

City of Capitola Agenda

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

Treasurer: Peter Wilk



UPDATED
CAPITOLA CITY COUNCIL
REGULAR MEETING

THURSDAY, AUGUST 9, 2018

7:00 PM

CITY COUNCIL CHAMBERS
420 CAPITOLA AVENUE, CAPITOLA, CA 95010

CLOSED SESSION - 6:00 PM
CITY MANAGER'S OFFICE

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

CONFERENCE WITH LABOR NEGOTIATOR [Govt. Code § 54957.6]

Negotiator: Dania Torres Wong/Larry Laurent
Employee Organizations: (1) Capitola Police Officers Association

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

[Govt. Code § 54956.9 (d)(1)]

(3 cases)

City of Capitola v. Linda Fridy & Gail Pellerin (Juan Escamilla Real Party in Interest)
Santa Cruz Superior Court Case No. 18CV02200

Oscar Ramirez v. City of Capitola et al.
United States District Court Case No. 18CV04142NC

City of Capitola v. D'Angelo
Santa Cruz County Superior Court Case No. CV 181659

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL – 7 PM

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

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

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

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

2. REPORT ON CLOSED SESSION

3. ADDITIONAL MATERIALS

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

4. ADDITIONS AND DELETIONS TO AGENDA

5. PUBLIC COMMENTS

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

6. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS

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

7. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS

A. Historical Museum Board Appointments

RECOMMENDED ACTION: Make appointment as recommended by the Historical Museum Board.

8. CONSENT CALENDAR

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

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

CAPITOLA CITY COUNCIL REGULAR MEETING AGENDA
August 9, 2018

- A. Consider the July 26, 2018, City Council Regular Meeting Minutes
RECOMMENDED ACTION: Approve minutes.
- B. Planning Commission Action Minutes
RECOMMENDED ACTION: Receive minutes.
- C. Schedule Appeal of the Planning Commission's Approval of a Design Permit, Variance, and Coastal Development Permit for Application #18-0412, 205 Magellan
RECOMMENDED ACTION: Schedule the appeal for the regular meeting of September 27, 2018.
- D. Second Reading of an Ordinance Adding Chapter 1.50 to the Capitola Municipal Code Pertaining to Electronic Filing of Campaign Statements
RECOMMENDED ACTION: Approve an ordinance adding Municipal Code Chapter 1.50.
- E. Award Contract for 38th Avenue Sidewalk Project
RECOMMENDED ACTION: Award a contract to Earthworks Paving Co. from Capitola in the amount of \$115,564 for the construction of the 38th Avenue Sidewalk Project.
- F. Grand Jury Report Response: Mental Health Crisis
RECOMMENDED ACTION: Accept the recommendations by the Santa Cruz County Civil Grand Jury, and direct the City Clerk to send the completed response packet pursuant to California Penal Code 933.05 PC.

9. GENERAL GOVERNMENT / PUBLIC HEARINGS

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

- A. Consider a Report on the Impacts of a Qualified Citizen Initiative Ordinance and a Resolution Placing the Initiative Measure on the November 6, 2018, Ballot
RECOMMENDED ACTION: Receive the requested report on the impacts of a proposed ordinance amending Title 8 of the Capitola Municipal Code pertaining to Health and Safety as related to the Santa Cruz Branch Line Rail Corridor and approve the resolution placing the measure on the November 2018 ballot
- B. Determine Award Amounts for Community Grants
RECOMMENDED ACTION: Consider the recommendations of the Community Grants Ad-Hoc Subcommittee and determine grant award amounts for Fiscal Years 2018/19 and 2019/20. Consider the subcommittee recommendation of a creation of a Local Critical Need Fund.
- C. Review the Deadlines and Procedures for Ballot Measure Arguments
RECOMMENDED ACTION:
 - 1. Review deadlines for arguments and rebuttals regarding Capitola's November 6, 2018, ballot measures.
 - 2. Consider designating two Council members to draft, identify signers and submit an argument in favor for the TOT ballot item.
 - 3. Consider designating two Council members to work with the Treasurer to draft, identify signers and submit an argument in favor for the Treasurer ballot item.

CAPITOLA CITY COUNCIL REGULAR MEETING AGENDA

August 9, 2018

4. Review the draft Cannabis Tax argument prepared by Mayor Termini.

D. Designation of the Voting Delegate and Alternate for the 2018 League of California Cities Annual Conference

RECOMMENDED ACTION: Designate Capitola's voting delegate and alternate and provide direction on the City's position on two resolutions.

10. ADJOURNMENT

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

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

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

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

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

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



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: City Manager Department
SUBJECT: Historical Museum Board Appointment

RECOMMENDED ACTION: Make appointment as recommended by the Historical Museum Board.

BACKGROUND/DISCUSSION: Three of the Historical Museum Board's seven seats expired in June, and the board also had an open unfinished term. On June 14, 2018, Council reappointed two members and appointed a new applicant to the unfinished term, based upon the Museum Trustees' recommendation. Recruitment was extended for the remaining vacancy and two applications were received: Brian Legakis (Attachment 1) and Coleton Tidwell (Attachment 2).

Pursuant to the Museum Board's bylaws, the board will interview applicants at its August 7 meeting and make a recommendation, which will be distributed as additional materials prior to the Council Meeting.

ATTACHMENTS:

1. Legakis Museum application
2. Tidwell Museum application

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

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

Jamie Goldstein, City Manager

8/3/2018

CITY OF CAPITOLA
CITY CLERK

JUL 02 2018



CITY of CAPITOLA BOARDS AND COMMISSIONS APPLICATION

Application for:

- Art & Cultural Commission
[Artist; Arts Professional; At Large Member]
Please underline category above.
- Architecture & Site Committee
[Architect; Landscape Architect; Historian]
Please underline category above.
- Finance Advisory Committee
[Business Representative; At Large Member]
Please underline category above.
- Traffic & Parking Commission
[Village Resident; Village Business Owner; At Large Member]
Please underline category above.
- Historical Museum Board
- Planning Commission
- Library Advisory Committee
- Other Committee _____

Name: Legakis Brian
Last First

Residential Neighborhood: Seacliff, Aptos

Occupation: Art Historian, retired Cabrillo College

Describe your qualifications and interest in serving on this Board/Commission/Committee: My work experience includes 40 years as a professor of Art History and Classical archaeology. My education: BA Biological Sciences UC Davis, MA & Ph.D Art History The University of Chicago. Extensive research in hundreds of museums in Europe & the US. I have an interest in the history of Capitola and the county of Santa Cruz. My children went to New Brighton Middle School. I patronize the businesses of Capitola, driving, running, cycling and surfing through or in the city weekly.

(Use additional paper, if necessary)

Please Note: Appointment to this position may require you to file a conflict of interest disclosure statement with the City Clerk. This information is a public record and these statements are available to the public on request.

July 1, 2018

Date

Brian Legakis

Signature of Applicant

Mail or Deliver Application to:
Capitola City Hall
Attn: City Clerk
420 Capitola Avenue, Capitola, CA 95010

All information contained in this page of the application is public data and will be made available for public review and copying for anyone requesting it, and may be posted on the website of the City of Capitola. All information in this page will be provided to the Capitola City Council in a public forum and will be reviewed in public. It will therefore be part of the public record.

Attachment: Legakis Museum application (Historical Museum Board Appointment)

RECEIVED

JUL -9 2018

CITY OF CAPITOLA



CITY of CAPITOLA BOARDS AND COMMISSIONS APPLICATION

Application for:

- Art & Cultural Commission
[Artist; Arts Professional; At Large Member]
Please underline category above.
- Architecture & Site Committee
[Architect; Landscape Architect; Historian]
Please underline category above.
- Finance Advisory Committee
[Business Representative; At Large Member]
Please underline category above.
- Traffic & Parking Commission
[Village Resident; Village Business Owner; At Large Member]
Please underline category above.
- Historical Museum Board
- Planning Commission
- Library Advisory Committee
- Other Committee _____

Name: Tidwell Coleton
Last First

Residential Neighborhood: Aptos

Occupation: Cal Works Housing Coordinator (find homes for homeless familie)

Describe your qualifications and interest in serving on this Board/Commission/Committee: _____

I have an immense interest in local history, as well as an interest in history overall. I have degrees in politics + History from UCSC, and local government is something I want to begin participating in. I work hard and I am passionate about helping others and education.

(Use additional paper, if necessary)

Please Note: Appointment to this position may require you to file a conflict of interest disclosure statement with the City Clerk. This information is a public record and these statements are available to the public on request.

7/2/18
Date

[Signature]
Signature of Applicant

Mail or Deliver Application to:
Capitola City Hall
Attn: City Clerk
420 Capitola Avenue, Capitola, CA 95010

All information contained in this page of the application is public data and will be made available for public review and copying for anyone requesting it, and may be posted on the website of the City of Capitola. All information in this page will be provided to the Capitola City Council in a public forum and will be reviewed in public. It will therefore be part of the public record.

Attachment: Tidwell Museum application (Historical Museum Board Appointment)



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: City Manager Department

SUBJECT: Consider the July 26, 2018, City Council Regular Meeting Minutes

RECOMMENDED ACTION: Approve minutes.

DISCUSSION: Attached for City Council review and approval are the minutes of the regular meeting of July 26, 2018.

ATTACHMENTS:

1. 7-26 draft minutes

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

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

Jamie Goldstein, City Manager

8/3/2018

**DRAFT
CAPITOLA CITY COUNCIL
REGULAR MEETING ACTION MINUTES
THURSDAY, JULY 26, 2018**

CALL TO ORDER

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

CONFERENCE WITH LABOR NEGOTIATOR [Govt. Code § 54957.6]

Negotiator: Dania Torres Wong

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

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
[Govt. Code § 54956.9(d)(4)]**

1 potential case

LIABILITY CLAIMS [Gov't Code § 54956.95]

Claimant: Carol Camnitz

Agency claimed against: City of Capitola

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

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL - 7 PM

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

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

2. PRESENTATIONS

A. Introduce New Parking Enforcement Officer

Police Chief Terry McManus introduced recently sworn-in Parking Enforcement Officer Gabe Rankin, who came up through the department's Explorer program.

B. Introduce New Assistant Planner

Community Development Director Katie Herlihy introduced Assistant Planner Sascha Landry, a County resident who recently received her master's degree in planning.

3. REPORT ON CLOSED SESSION

Attorney John Barisone said that for the ongoing labor negotiations Council received a report and provided direction. The claim was discussed and action is on the consent calendar. Regarding initiating litigation, the Council voted 5-0 to file legal action regarding the legal validity of the Greenway ballot initiative.

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES
July 26, 2018

4. **ADDITIONAL MATERIALS**

- A. Item 9.A – Corrected attachment and two public comments
- B. Item 9.C – Revised language for the resolution and two public comments
- C. Item 9.D -- Revised language for the resolution

5. **ADDITIONS AND DELETIONS TO AGENDA - None**

6. **PUBLIC COMMENTS**

Demora White followed up on a zoning code complaint she filed with the City earlier this week regarding rat infestation and a neighbor's practice of feeding birds.

7. **CITY COUNCIL / CITY TREASURER / STAFF COMMENTS**

City Clerk Linda Fridy reported on candidate filing status.

Council Member Harlan reported on the successful party last weekend at the Historical Museum book signing of the new Frank Hill-illustrated coloring book.

Mayor Termini noted there was a packed house for Wednesday's Extra Large concert.

8. **CONSENT CALENDAR**

MOTION:	APPROVE OR DENY AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Jacques Bertrand, Vice Mayor
AYES:	Harlan, Bottorff, Termini, Bertrand, Petersen

- A. Consider the June 28, 2018, City Council Regular Meeting Minutes
RECOMMENDED ACTION: Approve minutes.
- B. Liability Claim of Carol Camnitz [Claims Binder]
RECOMMENDED ACTION: Reject liability claim.
- C. Consider Approval of Memoranda of Understanding with Police Captains and Adopt Amended Salary Schedule for Fiscal Year 2018/19
RECOMMENDED ACTION:
 - 1. Authorize the City Manager to execute the successor agreements to existing Memoranda of Understanding (MOU) with negotiated changes from July 1, 2018, through June 30, 2020, for the following:
 - a. Police Captains
 - 2. Adopt **Resolution No. 4120** approving the updated salary schedule.
- D. Consider a New City Attorney Contract
RECOMMENDED ACTION: Consider the updated agreement for City Attorney Services with Atchison, Barisone, & Condotti in the amount of \$133,560 for Fiscal Year 2018/19 and authorize the City Manager to execute the agreement.

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES
July 26, 2018

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

RECOMMENDED ACTION: Adopt **Ordinance No. 1021** adding Chapter 5.36 “Retail Cannabis Licenses” and amending Municipal Code Chapter 17.24 to authorize retail cannabis as a conditionally permitted use in the Regional Commercial zone.

- F. Award 2018 Slurry Seal Project Contract

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

9. GENERAL GOVERNMENT / PUBLIC HEARINGS

- A. Consider Options for Awarding a Construction Contract for the Capitola Branch Library

RECOMMENDED ACTION: Either:

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

Public Works Director Steve Jesberg presented the staff report of options to address the over-budget lowest bid for the project.

Option 1 includes accepting the bid based on a combination of reduced costs and additional income. City Manager Jamie Goldstein reported that with both higher income and lower costs for the system-wide Measure S, an estimated \$10 million to \$15 million will be received, of which under the initial distribution formula Capitola would receive \$1.3 million to \$2 million. The additional distribution must be approved through the Joint Powers Agreement. On the reduction side, staff identified just over \$1 million in likely savings. Of those, \$757,000 would be made regardless of the extra funding level. If either the value engineering savings or additional income do not materialize, contract termination costs are about \$100,000. Under this option, work could begin in October.

Option two is a design-build approach in which a team of architects and contractors work together to meet described needs. The building design would be up to the winning bidder. Mayor Termini clarified that without the new funding the building size would decrease to 7,000 square feet. Staff estimates that work would begin in nine to 12 months.

A third option to redesign based on the identified value engineering and rebid is not recommended.

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES
July 26, 2018

Council Member Bottorff confirmed that option three may not lose the design costs already incurred.

In public comment, Barbara Gorson, resident and City library representative, supported option one that provides a flexible building for a 50-year life. She said option two is more uncertain, smaller, and costly.

Christine McBroom, resident, local business owner, and parent of young children, asked Council to invest in the community and supports option one.

Sam Storey, resident, noted the City does not have a library currently and option one is more timely. He is also concerned about the loss of \$1.5 million already incurred with option two.

Linda Smith, resident and honorary campaign chair, emphasized the community support for the design of option one, which has been shown to donors with pledges and payments already in place. She also said this type of project is not comparable to a residential, personal project.

Council Member Petersen reiterated her concern that extra time will mean extra money and said option one appears to be the best.

Council Member Bottorff said there are a lot of uncertainties with option one, including no guarantee for additional funds. He likes option three.

Council Member Bertrand said this library is an aspirational project and means a lot to the community. He added that investment in children comes back.

Council Member Harlan said she is happy to support option one. She knows the library is important to the community and recognizes the design has been shown to many donors. She acknowledged it is a leap of faith, but she is willing to take it.

Mayor Termini said based on his construction experience, rebids are not successful and often despite cuts, bids still come in higher. He sees option one as the least risky and most responsible.

MOTION:	AWARD THE CONTRACT TO OTTO CONSTRUCTION IN THE AMOUNT BID AND DIRECT STAFF TO NEGOTIATE A DEDUCTIVE CHANGE ORDER AND ADD THE BID ALTERNATE FOR CONCRETE PAVERS
RESULT:	ADOPTED [4 TO 1]
MOVER:	Kristen Petersen, Council Member
SECONDER:	Stephanie Harlan, Council Member
AYES:	Stephanie Harlan, Michael Termini, Jacques Bertrand, Kristen Petersen
NAYS:	Ed Bottorff

B. Report on Citizen Initiative Petition Qualification

RECOMMENDED ACTION: Receive report on the certification of a petition to amend Title 8 of the Capitola Municipal Code pertaining to Health and Safety as related to the Santa Cruz Branch Line Rail Corridor and order a report pursuant to Elections

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES
July 26, 2018

Code Section 9212 for presentation at the August 9 City Council meeting.

Clerk Fridy presented the staff report with timeline and elections code procedures. Attorney Barisone recommended that a report address fiscal impact; consistency with general and specific plans such as the Local Coastal Plan, the Monterey Bay Sanctuary Scenic Trail, and Transportation Plan; transportation, traffic congestion, and legal viability.

Council Member Bertrand asked if voters approve this ordinance, how does it reflect on conflicting approved plans. Attorney Barisone responded that if they do not agree, the plans should be amended, but the measure says that is not its intent.

In public comment, Juan Escamilla, initiative proponent, noted he received a lot of support through the signature gathering. In response to Council Member Harlan's question of how the ordinance was described to signers, Mr. Escamilla said it was presented as a way to make a trail and bike path not only in Capitola but through the County.

Linda Larsen, resident, said she was inspired by the petition. She heard a community voice to maintain what exists and said the primary resistance to a train is noise.

David van Brink said he is unclear on the intent, and supports a report with the impact on the contiguous trail.

Linda Wilshusen, former Regional Transportation (RTC) executive director, asked that a report address fiscal impact, transportation and accessibility, and safety. (Full statement on file.)

George Dondero, current RTC executive director and Capitola resident, said the corridor is an important link for both rail and scenic trail network. He noted the RTC funded a feasibility study in June to explore full replacement of the trestle for a train and trail.

Mark Mestizi-Miller, Friends of the Rail Trail and civil engineer, supports a report on the fiscal impact including a delay and loss of \$18 million for rail trail.

Dennis Norton, resident, does not feel an initiative is needed and questions its effectiveness, saying it is poorly written and unclear. Based on his time on the RTC board he thinks the trestle is too expensive to rebuild without railroad money. He questioned whether the federal Secretary of the Interior would support ending the rail use of a historic structure and asked if the ordinance impacts the votes of City RTC representatives.

Council Member Harlan said she is uncertain what the initiative is about. She noted the Scenic Trail has been planned for many years and needs to go to the coast. She wants people to be able to get to the beach as outlined in the City's many other plans.

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES
July 26, 2018

Council Members Bertrand and Petersen also support a report to identify impacts.

Council Member Bottorff agrees with the list of potential impacts as outlined by the attorney and the speakers.

Attorney Barisone noted that members of the public can email his office and the City Manager with questions they would like to see addressed in the study.

MOTION:	REQUEST A REPORT ON POTENTIAL BALLOT INITIATIVE IMPACTS AS PERMITTED BY ELECTIONS CODE 9212 (1), (2), (4), (7) AND (8) AS DISCUSSED TO BE PRESENTED AT THE AUGUST 9, 2018, REGULAR CITY COUNCIL MEETING.
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Jacques Bertrand, Vice Mayor
AYES:	Harlan, Bottorff, Termini, Bertrand, Petersen

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

City Manager Goldstein presented the staff report.

In public comment, Ted Burke, owner of Shadowbrook Restaurant, thanked Council, staff, and hospitality industry members who worked to craft a win-win option.

Council Member Bottorff said that while complete agreement is difficult, everyone worked together to support tourism and important youth programs.

Both Council Members Petersen and Harlan agree the measure is a good step forward.

Council Member Bertrand said he is particularly pleased with the potential for a permanent funding stream for children's programs.

Mayor Termini said Capitola provides visitors with an experience worth a small increase, and noted that the measure would create permanent and stable funding.

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

- D. Consider a Resolution Placing a Local Cannabis Tax Measure on the November 6, 2018, Election Ballot
RECOMMENDED ACTION: Adopt a resolution placing a measure on the November

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES
July 26, 2018

ballot to approve a not-to-exceed 7 percent Cannabis Business Tax.

City Manager Goldstein presented the staff report. He noted that the ordinance adopted earlier this evening requires passage of this measure to take effect.

There was no public or Council comment.

MOTION:	ADOPT THE RESOLUTION AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Jacques Bertrand, Vice Mayor
AYES:	Harlan, Bottorff, Termini, Bertrand, Petersen

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

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

City Manager Goldstein presented the staff report, emphasizing the desire for a unanimous vote to provide education and support.

In public comment, Christine McBroom, former appointed treasurer and local business owner, reviewed the job. She said an election may not result in someone with experience and education in Capitola finance. She believes the citizen oversight by the Finance Advisory Committee (FAC) is invaluable.

Council Member Harlan recalled the process to change the city clerk to an appointed position and earlier discussions to do same with the treasurer. In both positions it is valuable to have someone appointed with the appropriate skills. Council Member Petersen agreed.

Council Member Bottorff agrees that municipal finance has become more specialized and this is the direction cities are moving. He added the FAC needs to remain and provide vital recommendations.

Mayor Termini confirmed that the ongoing use of the FAC to provide citizen oversight can be included in arguments in favor of the change.

Council Member Bertrand, a former elected treasurer, acknowledged a learning curve when he became treasurer. He appreciated the opportunity to ask questions and represent the citizens, but he is willing to see if the citizens value having the position elected.

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES
July 26, 2018

MOTION:	ADOPT THE RESOLUTION AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Stephanie Harlan, Council Member
AYES:	Harlan, Bottorff, Termini, Bertrand, Petersen

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

Clerk Fridy presented the staff report.

There was no public comment. Council Member Petersen expressed enthusiasm for an electronic option.

MOTION:	APPROVE FIRST READING AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jacques Bertrand, Vice Mayor
SECONDER:	Stephanie Harlan, Council Member
AYES:	Harlan, Bottorff, Termini, Bertrand, Petersen

10. ADJOURNMENT

The meeting adjourned at 8:53 p.m.

ATTEST:

Michael Termini, Mayor

Linda Fridy, City Clerk



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: City Manager Department

SUBJECT: Planning Commission Action Minutes

RECOMMENDED ACTION: Receive minutes.

DISCUSSION: Attached for Council review are the action minutes of the July 19, 2018, Planning Commission regular meeting.

ATTACHMENTS:

1. 07-19-2018 Action

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

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

Jamie Goldstein, City Manager

8/3/2018



**DRAFT ACTION MINUTES
CAPITOLA PLANNING COMMISSION MEETING
THURSDAY, JULY 19, 2018
7 P.M. – CAPITOLA CITY COUNCIL CHAMBERS**

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

2. ORAL COMMUNICATIONS

- A. Additions and Deletions to Agenda**
- B. Public Comments**
- C. Commission Comments**
- D. Staff Comments**

3. CONSENT CALENDAR

A. 1550 41st Avenue #18-0221 APN: 034-111-22

Sign Permit for removal and replacement of existing signs located within the C-C (Community Commercial) zoning district.

This project is in the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Goodwill Central Coast

Representative: Monterey Signs, Filed: 05.18.2018

MOTION: Approve Sign Permit.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Edward Newman, Commissioner
SECONDER:	Linda Smith, Commissioner
AYES:	Smith, Newman, Welch, Westman, Storey

4. PUBLIC HEARINGS

A. 105 Stockton Avenue #18-0170 APN: 035-171-21

Sign Permit to allow two wall signs at 105 Stockton Avenue in the C-V (Central Village) Zoning District.

This project is located within the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption

Property Owner: Ashley Hubback

Representative: Vahan Tchakerian, Filed: 04.17.2018

MOTION: Approve Sign Permit and Master Sign Program, incorporating staff recommendations of one additional wall sign and new size restrictions, as amended.

RESULT:	APPROVED AS AMENDED [UNANIMOUS]
MOVER:	Linda Smith, Commissioner
SECONDER:	Susan Westman, Commissioner
AYES:	Smith, Newman, Welch, Westman, Storey

B. 205 Magellan Street #18-0184 APN: 036-192-13

Design Permit for first- and second-story additions which includes a variance request for the eighty percent permissible structural alteration limit for nonconforming structures for an existing single-story single-family home located in the R-1 (Single-Family Residential) zoning district.

This project is in the Coastal Zone and requires a Coastal Development Permit which is not appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

Environmental Determination: Categorical Exemption

Property Owner: Scott Harway

Representative: Scott Harway, Filed: 04.25.2018

MOTION: Approve Design Permit, Variance Request, and Coastal Development Permit, as amended.

RESULT:	APPROVED AS AMENDED [3 TO 2]
MOVER:	TJ Welch, Commissioner
SECONDER:	Linda Smith, Commissioner
AYES:	Smith, Welch, Storey
NAYS:	Newman, Westman

C. 115 San Jose Avenue #18-0243 APN: 035-221-17

Design Permit, Conditional Use Permit, Coastal Development Permit, and Major Revocable Encroachment Permit for a 500-square-foot parklet within the C-V (Central Village) zoning district.

This project is in the Coastal Zone and requires a Coastal Development Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

Environmental Determination: Categorical Exemption

Property Owner: Southstar P.M., Inc.

