funding for transportation projects, rather than regional coordination.