Representative: Capitola Wine Bar, Filed: 05.30.2018

MOTION: Remove item from Agenda due to request by applicant to withdraw parklet application.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	TJ Welch, Commissioner
SECONDER:	Susan Westman, Commissioner
AYES:	Smith, Newman, Welch, Westman, Storey

D. 210 Central Ave #18-0001 APN: 036-122-19

Design Permit, Conditional Use Permit, Major Revocable Encroachment Permit, and Variance request to the eighty percent permissible structural alteration limit for nonconforming structures for an addition to an historic single-family residence located at 210 Central Avenue within the R-1 (Single-Family) zoning district.

This project is in the Coastal Zone and requires a Coastal Development Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

Environmental Determination: Categorical Exemption

Property Owner: Paul & Brigitte Estey

Representative: Paul & Brigitte Estey, Owners. Filed: 01-02-2018

MOTION: Continued to Planning Commission meeting of September 6, 2018, to allow time for the applicant to put up story poles and netting to illustrate the height and massing of the proposed structure and revise front porch maintaining original pyramidal form of main roof.

RESULT:	CONTINUED [4 TO 1]	Next: 9/6/2018 7:00 PM
MOVER:	Edward Newman, Commissioner	
SECONDER:	Linda Smith, Commissioner	
AYES:	Smith, Newman, Westman, Storey	
NAYS:	Welch	

- 5. DIRECTOR'S REPORT
- 6. COMMISSION COMMUNICATIONS
- 7. ADJOURNMENT

Attachment: 07-19-2018 Action (July 19, 2018, Planning Commission Action Minutes)



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: City Manager Department

SUBJECT: Schedule Appeal of the Planning Commission's Approval of a Design Permit, Variance, and Coastal Development Permit for Application #18-0412, 205 Magellan

RECOMMENDED ACTION: Schedule the appeal for the regular meeting of September 27, 2018.

BACKGROUND/DISCUSSION: On July 19, 2018, the Planning Commission held a hearing for application #18-0184 at 205 Magellan St. and approved the application, which included a Design Permit, Variance, and Coastal Development Permit. A nearby property owner appealed the decision on August 2. (Attachment 1). Capitola Municipal Code §2.52.030 requires the City Council either to hear or schedule the appeal at its next regular meeting. Staff reached out to both parties, who agreed to the September 27 date.

FISCAL IMPACT: The appellant paid the required \$541.80 fee. The applicant will be billed hourly for staff time.

ATTACHMENTS:

1. Magellan Street - 205 - #18-0412 - Appeal Letter - 08.01.2018
2. Appeal Letter 205 Magellan #18-0184

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

Jamie Goldstein, City Manager

8/3/2018

August 1, 2018

To the Capitola City Council Members,

I appreciate that you are here to serve us.

This letter is to appeal the proposed remodel at 205 Magellan St. I respectfully request you reconsider and reject the proposed building application #18-0184. Further review should be considered based on the opinions of two Capitola Council members who voted against this project, Ed Newman (Real Estate Attorney in Capitola) and Susan Westman (member of Vision Capitola and past interim community development director). Mr. Newman voted against the application because he was unable to find the legal basis for the requested variance. Ms. Westman agreed with my assessment of noise being a problem on the second story rear deck, finding such rear deck issues to typically be a problem in the residential areas. Neither Mr. Newman nor Ms. Westman are the homeowners who will be next to this remodel. I am the owner of 201 Magellan St, and they see the same things I see with the illegal variance and noise/privacy problematic issue.

I oppose the remodel's rear open air deck and the addition of windows to the south side second story. These windows will be all along the patio side of my property. Placed at 4ft 9 inches high (people are easily taller than 4ft 9inches), these proposed second story windows will allow my yard to be observed and carry down noise. My backyard conversations will be heard as they peer into my L shaped outdoor living space, and sound carries. I am not aware of any plans to protect my reasonable expectations of privacy within my home.

There is no legal basis for the requested variance. Side walkways between our homes will only be 4ft 11 inches. Applicable law requires 6 ft setbacks. The property will double in size.

This remodel will impact my home value and take away my privacy and right to a noise free experience. For the past 34 years, I have been a homeowner in this community and I am trying to protect my interest. These are my concerns. I wish to be protected. They are asking for a variance of an existing primarily single story neighborhood in which I purchased a home 34 years ago. They are asking for me to deny this remodel's impact to my privacy and noise problems and taking away my outdoor living. I resist this unwelcomed impact.

I request this proposed building application for 205 Magellan St #18-0184 be reconsidered and rejected.

Thank you, Terrie Sterling

August 1, 2018

To the Capitola City Council Members,

I appreciate that you are here to serve us.

This letter is to appeal the proposed remodel at 205 Magellan St. I respectfully request you reconsider and reject the proposed building application #18-0184. Further review should be considered based on the opinions of two Capitola Council members who voted against this project, Ed Newman (Real Estate Attorney in Capitola) and Susan Westman (member of Vision Capitola and past interim community development director). Mr. Newman voted against the application because he was unable to find the legal basis for the requested variance. Ms. Westman agreed with my assessment of noise being a problem on the second story rear deck, finding such rear deck issues to typically be a problem in the residential areas. Neither Mr. Newman nor Ms. Westman are the homeowners who will be next to this remodel. I am the owner of 201 Magellan St, and they see the same things I see with the illegal variance and noise/privacy problematic issue.

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There is no legal basis for the requested variance. Side walkways between our homes will only be 4ft 11 inches. Applicable law requires 6 ft setbacks. The property will double in size.

Attachment: Appeal Letter 205 Magellan #18-0184 (Schedule Appeal of 205 Magellan)

This remodel will impact my home value and take away my privacy and right to a noise free experience. For the past 34 years, I have been a homeowner in this community and I am trying to protect my interest. These are my concerns. I wish to be protected. They are asking for a variance of an existing primarily single story neighborhood in which I purchased a home 34 years ago. They are asking for me to deny this remodel's impact to my privacy and noise problems and taking away my outdoor living. I resist this unwelcomed impact.

I request this proposed building application for 205 Magellan St #18-0184 be reconsidered and rejected.

Thank you, Terrie Sterling



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: City Manager Department

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

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

BACKGROUND/DISCUSSION: Capitola approved electronic filing of conflict of interest statements (Form 700) through NetFile in 2016 and funded electronic filing of campaign forms this fiscal year as part of ongoing paper-reduction and transparency efforts. The state requires that the City pass an ordinance assuring it will comply with requirements to implement the program. The City Council passed the first reading of the ordinance at its July 26, 2018, meeting.

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

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

Jamie Goldstein, City Manager

8/3/2018

Second Reading Electronic Campaign Filing
August 9, 2018

Ordinance No. _____

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

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

Section 1. Findings and Declarations.

The City Council finds and declares as follows:

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

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

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

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

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

1.50.010 Electronic Filing of Campaign Statements.

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

Second Reading Electronic Campaign Filing
August 9, 2018

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

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

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

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

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

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

This ordinance was introduced on the 26th day of July, 2018, and was passed and adopted by the City Council of the City of Capitola on the 9th day of August, 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

Michael Termini, Mayor

ATTEST:

Linda Fridy, City Clerk



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: Public Works Department

SUBJECT: Award Contract for 38th Avenue Sidewalk Project

RECOMMENDED ACTION: Award a contract to Earthworks Paving Co. of Capitola in the amount of \$115,564 for the construction of the 38th Avenue Sidewalk Project.

BACKGROUND: On August 1, 2018, the City received seven bids for the construction of the 38th Avenue Sidewalk Project. The low bid was from Earthworks Paving Company of Capitola with a bid in the amount of \$115,564. A bid summary is included as Attachment 1. The original engineer's estimate for the project was \$108,661, which was later revised to \$122,368 based on a change in the quantities of work.

DISCUSSION: This project will fill in a gap in the sidewalk system along the west side of 38th Avenue south of Capitola Road. The replacement of a small section of failed sidewalk along Capitola Avenue is also included in the project. The affected businesses and property owners along 38th Avenue are all in support of the project have all signed right-of-entry agreements.

Staff anticipates the contractor will begin work soon after Labor Day and complete the project by the end of September.

FISCAL IMPACT: Funding for this project is available from an Regional Surface Transportation Program Exchange grant from the Santa Cruz County Regional Transportation Commission in the amount of \$96,450 with the balance coming from a budgeted general fund allocation to the project in the amount of \$141,562. Following project completion any remaining funding will be allocated to the construction of the Park Avenue sidewalk project scheduled for this winter.

ATTACHMENTS:

1. 38th Avenue Sidewalk Bid Results

Report Prepared By: Steve Jesberg
Public Works Director

Award Contract for 38th Avenue Sidewalk Project
August 9, 2018

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

8/3/2018

Project Title : 38th Avenue Sidewalks 2018
Bid Opening : August 1, 2018 @11:00am

ITEM NO.	BID ITEM	UNIT	QTY	Estimate		#1 Earthworks Paving		#2 Precision Grade		#3 Vanguard	
				UNIT PRICE	UNIT TOTAL	UNIT PRICE	UNIT TOTAL	UNIT PRICE	UNIT TOTAL	UNIT PRICE	UNIT TOTAL
1	Mobilization	LS	1	\$10,000	\$10,000	\$7,200	\$7,200	\$2,220	\$2,220	\$14,900	\$14,900
2	Shrub Removal (Clear & Grub)	SF	410	\$2	\$615	\$12	\$4,920	\$8	\$3,280	\$10	\$4,100
3	Demolition (remove concrete/AC curb/gutter/sidewalk/pavement)	LS	1	\$10,000	\$10,000	\$24,000	\$24,000	\$19,480	\$19,480	\$53,620	\$53,620
4	Concrete Sidewalk	SF	891	\$20	\$17,820	\$15	\$13,365	\$19	\$16,929	\$10	\$8,910
5	Concrete Curb & Gutter	LF	357	\$90	\$32,130	\$55	\$19,635	\$76	\$27,132	\$45	\$16,065
6	Concrete Vertical Curb	LF	68	\$35	\$2,380	\$35	\$2,380	\$79	\$5,372	\$37	\$2,516
7	Concrete Approaches & Ramps	SF	567	\$37	\$20,979	\$25	\$14,175	\$31	\$17,577	\$12	\$6,804
8	Driveway AC Conforms	TON	7	\$150	\$1,050	\$700	\$4,900	\$764	\$5,348	\$922	\$6,454
9	Adjust valve/monument/cleanout Boxes to Grade	EA	7	\$850	\$5,950	\$770	\$5,390	\$460	\$3,220	\$360	\$2,520
10	Traffic Control and Construction Area Signs	LS	1	\$5,000	\$5,000	\$5,700	\$5,700	\$4,000	\$4,000	\$26,216	\$26,216
11	Temporary Water Pollution Control and Erosion Control	LS	1	\$1,500	\$1,500	\$2,000	\$2,000	\$3,200	\$3,200	\$950	\$950
12	Roadside Signs	EA	1	\$250	\$250	\$475	\$475	\$1,620	\$1,620	\$524	\$524
13	Remove/Replace Street AC Conform	LF	357	\$10	\$3,570	\$32	\$11,424	\$43	\$15,351	\$20	\$7,140
Subtotal					\$111,244						
10% Contingency					\$11,124						
TOTAL					\$122,368	\$115,564	\$124,729	\$150,719			

ITEM NO.	BID ITEM	UNIT	QTY	#4 Anderson Pacific		#5 Monterey Peninsula		#6 Grantierock		#7 Serna Construction	
				UNIT PRICE	UNIT TOTAL	UNIT PRICE	UNIT TOTAL	UNIT PRICE	UNIT TOTAL	UNIT PRICE	UNIT TOTAL
1	Mobilization	LS	1	\$7,500	\$7,500	\$15,000	\$15,000	\$14,000	\$14,000	\$20,000	\$20,000
2	Shrub Removal (Clear & Grub)	SF	410	\$15	\$6,150	\$12	\$4,920	\$15	\$6,150	\$10	\$4,100
3	Demolition (remove concrete/AC curb/gutter/sidewalk/pavement)	LS	1	\$10,000	\$10,000	\$24,000	\$24,000	\$42,000	\$42,000	\$25,000	\$25,000
4	Concrete Sidewalk	SF	891	\$20	\$17,820	\$24	\$21,384	\$15	\$13,365	\$20	\$17,820
5	Concrete Curb & Gutter	LF	357	\$115	\$41,055	\$115	\$41,055	\$60	\$21,420	\$85	\$30,345
6	Concrete Vertical Curb	LF	68	\$75	\$5,100	\$65	\$4,420	\$75	\$5,100	\$50	\$3,400
7	Concrete Approaches & Ramps	SF	567	\$31	\$17,577	\$42	\$23,814	\$23	\$13,041	\$55	\$31,185
8	Driveway AC Conforms	TON	7	\$1,950	\$13,650	\$850	\$5,950	\$750	\$5,250	\$2,000	\$14,000
9	Adjust valve/monument/cleanout Boxes to Grade	EA	7	\$950	\$6,650	\$300	\$2,100	\$250	\$1,750	\$500	\$3,500
10	Traffic Control and Construction Area Signs	LS	1	\$7,500	\$7,500	\$12,000	\$12,000	\$35,000	\$35,000	\$9,000	\$9,000
11	Temporary Water Pollution Control and Erosion Control	LS	1	\$2,500	\$2,500	\$2,800	\$2,800	\$2,500	\$2,500	\$7,000	\$7,000
12	Roadside Signs	EA	1	\$850	\$850	\$300	\$300	\$1,000	\$1,000	\$2,000	\$2,000
13	Remove/Replace Street AC Conform	LF	357	\$45	\$16,065	\$28	\$9,996	\$25	\$8,925	\$30	\$10,710
TOTAL					\$152,417	\$167,739	\$169,501	\$178,060			

Attachment: 38th Avenue Sidewalk Bid Results (Award Contract for 38th Avenue Sidewalk Project)



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: Capitola Police Department

SUBJECT: Grand Jury Report Response: Mental Health Crisis

RECOMMENDED ACTION: Accept the recommendations by the Santa Cruz County Civil Grand Jury, and direct the City Clerk to send the completed response packet pursuant to California Penal Code 933.05 PC.

BACKGROUND: On May 17, 2018, the Santa Cruz County Civil Grand Jury released a report titled *Mental Health Crisis, Seeking an Integrated Response*.

The City of Capitola and the Capitola Police Department value our partnership with County Health Services and the Behavioral Health Unit, as well as our partnerships with all law enforcement agencies in the County. Together, we will continue to collaborate with all stakeholders to address the challenges related to our ability to safely and effectively respond to emotionally distressed persons.

DISCUSSION: The Grand Jury completed its investigation and posted its six findings and five recommendations on May 17, 2018. The report includes findings and recommendations to all law enforcement agencies in the County. A copy of the report is attached and available on the City's website. The report highlights five recommendations (R), four of which are addressed to all five law enforcement agencies in the County, including the City of Capitola.

R1. The County Health Services Agency and the County's five law enforcement agencies should create a plan to make mental health liaisons available to respond to 911 emotionally distressed person (EDP) calls at all hours in all jurisdictions.

R2. The County Health Services Agency and the County's five law enforcement agencies should create a plan to make the Mobile Emergency Response Team (MERT) available to respond to 911 EDP calls at all hours in all jurisdictions.

R3. The County Health Services Agency, the County's five law enforcement agencies, and Santa Cruz Regional 911 should develop a dispatch plan that classifies 911 EDP calls as threatening (the subject presents a danger to others) or non-threatening (the subject does not present a danger to others).

R4. Santa Cruz Regional 911 should dispatch MERT with a law enforcement liaison in response to non-threatening 911 EDP calls.

Working with the other law enforcement agencies, and Santa Cruz Regional 911, City staff has

Grand Jury Report- Mental Health Crisis
August 9, 2018

prepared a draft response to the Grand Jury findings and recommendations.

Based on that coordinated effort at this time, the Police Department is not recommending implementation of -the listed recommendations. An examination of the total EDP calls in the city of Capitola and the response and resources provided by existing resources reveal that our current protocols are effective and efficient. The Police Department will continue to engage county-wide mental health resources when needed, as this team approach remains as a critical component to the successful resolution of EDP incidents.

While staff respects the investigation conducted by the Grand Jury, the recommendations present substantial operational and budgetary concerns shared by all five law enforcement agencies in the County. Adopting the recommendations as described in the Grand Jury report is not reasonable at this time for the City of Capitola.

FISCAL IMPACT: None

ATTACHMENTS:

1. Grand Jury Report Mental Health Crisis
2. Capitola Response to Grand Jury Report

Report Prepared By: Terry McManus
Police Chief

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

8/3/2018



Mental Health Crisis

Seeking An Integrated Response

Summary

In two separate incidents in October and November of 2016, a person experiencing a behavioral crisis was shot and killed in a confrontation with law enforcement. These incidents led the Grand Jury to examine how people in a mental health crisis in our community are handled.

Why is law enforcement the primary responder to a person in crisis when the issue is one of mental health? The Behavioral Health Division of the County Health Services Agency (Behavioral Health) has field-based personnel who respond on an emergency basis, but who are not accessible through 9-1-1. Can our system of initial response be modified to more fully integrate law enforcement and mental health? And once the initial contact is over, are people in crisis receiving appropriate and quality care when delivered to the County's Behavioral Health Unit (BHU) for evaluation?

National funding priorities have resulted in law enforcement becoming the primary responder to mental health calls. While our local law enforcement agencies have done some collaboration with Behavioral Health in improving the initial contact with people in crisis, more can be done. This report recommends changes that would expand the role of Behavioral Health personnel and reduce the burden on law enforcement when responding to 9-1-1 calls concerning people in crisis.

Background

A 2010 joint report by the national non-profit Treatment Advocacy Center and the National Sheriffs' Association describes the changes that shifted responsibility for dealing with mental illness from psychiatric hospitals to the criminal justice system.^[1] This shift put law enforcement, by default, on the front line in dealing with people in crisis.

The report estimates that in 1840, 20 percent of jail and prison inmates in this country suffered from serious mental illness. For the next 40 years our nation underwent a shift from criminalization to institutionalization, with states building psychiatric hospitals for the seriously mentally ill. By 1880, the percentage of jail and prison inmates with mental illness dropped below five percent and remained there until the mid-1950s.

At this point a shift from institutionalization back to criminalization began. The creation of Medicaid in the 1965 Social Security Act shifted the financial responsibility from the Federal government to the states in funding Institutions for Mental Diseases (IMDs).^[2] An IMD is "a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services."^[3] These rules under Medicaid excluded [Federal Financial Participation](#) (FFP) to IMDs not operated in conjunction with an [acute care facility](#). The loss of this FFP, which covers about 50 percent of the cost of treatment, resulted in the states closing their mental hospitals as they no longer qualified. As a result, even though the need for inpatient treatment beds continued, the availability of beds has decreased.^[4]

Predictably, this resulted in more people with mental illness among us, more contact between them and law enforcement, and more people with mental illness in our penal system.^[5] In the late 1990s the percentage of mentally ill correctional inmates dramatically rose and continued to rise. Today, we are almost at the same levels we were in 1840. The difference is that now, with the proliferation of weapons and substance abuse, confrontations with law enforcement have resulted in deaths and serious injuries to both people in crisis and law enforcement personnel. In 2017, County correctional personnel estimated that Behavioral Health was treating 17 percent of inmates for mental illness, with additional inmates declining treatment.^[6]

In Santa Cruz County, law enforcement is the primary responder to all 9-1-1 calls involving an [emotionally distressed person](#) (EDP). Other agencies, such as fire and emergency medical services, support law enforcement as the circumstances dictate.

In two separate 2016 Santa Cruz County incidents, after non-lethal means proved ineffective, law enforcement shot and killed a person experiencing a behavioral crisis. These incidents, each involving a different law enforcement agency, sparked much public interest and debate. The District Attorney investigated both cases and determined each shooting was justified because the personnel involved appropriately followed policies and procedures.^[7]

These occurrences were not unique to Santa Cruz County. A 2012 article estimated that

of all police shooting deaths nationally, one half were of people suffering from mental illness.^[8] An article from 2017 estimated the national percentage to be lower, but still an area of concern.^[9] California recognized the problem and in October of 2015, passed SB 11 and SB 29 requiring mandatory crisis intervention training for law enforcement.^[10]

Scope

The Grand Jury investigated the County's system of crisis intervention from contact to treatment by ascertaining what resources are available, how they are accessed, and what circumstances dictate which resources are sent. We examined whether modifications could be made to our system that would prioritize de-escalation and reduce the likelihood of a crisis ending in death by force.

The Grand Jury made site visits to the County's detention facilities and the County Regional 9-1-1 center. We also interviewed prominent people in the mental health field, key administrative personnel in County law enforcement and Behavioral Health, and first responders from each department. We obtained related policies, procedures, budgets, and contracts. We researched facilities, past and present, and their staffing levels. We also looked at the level of training for law enforcement in general and specifically in crisis intervention and the use of force prior to and after the 2016 incidents.

Investigation

Law Enforcement

The County's [crisis intervention training](#) (CIT) curriculum, developed jointly by mental health and law enforcement professionals in Santa Cruz County, was fashioned after a 2007 CIT model published by the University of Memphis.^[11] The goal of the CIT program is to train law enforcement that people in crisis need to be approached differently, with an emphasis on de-escalation.

The first 24-hour CIT course was held in Santa Cruz County in the Spring of 2016. Instruction was provided by Behavioral Health and law enforcement trainers. Attendance was offered to the five County law enforcement agencies, all of which sent some of their personnel. The County continues to offer this curriculum and the intent is to train all deputies and officers.^[12] As of this writing there have been three such training seminars hosted by three different law enforcement agencies, and attendance has included personnel from dispatch, parks, and corrections.

Attendees complete the CIT course with a deeper understanding of mental illness and its resultant behaviors. One example from the training is a role playing exercise that gives some insight into the behavior of a person in crisis in response to commands by officers. Attendees learn that behavior that appears to be blatant defiance of an officer's authority could be the result of a person responding to internal voices or an inability to understand the officer's commands.^[13]

Attendees also learn techniques for finding a connection with the person in crisis, engaging them in dialog, and taking the time to allow the person to calm down.

Providing the calming-time increases the chance that the person will comply with instructions and decreases the need for law enforcement to use force.^[14]

Mental Health Liaisons

In 2013 Behavioral Health embarked on a program of providing mental health liaisons to accompany law enforcement on 9-1-1 EDP calls. Funding for these liaisons is 50 percent from the Health Services Agency (HSA) and 50 percent from the law enforcement agency to which the liaison is assigned.

This program, in conjunction with CIT, has had a dramatic and positive effect on the way our officers and deputies interact with people in crisis. The downside to this approach is the additional time that many of these calls take. From initial contact to delivery of the person to the BHU, an officer or deputy can be occupied and otherwise unavailable for three to four hours.^[15]

As of March 2018 there are five liaisons responding with three of the County’s five law enforcement agencies (Table 1). Participants in this program from both groups deem it a success.^[16]

Table 1: Mental Health Liaisons and Agencies Served

	Liaison 1	Liaison 2	Liaison 3	Liaison 4	Liaison 5 ¹
Date of hire	10/2013	11/2014	1/2016	4/2017	9/2017
Agency served	Santa Cruz Police	County Sheriff	Watsonville Police	County Sheriff	Santa Cruz Police
Scheduled days and hours	Mon - Fri 8:30AM - 4:30PM	Mon - Fri 8:30AM - 5:00PM	Mon - Fri 8:30AM - 4:30PM	Sun, Mon, Tue, Thurs 8:00AM - 7:00PM	Thurs - Sun 8:00AM - 6:30PM
How utilized	Assigned to city beat officer(s)	Available to all deputies	Paired with a specific senior officer	Available to all deputies	Assigned to city beat officer(s)

¹HSA portion funded by a grant

Although the number of 9-1-1 EDP calls drops off markedly in the late night hours, the two 2016 incidents that resulted in the use of deadly force happened during that time, when no liaison was available.

Behavioral Health

Mobile Emergency Response Team

Since January 2016 Behavioral Health has operated a field-based mobile emergency response team (MERT) skilled in crisis intervention. Unfortunately, MERT is not a resource that can be accessed through 9-1-1. Instead, MERT is summoned by physicians' offices, clinics, urgent care facilities, and schools that are dealing with a person in crisis who does not pose a threat. Mental health and law enforcement personnel estimate that of all 9-1-1 EDP calls, about 70 percent of the subjects do not pose a threat to others.

We found that the MERT program is a valuable and appropriate asset for responding to people in crisis and should be expanded. If the relevant agencies develop criteria to enable our 9-1-1 center to identify subjects who do not pose a threat to others, MERT could respond as the primary agency to those 9-1-1 EDP calls, reducing the burden on law enforcement resources. This would create a three level EDP response:

1. MERT responds alone to EDP calls not routed through 9-1-1, as they currently do.
2. MERT responds as the primary agency with a deputy or an officer (as a liaison for scene safety) to 9-1-1 EDP calls that the new criteria classify as non-threatening. Once contact is made and the law liaison determines the scene is safe, the liaison can leave and be available to respond to other incidents.
3. Law enforcement responds as the primary agency with a mental health liaison to 9-1-1 EDP calls that the new criteria classify as threatening.

Crisis Stabilization

Crisis stabilization is the last step in the crisis intervention process. When a person is acting erratically or their behavior cannot be explained, they may be perceived as being in emotional distress. If their behavior generates an emergency response from a County agency, the responders will do an initial evaluation at the scene. If the responders determine that the person is a danger to themselves or to others or is gravely disabled, they will place the person on an involuntary hold of up to 72 hours.^[17] The person will then be brought to the County BHU for a more thorough evaluation. If, after this evaluation, the staff determines the person is stable and does not need to be held, the person will be given resource information for appropriate County programs and be released.

Until its closure in December 2013 the Dominican Santa Cruz Hospital BHU was the receiving facility for all people placed on involuntary holds. The County then built its own BHU, which opened in 2014. Rather than operate the BHU with Behavioral Health staff, the County contracted with Telecare Corporation, a private, for-profit provider.

Telecare's facility is now where individuals placed on involuntary holds are brought. They first are taken into the [crisis stabilization program](#) (CSP). Here those placed on hold can spend up to 24 hours while undergoing evaluation.^[18] After evaluation, the

person will either be:

- referred to an inpatient treatment facility (possibly one of the beds at the BHU) if they cannot be stabilized
- sent to a detention facility if a crime is involved
- released

The County's contract requires Telecare's CSP staff to be able to evaluate two juveniles and eight adults at any given time. They are also required to maintain separation between the juveniles and adults at all times. The Grand Jury was given a floor plan of the CSP that shows the ability to maintain a separation between the two age groups, but the floor plan has no detail as to the accommodations for either. We were told in interviews that the adult area has a large room with eight recliner chairs. It remains unclear what the accommodations are for the juveniles. We attempted to view the CSP but were unable to gain access.

In October of 2017 the National Alliance on Mental Health (NAMI) of Santa Cruz issued a task force report that was critical of Telecare's practices.^[19] The contract between the County and Telecare provides for periodic oversight meetings and the right to review services performed. There is no publicly available record of any County audit or inspection of the Telecare facility.

Grand juries do not have the authority to investigate the performance of private, for-profit contractors to government agencies, so we were not able to evaluate the accommodations in the CSP or the allegations of the NAMI Santa Cruz task force report.

Findings

- F1.** The 24-hour Crisis Intervention Training course has given law enforcement responders additional tools for dealing with people in crisis, resulting in less use of force.
- F2.** Adding more mental health liaisons and increasing their hours of availability would increase the benefit of this program to law enforcement and people in crisis.
- F3.** Having law enforcement be the primary responder to non-threatening 9-1-1 EDP calls reduces the overall availability of law enforcement to the community.
- F4.** The Mobile Emergency Response Team (MERT) is not accessible through 9-1-1, resulting in overuse of law enforcement.
- F5.** Current dispatch procedures do not distinguish between threatening and non-threatening EDP calls. Making this distinction would create an opportunity for MERT to respond to the 70 percent of 9-1-1 EDP calls that do not involve a threat.
- F6.** Having a private, for-profit contractor operate the County BHU reduces transparency between the Behavioral Health Department and the people they serve.

Recommendations

- R1.** The County Health Services Agency and the County’s five law enforcement agencies should create a plan to make mental health liaisons available to respond to 9-1-1 EDP calls at all hours in all jurisdictions. (F2)
- R2.** The County Health Services Agency and the County’s five law enforcement agencies should create a plan to make MERT available to respond to 9-1-1 EDP calls at all hours in all jurisdictions. (F3-F5)
- R3.** The County Health Services Agency, the County’s five law enforcement agencies, and Santa Cruz Regional 9-1-1 should develop a dispatch plan that classifies 9-1-1 EDP calls as threatening (the subject presents a danger to others) or nonthreatening (the subject does not present a danger to others). (F5)
- R4.** Santa Cruz Regional 9-1-1 should dispatch MERT with a law enforcement liaison in response to non-threatening 9-1-1 EDP calls. (F5)
- R5.** The County should conduct a compliance audit of the Telecare facility to investigate the allegations in the NAMI Santa Cruz task force report, post the results of the investigation on the Health Services Agency website, and recommend appropriate changes to performance specifications in any future contract. (F6)

Commendation

- C1.** The Grand Jury commends our County’s law enforcement agencies for incorporating the new methodologies set forth in the CIT course and adapting their procedures to those methodologies.

Required Responses

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Santa Cruz County Board of Supervisors	F2–F6	R1–R5	90 Days August 15, 2018
Santa Cruz County Sheriff	F1–F4	R1–R4	60 Days July 16, 2018

Requested Responses

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
City of Capitola Chief of Police	F1–F4	R1–R4	60 Days July 16, 2018
City of Santa Cruz Chief of Police	F1–F4	R1–R4	60 Days July 16, 2018
City of Scotts Valley Chief of Police	F1–F4	R1–R4	60 Days July 16, 2018
City of Watsonville Chief of Police	F1–F4	R1–R4	60 Days July 16, 2018
Santa Cruz Regional 9-1-1 General Manager	F2–F4	R3, R4	60 Days July 16, 2018
Director, Santa Cruz County Health Services Agency	F1, F2, F4, F6	R1–R3, R5	60 Days July 16, 2018

Definitions

Acute care facility: a term used but not specifically defined in Medicaid; generally understood to mean a place where a patient receives active but short-term treatment for a severe injury or episode of illness

Behavioral health unit: a place designated for mental health care

Crisis intervention training: a law enforcement-based training course for assisting those individuals with a mental illness and improving the safety of patrol officers, consumers, family members, and citizens within the community^[20]

Crisis stabilization program: a segregated area in which a behavioral health unit initially evaluates patients placed on involuntary hold

Emotionally distressed person: terminology Santa Cruz County dispatch uses in lieu of referring to a person who may need to be detained involuntarily under Penal Code section 5150

Federal Financial Participation: a federal program that reimburses local health agencies for Medicaid funded services

Sources

References

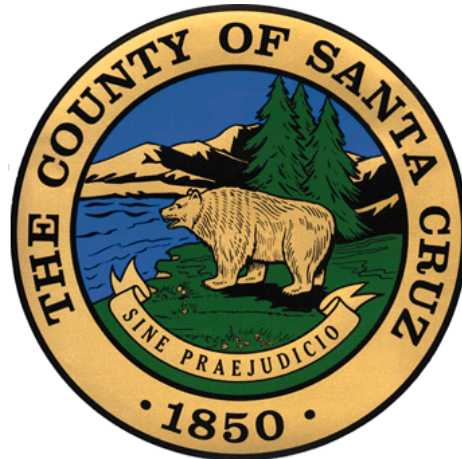
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Site Visits

Regional 9-1-1 Center

Santa Cruz County main jail



**The 2017–2018 Santa Cruz County Civil Grand Jury
Requests that the
City of Capitola Chief of Police
Respond to the Findings and Recommendations
Specified in the Report Titled
Mental Health Crisis
Seeking An Integrated Response
by July 16, 2018**

When the response is complete, please

1. Email the completed Response Packet as a file attachment to grandjury@scgrandjury.org, and
2. Print and send a hard copy of the completed Response Packet to

The Honorable Judge John Gallagher
Santa Cruz Courthouse
701 Ocean St.
Santa Cruz, CA 95060

Instructions for Respondents

California law PC §933.05 (included [below](#)) requires the respondent to a Grand Jury report to comment on each finding and recommendation within a report. Explanations for disagreements and timeframes for further implementation or analysis must be provided. Please follow the format below when preparing the responses.

Response Format

1. For the Findings included in this Response Packet, select one of the following responses and provide the required additional information:
 - a. **AGREE** with the Finding, or
 - b. **PARTIALLY DISAGREE** with the Finding and specify the portion of the Finding that is disputed and include an explanation of the reasons therefor, or
 - c. **DISAGREE** with the Finding and provide an explanation of the reasons therefor.

2. For the Recommendations included in this Response Packet, select one of the following actions and provide the required additional information:
 - a. **HAS BEEN IMPLEMENTED**, with a summary regarding the implemented action, or
 - b. **HAS NOT YET BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE**, with a timeframe or expected date for implementation, or
 - c. **REQUIRES FURTHER ANALYSIS**, with an explanation and the scope and parameters of an analysis or study, and a timeframe for that analysis or study; this timeframe shall not exceed six months from the date of publication of the grand jury report, or
 - d. **WILL NOT BE IMPLEMENTED** because it is not warranted or is not reasonable, with an explanation therefor.

If you have questions about this response form, please contact the Grand Jury by calling 831-454-2099 or by sending an email to grandjury@scgrandjury.org.

Attachment: Capitola Response to Grand Jury Report (Grand Jury Report- Mental Health Crisis)

Findings

F1. The 24-hour Crisis Intervention Training course has given law enforcement responders additional tools for dealing with people in crisis, resulting in less use of force.

- AGREE**
- PARTIALLY DISAGREE** – explain the disputed portion
- DISAGREE** – explain why

Response explanation (required for a response other than **Agree**):

Attachment: Capitola Response to Grand Jury Report (Grand Jury Report- Mental Health Crisis)

- F2.** Adding more mental health liaisons and increasing their hours of availability would increase the benefit of this program to law enforcement and people in crisis.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

F3. Having law enforcement be the primary responder to non-threatening 9-1-1 EDP calls reduces the overall availability of law enforcement to the community.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

F4. The Mobile Emergency Response Team (MERT) is not accessible through 9-1-1, resulting in overuse of law enforcement.

- AGREE**
- PARTIALLY DISAGREE** – explain the disputed portion
- DISAGREE** – explain why

Response explanation (required for a response other than **Agree**):

While we agree that the MERT is not accessible through 9-1-1, we do wish to clarify one point. We do not consider dispatching public safety officers to any 9-1-1 mental health crisis call to be "overuse." In these types of incidents, we encourage residents to call 9-1-1 even if they are unsure whether an emergency exists. Consequently, public safety officers frequently respond to calls that turn out to not pose imminent threats to life, safety or property, or even require any law enforcement attention. Even so, we do not consider these calls to be "overuse" of public safety resources.

As discussed later, differentiating threats based on a mental health-related 9-1-1 call, particularly one from family or loved ones in obvious distress, can be difficult. In these cases, we would not consider dispatching an officer to be "overuse" of resources should the call turn out to require a strictly clinical response.

Attachment: Capitola Response to Grand Jury Report (Grand Jury Report- Mental Health Crisis)

Recommendations

R1. The County Health Services Agency and the County’s five law enforcement agencies should create a plan to make mental health liaisons available to respond to 9-1-1 EDP calls at all hours in all jurisdictions. (F2)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

Response explanation, summary, and timeframe:

While having a team of mental health liaisons operating on a 24-hour basis in all jurisdictions within the County is a goal to consider, we believe the skillful application of existing resources to their best possible use, receptivity to continuous quality improvement, enhanced training for law enforcement and mental health professionals, and actively seeking new funding opportunities and programs are sufficient to address the mental health and public safety needs of the community. Responsible stewardship of City resources is one of the primary obligations of the Capitola City Council.

The city of Capitola values our partnerships with local law enforcement agencies, and we have worked together to address the very significant and difficult issues raised by the Grand Jury.

A review of calls for service related to EDP calls during calendar year 2017, does not reveal a need to increase mental health liaisons staffing during the evening hours. We will continue to make data-driven staffing decisions in conjunction with our partners, and appropriately adjust resources as needed.

Attachment: Capitola Response to Grand Jury Report (Grand Jury Report- Mental Health Crisis)

R2. The County Health Services Agency and the County’s five law enforcement agencies should create a plan to make MERT available to respond to 9-1-1 EDP calls at all hours in all jurisdictions. (F3-F5)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

Response explanation, summary, and timeframe:

The city of Capitola has an existing agreement with MERT, allowing a “joint” response with law enforcement in Capitola when needed and once a scene has been secured. We have no plans to implement policy changes requiring MERT teams to respond to calls on a 24-hour basis as Capitola’s EDP calls for service do not currently warrant 24-hour availability.

R3. The County Health Services Agency, the County’s five law enforcement agencies, and Santa Cruz Regional 9-1-1 should develop a dispatch plan that classifies 9-1-1 EDP calls as threatening (the subject presents a danger to others) or nonthreatening (the subject does not present a danger to others). (F5)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

Response explanation, summary, and timeframe:

Currently, all calls for service to Santa Cruz Regional 9-1-1 are evaluated to determine the appropriate response. When the dispatcher or call taker at Santa Cruz Regional 9-1-1 determines a caller is reporting that a person is behaving in a threatening manner (either to themselves or others) they will dispatch law enforcement.

While it may be theoretically possible to further classify those calls as threatening to themselves or others based on caller information, concern exists regarding the safety and welfare of officers responding to EDP calls that have been “classified” based solely upon caller information collected during highly emotional situations.

At this time, Capitola is not willing to substitute the Grand Jury recommended dispatch strategy for the judgments and expertise of public safety officers.

If a dispatcher determines a caller is reporting that a member of the public is a threat to themselves or others, the initial responders in all situations should be law enforcement. Following an on-scene assessment, Capitola PD is committed to utilizing the full range of County mental health services available to the parties involved.

The County has walk-in crisis services available at the Emeline Clinic, as well as 24-hour access to psychiatric services at the Behavioral Health Unit. The MERT and law enforcement mental health liaisons augment these services in the field as required under current policy and protocol.

All members of the Capitola Police Department have attended the Crisis Intervention Training offered by the Santa Cruz Sheriff’s Office in an effort to improve outcomes during EDP calls for all involved persons.

Attachment: Capitola Response to Grand Jury Report (Grand Jury Report- Mental Health Crisis)

R4. Santa Cruz Regional 9-1-1 should dispatch MERT with a law enforcement liaison in response to non-threatening 9-1-1 EDP calls. (F5)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

Response explanation, summary, and timeframe:

Following initial assessments by public safety officers, MERT teams are available to respond when requested by emergency personnel on scene. Capitola does not believe MERT teams should be co-dispatched with law enforcement.

Attachment: Capitola Response to Grand Jury Report (Grand Jury Report- Mental Health Crisis)

Penal Code §933.05

1. For Purposes of subdivision (b) of §933, as to each Grand Jury finding, the responding person or entity shall indicate one 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 therefor.
2. For purpose of subdivision (b) of §933, as to each Grand Jury recommendation, the responding person shall report one of the following actions:
 - 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 the 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 therefor.
3. However, if a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a County department headed by an elected officer, both the department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected department head shall address all aspects of the findings or recommendations affecting his or her department.
4. A Grand Jury may request a subject person or entity to come before the Grand Jury for the purpose of reading and discussing the findings of the Grand Jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.
5. During an investigation, the Grand Jury shall meet with the subject of that investigation regarding that investigation unless the court, either on its own determination or upon request of the foreperson of the Grand Jury, determines that such a meeting would be detrimental.
6. A Grand Jury shall provide to the affected agency a copy of the portion of the Grand Jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. **No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.**



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: City Manager Department

SUBJECT: Consider a Report on the Impacts of a Qualified Citizen Initiative Ordinance and a Resolution Placing the Initiative Measure on the November 6, 2018, Ballot

RECOMMENDED ACTION: Receive the requested report on the impacts of a proposed ordinance amending Title 8 of the Capitola Municipal Code pertaining to Health and Safety as related to the Santa Cruz Branch Line Rail Corridor and approve the resolution placing the measure on the November 2018 ballot and ordering an impartial analysis.

BACKGROUND: On April 2, 2018, the City Clerk received a Notice of Intent from a Capitola resident with language for an initiative measure to amend Chapter 8 of the Capitola Municipal Code, Health and Safety, related to use of the Santa Cruz County Regional Transportation Commission's rail corridor and trestle (Attachment 1). Following elections code procedure, on June 1 the proponents submitted a petition and staff accepted it for filing. The petition was then submitted to the Santa Cruz County Registrar of Voters for certification of the signatures. On June 27, the County Elections Official certified the petition was signed by 827 registered voters of Capitola (Attachment 3), a sufficient number to qualify for the ballot.

During the circulation and certification period, the City received public communication expressing concern about the proposed Municipal Code amendment (Attachments 4,5).

The report of qualification was presented to the City Council at its meeting of July 26, 2018, at which time the City Council requested a report on potential impacts of the measure pursuant to Section 9212 of the Elections Code.

Additionally, the City has filed suit in Superior Court requesting judicial review of the legality of the proposed ordinance.

DISCUSSION: The deadline for measures to be submitted to the County for inclusion on the November 2018 consolidated election ballot is August 10. The attached Elections Code 9212 report addresses the proposed ordinance's consistency with adopted plans; the legality of the initiative; the initiative's impact on transportation infrastructure; the initiative's impact on traffic congestion; the initiative's fiscal impacts, including impacts relative to the availability of grant funds for Monterey Bay Sanctuary Scenic Trail improvements within the City.

The operative provisions of the initiative appear at section 8.72.040 of the proposed ordinance:

Citizen Initiative Ballot Measure
August 9, 2018

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

The report identifies potential issues with the proposed ordinance including:

- Numerous adopted City policies which are clearly or arguably impeded, contradicted, or frustrated by the initiative;
- That the initiative is subject to a legal challenge on four separate bases: as proposing an implied amendment to the Capitola General Plan; as being administrative rather than legislative in nature; as impermissibly interfering with the City Council's fiscal authority and responsibility; and as being unduly vague; and
- Depending on the ultimate interpretation of the operative ordinance provisions, a range of fiscal impacts; potential increased liability exposure for the City; possible reduction in the competitiveness of City grant applications; and over the long term, potential increased conflicts between bikes, pedestrians and motorists.

The Council has only two options available to it based on Elections Code: adopt the ordinance without alternation or place it on the ballot without alteration. The attached report can help inform that process and provide background for any arguments should it be placed on the ballot, but regardless of the contents of the 9212 report, the City cannot refuse to adopt or place the measure.

Council members may also wish to discuss whether to designate members to prepare and file an argument related to the initiative.

FISCAL IMPACT: In addition to impacts outlined in the report, the City is responsible for the cost of putting the measure on the November 2018 ballot.

ATTACHMENTS:

1. 2018-08-03 Greenway Capitola Corridor Initiative (PDF)
2. Ballot Title Summary.FINAL (PDF)
3. Greenway petition certification summary (PDF)
4. Ballot initiative public communication(PDF)
5. Letter to CCC - Greenway Capitola Petition 2018 06 11 (PDF)
6. 2018-08-03 Greenway Capitola Corridor Initiative 9212 report (PDF)

Report Prepared By: Linda Fridy
City Clerk

Citizen Initiative Ballot Measure
August 9, 2018

Reviewed and Forwarded by:

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

Jamie Goldstein, City Manager

8/3/2018

RESOLUTION NO. ____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA REQUESTING SUBMISSION TO THE VOTERS OF A LOCAL BALLOT MEASURE REGARDING AN ORDINANCE ADDING CHAPTER 8.72, ENTITLED “GREENWAY CAPITOLA CORRIDOR TO THE CAPITOLA MUNICIPAL CODE FOR INCLUSION ON THE NOVEMBER 6, 2018, CONSOLIDATED GENERAL ELECTION BALLOT

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

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

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

WHEREAS, on April 2, 2018, proponents of an initiative measure submitted a Notice of Intent and written text of the measure and requested that a Ballot Title and Summary be prepared for the measure in order to circulate the petition; and

WHEREAS, the City Attorney prepared and provided the Ballot Title and Summary on April 17, 2018, with the Ballot Title “A proposed amendment to the City of Capitola Municipal Code directing the City of Capitola to undertake unspecified “steps necessary to preserve and utilize” the Santa Cruz Branch Rail Line, including the existing trestle over Soquel Creek in the City of Capitola, for human powered transportation, and prohibiting the use of City funds or resources for a detour of the proposed Monterey Bay Sanctuary Scenic Trail through the Capitola Village.”; and

WHEREAS, pursuant to California Elections Code Section 9280, whenever a city measure qualifies for a place on the ballot, the City Council may direct the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure.

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

Citizen Initiative Ballot Measure
 August 9, 2018

Shall the Capitola Municipal Code be amended to direct Capitola "constituent departments" to take "all steps necessary" to "preserve and maintain" the Capitola segment of the Santa Cruz Regional Transportation Commission's Rail Corridor and Trestle over Soquel Creek for bicyclists, pedestrians and other human powered transportation, and to prohibit expenditures to route bicyclists, pedestrians and other human powered transportation from the rail corridor to Capitola streets and sidewalks?	Yes	
	No	

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

- Print the attached measure text exactly as filed or indicated on the filed document in the Voter's Information Pamphlet section of the Sample Ballot for the November 6, 2018, election. Cost of printing and distribution of the measure text will be paid for by the city/district, attached hereto as Exhibit "A."
- Not to print the measure text in the Voter's Information Pamphlet of the Sample Ballot but send a copy to voters upon request at the cost of said city/district.

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

BE IT FURTHER RESOLVED AND ORDERED that the City Clerk is hereby directed to submit to the City Attorney a certified copy of the measure pursuant to Elections Code § 9280. The City Attorney is hereby authorized and directed to prepare an impartial analysis of the ballot measure showing the effect of the measure on the existing law and operation of the measure, said analysis to be submitted by the City Attorney to the County of Santa Cruz elections office, or other appropriate office, for printing by the date set by the County of Santa Cruz elections official for the filing of arguments for and against the measure. The impartial analysis shall not exceed five hundred (500) words in length and shall otherwise comply in all respects with the applicable provisions of the Elections Code.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at a regular meeting held on the 9th day of August, 2018, by the following vote:

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

EXHIBIT A

Measure to be voted on: November 6, 2018

TITLE 8 — HEALTH AND SAFETY

Chapter 8.72

GREENWAY CAPITOLA CORRIDOR

8.72.010 Purpose.

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

8.72.020 Definitions.

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

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

8.72.030 Findings.

- A. New Public Asset. In 2012 the Santa Cruz County Regional Transportation Commission (SCCRTC) acquired the Corridor from Union Pacific. The Corridor includes the historic Trestle. For the first time, the Corridor and Trestle have the potential to be accessible for bike and pedestrian use. The SCCRTC is planning bike and pedestrian use along the majority of the Corridor.
- B. Trestle Detour. The SCCRTC has proposed making the Trestle off-limits to pedestrians, bikes, electric bikes, and skateboarders, detouring pedestrian and bike traffic from the Corridor onto bike lanes and sidewalks in the local Capitola street network and across the Stockton Avenue Bridge.
- C. Accessibility. A detour from the Trestle through Capitola Village would require an approximately 200 ft grade change on both ends of the trail. Keeping the Trail on the Trestle provides a flat path across Capitola, which increases accessibility for people of all ages and abilities.
- D. Skateboarding for Transportation. A detour would enter Capitola's "no skateboarding

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zone," inhibiting skateboarding for transportation to New Brighton Middle School and the McGregor Pump Track & Skateboard Park. In contrast, a trail that crosses the Trestle would provide safe access to both locations.

- E. Traffic and Safety. Capitola Village streets are often congested preventing residents and visitors from getting from one side of Capitola to the other quickly and safely. Increasing passthrough bicycle and pedestrian traffic would exacerbate the existing problem.
- F. Safe Routes to School. It is the stated goal of Santa Cruz County, California, Transportation Sales Tax Measure D (November 2016) to "provide safe routes to schools." Walking and biking via the Trestle will provide safe access to New Brighton Middle School. A detour that navigates a significant grade change on narrow, busy streets will not.
- G. Stated Preference. 82% of residents who provided input regarding the Corridor in Vision Capitola 2016 supported using the Corridor for active transportation and recreation rather than a train.
- H. Efficient Route. Keeping the Trail in the Corridor as it crosses the Trestle will provide a direct pathway from one side of Capitola to the other.
- I. Tourism. The ability to actively use the Trestle will support the local economy by attracting tourists with a safe new way to experience breathtaking views.
- J. Healthy Community and Sustainable Transportation. Bicycling and walking are by far the healthiest, most sustainable forms of transportation. Building a safer Trail will encourage more people to choose these options.

8.72.040 Implementation.

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

8.72.050 Changes.

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

8.72.060 Effect of adoption.

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

8.72.070 Severability.

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

GREENWAY CAPITOLA CORRIDOR INITIATIVE

Election Code Section 9212 Report

Per the Capitola City Council's July 26, 2018, direction and in accordance with California Elections Code Section 9212, the City Manager, Public Works Director, Finance Director, Planning Director, and City Attorney submit the following report concerning the Greenway Capitola Corridor Initiative ("Initiative") which has received the requisite number of citizen signatures to qualify for inclusion on the November 2018 Capitola municipal election ballot.

In accordance with Elections Code Section 9215, at its August 9, 2018, meeting the City Council will either adopt the ordinance proposed by the Initiative without alteration or submit the Initiative without alteration to the voters for adoption or rejection at the November 6, 2018 municipal election. This report will address the following: the proposed ordinance's consistency with the General Plan, Local Coastal Program and Bicycle Transportation Plan adopted by the Capitola City Council and certified by the California Coastal Commission; the proposed ordinance's consistency with the Monterey Bay Sanctuary Scenic Trail Master Plan adopted by the Santa Cruz County Regional Transportation Commission and the Capitola City Council and certified by the California Coastal Commission; the legality of the Initiative; the Initiative's impact on transportation infrastructure; the Initiative's impact on traffic congestion; the Initiative's fiscal impacts, including impacts relative to the availability of grant funds for Monterey Bay Sanctuary Scenic Trail improvements within the City.

1. THE GREENWAY CAPITOLA CORRIDOR INITIATIVE

The operative provisions of the Initiative appear at section 8.72.040 of the Initiative's proposed ordinance:

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

Per section 8.72.020 of the proposed ordinance “Active Transportation” is defined as “human-powered transportation” and therefore does not include railroad transportation. “All steps necessary” is not defined. “Related to” is not defined. “Detour” is not defined. The ordinance, by its terms, gives instruction directly to City departments, employees and agencies.

In the Notice of Intent to Circulate Petition which accompanies the Initiative, Initiative proponent Juan Escamilla states that the Initiative is proposed “...for the purpose of improving safety and reducing traffic congestion by keeping the Monterey Bay Sanctuary Scenic Trail... in the Santa Cruz Branch Line Rail Corridor... within the City of Capitola while protecting the Capitola Trestle...” Among other reasons cited for the Initiative, Mr. Escamilla states, “The Santa Cruz Regional Transportation Commission has *proposed* routing the Trail off the Trestle and onto the streets and sidewalks of the Capitola Village. Such a route will be unsafe and increase traffic congestion.” He also states, “The Corridor and Trestle provide a level, direct path for people riding and walking to get from one side of Capitola to the other.” (Italics added). Significantly, as explained below, the Commission has not only *proposed* the trail route referenced by Mr. Escamilla, it has *adopted* the Monterey Bay Sanctuary Scenic Trail Network Master Plan (“Trail Master Plan”) which calls for that route. In addition, the City of Capitola has *adopted* the same Trail Master Plan to the extent that it calls for scenic trail network facilities to traverse the City of Capitola.

The Initiative findings, set forth at Section 8.72.030 of the ordinance proposed by the Initiative, like the remainder of the ordinance, do not reference the Trail Master Plan adopted by the Santa Cruz Regional Transportation Commission and Capitola City Council, but do reference the fact that the Regional Transportation Commission has obtained title to the County-wide rail corridor which is a focal point of the Trail Master Plan. The first three findings set forth in Section 8.72.030 state:

- A. New Public Asset. In 2012 the Santa Cruz Regional Transportation Commission (SCCRTC) acquired the Corridor from Union Pacific. The Corridor includes the historic Trestle. For the first time, the Corridor and the Trestle have the potential to be accessible for bike and pedestrian use. The SCCRTC is planning bike and pedestrian use along the majority of the Corridor.
- B. Trestle Detour. The SCCRTC has proposed making the Trestle off-limits to pedestrians, bike, electric bikes, and skateboarders, *detouring* the pedestrian

and bike traffic from the Corridor onto bike lanes and sidewalks in the local Capitola street network and across the Stockton Avenue Bridge.

C. Accessibility. A *detour* from the Trestle through Capitola Village would require an approximately 200 ft. grade change on both ends of the trail. Keeping the Trail on the Trestle provides a flat path across Capitola, which increases accessibility for people of all ages and abilities. (Italics added)

Once again, these findings overlook the fact that the Trail Master Plan has been adopted. The RTC has not *proposed* a *detour* from the trestle through Capitola Village. It has adopted a Trail Master Plan delineating a scenic trail that runs from the Trestle into the Village. The bike and pedestrian connections from the Trestle to the Village, which the Initiative would prohibit, are *part of* the legislatively approved scenic trail, not a *detour from* that trail.

2. PLAN CONSISTENCY

As noted above the Initiative does not acknowledge the adoption of the Trail Master Plan by the Regional Transportation Commission and Capitola City Council (nor that Master Plan’s certification by the California Coastal Commission). However, it does reference other pertinent planning documents when it states at Section 8.72.060:

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

The City Council has requested staff to analyze whether it is indeed possible to reconcile and harmonize pertinent General Plan and Local Coastal Program policies with the mandates of the Initiative. In addition, the Council requested this same analysis with reference to policies set forth in the Monterey Bay Sanctuary Scenic Trail Master Plan and the City’s Bicycle Transportation Plan.

2A. GENERAL PLAN/LOCAL COASTAL PROGRAM/BICYCLE TRANSPORTATION PLAN CONSISTENCY

Per California Government Code Section 65300, every city in California is required to adopt a General Plan. That plan must set out a city’s development policies and objectives, and include specific elements including a land use element and circulation element. (Govt. Code Section 65300) Once a city has adopted a General Plan, all zoning and land use ordinances must be consistent with the Plan, and to be consistent must be compatible with the objectives, policies,

general land uses, and programs specified in that Plan. (Govt. Code Section 65860). It is within this general legal framework that the Initiative must be gauged for consistency with the Capitola General Plan.

The Capitola General Plan was adopted by the City Council on June 26, 2014. The pertinent General Plan policies and programs appear in the Plan's Mobility Element. The Mobility Element contains a "Bicycle Network" section, commencing at page MO-10 of the Plan. This section of the Plan references the City's Bicycle Transportation Plan, previously adopted by the City Council on February 10, 2011. With reference to that "BTP," the Plan, echoing the Trail Master Plan, states:

"The BTP identifies a number of existing and proposed bikeways for Capitola as shown in Figure MO-4. In addition to the bikeways shown in Figure MO-4 a multi-use trail for bicycles and pedestrians is planned along the Santa Cruz Branch rail line corridor. *In the short term, the rail trail will cross Soquel Creek over Stockton Bridge in the Village until sufficient funds are available to retrofit the trestle to accommodate bicycles and pedestrians.*" (Italics added)

At page MO-12, again echoing the Trail Master Plan, the General Plan, discussing the rail corridor within Capitola, states:

"The Santa Cruz Regional Transportation Commission (RTC) acquired the Santa Cruz Branch Rail Line right-of-way in the Fall of 2012 for recreational rail, preservation, and future transportation uses. Planned transportation uses within this right-of-way include *passenger rail service*, bicycle and pedestrian facilities, and *freight rail service*. In 2013, the RTC adopted plans for new multi-use bicycle and pedestrian trail parallel to the rail tracks as part of the master plan for the Monterey Bay Sanctuary Scenic Trail Network. (Italics added).

General Plan Mobility Element policies which are clearly or arguably impeded or frustrated by the Initiative include the following:

- Policy MO-2.1 – Support policies and programs to maintain a balanced multi-modal transportation network that meets the needs of all local roadway users.
- Policy MO-2.4 – Accommodate bicycling, walking and public transit as a routine part of the City's roadway maintenance.
- Policy MO-2.5 – Support opportunities to repurpose existing rights-of-way or create new rights-of-way to enhance connectivity for pedestrians, bicyclists and transit.

- Policy MO-6.5 - Encourage visitors to enter the Village using non-automotive modes of transportation including by walking and biking.
- Policy MO-6.6 – Enhance bicycle and pedestrian connections to the Village from surrounding residential neighborhoods and commercial areas.
- Policy MO-6.7 – Maintain an environment within the Village that prioritizes the safety and convenience of pedestrians and bicyclists.
- Policy MO-7.6 – Work with regional partners to explore the feasibility of passenger rail service on the Santa Cruz Branch rail line.
- Policy MO-8.1 – Construct and maintain bikeways consistent with the Capitola BTP.
- Policy MO-8.2 – Ensure that bikeways in Capitola are well integrated with existing and proposed regional bikeways (such as that proposed by the Trail Master Plan) in Santa Cruz County.
- Policy MO-8.3 – Ensure that bikeways in Capitola are safe and convenient for cyclists of all ages and abilities.
- Policy MO-8.4 – Improve public safety by minimizing conflicts between cyclists and motor vehicles on Capitola roadways.
- Action MO-8.2 – Incorporate projects identified in Capitola’s BTP into the City’s Capital Improvement Program.
- Action MO-8.3 – Actively participate in efforts to implement new bicycle pathways in Capitola identified in the Monterey Bay Sanctuary Scenic Trail Plan. Ensure that bicyclists can safely cross Soquel Creek when traveling through the Village.

The Capitola Local Coastal Program, last revised by the City and certified by the California Coastal Commission in 2005, likewise articulates germane policy and implementation goals:

- Policy 11-12 Develop a scheme for safe bicycle connection between Cliff Drive and Park Avenue and improve bicycle parking facilities.
- Implementation: Develop overall bicycle plan for Cliff Drive-Village-Park Avenue transition utilizing directional signing and seek Regional Transportation Commission funds for development.

Section 8.72.040 A of the Initiative directly contradicts all of the afore-referenced plan policies that call for the continuation of rail service on the Capitola rail corridor by requiring City

departments to “take all steps necessary to preserve and utilize the Corridor and Trestle for active transportation [i.e. non-rail transportation] and recreation”. Section 8.72.040 B likewise directly contradicts all of the afore-referenced plan policies calling for the scenic trail to circumvent the Trestle by proceeding on City streets and sidewalks from rail grade down through the Village and thereafter ascending back to rail grade. Section 8.72.040 B similarly contradicts all of the above-referenced plan policies that call for cyclist/pedestrian convenience and safety within the Village by prohibiting even maintenance or signage that would facilitate such safety and convenience on that portion of the scenic trail addressed by the Initiative. Section 8.72.040 B prohibits City departments, agencies and employees from spending funds or resources to construct, reconstruct, operate, or maintain a “detour of the Trail onto Capitola streets or sidewalks.” Since the Trail Master Plan incorporates the referenced Village bikeways into Segment 11 of the scenic trail, those bikeways by definition are *part* the scenic trail, not a *detour from*, the trail. If the Initiative proponents’ intent is to prohibit the City from spending any money to construct, improve or maintain this portion of the scenic trail so as to render the Trestle the only feasible bicycle / pedestrian scenic trail pathway through Capitola, this section of the Initiative is in direct conflict with all of the foregoing policies that unequivocally call for the City to spend funds and resources to construct, enhance, improve and maintain Village bikeways in the City of Capitola and to do so in a fashion that seamlessly integrates those bikeways into the scenic trail called for by the Trail Master Plan.

2B. Monterey Bay Sanctuary Scenic Trail Master Plan Consistency

As noted above, the Initiative does not expressly reference the Trail Master Plan. It nonetheless directly implicates that Trail Master Plan which was adopted by the Santa Cruz Regional Transportation Commission on November 7, 2013 and was subsequently unanimously adopted by the City Council, per Resolution No. 4019, on April 9, 2015. As noted above the Trail Master Plan’s scenic trail and rail corridor is identified as part of Capitola’s integrated transportation network in its June 2014 General Plan. Resolution No. 4019 was accordingly adopted pursuant to General Plan policies calling for the scenic trail, as designed in the Trail Master Plan, to traverse Capitola. Thereafter, per Resolution 4044 adopted unanimously on January 28, 2016, the Capitola City Council endorsed a regional sales tax spending plan calling for the expenditure of 15% of certain sales tax revenues on the development of the county-wide scenic trail called for by the Trail Master Plan.

The Trail Master Plan's overarching objective is summarized by Representative Sam Farr in his letter which introduces the Trail Master Plan:

With the rail corridor as a tremendous new public resource, the Santa Cruz County Regional Transportation Commission is in a unique position to provide a continuous and separated bicycle and pedestrian path as the spine of a braided Trail Network. The primary corridor will link coastal access to schools, retail centers, residences and other destinations in our vibrant community. *The rail right-of-way will also serve freight and passenger rail service thereby expanding travel options and providing unprecedented integration of bicycle, pedestrian and transit options.* (Italics added)

The Trail Master Plan articulates a number of objectives and policies that are applicable to the Capitola segment of the scenic trail:

- Objective 1.1 – Provide a continuous public trail along the Santa Cruz Branch Line railroad corridor and connecting spur trails within Santa Cruz County. (The Initiative would prohibit a spur trail from the Trestle.)
- Policy 1.1.3 – Use existing built trails, roadways, and other transportation facilities to the fullest extent possible to provide for the primary trail alignment and spur trails. (This would include existing Capitola bikeways within the Village.)
- Policy 1.2.2. – Provide safe, direct linkages between trails and paved pathways, bike lanes, transit terminals, bus stops and parking facilities. (This would include linkages from the rail bed to Capitola bikeways in the Village which the Initiative prohibits.)
- Policy 1.2.4 – Develop trails in such a way so that future rail transit services along the corridor are not precluded. (Because the Capitola railroad trestle is currently not wide enough to accommodate pedestrians, cyclists and trains simultaneously, the practical effect of the Initiative's implementation would be to sever the railroad at this particular artery thereby frustrating this particular Trail Master Plan policy and eliminating county-wide railroad service along this rail corridor.)

Section 3.4 of the Master Plan specifically addresses one Capitola segment of the scenic trail, also referred to as "Segment 11" and the "Central Reach." At page 3-10, the Master Plan notes:

"Other challenges along the Central Reach are the many existing large rail bridge and trestle structure crossings. These structures are old, narrow in width, and span steep drainages and roadways. In one scenario the structure spans across a historic district in Capitola. The southern portion of the Central Reach parallels the coast meandering atop the steep coastal bluffs and multiple residential and resort areas. The Central Reach connects over six state beaches, numerous coastal access points, parks, schools, and provides future connection opportunities for countless communities along the corridor." (This would include the connection opportunity between the rail trail and the Village, which the Initiative prohibits.)

Section 4.11.1 of the Trail Master Plan specifically states that the existing bikeway network through the Village is, of necessity, an integral component of the scenic trail:

“The boundary for Segment 11 is determined by the terminus of Segment 10 at Jade Street Park. Segment 11 runs from Jade Street Park at 47th Avenue down the coast 3.2 miles to State Park Drive. This segment is impacted by extreme topography, dense urban development, and infrastructure constraints through Capitola. The existing on-street bike and pedestrian facilities will need to support the connection for the Coastal Rail Trail until Segments 10 and 11 can be completed.

Section 4.11.2 expands on this obvious physical constraint:

“The greatest challenge in this segment is the rail trestle crossing of Soquel Creek. The current rail trestle passes through a historic district. There are current discussions about improvements to this bridge trestle due to structural conditions. Coastal trail access through this area will need to continue on existing surface streets and sidewalks to cross Soquel Creek and navigate through Capitola Village. Future plans for the rail trestle replacement should include a new bike/pedestrian facility in the bridge design. The cost for this larger iconic bridge structure has not yet been determined and does not appear in this Master Plan.”

The Segment 11 trail alignment is mapped at page 4-63 of the Master Plan and it clearly illustrates the scenic trail’s path through Capitola Village including the alignment “connection points” pursuant to which the trail descends from the rail grade into the Village and, using the Village’s existing bikeways, circumvents the subject railroad trestle so as to implement all of the Trail Master Plan objectives and policies outlined above. The Initiative clearly prohibits the City from appropriating any human or fiscal resources towards the implementation of these Trail Master Plan policies with reference to the portion of the scenic trail addressed by the Initiative. Accordingly, as with the other planning documents referenced in Section 2A, the Initiative directly contradicts the Trail Master Plan.

3. LEGAL ANALYSIS

The Initiative is subject to a legal challenge on four separate bases: as proposing an implied amendment to the Capitola General Plan; as being administrative rather than legislative in nature; as impermissibly interfering with the City Council’s fiscal authority and responsibility; and as being unduly vague.

3A. GENERAL PLAN – IMPLIED AMENDMENT

As explained above although the ordinance proposed by the Initiative, at Section 8.72.060, states that it shall not be construed as amending any General Plan provisions but “rather shall be construed and harmonized in a manner to strengthen and define such provisions,” it is readily apparent in light of the direct contradictions between the ordinance and General Plan provisions outlined in Section 2A, the ordinance, with regard to the referenced General Plan provisions, cannot be construed as “strengthening” those provisions. To the contrary the ordinance would prohibit implementation of those General Plan provisions thereby effectively nullifying them and amending them out of the General Plan.

In *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 53 Cal 3d 531, the California Supreme Court invalidated a Walnut Creek traffic control initiative it found to be in conflict with that city’s pro-growth General Plan. Noting that under California statutory law (Government Code Section 65860) land use ordinances that conflict with a city’s General Plan are invalid, the Court held that unless voters clearly intended to amend a city’s General Plan in adopting an initiative that is inconsistent with that General Plan the initiative will be judicially invalidated. In this case where the Greenway Capitola Corridor Initiative expressly states that the Initiative “shall not be construed as amending or rescinding any provisions of the general plan”, it is highly unlikely that a court will find an electorate intent to do so. Therefore, given the inconsistencies between the Initiative and the Capitola General Plan, there is a likelihood that a court would invalidate the Initiative on this basis.

3B. ADMINISTRATIVE / LEGISLATIVE

As explained above, the Initiative pertains directly to one land use plan and indirectly to another, both of which were legislatively adopted.¹ The Initiative refers to provisions in the Trail Master Plan which call for routing bicycle and pedestrian trail users through Capitola Village in lieu of routing them over the Trestle which is not wide enough to simultaneously accommodate those users and trains. Nowhere does the Initiative suggest that it is intended to amend the Trail Master Plan. In fact, as noted earlier, the Initiative does not expressly reference the Trail Master Plan. It only obliquely refers to “proposals” that the Regional Transportation Commission and the City Council have actually legislatively promulgated as policy with their adoption of the Trail Master Plan. The Initiative by its terms directs City departments, agencies and employees

¹ The adoption of land use plans, such as a General Plan or a specific plan, and amendments to those plans, constitute legislative acts. *Yost v. Thomas* (1984) 36 Cal. 3d 561, 570.

in the manner by which they are to implement (or more accurately decline to implement or even maintain) Segment 11 of the Trail Master Plan.

In *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal. App. 4th 1311, Orange County voters, per a 1999 initiative, Measure A, adopted a land use plan for a former military base which included a civilian airport. In 2000 the voters adopted a subsequent initiative, Measure F, which listed a number of projects called for by the Measure A land use plan, including the airport, and decreed that those projects could not be implemented absent a prior 2/3 affirmative vote of the electorate. The ballot materials indicated that a primary objective of Measure F was to frustrate development of the subject airport. In finding Measure F invalid, the appellate court, at pp. 1332-1333 stated:

“While it has been generally said that the reserved power of initiative and referendum accorded by article IV, section 1, of the Constitution is to be liberally construed to uphold it whenever reasonable, it is established beyond dispute that the power of referendum may be invoked only with respect to matters which are strictly legislative in character. Under an unbroken line of authorities, administrative or executive acts are not within the reach of the referendum process. The plausible rationale for this rule espoused in numerous cases is that to allow the referendum or initiative to be invoked to annul or delay the executive or administrative conduct would destroy the efficient administration of the business affairs of a city or municipality” ...

The acts, ordinances and resolutions of a municipal governing body may, of course, be legislative in nature or they may be of an administrative or executive character. Also well settled is the distinction between the exercise of local legislative power, and acts of an administrative nature. *‘The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it’* ... *‘Acts constituting a declaration of public purpose, and making provisions for ways and means of its accomplishment, may be generally classified as calling for the exercise of legislative power. Acts which are to be deemed as acts of administration, and classed among those governmental powers properly assigned to the executive department, are those which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body, or such as are devolved upon it by the organic law of its existence.’* (Italics original)

The operative provision of the Initiative expressly gives direction to the City’s “constituent departments” with regard to the manner in which they will administer “construction, reconstruction, operation, maintenance, financing, marketing, or signage” for a portion of the scenic trail in the City. As such the Initiative prescribes acts “which

are properly assigned to the [City's] executive department", i.e. the City Manager who, through the City's constituent departments implements City policy legislatively promulgated by the City Council. ²

Viewed in this context the Initiative, in the language cited by the *Citizens* court, "merely pursues a plan already adopted by the legislative body itself, or some power superior to it," i.e. the Trail Master Plan adopted by the Regional Transportation Commission and City Council; hence the Initiative impermissibly decrees an act of administration, i.e. "those [acts] which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body..." *Citizens, supra* at pp. 1332-1333. On this basis it is fair to conclude that a court would likely invalidate the Initiative as calling for administrative action, i.e. dictating conduct on the part of City staff which would effectively serve to annul or destroy the efficient administration of the Trail Master Plan's implementation.

3.C. FISCAL INTERFERENCE

Like the adoption of a land use plan, the adoption of a city budget by a city council constitutes a legislative act. *Scott v. Common Council* (1996) 44 Cal. App.4th 684,690. The City Council in 2016 with its adoption of Resolution 4044, referenced above at Section 2B, made a political commitment to exercise its fiscal discretion so as to devote a substantial percentage of its share of regional sales tax revenue to the development of Segment 11 of the scenic trail. While the Capitola 2014/15 – 2018/19 Capital Improvement Program (the "CIP"), adopted prior to the voters' 2016 approval of the regional sales tax, does not specifically call for any bikeway improvements, the CIP at page 13 does call for "pedestrian safety devices at the Stockton Avenue / Esplanade intersection." And while the current CIP is silent with respect to bikeway improvements, it is foreseeable in light of the City Council's above-referenced political commitment, that it will include some bikeway improvements in its next CIP, presumably scheduled for adoption in 2019.

As noted above the Initiative flatly and indefinitely prohibits the City from expending "any funds or resources related to the construction, reconstruction, operation, maintenance, financing, marketing or signage for a detour of the Trail onto Capitola Streets or sidewalks." In

² For a full explanation of the City Manager's legal authority and responsibility for the City's administrative operations, refer to California Government Code Sections 34851-3482 and Capitola Municipal Code Sections 2.08.070-2.08.240.

other words, the Initiative prohibits the City Council from budgeting or planning for any bikeway or pedestrian improvements which might facilitate the flow of bicycle or pedestrian traffic through the Village to or from the Trestle. For example, to the extent that the aforementioned Stockton Avenue / Esplanade intersection pedestrian safety devices might be “related to” facilitating the flow of pedestrian traffic from the Trestle through that intersection, the City Council would be prohibited from allocating funds to that project and the City’s Public Works Department would be prohibited from implementing that project despite budget policies calling for the project and despite the project’s inclusion in the CIP.

Just as an initiative directing how a land use plan is to be implemented or interfered with constitutes an unlawful attempt to impair governmental functions, similarly an initiative which purports to constrain the fiscal prerogatives of a city council constitutes “an unlawful attempt to impair essential governmental functions through interference with the administration of the City’s fiscal powers”. *City of Atascadero v. Daly* (1982) 135 Cal. App. 3d 466, 470. As explained by the Supreme Court in *Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 839-840, this rule applies to Capitola City Council budget appropriations which the Initiative would prohibit:

Although it is the general rule that referendum provisions are to be liberally construed in favor of the reserved power, it is settled that consideration must also be given to the consequences of applying the rule. . . . If essential governmental functions would be seriously impaired by the referendum process, the courts, in construing the applicable constitutional and statutory provisions, will assume that no such result was intended. . . . One of the reasons, if not the chief reason, why the Constitution excepts from the referendum power acts of the Legislature providing for tax levies *or appropriations* for the usual current expenses of the state is to prevent disruption of its operations by interference with the administration of its fiscal powers and policies. The same reasoning applies to similar acts of a county board of supervisors. . . . (Italics added)

In striking an initiative which would have repealed a pre-Proposition 218 transient occupancy tax ordinance, the court in *Myer v. City Council of Pismo Beach* (1966) 241 Cal. App. 2d 237, 244 succinctly stated the rationale for this rule:

Such a proposed initiative ordinance, even if approved by a vote of the electors, cannot be used as a means of tying the hands of the city council and depriving it of the right and duty to exercise its discretionary power in a taxation matter such as is here involved.

In summary the Capitola City Council has both a “right and duty” to exercise its fiscal discretion and an initiative which would serve to “tie the hands” of the Council when it comes to

certain bicycle/pedestrian safety expenditures which the Council might deem in the best interest of the public, will likely not withstand judicial scrutiny.

3D. VAGUENESS

As noted earlier Section 8.72.040 A of the Initiative’s proposed ordinance requires City departments to “*take all steps necessary*” to preserve and utilize the Corridor and Trestle for active transportation and recreation, while Section 8.72.040 B prohibits City departments, agencies and employees from expending “*any funds or resources*” for purposes “*related to*” construction, reconstruction, operation, maintenance, financing, marketing or signage facilitating a “*detour*” of the scenic trail onto Capitola streets or sidewalks. The italicized language begs the question of what steps constitute “necessary steps” for preservation and utilization of the trail and corridors, what “funds or resources” are “related to” the subject detour, and what exactly is the “detour” for which funding/resource appropriations are prohibited. The italicized language further begs the question of who determines what “steps” are “necessary”, and when a funding or resource decision is “related to” the subject undefined “detour”.

For example, the Mobility Element of the Capitola General Plan calls for the City’s compliance with the California Complete Streets Act which, in turn, calls for the City to develop an integrated network of sidewalks, streets and pathways suitable for a variety of transit modalities. In other words, all of the City’s streets, sidewalks and pathways, constituting an integrated transit network, are “related to” one another. To this end Plan Goal MO-2 directs the City to:

“Provide for ‘Complete Streets’ that serve all modes of transportation, including vehicles, public transit, bicyclists, and pedestrians.”

As further explained at page MO-6 of the General Plan:

The California Complete Streets Act (AB 1358) requires Capitola to plan for multimodal transportation networks in the General Plan. These networks should allow for travel by motor vehicle, foot, bicycle, and transit to reach key destinations in Capitola and the larger region. All street improvement projects should be viewed as opportunities to improve safety, access, and mobility for all travelers. Capitola can use complete streets design to enhance streets for all modes and all users no matter their age or ability.

In summary, viewed in this General Plan context, *any* improvement to City bicycle and pedestrian pathways which might make it easier for cyclists and pedestrians to access or egress

the Trestle, no matter their proximity to the Trestle, might be “related to” the funding and resource expenditures prohibited by the Initiative.

A more reasonable and narrower interpretation is that the Initiative’s funding / resource restrictions only refer to appropriations for repairs, maintenance, construction and signage that might improve bicycle / pedestrian facilities within the detour. However, the Initiative does not define its use of the term “detour.” Employing a Webster’s Dictionary definition (New College Edition, 1981) a “detour” is a “deviation from a direct course.” In this context the “direct course” is the rail corridor traversing Capitola and the “deviation” would therefore be that portion of the scenic trail which departs the rail corridor at the Trestle to the point at which it re-joins the rail corridor near the intersection of Park and Monterey Avenue, a distance of approximately 8/10 of a mile. Nonetheless, absent a definition, it is not clear whether the Initiative proponents intend an appropriations prohibition on this level of magnitude.

An apparent intended near-term objective of the Initiative is City inaction which would effectively sever the County’s single county-wide railroad corridor and preclude implementation of regional planning policies (agreed to by Santa Cruz County and each of the County’s four cities) concerning rail transit as articulated in the Trail Master Plan. However, this objective overlooks the fact that the Regional Transportation Commission, not the City, owns, maintains and regulates the Trestle’s use. As a result, the only real scenic trail impact that would ensue upon adoption of the Initiative would be an inability on the City’s part to improve or maintain a portion of the scenic trail that traverses City streets. The Initiative will not serve to assure that the Regional Transportation Commission grants cyclist/pedestrian access to the Trestle or prohibits rail traffic on the Trestle. Considered in this light, the “steps necessary” which a 1.68 square mile city with a population of approximately 10,000 would need to take in order to accomplish the Initiative’s “no rail” objective in all likelihood exceed the City’s practical, funding and legal capabilities.

“A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.” *Connally v. General Construction Co.* (1926) 269 U.S. 385, 391. Citing this United Supreme Court foundational language for the vagueness doctrine, the California Supreme Court in *Evangelatos v. Superior Court* (1988) 44 Cal. 3d 1188, 1201 articulated the standard for gauging a statute’s validity against a vagueness challenge:

Many, probably most, statutes are ambiguous in some respects and instances invariably arise under which the application of statutory language may be unclear. So long as a statute does not threaten to infringe on the exercise of First Amendment or other constitutional rights, however, such ambiguities, even if numerous, do not justify the invalidation of a statute on its face. In order to succeed on a facial vagueness challenge to a legislative measure that does not threaten constitutionally protected conduct like the initiative measure at issue here a party must do more than identify some instances in which the application of the statute may be uncertain or ambiguous; he must demonstrate that “the law is impermissibly vague *in all of its applications.*”

While the vagueness bar set by the California Supreme Court is high, it is not insurmountable and in cases such as this, a court will seriously consider its application. The California Supreme Court in *Citizens for Jobs and the Economy* decision referenced in Section 3B, quoted language in the challenged Measure F initiative, analogous to the Initiative’s “any funding or resources,” “related to” and “all steps necessary” language, noting its breadth and ambiguity, and concluded that the quoted language rendered Measure F void for vagueness:

In section 4 of Measure F, the County would be allowed to expend funds “*as necessary for the planning of any project* listed in Section Three and for the submission of an approved project to the voters for ratification as required herein, but only upon a vote of the Board of Supervisors after public hearing *and only to the extent necessary* (A) to define the project; (B) to prepare an environmental impact report, [etc.] ... The Board of Supervisors may expend no other funds *for any other purposes relating to any such project, until and unless the act by the County to approve the project is ratified by the voters* as required by Section Three.” (Italics added.) Spending is also allowed “as may otherwise be required by state or federal law.” These terms clearly circumscribe the discretion of the Board, but it is not possible to tell to what extent. Who is to decide what spending is necessary, or for what purposes that are sufficiently related to the project?...

The uncertainty of the type of instructions imposed on the Board, in the context of the planning process authorized by Measure A, interacts in this case with the other defects already identified in the measure to demonstrate its invalidity. *Citizens, supra at p. 1335* (Italics original)

Similarly, here the Initiative clearly circumscribes the discretion of the City Council to fund certain projects (Section 8.72.040.B)) and mandates that City staff undertake other projects (Section 8.72.040.A), but it is not possible to tell to what extent who is to decide, or what projects are sufficiently related to the undefined detour to warrant proscription under the Initiative. In light of these factors there is a likelihood that a court would overturn the Initiative on vagueness grounds.

4. FISCAL, TRANSPORTATION INFRASTRUCTURE, TRAFFIC IMPACTS

4A. INTERPRETATION

Given the Initiative's vague and ambiguous text it is not possible to gauge its potential fiscal, traffic and transportation impacts with any level of accuracy as those impacts, in large part, would depend upon how the Initiative is interpreted and thereby applied. Section 8.72.040 A directs the City to take all steps necessary to preserve and utilize the Corridor/Trestle for cyclist and pedestrian use. The City does not own, manage or have regulatory authority over the Corridor or Trestle. Therefore, it is unclear what specific actions the City could legally take to comply with this language. As a result, it is impossible to determine with any accuracy what impacts on City resources, are implicated by this Initiative mandate.

Until such time as the Regional Transportation Commission constructs (or authorizes another entity to construct) a pedestrian/bicycle path on the Trestle, the prohibitions contained in Section 8.72.040B would clearly restrict specific activity by the City. If the Regional Transportation Commission constructs a pedestrian / bike path on the Trestle, it is not clear whether the prohibitions contained in Section 8.72.040B of the Initiative would continue or expire. The Initiative simply fails to address this scenario. However, even the specific activity that Section 8.72.040B prohibits is open to interpretation. Specifically, the operative language prohibiting the City from using funds or resources "for a detour of the Trail onto Capitola streets or sidewalks" is ambiguous.

There are two alternative interpretations of Section 8.72.040B that are analyzed in this report. While there are other more tenuous interpretations of Section 8.72.040B, they are not considered here due to time constraints.

Interpretation A:

Section 8.72.040B would prohibit the City from expending resources to maintain or construct a short link between the Trestle and City streets/sidewalks. This interpretation would not prohibit the City from maintaining and building bike paths and sidewalks that allow users to travel through the Village along the route of the scenic trail. (The Initiative simply references "a detour of the *Trail* onto Capitola streets or sidewalks". Thus, read literally, it pertains to any egress to or access from, the rail corridor to City streets or sidewalks. Other portions of the Initiative, discussed in Section 1, indicate the proponents are concerned primarily with the *Trestle* access / egress.)

Interpretation B:

Section 8.72.040B would prohibit the City from constructing or maintaining bike and pedestrian facilities on streets and sidewalks that could be used to allow pedestrians or cyclists to travel through the Village along the route of the scenic trail. Under this interpretation the prohibition would apply to the existing bike paths and sidewalks on Cliff Drive, Stockton Bridge, Stockton Avenue, Capitola Avenue, and Monterey Avenue.

4B. IMPACTS

If the Initiative is applicable to the entire street and sidewalk connection through the Capitola Village under Interpretation B (see “detour” definition discussion in Section 3D), the impacts would be far greater than those implicated by Interpretation A.

Fiscal / Traffic Infrastructure Impacts:

Interpretation A: Under Interpretation A, there is no foreseeable change in business activity in the Village. In terms of potential grant funding, if the Regional Transportation Commission constructed a bike/pedestrian path over the Trestle there would be no likely impacts from the Initiative. If the Regional Transportation Commission does not construct a bike/pedestrian path over the Trestle, the Initiative would likely make City grant applications slightly less competitive. The lack of signage and the consequential absence of a designated scenic trail through the Village would potentially render City grant applications less viable.

Interpretation B: Prohibiting the expenditure of funds for the construction and maintenance of bicycle and pedestrian infrastructure which allows scenic trail users to circumvent the Trestle by going through the Village along the route of the Master Trial Plan’s designated scenic trail would have a potential negative impact on commercial activity in the Village. In the near term that impact would likely be insignificant as the status quo would continue. However, in the longer term, the prohibition on the expenditure of funds for construction and maintenance of bicycle and pedestrian infrastructure would result in deteriorating conditions on sidewalks and bike lanes in the Village along the scenic trail route. It is then likely that deteriorating infrastructure would negatively impact the visitor experience resulting in reduced retail sales and, potentially, reduced hotel and short-term rental activity. It is impossible to precisely quantify this fiscal impact, but the negative impact would likely increase over time, potentially to significant levels within ten to twenty years.

Additionally, liability exposure for the City associated with Interpretation B could be significant and would likely increase over time. The prohibition on maintenance of pedestrian and bike facilities in the Village would potentially, and clearly, increase the likelihood of accidents and consequential personal injury lawsuits predicated upon the dangerous condition of public property.

The negative impacts to potential future grant applications would be more significant under Interpretation B. If the Regional Transportation Commission does not construct a bike/pedestrian path over the Trestle, the Initiative would likely make City grant application less competitive because the scenic trail would be fragmented as a result of City inaction. As written, the Initiative would prohibit the City from appropriating any funds, no matter the source, for scenic trail improvement or maintenance within (and possibly beyond) the Village. This could potentially result in the City losing millions of dollars in local, state, and federal funds for improvements to the scenic trail within City limits.

Traffic Impacts:

Interpretation A: Prohibiting new connections between the scenic trail and City streets/sidewalks would have minimal impacts on traffic congestion. The existing sidewalks and bike lanes currently allow cyclists and pedestrians to travel through the Village along a route which allows them to avoid the Trestle. A prohibition on connections between the rail corridor and the existing road network will most likely not change the volume of bicycle and pedestrian trips on City streets and sidewalks in general and on Village streets and sidewalks in particular.

Interpretation B: In the short term, prohibiting the expenditure of funds for the operation and maintenance of existing bicycle and pedestrian infrastructure which currently already allows scenic trail users to go avoid the Trestle and access the Village would have minimal impacts on traffic congestion. Existing improvements would remain in place and therefore no near-term change in the volume of bicycle and pedestrian trips would be anticipated.

In the long term, without being able to maintain or construct new pedestrian and bicycle infrastructure, these facilities will deteriorate. In addition, as other segments of the scenic trail are completed, it is likely that pedestrian and bicycle trip volumes will increase. That increase coupled with deteriorating infrastructure will, over the long term, eventually lead to increased hazardous and detrimental conflicts between bikes, pedestrians and motorists.

BALLOT TITLE

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

BALLOT SUMMARY

Background.

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

The Measure.

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

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

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

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



Petition Result Breakdown

9.A.3

Capitola Greenway
Capitola Greenway

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

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

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

Attachment: Greenway petition certification summary (Citizen Initiative Ballot Measure)

MAY 07 2018

May 4, 2018

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

Dear Members of the City Council:

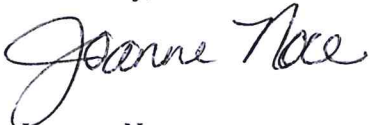
Attached please find a copy of the April 23, 2018 letter sent to Mr. Anthony Condotti regarding a Notice of Intent to Circulate a Petition for the "Greenway Capitola Corridor" submitted by Juan Escamilla on April 2, 2018. The letter outlines serious concerns about the wording and overall purpose of these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

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

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

Thank you.

Sincerely,

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

Attachment

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

Attachment: Ballot initiative public communication (Citizen Initiative Ballot Measure)

April 23, 2018

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

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

Dear Mr. Condotti –

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

Regarding *Notice of Intent to Circulate Petition*:

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

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

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

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

8.72.010 Purpose

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

8.72.020 Definitions

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

8.72.030 Findings

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

8.72.050 Changes

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

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

Sincerely,



Joanne Noce
4965 Emerald St.
Capitola, CA 95010

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

Cc: Santa Cruz County Regional Transportation Commission



Advocating for the Coastal Rail & Trail since 2002

June 11, 2018

Susan Craig, Central Coast District Manager

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

Re: Greenway Capitola Corridor Initiative Measure

Dear Ms. Craig,

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

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

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

Respectfully yours,

Mark Mesiti-Miller, P.E.

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

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

GREENWAY CAPITOLA CORRIDOR INITIATIVE

Election Code Section 9212 Report

Per the Capitola City Council's July 26, 2018, direction and in accordance with California Elections Code Section 9212, the City Manager, Public Works Director, Finance Director, Planning Director, and City Attorney submit the following report concerning the Greenway Capitola Corridor Initiative ("Initiative") which has received the requisite number of citizen signatures to qualify for inclusion on the November 2018 Capitola municipal election ballot.

In accordance with Elections Code Section 9215, at its August 9, 2018, meeting the City Council will either adopt the ordinance proposed by the Initiative without alteration or submit the Initiative without alteration to the voters for adoption or rejection at the November 6, 2018 municipal election. This report will address the following: the proposed ordinance's consistency with the General Plan, Local Coastal Program and Bicycle Transportation Plan adopted by the Capitola City Council and certified by the California Coastal Commission; the proposed ordinance's consistency with the Monterey Bay Sanctuary Scenic Trail Master Plan adopted by the Santa Cruz County Regional Transportation Commission and the Capitola City Council and certified by the California Coastal Commission; the legality of the Initiative; the Initiative's impact on transportation infrastructure; the Initiative's impact on traffic congestion; the Initiative's fiscal impacts, including impacts relative to the availability of grant funds for Monterey Bay Sanctuary Scenic Trail improvements within the City.

1. THE GREENWAY CAPITOLA CORRIDOR INITIATIVE

The operative provisions of the Initiative appear at section 8.72.040 of the Initiative's proposed ordinance:

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

Per section 8.72.020 of the proposed ordinance “Active Transportation” is defined as “human-powered transportation” and therefore does not include railroad transportation. “All steps necessary” is not defined. “Related to” is not defined. “Detour” is not defined. The ordinance, by its terms, gives instruction directly to City departments, employees and agencies.

In the Notice of Intent to Circulate Petition which accompanies the Initiative, Initiative proponent Juan Escamilla states that the Initiative is proposed “...for the purpose of improving safety and reducing traffic congestion by keeping the Monterey Bay Sanctuary Scenic Trail... in the Santa Cruz Branch Line Rail Corridor... within the City of Capitola while protecting the Capitola Trestle...” Among other reasons cited for the Initiative, Mr. Escamilla states, “The Santa Cruz Regional Transportation Commission has *proposed* routing the Trail off the Trestle and onto the streets and sidewalks of the Capitola Village. Such a route will be unsafe and increase traffic congestion.” He also states, “The Corridor and Trestle provide a level, direct path for people riding and walking to get from one side of Capitola to the other.” (Italics added). Significantly, as explained below, the Commission has not only *proposed* the trail route referenced by Mr. Escamilla, it has *adopted* the Monterey Bay Sanctuary Scenic Trail Network Master Plan (“Trail Master Plan”) which calls for that route. In addition, the City of Capitola has *adopted* the same Trail Master Plan to the extent that it calls for scenic trail network facilities to traverse the City of Capitola.

The Initiative findings, set forth at Section 8.72.030 of the ordinance proposed by the Initiative, like the remainder of the ordinance, do not reference the Trail Master Plan adopted by the Santa Cruz Regional Transportation Commission and Capitola City Council, but do reference the fact that the Regional Transportation Commission has obtained title to the County-wide rail corridor which is a focal point of the Trail Master Plan. The first three findings set forth in Section 8.72.030 state:

- A. New Public Asset. In 2012 the Santa Cruz Regional Transportation Commission (SCCRTC) acquired the Corridor from Union Pacific. The Corridor includes the historic Trestle. For the first time, the Corridor and the Trestle have the potential to be accessible for bike and pedestrian use. The SCCRTC is planning bike and pedestrian use along the majority of the Corridor.
- B. Trestle Detour. The SCCRTC has proposed making the Trestle off-limits to pedestrians, bike, electric bikes, and skateboarders, *detouring* the pedestrian

and bike traffic from the Corridor onto bike lanes and sidewalks in the local Capitola street network and across the Stockton Avenue Bridge.

C. Accessibility. A *detour* from the Trestle through Capitola Village would require an approximately 200 ft. grade change on both ends of the trail. Keeping the Trail on the Trestle provides a flat path across Capitola, which increases accessibility for people of all ages and abilities. (Italics added)

Once again, these findings overlook the fact that the Trail Master Plan has been adopted. The RTC has not *proposed* a *detour* from the trestle through Capitola Village. It has adopted a Trail Master Plan delineating a scenic trail that runs from the Trestle into the Village. The bike and pedestrian connections from the Trestle to the Village, which the Initiative would prohibit, are *part of* the legislatively approved scenic trail, not a *detour from* that trail.

2. PLAN CONSISTENCY

As noted above the Initiative does not acknowledge the adoption of the Trail Master Plan by the Regional Transportation Commission and Capitola City Council (nor that Master Plan's certification by the California Coastal Commission). However, it does reference other pertinent planning documents when it states at Section 8.72.060:

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

The City Council has requested staff to analyze whether it is indeed possible to reconcile and harmonize pertinent General Plan and Local Coastal Program policies with the mandates of the Initiative. In addition, the Council requested this same analysis with reference to policies set forth in the Monterey Bay Sanctuary Scenic Trail Master Plan and the City's Bicycle Transportation Plan.

2A. GENERAL PLAN/LOCAL COASTAL PROGRAM/BICYCLE TRANSPORTATION PLAN CONSISTENCY

Per California Government Code Section 65300, every city in California is required to adopt a General Plan. That plan must set out a city's development policies and objectives, and include specific elements including a land use element and circulation element. (Govt. Code Section 65300) Once a city has adopted a General Plan, all zoning and land use ordinances must be consistent with the Plan, and to be consistent must be compatible with the objectives, policies,

general land uses, and programs specified in that Plan. (Govt. Code Section 65860). It is within this general legal framework that the Initiative must be gauged for consistency with the Capitola General Plan.

The Capitola General Plan was adopted by the City Council on June 26, 2014. The pertinent General Plan policies and programs appear in the Plan's Mobility Element. The Mobility Element contains a "Bicycle Network" section, commencing at page MO-10 of the Plan. This section of the Plan references the City's Bicycle Transportation Plan, previously adopted by the City Council on February 10, 2011. With reference to that "BTP," the Plan, echoing the Trail Master Plan, states:

"The BTP identifies a number of existing and proposed bikeways for Capitola as shown in Figure MO-4. In addition to the bikeways shown in Figure MO-4 a multi-use trail for bicycles and pedestrians is planned along the Santa Cruz Branch rail line corridor. *In the short term, the rail trail will cross Soquel Creek over Stockton Bridge in the Village until sufficient funds are available to retrofit the trestle to accommodate bicycles and pedestrians.*" (Italics added)

At page MO-12, again echoing the Trail Master Plan, the General Plan, discussing the rail corridor within Capitola, states:

"The Santa Cruz Regional Transportation Commission (RTC) acquired the Santa Cruz Branch Rail Line right-of-way in the Fall of 2012 for recreational rail, preservation, and future transportation uses. Planned transportation uses within this right-of-way include *passenger rail service*, bicycle and pedestrian facilities, and *freight rail service*. In 2013, the RTC adopted plans for new multi-use bicycle and pedestrian trail parallel to the rail tracks as part of the master plan for the Monterey Bay Sanctuary Scenic Trail Network. (Italics added).

General Plan Mobility Element policies which are clearly or arguably impeded or frustrated by the Initiative include the following:

- Policy MO-2.1 – Support policies and programs to maintain a balanced multi-modal transportation network that meets the needs of all local roadway users.
- Policy MO-2.4 – Accommodate bicycling, walking and public transit as a routine part of the City's roadway maintenance.
- Policy MO-2.5 – Support opportunities to repurpose existing rights-of-way or create new rights-of-way to enhance connectivity for pedestrians, bicyclists and transit.

- Policy MO-6.5 - Encourage visitors to enter the Village using non-automotive modes of transportation including by walking and biking.
- Policy MO-6.6 – Enhance bicycle and pedestrian connections to the Village from surrounding residential neighborhoods and commercial areas.
- Policy MO-6.7 – Maintain an environment within the Village that prioritizes the safety and convenience of pedestrians and bicyclists.
- Policy MO-7.6 – Work with regional partners to explore the feasibility of passenger rail service on the Santa Cruz Branch rail line.
- Policy MO-8.1 – Construct and maintain bikeways consistent with the Capitola BTP.
- Policy MO-8.2 – Ensure that bikeways in Capitola are well integrated with existing and proposed regional bikeways (such as that proposed by the Trail Master Plan) in Santa Cruz County.
- Policy MO-8.3 – Ensure that bikeways in Capitola are safe and convenient for cyclists of all ages and abilities.
- Policy MO-8.4 – Improve public safety by minimizing conflicts between cyclists and motor vehicles on Capitola roadways.
- Action MO-8.2 – Incorporate projects identified in Capitola’s BTP into the City’s Capital Improvement Program.
- Action MO-8.3 – Actively participate in efforts to implement new bicycle pathways in Capitola identified in the Monterey Bay Sanctuary Scenic Trail Plan. Ensure that bicyclists can safely cross Soquel Creek when traveling through the Village.

The Capitola Local Coastal Program, last revised by the City and certified by the California Coastal Commission in 2005, likewise articulates germane policy and implementation goals:

- Policy 11-12 Develop a scheme for safe bicycle connection between Cliff Drive and Park Avenue and improve bicycle parking facilities.
- Implementation: Develop overall bicycle plan for Cliff Drive-Village-Park Avenue transition utilizing directional signing and seek Regional Transportation Commission funds for development.

Section 8.72.040 A of the Initiative directly contradicts all of the afore-referenced plan policies that call for the continuation of rail service on the Capitola rail corridor by requiring City

departments to “take all steps necessary to preserve and utilize the Corridor and Trestle for active transportation [i.e. non-rail transportation] and recreation”. Section 8.72.040 B likewise directly contradicts all of the afore-referenced plan policies calling for the scenic trail to circumvent the Trestle by proceeding on City streets and sidewalks from rail grade down through the Village and thereafter ascending back to rail grade. Section 8.72.040 B similarly contradicts all of the above-referenced plan policies that call for cyclist/pedestrian convenience and safety within the Village by prohibiting even maintenance or signage that would facilitate such safety and convenience on that portion of the scenic trail addressed by the Initiative. Section 8.72.040 B prohibits City departments, agencies and employees from spending funds or resources to construct, reconstruct, operate, or maintain a “detour of the Trail onto Capitola streets or sidewalks.” Since the Trail Master Plan incorporates the referenced Village bikeways into Segment 11 of the scenic trail, those bikeways by definition are *part* the scenic trail, not a *detour from*, the trail. If the Initiative proponents’ intent is to prohibit the City from spending any money to construct, improve or maintain this portion of the scenic trail so as to render the Trestle the only feasible bicycle / pedestrian scenic trail pathway through Capitola, this section of the Initiative is in direct conflict with all of the foregoing policies that unequivocally call for the City to spend funds and resources to construct, enhance, improve and maintain Village bikeways in the City of Capitola and to do so in a fashion that seamlessly integrates those bikeways into the scenic trail called for by the Trail Master Plan.

2B. Monterey Bay Sanctuary Scenic Trail Master Plan Consistency

As noted above, the Initiative does not expressly reference the Trail Master Plan. It nonetheless directly implicates that Trail Master Plan which was adopted by the Santa Cruz Regional Transportation Commission on November 7, 2013 and was subsequently unanimously adopted by the City Council, per Resolution No. 4019, on April 9, 2015. As noted above the Trail Master Plan’s scenic trail and rail corridor is identified as part of Capitola’s integrated transportation network in its June 2014 General Plan. Resolution No. 4019 was accordingly adopted pursuant to General Plan policies calling for the scenic trail, as designed in the Trail Master Plan, to traverse Capitola. Thereafter, per Resolution 4044 adopted unanimously on January 28, 2016, the Capitola City Council endorsed a regional sales tax spending plan calling for the expenditure of 15% of certain sales tax revenues on the development of the county-wide scenic trail called for by the Trail Master Plan.

The Trail Master Plan's overarching objective is summarized by Representative Sam Farr in his letter which introduces the Trail Master Plan:

With the rail corridor as a tremendous new public resource, the Santa Cruz County Regional Transportation Commission is in a unique position to provide a continuous and separated bicycle and pedestrian path as the spine of a braided Trail Network. The primary corridor will link coastal access to schools, retail centers, residences and other destinations in our vibrant community. *The rail right-of-way will also serve freight and passenger rail service thereby expanding travel options and providing unprecedented integration of bicycle, pedestrian and transit options.* (Italics added)

The Trail Master Plan articulates a number of objectives and policies that are applicable to the Capitola segment of the scenic trail:

- Objective 1.1 – Provide a continuous public trail along the Santa Cruz Branch Line railroad corridor and connecting spur trails within Santa Cruz County. (The Initiative would prohibit a spur trail from the Trestle.)
- Policy 1.1.3 – Use existing built trails, roadways, and other transportation facilities to the fullest extent possible to provide for the primary trail alignment and spur trails. (This would include existing Capitola bikeways within the Village.)
- Policy 1.2.2. – Provide safe, direct linkages between trails and paved pathways, bike lanes, transit terminals, bus stops and parking facilities. (This would include linkages from the rail bed to Capitola bikeways in the Village which the Initiative prohibits.)
- Policy 1.2.4 – Develop trails in such a way so that future rail transit services along the corridor are not precluded. (Because the Capitola railroad trestle is currently not wide enough to accommodate pedestrians, cyclists and trains simultaneously, the practical effect of the Initiative's implementation would be to sever the railroad at this particular artery thereby frustrating this particular Trail Master Plan policy and eliminating county-wide railroad service along this rail corridor.)

Section 3.4 of the Master Plan specifically addresses one Capitola segment of the scenic trail, also referred to as "Segment 11" and the "Central Reach." At page 3-10, the Master Plan notes:

"Other challenges along the Central Reach are the many existing large rail bridge and trestle structure crossings. These structures are old, narrow in width, and span steep drainages and roadways. In one scenario the structure spans across a historic district in Capitola. The southern portion of the Central Reach parallels the coast meandering atop the steep coastal bluffs and multiple residential and resort areas. The Central Reach connects over six state beaches, numerous coastal access points, parks, schools, and provides future connection opportunities for countless communities along the corridor." (This would include the connection opportunity between the rail trail and the Village, which the Initiative prohibits.)

Section 4.11.1 of the Trail Master Plan specifically states that the existing bikeway network through the Village is, of necessity, an integral component of the scenic trail:

“The boundary for Segment 11 is determined by the terminus of Segment 10 at Jade Street Park. Segment 11 runs from Jade Street Park at 47th Avenue down the coast 3.2 miles to State Park Drive. This segment is impacted by extreme topography, dense urban development, and infrastructure constraints through Capitola. The existing on-street bike and pedestrian facilities will need to support the connection for the Coastal Rail Trail until Segments 10 and 11 can be completed.

Section 4.11.2 expands on this obvious physical constraint:

“The greatest challenge in this segment is the rail trestle crossing of Soquel Creek. The current rail trestle passes through a historic district. There are current discussions about improvements to this bridge trestle due to structural conditions. Coastal trail access through this area will need to continue on existing surface streets and sidewalks to cross Soquel Creek and navigate through Capitola Village. Future plans for the rail trestle replacement should include a new bike/pedestrian facility in the bridge design. The cost for this larger iconic bridge structure has not yet been determined and does not appear in this Master Plan.”

The Segment 11 trail alignment is mapped at page 4-63 of the Master Plan and it clearly illustrates the scenic trail’s path through Capitola Village including the alignment “connection points” pursuant to which the trail descends from the rail grade into the Village and, using the Village’s existing bikeways, circumvents the subject railroad trestle so as to implement all of the Trail Master Plan objectives and policies outlined above. The Initiative clearly prohibits the City from appropriating any human or fiscal resources towards the implementation of these Trail Master Plan policies with reference to the portion of the scenic trail addressed by the Initiative. Accordingly, as with the other planning documents referenced in Section 2A, the Initiative directly contradicts the Trail Master Plan.

3. LEGAL ANALYSIS

The Initiative is subject to a legal challenge on four separate bases: as proposing an implied amendment to the Capitola General Plan; as being administrative rather than legislative in nature; as impermissibly interfering with the City Council’s fiscal authority and responsibility; and as being unduly vague.

3A. GENERAL PLAN – IMPLIED AMENDMENT

As explained above although the ordinance proposed by the Initiative, at Section 8.72.060, states that it shall not be construed as amending any General Plan provisions but “rather shall be construed and harmonized in a manner to strengthen and define such provisions,” it is readily apparent in light of the direct contradictions between the ordinance and General Plan provisions outlined in Section 2A, the ordinance, with regard to the referenced General Plan provisions, cannot be construed as “strengthening” those provisions. To the contrary the ordinance would prohibit implementation of those General Plan provisions thereby effectively nullifying them and amending them out of the General Plan.

In *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 53 Cal 3d 531, the California Supreme Court invalidated a Walnut Creek traffic control initiative it found to be in conflict with that city’s pro-growth General Plan. Noting that under California statutory law (Government Code Section 65860) land use ordinances that conflict with a city’s General Plan are invalid, the Court held that unless voters clearly intended to amend a city’s General Plan in adopting an initiative that is inconsistent with that General Plan the initiative will be judicially invalidated. In this case where the Greenway Capitola Corridor Initiative expressly states that the Initiative “shall not be construed as amending or rescinding any provisions of the general plan”, it is highly unlikely that a court will find an electorate intent to do so. Therefore, given the inconsistencies between the Initiative and the Capitola General Plan, there is a likelihood that a court would invalidate the Initiative on this basis.

3B. ADMINISTRATIVE / LEGISLATIVE

As explained above, the Initiative pertains directly to one land use plan and indirectly to another, both of which were legislatively adopted.¹ The Initiative refers to provisions in the Trail Master Plan which call for routing bicycle and pedestrian trail users through Capitola Village in lieu of routing them over the Trestle which is not wide enough to simultaneously accommodate those users and trains. Nowhere does the Initiative suggest that it is intended to amend the Trail Master Plan. In fact, as noted earlier, the Initiative does not expressly reference the Trail Master Plan. It only obliquely refers to “proposals” that the Regional Transportation Commission and the City Council have actually legislatively promulgated as policy with their adoption of the Trail Master Plan. The Initiative by its terms directs City departments, agencies and employees

¹ The adoption of land use plans, such as a General Plan or a specific plan, and amendments to those plans, constitute legislative acts. *Yost v. Thomas* (1984) 36 Cal. 3d 561, 570.

in the manner by which they are to implement (or more accurately decline to implement or even maintain) Segment 11 of the Trail Master Plan.

In *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal. App. 4th 1311, Orange County voters, per a 1999 initiative, Measure A, adopted a land use plan for a former military base which included a civilian airport. In 2000 the voters adopted a subsequent initiative, Measure F, which listed a number of projects called for by the Measure A land use plan, including the airport, and decreed that those projects could not be implemented absent a prior 2/3 affirmative vote of the electorate. The ballot materials indicated that a primary objective of Measure F was to frustrate development of the subject airport. In finding Measure F invalid, the appellate court, at pp. 1332-1333 stated:

“While it has been generally said that the reserved power of initiative and referendum accorded by article IV, section 1, of the Constitution is to be liberally construed to uphold it whenever reasonable, it is established beyond dispute that the power of referendum may be invoked only with respect to matters which are strictly legislative in character. Under an unbroken line of authorities, administrative or executive acts are not within the reach of the referendum process. The plausible rationale for this rule espoused in numerous cases is that to allow the referendum or initiative to be invoked to annul or delay the executive or administrative conduct would destroy the efficient administration of the business affairs of a city or municipality” ...

The acts, ordinances and resolutions of a municipal governing body may, of course, be legislative in nature or they may be of an administrative or executive character. Also well settled is the distinction between the exercise of local legislative power, and acts of an administrative nature. *‘The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it’* ... *‘Acts constituting a declaration of public purpose, and making provisions for ways and means of its accomplishment, may be generally classified as calling for the exercise of legislative power. Acts which are to be deemed as acts of administration, and classed among those governmental powers properly assigned to the executive department, are those which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body, or such as are devolved upon it by the organic law of its existence.’* (Italics original)

The operative provision of the Initiative expressly gives direction to the City’s “constituent departments” with regard to the manner in which they will administer “construction, reconstruction, operation, maintenance, financing, marketing, or signage” for a portion of the scenic trail in the City. As such the Initiative prescribes acts “which

are properly assigned to the [City's] executive department", i.e. the City Manager who, through the City's constituent departments implements City policy legislatively promulgated by the City Council. ²

Viewed in this context the Initiative, in the language cited by the *Citizens* court, "merely pursues a plan already adopted by the legislative body itself, or some power superior to it," i.e. the Trail Master Plan adopted by the Regional Transportation Commission and City Council; hence the Initiative impermissibly decrees an act of administration, i.e. "those [acts] which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body..." *Citizens, supra* at pp. 1332-1333. On this basis it is fair to conclude that a court would likely invalidate the Initiative as calling for administrative action, i.e. dictating conduct on the part of City staff which would effectively serve to annul or destroy the efficient administration of the Trail Master Plan's implementation.

3.C. FISCAL INTERFERENCE

Like the adoption of a land use plan, the adoption of a city budget by a city council constitutes a legislative act. *Scott v. Common Council* (1996) 44 Cal. App.4th 684,690. The City Council in 2016 with its adoption of Resolution 4044, referenced above at Section 2B, made a political commitment to exercise its fiscal discretion so as to devote a substantial percentage of its share of regional sales tax revenue to the development of Segment 11 of the scenic trail. While the Capitola 2014/15 – 2018/19 Capital Improvement Program (the "CIP"), adopted prior to the voters' 2016 approval of the regional sales tax, does not specifically call for any bikeway improvements, the CIP at page 13 does call for "pedestrian safety devices at the Stockton Avenue / Esplanade intersection." And while the current CIP is silent with respect to bikeway improvements, it is foreseeable in light of the City Council's above-referenced political commitment, that it will include some bikeway improvements in its next CIP, presumably scheduled for adoption in 2019.

As noted above the Initiative flatly and indefinitely prohibits the City from expending "any funds or resources related to the construction, reconstruction, operation, maintenance, financing, marketing or signage for a detour of the Trail onto Capitola Streets or sidewalks." In

² For a full explanation of the City Manager's legal authority and responsibility for the City's administrative operations, refer to California Government Code Sections 34851-3482 and Capitola Municipal Code Sections 2.08.070-2.08.240.

other words, the Initiative prohibits the City Council from budgeting or planning for any bikeway or pedestrian improvements which might facilitate the flow of bicycle or pedestrian traffic through the Village to or from the Trestle. For example, to the extent that the aforementioned Stockton Avenue / Esplanade intersection pedestrian safety devices might be “related to” facilitating the flow of pedestrian traffic from the Trestle through that intersection, the City Council would be prohibited from allocating funds to that project and the City’s Public Works Department would be prohibited from implementing that project despite budget policies calling for the project and despite the project’s inclusion in the CIP.

Just as an initiative directing how a land use plan is to be implemented or interfered with constitutes an unlawful attempt to impair governmental functions, similarly an initiative which purports to constrain the fiscal prerogatives of a city council constitutes “an unlawful attempt to impair essential governmental functions through interference with the administration of the City’s fiscal powers”. *City of Atascadero v. Daly* (1982) 135 Cal. App. 3d 466, 470. As explained by the Supreme Court in *Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 839-840, this rule applies to Capitola City Council budget appropriations which the Initiative would prohibit:

Although it is the general rule that referendum provisions are to be liberally construed in favor of the reserved power, it is settled that consideration must also be given to the consequences of applying the rule. ... If essential governmental functions would be seriously impaired by the referendum process, the courts, in construing the applicable constitutional and statutory provisions, will assume that no such result was intended. ... One of the reasons, if not the chief reason, why the Constitution excepts from the referendum power acts of the Legislature providing for tax levies *or appropriations* for the usual current expenses of the state is to prevent disruption of its operations by interference with the administration of its fiscal powers and policies. The same reasoning applies to similar acts of a county board of supervisors... (Italics added)

In striking an initiative which would have repealed a pre-Proposition 218 transient occupancy tax ordinance, the court in *Myer v. City Council of Pismo Beach* (1966) 241 Cal. App. 2d 237, 244 succinctly stated the rationale for this rule:

Such a proposed initiative ordinance, even if approved by a vote of the electors, cannot be used as a means of tying the hands of the city council and depriving it of the right and duty to exercise its discretionary power in a taxation matter such as is here involved.

In summary the Capitola City Council has both a “right and duty” to exercise its fiscal discretion and an initiative which would serve to “tie the hands” of the Council when it comes to

certain bicycle/pedestrian safety expenditures which the Council might deem in the best interest of the public, will likely not withstand judicial scrutiny.

3D. VAGUENESS

As noted earlier Section 8.72.040 A of the Initiative’s proposed ordinance requires City departments to “*take all steps necessary*” to preserve and utilize the Corridor and Trestle for active transportation and recreation, while Section 8.72.040 B prohibits City departments, agencies and employees from expending “*any funds or resources*” for purposes “*related to*” construction, reconstruction, operation, maintenance, financing, marketing or signage facilitating a “*detour*” of the scenic trail onto Capitola streets or sidewalks. The italicized language begs the question of what steps constitute “necessary steps” for preservation and utilization of the trail and corridors, what “funds or resources” are “related to” the subject detour, and what exactly is the “detour” for which funding/resource appropriations are prohibited. The italicized language further begs the question of who determines what “steps” are “necessary”, and when a funding or resource decision is “related to” the subject undefined “detour”.

For example, the Mobility Element of the Capitola General Plan calls for the City’s compliance with the California Complete Streets Act which, in turn, calls for the City to develop an integrated network of sidewalks, streets and pathways suitable for a variety of transit modalities. In other words, all of the City’s streets, sidewalks and pathways, constituting an integrated transit network, are “related to” one another. To this end Plan Goal MO-2 directs the City to:

“Provide for ‘Complete Streets’ that serve all modes of transportation, including vehicles, public transit, bicyclists, and pedestrians.”

As further explained at page MO-6 of the General Plan:

The California Complete Streets Act (AB 1358) requires Capitola to plan for multimodal transportation networks in the General Plan. These networks should allow for travel by motor vehicle, foot, bicycle, and transit to reach key destinations in Capitola and the larger region. All street improvement projects should be viewed as opportunities to improve safety, access, and mobility for all travelers. Capitola can use complete streets design to enhance streets for all modes and all users no matter their age or ability.

In summary, viewed in this General Plan context, *any* improvement to City bicycle and pedestrian pathways which might make it easier for cyclists and pedestrians to access or egress

the Trestle, no matter their proximity to the Trestle, might be “related to” the funding and resource expenditures prohibited by the Initiative.

A more reasonable and narrower interpretation is that the Initiative’s funding / resource restrictions only refer to appropriations for repairs, maintenance, construction and signage that might improve bicycle / pedestrian facilities within the detour. However, the Initiative does not define its use of the term “detour.” Employing a Webster’s Dictionary definition (New College Edition, 1981) a “detour” is a “deviation from a direct course.” In this context the “direct course” is the rail corridor traversing Capitola and the “deviation” would therefore be that portion of the scenic trail which departs the rail corridor at the Trestle to the point at which it re-joins the rail corridor near the intersection of Park and Monterey Avenue, a distance of approximately 8/10 of a mile. Nonetheless, absent a definition, it is not clear whether the Initiative proponents intend an appropriations prohibition on this level of magnitude.

An apparent intended near-term objective of the Initiative is City inaction which would effectively sever the County’s single county-wide railroad corridor and preclude implementation of regional planning policies (agreed to by Santa Cruz County and each of the County’s four cities) concerning rail transit as articulated in the Trail Master Plan. However, this objective overlooks the fact that the Regional Transportation Commission, not the City, owns, maintains and regulates the Trestle’s use. As a result, the only real scenic trail impact that would ensue upon adoption of the Initiative would be an inability on the City’s part to improve or maintain a portion of the scenic trail that traverses City streets. The Initiative will not serve to assure that the Regional Transportation Commission grants cyclist/pedestrian access to the Trestle or prohibits rail traffic on the Trestle. Considered in this light, the “steps necessary” which a 1.68 square mile city with a population of approximately 10,000 would need to take in order to accomplish the Initiative’s “no rail” objective in all likelihood exceed the City’s practical, funding and legal capabilities.

“A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.” *Connally v. General Construction Co.* (1926) 269 U.S. 385, 391. Citing this United Supreme Court foundational language for the vagueness doctrine, the California Supreme Court in *Evangelatos v. Superior Court* (1988) 44 Cal. 3d 1188, 1201 articulated the standard for gauging a statute’s validity against a vagueness challenge:

Many, probably most, statutes are ambiguous in some respects and instances invariably arise under which the application of statutory language may be unclear. So long as a statute does not threaten to infringe on the exercise of First Amendment or other constitutional rights, however, such ambiguities, even if numerous, do not justify the invalidation of a statute on its face. In order to succeed on a facial vagueness challenge to a legislative measure that does not threaten constitutionally protected conduct like the initiative measure at issue here a party must do more than identify some instances in which the application of the statute may be uncertain or ambiguous; he must demonstrate that “the law is impermissibly vague *in all of its applications.*”

While the vagueness bar set by the California Supreme Court is high, it is not insurmountable and in cases such as this, a court will seriously consider its application. The California Supreme Court in *Citizens for Jobs and the Economy* decision referenced in Section 3B, quoted language in the challenged Measure F initiative, analogous to the Initiative’s “any funding or resources,” “related to” and “all steps necessary” language, noting its breadth and ambiguity, and concluded that the quoted language rendered Measure F void for vagueness:

In section 4 of Measure F, the County would be allowed to expend funds “*as necessary for the planning of any project* listed in Section Three and for the submission of an approved project to the voters for ratification as required herein, but only upon a vote of the Board of Supervisors after public hearing *and only to the extent necessary* (A) to define the project; (B) to prepare an environmental impact report, [etc.] ... The Board of Supervisors may expend no other funds *for any other purposes relating to any such project, until and unless the act by the County to approve the project is ratified by the voters* as required by Section Three.” (Italics added.) Spending is also allowed “as may otherwise be required by state or federal law.” These terms clearly circumscribe the discretion of the Board, but it is not possible to tell to what extent. Who is to decide what spending is necessary, or for what purposes that are sufficiently related to the project?...

The uncertainty of the type of instructions imposed on the Board, in the context of the planning process authorized by Measure A, interacts in this case with the other defects already identified in the measure to demonstrate its invalidity. *Citizens, supra at p. 1335* (Italics original)

Similarly, here the Initiative clearly circumscribes the discretion of the City Council to fund certain projects (Section 8.72.040.B)) and mandates that City staff undertake other projects (Section 8.72.040.A), but it is not possible to tell to what extent who is to decide, or what projects are sufficiently related to the undefined detour to warrant proscription under the Initiative. In light of these factors there is a likelihood that a court would overturn the Initiative on vagueness grounds.

4. FISCAL, TRANSPORTATION INFRASTRUCTURE, TRAFFIC IMPACTS

4A. INTERPRETATION

Given the Initiative's vague and ambiguous text it is not possible to gauge its potential fiscal, traffic and transportation impacts with any level of accuracy as those impacts, in large part, would depend upon how the Initiative is interpreted and thereby applied. Section 8.72.040 A directs the City to take all steps necessary to preserve and utilize the Corridor/Trestle for cyclist and pedestrian use. The City does not own, manage or have regulatory authority over the Corridor or Trestle. Therefore, it is unclear what specific actions the City could legally take to comply with this language. As a result, it is impossible to determine with any accuracy what impacts on City resources, are implicated by this Initiative mandate.

Until such time as the Regional Transportation Commission constructs (or authorizes another entity to construct) a pedestrian/bicycle path on the Trestle, the prohibitions contained in Section 8.72.040B would clearly restrict specific activity by the City. If the Regional Transportation Commission constructs a pedestrian / bike path on the Trestle, it is not clear whether the prohibitions contained in Section 8.72.040B of the Initiative would continue or expire. The Initiative simply fails to address this scenario. However, even the specific activity that Section 8.72.040B prohibits is open to interpretation. Specifically, the operative language prohibiting the City from using funds or resources "for a detour of the Trail onto Capitola streets or sidewalks" is ambiguous.

There are two alternative interpretations of Section 8.72.040B that are analyzed in this report. While there are other more tenuous interpretations of Section 8.72.040B, they are not considered here due to time constraints.

Interpretation A:

Section 8.72.040B would prohibit the City from expending resources to maintain or construct a short link between the Trestle and City streets/sidewalks. This interpretation would not prohibit the City from maintaining and building bike paths and sidewalks that allow users to travel through the Village along the route of the scenic trail. (The Initiative simply references "a detour of the *Trail* onto Capitola streets or sidewalks". Thus, read literally, it pertains to any egress to or access from, the rail corridor to City streets or sidewalks. Other portions of the Initiative, discussed in Section 1, indicate the proponents are concerned primarily with the *Trestle* access / egress.)

Interpretation B:

Section 8.72.040B would prohibit the City from constructing or maintaining bike and pedestrian facilities on streets and sidewalks that could be used to allow pedestrians or cyclists to travel through the Village along the route of the scenic trail. Under this interpretation the prohibition would apply to the existing bike paths and sidewalks on Cliff Drive, Stockton Bridge, Stockton Avenue, Capitola Avenue, and Monterey Avenue.

4B. IMPACTS

If the Initiative is applicable to the entire street and sidewalk connection through the Capitola Village under Interpretation B (see “detour” definition discussion in Section 3D), the impacts would be far greater than those implicated by Interpretation A.

Fiscal / Traffic Infrastructure Impacts:

Interpretation A: Under Interpretation A, there is no foreseeable change in business activity in the Village. In terms of potential grant funding, if the Regional Transportation Commission constructed a bike/pedestrian path over the Trestle there would be no likely impacts from the Initiative. If the Regional Transportation Commission does not construct a bike/pedestrian path over the Trestle, the Initiative would likely make City grant applications slightly less competitive. The lack of signage and the consequential absence of a designated scenic trail through the Village would potentially render City grant applications less viable.

Interpretation B: Prohibiting the expenditure of funds for the construction and maintenance of bicycle and pedestrian infrastructure which allows scenic trail users to circumvent the Trestle by going through the Village along the route of the Master Trial Plan’s designated scenic trail would have a potential negative impact on commercial activity in the Village. In the near term that impact would likely be insignificant as the status quo would continue. However, in the longer term, the prohibition on the expenditure of funds for construction and maintenance of bicycle and pedestrian infrastructure would result in deteriorating conditions on sidewalks and bike lanes in the Village along the scenic trail route. It is then likely that deteriorating infrastructure would negatively impact the visitor experience resulting in reduced retail sales and, potentially, reduced hotel and short-term rental activity. It is impossible to precisely quantify this fiscal impact, but the negative impact would likely increase over time, potentially to significant levels within ten to twenty years.

Additionally, liability exposure for the City associated with Interpretation B could be significant and would likely increase over time. The prohibition on maintenance of pedestrian and bike facilities in the Village would potentially, and clearly, increase the likelihood of accidents and consequential personal injury lawsuits predicated upon the dangerous condition of public property.

The negative impacts to potential future grant applications would be more significant under Interpretation B. If the Regional Transportation Commission does not construct a bike/pedestrian path over the Trestle, the Initiative would likely make City grant application less competitive because the scenic trail would be fragmented as a result of City inaction. As written, the Initiative would prohibit the City from appropriating any funds, no matter the source, for scenic trail improvement or maintenance within (and possibly beyond) the Village. This could potentially result in the City losing millions of dollars in local, state, and federal funds for improvements to the scenic trail within City limits.

Traffic Impacts:

Interpretation A: Prohibiting new connections between the scenic trail and City streets/sidewalks would have minimal impacts on traffic congestion. The existing sidewalks and bike lanes currently allow cyclists and pedestrians to travel through the Village along a route which allows them to avoid the Trestle. A prohibition on connections between the rail corridor and the existing road network will most likely not change the volume of bicycle and pedestrian trips on City streets and sidewalks in general and on Village streets and sidewalks in particular.

Interpretation B: In the short term, prohibiting the expenditure of funds for the operation and maintenance of existing bicycle and pedestrian infrastructure which currently already allows scenic trail users to go avoid the Trestle and access the Village would have minimal impacts on traffic congestion. Existing improvements would remain in place and therefore no near-term change in the volume of bicycle and pedestrian trips would be anticipated.

In the long term, without being able to maintain or construct new pedestrian and bicycle infrastructure, these facilities will deteriorate. In addition, as other segments of the scenic trail are completed, it is likely that pedestrian and bicycle trip volumes will increase. That increase coupled with deteriorating infrastructure will, over the long term, eventually lead to increased hazardous and detrimental conflicts between bikes, pedestrians and motorists.



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: City Manager Department

SUBJECT: Determine Award Amounts for Community Grants

RECOMMENDED ACTION: Consider the recommendations from the Community Grants Ad-Hoc Subcommittee and determine grant award amounts for Fiscal Years 2018/19 and 2019/20. Consider the subcommittee suggestion to create a Local Critical Need Fund.

BACKGROUND: At the May 30, 2018, Budget Hearing, Council approved a budget of \$275,000 for the Capitola Community Grant Program in both fiscal year 2018/2019 and 2019/2020. The Council directed staff to accept applications from existing grantees for a two-year grant cycle from July 1, 2018, through June 30, 2020. Applications were sent to existing grantees on May 31, 2018.

At the same Council meeting, Councilmembers Bottorff and Peterson were appointed to serve on a subcommittee to make allocation recommendations to the full Council.

DISCUSSION: The application process for the two-year grant cycle closed on July 2, 2018. For the Fiscal Year 2018/19 and 2019/20 cycle, the City received grant applications for 40 programs from 30 community agencies. Families in Transition and Campus Kids Connection did not apply for the current grant cycle.

The City received grant requests totaling \$270,947.00 for both 2018/2019 and 2019/2020.

The appointed subcommittee met in July to review the grant requests and make recommendations to the City Council. The subcommittee recommended using the 2017/2018 award amount as the base for the 2018/2019 with a 2 percent adjustment and an additional 2 percent adjustment for 2019/2020.

The exceptions to this formula are the Senior Citizens Legal Services and the Lift Line Program for Community Bridges.

The base used for Senior Citizens Legal Services is the 2015/2016 award amount, which is higher than the 2017/2018 award amount. Council reduced the Senior award in 2016/2017 by 15 percent. Community Bridges reduced its current request amount from the 2017/2018 award amount of \$47,934 to \$30,000 in 2018/2019.

The subcommittee made award recommendations totaling \$240,914 for 2018/2019 and \$245,732 for 2019/2020. These amounts are \$34,086 and \$29,268 less than budgeted amounts.

Community Grants
August 9, 2018

The subcommittee also suggested the City create a Local Critical Need Fund in 2018/2019 with some of the remaining Community Grant budget. This fund would be available for use for local critical need issues as designated by the City.

FISCAL IMPACT: In fiscal year 2018/2019, the subcommittee recommended award amount is \$240,914. In 2019/2020 the subcommittee recommended award amount is \$245,732.

ATTACHMENTS:

1. Community Grants Subcommittee Award Recommendations for 2018-2020

Report Prepared By: Larry Laurent
Assistant to the City Manager

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

8/3/2018

2018 - 2020 Capitola Community Grant Applications

Community Grant Applicants	Target	17-18 Award	18-19 Request	18/19 Award Recommended by subcommittee 2 % COLA from 17/18	19/20 Award Recommended by subcommittee 2 % COLA from 18/19	Notes
	Population					
	Demograph					
Advocacy, Inc.		\$7,680.00	\$7,680.00	\$7,834.00	\$7,990.00	
Big Brothers Big Sisters of Santa Cruz County, Inc	Youth	\$2,886.00	\$5,000.00	\$2,944.00	\$3,003.00	
Cabrillo Stroke and Disability Learning Center		\$7,168.00	\$7,383.00	\$7,311.00	\$7,458.00	
Campus Kids Connection, Inc.	Youth	\$15,638.00	\$0.00	\$0.00	\$0.00	Did not apply
Central Coast Center for Independent Living		\$10,095.00	\$15,000.00	\$10,297.00	\$10,503.00	
CAB of Santa Cruz County, Inc. , The Shelter Project		\$1,378.00	\$2,500.00	\$1,406.00	\$1,434.00	
Community Bridges (CB)		\$113,324.00	\$98,269.00	\$96,698.00	\$98,632.00	
CB- Meals on Wheels for Santa Cruz County		\$59,327.00	\$61,344.00	\$60,514.00	\$61,724.00	
CB- Lift Line		\$47,934.00	\$30,000.00	\$30,000.00	\$30,000.00	Requested Less
CB- Live Oak Community Resources		\$5,138.00	\$6,000.00	\$5,241.00	\$5,346.00	
CB-Child Development Division	Youth	\$925.00	\$925.00	\$944.00	\$962.00	
Conflict Resolution Center of Santa Cruz		\$3,215.00	\$5,000.00	\$3,279.00	\$3,345.00	
Court Appointed Special Advocates of Santa Cruz County	Youth	\$3,169.00	\$5,000.00	\$3,232.00	\$3,297.00	
Arts Council of Santa Cruz County		\$997.00	\$5,000.00	\$1,017.00	\$1,037.00	
Dientes Community Dental Care		\$1,403.00	\$1,431.00	\$1,431.00	\$1,460.00	
Encompass Community Services (ENC)		\$14,893.00	\$15,894.54	\$15,191.00	\$15,495.00	
ENC-Youth Services Counseling	Youth	\$7,305.00	\$7,500.00	\$7,451.00	\$7,600.00	
ENC-Santa Cruz AIDS Project		\$7,588.00	\$8,394.54	\$7,740.00	\$7,895.00	
Families In Transition	Youth	\$2,521.00	\$0.00	\$0.00	\$0.00	Did not apply
Family Service Agency of the Central Coast (FSA)		\$11,761.00	\$11,761.00	\$11,996.00	\$12,236.00	
FSA-Counseling - North County		\$4,903.00	\$4,903.00	\$5,001.00	\$5,101.00	
FSA-I-You Venture		\$1,399.00	\$1,399.00	\$1,427.00	\$1,456.00	
FSA- Senior Outreach		\$1,399.00	\$1,399.00	\$1,427.00	\$1,456.00	
FSA-Suicide Prevention		\$1,216.00	\$1,216.00	\$1,240.00	\$1,265.00	
FSA-Survivors Healing Center		\$492.00	\$492.00	\$502.00	\$512.00	
FSA-WomenCARE		\$2,352.00	\$2,352.00	\$2,399.00	\$2,447.00	
Grey Bears		\$14,864.00	\$17,500.00	\$15,161.00	\$15,465.00	
Homeless Services Center		\$2,680.00	\$3,500.00	\$2,734.00	\$2,788.00	
Hospice of Santa Cruz County		\$1,608.00	\$2,500.00	\$1,640.00	\$1,673.00	
Monarch Services Servicios Monarca		\$3,797.00	\$3,909.00	\$3,873.00	\$3,950.00	
Native Animal Rescue		\$1,200.00	\$2,800.00	\$1,224.00	\$1,248.00	
O'Neill Sea Odyssey	Youth	\$2,943.00	\$2,943.00	\$3,002.00	\$3,062.00	
Parents Center Santa Cruz	Youth	\$6,500.00	\$6,500.00	\$6,630.00	\$6,763.00	
Santa Cruz Toddler Care Center	Youth	\$1,248.00	\$2,500.00	\$1,273.00	\$1,298.00	
Second Harvest Food Bank Santa Cruz County		\$10,455.00	\$10,500.00	\$10,664.00	\$10,877.00	
Senior Citizens Legal Services		\$8,836.00	\$11,000.00	\$10,366.00	\$10,574.00	2018 Amount based on 15/16 award
Senior Network Services, Inc.		\$2,563.00	\$2,645.00	\$2,614.00	\$2,667.00	

2018 - 2020 Capitola Community Grant Applications

Seniors Council of Santa Cruz and San Benito Counties (SC)		\$8,537.00	\$10,000.00	\$8,708.00	\$8,882.00	
SC-Project Scout		\$3,437.00	\$5,000.00	\$3,506.00	\$3,576.00	
SC-Companion for Life/Lifeline		\$5,100.00	\$5,000.00	\$5,202.00	\$5,306.00	
The Diversity Center		\$1,072.00	\$2,500.00	\$1,093.00	\$1,115.00	
United Way (UW)		\$7,446.00	\$4,000.00	\$4,080.00	\$4,162.00	
UW-Community Assessment Project	Youth	\$6,470.00	\$2,000.00	\$2,040.00	\$2,081.00	
UW-2-1-1 Help Line		\$976.00	\$2,000.00	\$2,040.00	\$2,081.00	
Vista Center for the Blind and Visually Impaired		\$1,898.00	\$2,232.00	\$1,936.00	\$1,975.00	
Volunteer Center of Santa Cruz		\$3,215.00	\$6,000.00	\$3,279.00	\$3,345.00	
TOTALS		\$274,990.00	\$270,947.54	\$240,914.00	\$245,732.00	



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: City Manager Department

SUBJECT: Review the Deadlines and Procedures for Ballot Measure Arguments

RECOMMENDED ACTION:

1. Review deadlines for arguments and rebuttals regarding Capitola's November 6, 2018, ballot measures.
2. Consider designating two Council members to draft, identify signers and submit an argument in favor for the TOT ballot item .
3. Consider designating two Council members to work with the Treasurer to draft, identify signers and submit an argument in favor for the Treasurer ballot item.
4. Review the draft Cannabis Tax argument prepared by Mayor Termini.

BACKGROUND: On July 26, the City Council placed three measures on the ballot for the November 6, 2018, consolidated general municipal election. In addition, a citizen initiative qualified for the ballot and a resolution placing it on the ballot is on this agenda. Arguments and rebuttals for and against each of these items may be submitted for printing in the County Voters' Guide.

DISCUSSION: The City Clerk/Elections Official has set the deadlines for arguments and rebuttals in coordination with the consolidated election; therefore, arguments are due by 5 p.m. on Friday, August 17, 2018, and rebuttals are due by 5 p.m. on Friday, August 24. State elections code sets the length of arguments at 300 words and rebuttals at 250 words. Elections code also defines permitted filers (§ 9282(b)):

- the City Council or a member or members authorized by that body
- an individual voter who is eligible to vote on the measure
- bona fide association of citizens
- a combination of voters and associations

The filer then designates no more than five people to sign the argument and rebuttal. The filer may sign the argument, but is not required to.

If more than one argument for or against is received, the Elections Official will choose one argument based on the following priorities (§ 9287).

- The City Council, or member or members authorized by the Council

Ballot Measure Arguments
August 9, 2018

- An individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure (for a citizen initiative)
- Bona fide associations of citizens
- Individual voters who are eligible to vote on the measure

The City Council may choose to authorize members to file arguments, or members may file as individual voters. Staff recommends that, should the Council prefer to have arguments that include community members, only two Council Members sign to prevent any Brown Act concerns of a serial meeting to discuss the content. All Council Members may provide suggestions for any argument content during this meeting discussion.

Mayor Termini has drafted an argument for the proposed cannabis business tax (Attachment 4) and is recommending that it be signed by the full Council, or four Councilmembers and Treasurer Wilk. Staff cannot prepare arguments as that would be a use of public resources for campaigning. However, the City Attorney and Finance Director can prepare impartial analyses as directed.

County Elections offers a *Guide To Writing Arguments, Rebuttal and Analyses for Local Measures* that includes the required filing forms along with instructions. It is available online at votescount.com.

Please note that although the County allows faxed or electronic submissions to meet its deadlines, Capitola is requiring that hard copies with original signatures be submitted by the 5 p.m. deadline to qualify. Attachments 1-3 are the notices for the City's measures.

FISCAL IMPACT: The Fiscal Year 2018/19 Budget includes funding for elections costs. The City will be billed following the election based on the number of voters and amount of printing.

ATTACHMENTS:

1. TOT Notice of Measure 2018
2. Cannabis Tax Notice of Measure 2018
3. Appointed Treasurer Notice of Measure 2018
4. Draft cannabis argument

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:

Jamie Goldstein, City Manager

8/3/2018



NOTICE OF MEASURE TO BE PLACED BEFORE VOTERS

Capitola Proposes an Increased Visitors Service Fee (Transient Occupancy Tax) Tax Measure for the November 6, 2018, General Municipal Election and Fixes Times for Submission of Arguments and Rebuttals

NOTICE IS HEREBY GIVEN that at its meeting on July 26, 2018, the Capitola City Council adopted Resolution No. 4121 placing a ballot measure for voters' consideration to raise the Visitors Service Fee (Transient Occupancy Tax) from 10 percent to 12 percent.

The following question shall be submitted to the voters of the City of Capitola at the General Municipal Election to be held on Tuesday, November 6, 2018:

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

Argument and rebuttal deadlines for the City of Capitola Ballot Measures have been established in coordination with those for the Santa Cruz County Consolidated General Election as follows:

- Arguments for or against: August 17, 2018
- End of 10-day public inspection: August 27, 2018
- Impartial Analysis (City Attorney): August 17, 2018
- Rebuttals: August 24, 2018
- End of 10-day public inspection: September 4, 2018

Complete filed and signed arguments and rebuttals are due at City Hall by **5 p.m.** on the deadline date. **ELECTRONIC OR FAXED SUBMISSIONS ARE NOT ACCEPTABLE.** Those arguments and rebuttals selected by the City Elections Official to be printed must then be emailed to Gail.Pellerin@santacruzcounty.us

Filing Location: Office of the City Clerk, Capitola City Hall, 420 Capitola Avenue, Capitola, CA
Phone (831) 475-7300

Arguments and rebuttals will be available for public review during regular office hours.

Attachment: TOT Notice of Measure 2018 (Ballot Measure Arguments)



NOTICE OF MEASURE TO BE PLACED BEFORE VOTERS

Capitola Proposes a New Cannabis Business Tax Measure for the November 6, 2018, General Municipal Election and Fixes Times for Submission of Arguments and Rebuttals

NOTICE IS HEREBY GIVEN that at its meeting on July 26, 2018, the Capitola City Council adopted Resolution No. 4122 placing a ballot measure for voters' consideration to create a Cannabis Business Tax of no more than 7 percent.

The following question shall be submitted to the voters of the City of Capitola at the Consolidated General Municipal Election to be held on Tuesday, November 6, 2018:

To protect the quality of life in the City of Capitola and to fund essential City services such as sidewalks, streets, and emergency response, shall Capitola voters enact an ordinance establishing a tax of no more than 7% on cannabis businesses in the city, generating estimated revenue of up to \$310,000 annually per cannabis business, to remain in effect until changed or ended by voters, with all funds staying local?	Yes	
	No	

Argument and rebuttal deadlines for the City of Capitola Ballot Measures have been established in coordination with those for the Santa Cruz County Consolidated General Election as follows:

- Arguments for or against: August 17, 2018
- End of 10-day public inspection: August 27, 2018
- Impartial Analysis (City Attorney): August 17, 2018
- Rebuttals: August 24, 2018
- End of 10-day public inspection: September 4, 2018

Complete filed and signed arguments and rebuttals are due at City Hall by **5 p.m.** on the deadline date. **ELECTRONIC OR FAXED SUBMISSIONS ARE NOT ACCEPTABLE.** Those arguments and rebuttals selected by the City Elections Official to be printed must then be emailed to Gail.Pellerin@santacruzcounty.us

Filing Location: Office of the City Clerk, Capitola City Hall, 420 Capitola Avenue, Capitola, CA
Phone (831) 475-7300

Arguments and rebuttals will be available for public review during regular office hours.

Attachment: Cannabis Tax Notice of Measure 2018 (Ballot Measure Arguments)



NOTICE OF MEASURE TO BE PLACED BEFORE VOTERS

Capitola Proposes Asking Voters to Change the City Treasurer from an Elected to an Appointed Position on the November 6, 2018, General Municipal Election and Fixes Times for Submission of Arguments and Rebuttals

NOTICE IS HEREBY GIVEN that at its meeting on July 26, 2018, the Capitola City Council adopted Resolution No. 4123 placing a ballot measure for voters' consideration to make the City Treasurer an appointive position.

The following question shall be submitted to the voters of the City of Capitola at the General Municipal Election to be held on Tuesday, November 6, 2018:

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

Argument and rebuttal deadlines for the City of Capitola Ballot Measures have been established in coordination with those for the Santa Cruz County Consolidated General Election as follows:

- Arguments for or against: August 17, 2018
- End of 10-day public inspection: August 27, 2018
- Impartial Analysis (City Attorney): August 17, 2018
- Rebuttals: August 24, 2018
- End of 10-day public inspection: September 4, 2018

Complete filed and signed arguments and rebuttals are due at City Hall by **5 p.m.** on the deadline date. **ELECTRONIC OR FAXED SUBMISSIONS ARE NOT ACCEPTABLE.** Those arguments and rebuttals selected by the City Elections Official to be printed must then be emailed to Gail.Pellerin@santacruzcounty.us

Filing Location: Office of the City Clerk, Capitola City Hall, 420 Capitola Avenue, Capitola, CA
Phone (831) 475-7300

Arguments and rebuttals will be available for public review during regular office hours.

Attachment: Appointed Treasurer Notice of Measure 2018 (Ballot Measure Arguments)

Draft argument in favor of cannabis tax measure

With the passage of Proposition 64, which legalized adult-use cannabis, local governments were given the responsibility to provide oversight and regulate the legalization of cannabis business within their communities.

In the City of Capitola, Proposition 64 passed by more than 65%, indicating our community's support for bringing adult-use cannabis out of the shadows and into a regulated, safety-focused business for those who choose to participate. Establishing a cannabis tax is a common-sense component of any such regulation.

Earlier this year, after a robust public process, the City Council unanimously adopted an ordinance that allows the City to ensure public safety while overseeing this growing industry. To prioritize safety and visibility, the local ordinance will only allow up to two retail cannabis stores in the Regional Commercial zone district, which located on 41st Ave and Clares around the Mall. The ordinance also created buffer zones around schools and parks, and requires best-practice controls to ensure the stores are safely operated.

The ordinance to legalize cannabis businesses will not take effect unless and until this tax proposal is approved by the voters of Capitola. The maximum tax rate will be 7%.

The tax is an important part of the City's ongoing commitment to fiscal responsibility. It was carefully crafted public forums to find the right balance between generating the revenue needed while addressing certainty for this emerging industry. Funds collected will be directed toward priorities set by residents such as maintaining long-term financial health and funding essential City services such as sidewalks, streets, and emergency response,

Measure ___ will provide additional funding to support the quality of life for our residents and our city.

Please join your entire City Council and vote YES on Measure ___.



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 9, 2018

FROM: City Manager Department

SUBJECT: Designation of the Voting Delegate and Alternate for the 2018 League of California Cities Annual Conference

RECOMMENDED ACTION: Designate Capitola's voting delegate and alternate and provide direction on the City's position on two resolutions.

BACKGROUND: The 2018 League of California Cities Annual Conference will be held in Sacramento from September 12 through September 14. At this meeting, the League holds its annual business meeting to consider and take action on resolutions that establish League policy. Two such resolutions have been selected for a vote.

DISCUSSION: To vote on these items, the City must designate a voting delegate. Attachment 1 is a memorandum from the League regarding designation of the voting delegate and alternates. These representatives must be appointed by City Council action. The League needs to be notified of appointments by August 31, 2018.

Each city should appoint one delegate and up to two alternate voting delegates, one of whom may vote if the designated voting delegate is unable to serve in that capacity. The delegate and alternate(s) must be registered to attend the conference, but they need not register for the entire conference; they may register for Friday only. (Please note that if three Council Members attend the conference, there will not be a quorum for the September 13, 2018, City Council meeting.)

The full City Council may provide direction to its voting delegate on the two resolutions, one addressing attempts to limit local decision-making authority and another regarding pesticides. These are described in Attachment 2.

At least one voting delegate or alternate must be present at the Business Meeting on Friday and in possession of the voting card in order to cast a vote.

FISCAL IMPACT: Council Members may use funds budgeted for travel and training expenses to attend the conference.

ATTACHMENTS:

1. League Voting Delegate Information
2. 2018 League Annual Conference Resolution Packet

League Voting Delegate
August 9, 2018

Report Prepared By: Linda Fridy
City Clerk

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

8/3/2018



1400 K Street, Suite 400 • Sacramento,
California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

Council Action Advised by July 31, 2018

May 17, 2018

TO: Mayors, City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – September 12 - 14, Long Beach**

The League's 2018 Annual Conference is scheduled for September 12 – 14 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly), scheduled for 12:30 p.m. on Friday, September 14, at the Long Beach Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, August 31, 2018. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note the following procedures are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one voter must be present at the

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Sacramento Convention Center, will be open at the following times: Wednesday, September 12, 8:00 a.m. – 6:00 p.m.; Thursday, September 13, 7:00 a.m. – 4:00 p.m.; and Friday, September 14, 7:30 a.m.– 11:30 a.m.. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city’s voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League’s office by Friday, August 31. If you have questions, please call Kayla Curry at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form

Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



*Annual Conference
Resolutions Packet*

2018 Annual Conference Resolutions



*Long Beach, California
September 12 – 14, 2018*

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration at the Annual Conference and referred to League policy committees.

POLICY COMMITTEES: Five policy committees will meet at the Annual Conference to consider and take action on the resolutions referred to them. The committees are: Environmental Quality, Governance, Transparency & Labor Relations; Housing, Community & Economic Development; Revenue and Taxation; and Transportation, Communication & Public Works. The committees will meet from 9:00 – 11:00 a.m. on Wednesday, September 12, at the Hyatt Regency Long Beach. The sponsors of the resolutions have been notified of the time and location of the meeting.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 13, at the Hyatt Long Beach, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president. Please check in at the registration desk for room location.

ANNUAL LUNCHEON/BUSINESS MEETING/GENERAL ASSEMBLY: This meeting will be held at 12:30 p.m. on Friday, September 14, at the Long Beach Convention Center.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Meeting of the General Assembly. This year, that deadline is 12:30 p.m., Thursday, September 13. Resolutions can be viewed on the League's Web site: www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: mdesmond@cacities.org or (916) 658-8224

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities is through the League's seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
 - (c) Consider important issues not adequately addressed by the policy committees and board of directors.
 - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

1. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES CALLING UPON THE LEAGUE TO RESPOND TO THE INCREASING VULNERABILITIES TO LOCAL MUNICIPAL AUTHORITY, CONTROL AND REVENUE AND EXPLORE THE PREPARATION OF A BALLOT MEASURE AND/OR CONSTITUTIONAL AMENDMENT THAT WOULD FURTHER STRENGTHEN LOCAL DEMOCRACY AND AUTHORITY

Source: City of Beverly Hills

Concurrence of five or more cities/city officials: Cities: Arcadia, Burbank, Cupertino; Duarte; Oceanside; Ontario; Palo Alto; Redondo Beach; Santa Cruz; Sunnyvale; Torrance; West Hollywood

Referred to: Governance, Transparency & Labor Relations; Housing, Community & Economic Development; Revenue and Taxation; and Transportation, Communication & Public Works Policy Committees

WHEREAS, the State of California is comprised of diverse communities that are home to persons of differing backgrounds, needs, and aspirations; yet united by the vision that the most accessible, responsive, effective, and transparent form of democratic government is found at the local level and in their own communities; and

WHEREAS, subsidiarity is the principle that democratic decisions are best made at the most local level best suited to address the needs of the People, and suggests that local governments should be allowed to find solutions at the local level before the California Legislature imposes uniform and overreaching measures throughout the State; and

WHEREAS, the California Constitution recognizes that local self-government is the cornerstone of democracy by empowering cities to enact local laws and policies designed to protect the local public health, safety and welfare of their residents and govern the municipal affairs of charter cities; and

WHEREAS, over recent years there have been an increasing number of measures introduced within the Legislature or proposed for the state ballot, often sponsored by powerful interest groups and corporations, aimed at undermining the authority, control and revenue options for local governments and their residents; and

WHEREAS, powerful interest groups and corporations are willing to spend millions in political contributions to legislators to advance legislation, or to hire paid signature gatherers to qualify deceptive ballot proposals attempting to overrule or silence the voices of local residents and their democratically-elected local governments affected by their proposed policies; and

WHEREAS, powerful interest groups and corporations propose and advance such measures because they view local democracy as an obstacle that disrupts the efficiency of implementing corporate plans and increasing profits and therefore object when local residents—either through their elected city councils, boards of supervisors, special district boards, or by action of local voters—enact local ordinances and policies tailored to fit the needs of their individual communities; and

WHEREAS, public polling repeatedly demonstrates that local residents and voters have the highest levels of confidence in levels of government that are closest to the people, and thus would be likely to strongly support a ballot measure that would further strengthen the ability of communities to govern themselves without micromanagement from the state or having their authority undermined by deep-pocketed and powerful interests and corporations.

RESOLVED that the League of California Cities should assess the increasing vulnerabilities to local authority, control and revenue and explore the preparation of a ballot measure and/or constitutional amendment that would give the state's voters an opportunity to further strengthen local authority and preserve the role of local democracy to best preserve their local quality of life.

Background Information on Resolution No. 1

Source: City of Beverly Hills

Background:

The relationship between the state and cities functions best as a partnership where major policy issues are approached by the state with careful consideration of the varied conditions among the state's 482 cities and 58 counties. There should be an appreciation of the importance of retaining local flexibility to tailor policies to reflect the needs and circumstances of the local community. Still, cities have had to respond to state legislation that undermines the principle of "local control" over important issues such as land use, housing, finance, infrastructure, elections, labor relations and other issues directly affecting cities.

Alexis de Tocqueville's "Democracy in America" examined the operation of the principle of subsidiarity in the early 19th century. Subsidiarity is an organizing principle that states matters should be handled by the smallest, lowest or least centralized competent authority. Tocqueville wrote that "Decentralization has not only an administrative value, but also a civic dimension, since it increases the opportunities for citizens to take interest in public affairs; it makes them get accustomed to using freedom." Tocqueville's works were first published in 1835 with a second volume published in 1840. The United States had a population of just 17 million people in 1840, less than 50% of the population of California today and yet there was value found in decentralization.

Another consideration is to examine how the European Union ("EU") operates. There are two prime guiding principles for the EU. The first is principle of conferral, which states that the EU should act only within the limits of the competences conferred on it by the treaties. The second, which is relevant to this resolution, is the principle of subsidiarity, which states that the EU should act only where an objective cannot be sufficiently achieved by the member states acting alone. Sacramento should operate in a similar manner and only govern when objectives need to be achieved at a much larger level than a local government.

For years, Governor Jerry Brown himself has spoken on the principle of "subsidiarity." Governor Brown has asserted for numerous years that local officials should have the flexibility to act without micromanagement from Sacramento.

Legislation introduced in both 2017 and 2018 by the state legislature has continually threatened local control in flagrant opposition to the principle of subsidiarity. This has included, but not been limited to, Senate Bill 649 (Hueso) Wireless Telecommunications Facilities ("SB 649") in 2017; AB 252 (Ridley-Thomas) Local government: taxation: prohibition: video streaming services ("AB 252") in 2017; and Senate Bill 827 (Wiener) Planning and Zoning: Transit-Rich Housing Bonus ("SB 827") in 2018.

SB 649 would have applied to all telecommunications providers and the equipment they use, including "micro-wireless," "small cell," and "macro-towers," as well as a range of video and cable services. The bill would have allowed the use of "small cell" wireless

antennas and related equipment without a local discretionary permit in all zoning districts as a use by-right, subject only to an administrative permit. Additionally, SB 649 provided a de facto CEQA exemption for the installation of such facilities and precluded consideration by the public for the aesthetic, nuisance, and environmental impacts of these facilities. SB 649 would have also removed the ability for cities to obtain fair and reasonable compensation when authorizing the use of public property and rights of way from a “for profit” company for this type of use.

SB 649 passed out of the State Assembly by a vote of 46-16-17 and out of the State Senate by a vote of 22-10-8 despite over 300 cities and 47 counties in California providing letters of opposition. Ultimately, Governor Brown vetoed the bill as he believed “that the interest which localities have in managing rights of way requires a more balanced solution than the one achieved in this bill.” It is strongly believed that the issue of wireless telecommunications facilities is not over and it is anticipated that legislation will be introduced on this topic in January 2019.

Another example of an incursion into local control was AB 252, which would have prohibited any tax on the sale or use of video streaming services, including sales and use taxes and utility user taxes. Over the last two decades, voters in 107 cities and 3 counties have adopted measures to modernize their Utility User Tax (“UUT”) ordinances. Of these jurisdictions, 87 cities and 1 county approved ordinances to allow a UUT on video providers. Prior to its first Committee hearing, AB 252 received opposition letters from 37 cities, the League of California Cities, South Bay Council of Governments, California Contract Cities Association, and nine other organizations. This bill failed in the Assembly Revenue and Taxation Committee 8-0-2, which the author of the Committee chaired.

More recently, SB 827 would have overridden local control on housing development that was within ½ mile of a major transit stop or ¼ mile from a high-quality bus corridor as defined by the legislation with some limitations. On April 17, 2018, SB 827 failed in the Senate Transportation and Housing Committee 4-6-3 but was granted reconsideration. State legislators have indicated they will continue to introduce legislation that will override local zoning ordinances for the development of affordable housing in conjunction with mixed use and/or luxury condominium/apartment housing.

These are just three examples of the increasing attempts by Sacramento to supersede local control. Presently, there are discussions occurring in Sacramento to ban cities from creating their own municipal broadband or to prohibit local ordinances over the regulation of shared mobility devices such as dockless electric scooters. These decisions should remain with each individual jurisdiction to decide based on the uniqueness of their community and the constituents that live in each city.

Often fueled by the actions of special interest groups, Sacramento is continually attempting to overreach their authority with various incursions on local control. The desire in Sacramento to strip communities of their ability to make decisions over issues which should remain at the local level seems to intensify each state legislative cycle. Increasingly, legislation is being introduced with a “one-size-fits-all” approach which is detrimental in a

state with over 40 million residents that have extremely diverse communities from the desert to the sea, from the southern to the northern borders.

Loren King in the book “Cities, Subsidiarity and Federalism” states, “Decisions should be made at the lowest feasible scale possible”. The proposed resolution directs the League of California Cities to assess the increasing vulnerabilities to local authority, control and revenue. It also directs the League of California Cities to explore the preparation of a ballot measure and/or constitutional amendment which would aim to ensure that decisions are made as close to home as possible.

Local government, when done right, is the best form of democracy precisely because it is closest to home. A ballot measure and/or constitutional amendment would provide the state’s voters an opportunity to further strengthen local authority and maintain the role of local democracy to best preserve their local quality of life while still leaving the appropriate issues at the county, regional or state legislature depending on the topic. Any ballot measure and/or constitutional amendment should institutionalize the principle of subsidiarity, while encouraging inclusive regional cooperation that recognizes the diversity of California’s many individual communities. The time has come to allow the residents of California’s voters to decide if they prefer top down governance from Sacramento or bottom up governing from their own locally elected officials.

League of California Cities Staff Analysis on Resolution No. 1

Staff: Dan Carrigg, Johnnie Pina
 Committees: Governance, Transparency and Labor Relations
 Housing, Community & Economic Development
 Revenue & Taxation
 Transportation, Communication and Public Works

Summary:

This Resolution states that the League of California Cities should assess the vulnerabilities to local authority, control and revenue and explore the preparation of a ballot measure and or constitutional amendment that would give the state’s voters an opportunity to further strengthen local authority and preserve the role of local democracy.

Background:

The City of Beverly Hills is sponsoring this resolution in reaction to their concerns over measures coming from the Legislature and the initiative process attempting to roll back local control and hinder cities from providing optimal services to their residents.

As examples, the city cites the 2017-2018 legislative cycle, the Legislature introduced bills such as Senate Bill 649 (Hueso) Wireless Telecommunications Facilities, and AB 252 (Ridley-Thomas) proposing to prohibit taxes on video streaming services, and more recently Senate Bill 827 (Wiener) Planning and Zoning: Transit-Rich Housing. SB 649 was vetoed by the Governor and SB 827 died in policy committee, however if these measures had been signed into law they would have impinged on the ability of a local government to be responsive to the needs of their constituents.

The city maintains that “local government, when done right, is the best form of democracy precisely because it is closest to home. A ballot measure and/or constitutional amendment would provide the state’s voters an opportunity to further strengthen local authority and maintain the role of local democracy to best preserve their local quality of life while still leaving the appropriate issues at the county, regional or state legislature depending on the topic.”

Fiscal Impact:

By requesting the League to “assess” vulnerabilities and “explore” the preparation of a ballot measure that would further protect local authority, there are no proposals to be quantified. But it is presumed that the League would not pursue a measure that did not have positive impacts of further protecting local authority.

For the League as an organization, however, the fiscal impact of sponsoring a ballot measure can be very expensive. It can take several million dollars to qualify a measure via signature gathering, and much more to fund an effective campaign and overcome organized opposition.

Comments:

- 1) Ballot measure advocacy is a settled aspect of California’s political process. This year’s November ballot is an example of that, with proposals ranging from dividing California

into three states, restoring rent control, repealing transportation funding, to funding housing and water bonds. Three other measures are not on the November ballot after their sponsors spent millions gathering signatures to qualify measures, then leveraged last-minute legislative deals in exchange for pulling them from the ballot.

- 2) Most major stakeholder organizations in Sacramento have realized that they cannot rely on legislative advocacy alone to protect their interests, but must develop and maintain the capacity to protect their interests in the ballot process as well.
- 3) The League has been engaged in ballot advocacy for nearly 20 years. In the early 2000's, city officials were angered by repeated state raids of local revenues. These concerns led to the League --for the first time in its then 100-year history--developing a ballot advocacy infrastructure that included forming and fundraising for an issues political action committee (PAC), establishing a network of regional managers, and building a coalition with other organizations that ultimately led to the passage of Prop. 1A of 2004. Over the years, the League's successful campaigns include the passage of Proposition 1A and Proposition 99 and the defeat of Propositions 90 and 98.

a. Yes on Proposition 1A (2004)

As a result of the passage of Prop 1A, local government revenues that otherwise would have been raided by the state legislature were kept in local coffers. This resulted in increased funding for public safety, health, libraries, parks and other locally delivered services. Proposition 1A PASSED WITH 83.7% OF THE VOTE.

b. No on Proposition 90 (2006)

Prop. 90 was a well-financed special interest-backed initiative that sought to eliminate most of local governments' land use decision making authority. Led by the League, the opposition educated voters on how this measure's far reaching provisions would have cost taxpayers billions of dollars by driving up the cost of infrastructure projects, prevented voters and state and local agencies from enacting environmental protections, jeopardized public safety services and more. Proposition 90 FAILED WITH 52.4% OF THE VOTERS VOTING NO.

c. No on Proposition 98 Yes on Proposition 99 (2008)

Given the hidden agendas within Prop 98, our message was not always an easy one to communicate to the electorate. The No on 98/ Yes on 99 campaign was able to educate voters on the important differences between both measures. As a result, important eminent domain reforms were enacted and both land use decision making and rent control were preserved within our communities. Proposition 98 FAILED WITH 61.6% OF THE VOTERS VOTING NO. Proposition 99 PASSED BY 61% OF THE VOTE.

d. Yes on Proposition 22 (2010)

As a result of the passage, local governments have been able to pay for infrastructure investment, create local jobs and avoid devastating cuts in our communities. Proposition 22 APPROVED BY 60.7% OF VOTERS.

- 4) While the League has been able to recently defeat several major legislative proposals aimed at undermining local authority, and avoid a battle over the Business Roundtable's measure in November due to the "soda tax" deal, the threats to local authority and revenue remain a constant concern. Other interest groups may be emboldened by some of the recent "deals" cut by ballot proponents and seek to implement similar strategies for the 2020 ballot. The next Governor may also have different philosophies than Governor Jerry Brown on "subsidiarity."
- 5) The League's President opted to send this resolution to four policy committees for several reasons: (a) the recent major threats to local control covered broad policy areas: telecom, land use, contracting, and revenue; and (b) having this issue vetted broadly within the League policy process will provide a better assessment of the depth of concern for the vulnerability to local control within the membership
- 6) If the membership chooses to approve this measure, it is strongly advisable to retain continued flexibility for the League to "assess" vulnerabilities and "explore" options. Any ballot initiative consideration must be approached very carefully by the organization. It is a difficult and very expensive endeavor that can have additional political ramifications. For 120 years the League's core mission has been to protect local control - and it has gone to the ballot successfully before to do so -- but any such effort must be approached thoughtfully, prudently and cautiously.

Existing League Policy:

Related to this Resolution, existing policy provides:

- The League of California Cities' Mission Statement is, "To expand and protect local control for cities through education and advocacy. To enhance the quality of life for all Californians"
- The League of California Cities' Summary of Existing Policy and Guidelines states, "We Believe
 - Local self-governance is the cornerstone of democracy.
 - Our strength lies in the unity of our diverse communities of interest.
 - In the involvement of all stakeholders in establishing goals and in solving problems.
 - In conducting the business of government with openness, respect, and civility.
 - The spirit of public service is what builds communities.
 - Open decision-making that is of the highest ethical standards honors the public trust.
 - Cities are the economic engine of California.
 - The vitality of cities is dependent upon their fiscal stability and local autonomy.
 - The active participation of all city officials increases the League's effectiveness.
 - Focused advocacy and lobbying is most effective through partnerships and collaboration.
 - Well-informed city officials mean responsive, visionary leadership, and effective and efficient
 - city operations."
- Click here to view the [Summary of Existing Policy and Guiding Principles 2018](#).

Support:

The following letters of concurrence were received: Steven Scharf, Cupertino City Council Member; Michael S. Goldman, Sunnyvale City Council; Lydia Kou, Palo Alto City Council Member; David Terrazas, Mayor of Santa Cruz; Peter Weiss, Mayor of Oceanside; Alan D. Wapner, Mayor pro Tem of Ontario; Patrick Furey, Mayor of Torrance; Lauren Meister, West Hollywood Council Member; Liz Reilly, Duarte Mayor Pro Tem; Bill Brand, Mayor of Redondo Beach; Sho Tay, Mayor of Arcadia; Emily Gabel-Luddy, Mayor of Burbank.

2. A RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES DECLARING ITS COMMITMENT TO SUPPORT THE REPEAL OF PREEMPTION IN CALIFORNIA FOOD AND AGRICULTURE CODE § 11501.1 THAT PREVENTS LOCAL GOVERNMENTS FROM REGULATING PESTICIDES

Source: City of Malibu

Concurrence of five or more cities/city officials: Cities: Agoura Hills; Calabasas; Davis; Menlo Park; Moorpark; Ojai; Oxnard; Richmond; West Hollywood

Referred to: Environmental Quality

WHEREAS, anticoagulant rodenticides are poisonous bait products that are poisoning 80 to 90% of predator wildlife in California. These poisons cause painful, internal hemorrhaging in non-target animals, including pets, that accidentally ingest the products. Approximately 10,000 children under the age of six are accidentally poisoned by anticoagulant rodenticides each year nationwide; and

WHEREAS, in response to these harms, the California Department of Pesticide Regulation banned the consumer purchase and use of second-generation anticoagulant rodenticides in July 2014. Despite collecting data for almost four years after this ban, the Department of Fish and Wildlife found no evidence supporting a decrease in poisonings by anticoagulant rodenticides; and

WHEREAS, the state of California currently only recognizes the harm posed by second-generation anticoagulant rodenticides, which are prohibited in state wildlife habitat areas but are still available for agricultural purposes and by certified applicators throughout the state of California; and

WHEREAS, first-generation anticoagulant rodenticides are still available to the public and used throughout California without limitation; and

WHEREAS, nonpoisonous rodent control methods, such as controlling trash, sealing buildings, setting traps, erecting raptor poles and owl boxes, and removing rodent nesting areas are also effective rodent control methods; and

WHEREAS, the state of California preempts cities from regulating pesticides; and

WHEREAS, many cities across California have passed resolutions restricting pesticide use on city property and have expressed the desire to ban the use of pesticides within their jurisdictions.

NOW, THEREFORE, BE IT RESOLVED by the General Assembly of the League of California Cities, assembled in Long Beach, California on September 14, 2018, to do as follows:

1. Encourage the state of California to fund and sponsor further research into the negative impacts of anticoagulant rodenticides to determine whether the use of these products should be further restricted or banned statewide.

2. Direct the League of California Cities staff to consider creating a task force with other organizations and jointly commission a report on the unintended negative impact of anticoagulant rodenticides;
3. Encourage cities throughout California to eliminate use of anticoagulant rodenticides as part of their maintenance program in city-owned parks, lands, and facilities and to report on the effectiveness of other rodent control methods used in their maintenance program;
4. Encourage property owners throughout California to eliminate use of anticoagulant rodenticides on their properties;
5. Encourage cities throughout California to join in these advocacy efforts to mitigate the unintended negative impacts of anticoagulant rodenticides;
6. Endorse a repeal of California Food and Agriculture Code § 11501.1 to end local preemption of regulating pesticides; and
7. Call for the Governor and the Legislature to work with the League of California Cities and other stakeholders to consider and implement this reform.

Background Information on Resolution

Source: City of Malibu

Background:

A. Anticoagulant rodenticides are unnecessarily destructive and dangerous

Anticoagulant rodenticides contain lethal agents that disrupt the normal blood clotting or coagulation process causing dosed rodents to die from uncontrolled bleeding or hemorrhaging. Deaths typically occur between four days and two weeks after rodents begin to feed on the bait. Animals commonly targeted by anticoagulant rodenticides include rats, mice, gophers and squirrels. Non-target predator wildlife victims, which are exposed to an 80-90% risk of poisoning, include owls, hawks, bobcats, bears, foxes, coyotes, and mountain lions. The endangered species at risk of poisoning include fishers, spotted owls, and San Joaquin foxes. The use of anticoagulant rodenticides not only harms rodents, but it commonly harms pets, such as dogs, cats, and bunnies, and other wildlife that mistakenly eat the bait through primary poisoning or that unknowingly consume animals that have ingested the anticoagulant rodenticide through secondary poisoning. Children also suffer poisoning by mistakenly ingesting anticoagulant rodenticides.

California recognizes the grave harm that can be caused by anticoagulant rodenticides and has partially restricted access to second-generation anticoagulant rodenticides by the public:

Because of documented hazards to wildlife, pets and children, the California Department of Pesticide Regulation has restricted public access to some of these materials in California. As of July 1, 2014, rodenticide products containing the active ingredients brodifacoum, bromadiolone, difethialone and difenacoum are only to be used by licensed applicators (professional exterminators).¹

California has also prohibited the use of these ingredients in any “wildlife habitat area,” which is defined as “any state park, state wildlife refuge, or state conservancy.”²

The United State Environmental Protection Agency³ and the California Department of Pesticide Regulation⁴ have both documented in detail the damage to wildlife from second-generation anticoagulant rodenticides in support of the 2014 consumer ban on the purchase and use of the products. While first-generation anticoagulant rodenticides are less toxic, they are far more abundant due to their continued availability to all members of public.⁴ The California Department of Fish & Wildlife was tasked with collecting data on poisoning incidents to ascertain the effectiveness of the restrictions on second-generation anticoagulant rodenticides. After almost four years of collecting data, there was no evidence supporting a reduction in the number of poisonings.

¹ <https://www.wildlife.ca.gov/living-with-wildlife/rodenticides>.

² Cal. Food and Agric. Code § 12978.7.

³ <https://www.epa.gov/rodenticides/restrictions-rodenticide-products>

⁴ https://www.cdpr.ca.gov/docs/registration/reevaluation/chemicals/brodifacoum_final_assess.pdf

Recent studies by the University of California, Los Angeles and the National Park Service on bobcats have shown that first-generation anticoagulant rodenticide poisoning levels similar to the second-generation anticoagulant rodenticides poisoning levels.⁵ A comprehensive study of 111 mountain lions in 37 California counties found first-generation anticoagulant rodenticides in the liver tissue of 81 mountain lions (73% of those studied) across 33 of the 37 counties, and second-generation anticoagulant rodenticides in 102 mountain lions (92% of those studied) across 35 of the 37 counties.⁶ First-generation anticoagulant rodenticides were identified as contributing to the poisoning of Griffith Park mountain lion, P-22, (who was rescued), and the deaths of Newbury Park mountain lion, P-34, and Verdugo Hills mountain lion, P-41.

This data demonstrates the inadequacy of current legislative measures to ameliorate the documented problem caused by both second-generation and first-generation anticoagulant rodenticides.

B. State law preempts general law cities from regulating the use of pesticides, including anticoagulant rodenticides

A general law city may not enact local laws that conflict with general state law.⁷ Local legislation that conflicts with state law is void.⁸ A local law conflicts with state law if it (1) duplicates, (2) contradicts, or (3) enters a field that has been fully occupied by state law, whether expressly or by implication. A local law falling into any of these categories is “preempted” and is unenforceable.

State law expressly bars local governments from regulating or prohibiting pesticide use. This bar is codified in the California Food and Agricultural Code § 11501.1(a):

This division and Division 7 . . . are of statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this code, no ordinance or regulation of local government, including, but not limited to, an action by a local governmental agency or department, a county board of supervisors, or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, transportation, or use of pesticides, and any of these ordinances, laws or regulations are void and of no force or effect.

State law also authorizes the state to take action against any local entity that promulgates an ordinance or regulation that violates § 11501.1(a).⁹ The statute was specifically adopted to overrule a 30 year old court decision in *People v. County of Mendocino*,¹⁰ which had held that a

⁵ L. E. K. Serieys, et al, “Anticoagulant rodenticides in urban bobcats: exposure, risk factors and potential effects based on a 16-year study,” *Ecotoxicology* (2015) 24:844–862.

⁶ J. Rudd, et al, “Prevalence of First-Generation and Second-Generation Rodenticide Exposure in California Mountain Lions,” Proceeding of the 28th Vertebrate Pest Conference, February 2018.

⁷ Cal. Const. art. XI § 7.

⁸ *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 743.

⁹ Cal. Food and Agric. Code § 11501.1, subd. (b).

¹⁰ *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal. 3d 476.

local regulation prohibiting aerial application of phenoxy herbicides was not then preempted by state or federal law.¹¹

The use of pesticides is broadly regulated by state law. In the language of preemption law, the state “occupies the field,” leaving no room for additional local law on the subject. Accordingly, a city’s ban on the use of anticoagulant rodenticides would be unenforceable.

C. California should repeal the preemption in Cal. Food and Agric. Code § 11501.1 to provide cities with the authority to decide how to regulate pesticides within their own jurisdictions based on local concerns

The state of California should provide cities with the authority to regulate the use of pesticides in their own jurisdictions based on their own individual local needs.

Recognizing that cities’ power to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations” is presently preempted by the general laws of the state, cities throughout California request that the state provide cities with the authority to decide how to deal with rodents based on their land use.

Depending on such land use, cities may decide to allow the use of nonpoisonous control methods, non-anticoagulant rodenticides, or anticoagulant rodenticides, if necessary. Nonpoisonous methods to control rodent pests, include sealing entrances to buildings, sanitizing property, removing rodent habitats, such as ivy or wood piles, setting traps, and erecting raptor poles or owl boxes. For example, a recent landmark study by Ventura County established that installing raptor poles for hawks and owls was more effective than anticoagulant rodenticides in reducing the damage to water control levees caused by ground squirrel burrows. Burrows decreased by 66% with the change.¹²

The ultimate goal is to allow cities to address their local concerns with the input of community members at open and public meetings. Presently, cities are unable to adequately address local concerns; they are limited to encouraging or discouraging behavior.

D. Conclusion

The negative effects from the use of anticoagulant rodenticides across California has garnered the interest of cities and community members to remedy the problem. By presenting this resolution to the League of California Cities, the City of Malibu hopes to organize support and gain interest at the state level to repeal the preemption in Cal. Food and Agric. Code § 11501.1 to provide cities with the authority to regulate pesticides based on individual, local concerns.

¹¹ *IT Corp. v. Solano County Bd. Of Supervisors* (1991) 1 Cal. 4th 81, fn. 9; *Turner v. Chevron USA Inc.*, 2006 WL 1314013, fn. 14 (unpublished).

¹² <http://vcportal.ventura.org/BOS/District2/RaptorPilotStudy.pdf>

League of California Cities Staff Analysis on Resolution No. 2

Staff: Erin Evans-Fudem
Committee: Environmental Quality

Summary:

This resolution seeks to have the state and the League study the negative impacts of anticoagulant rodenticides and address the inability of cities to regulate the use of rodenticides and pesticides.

Specifically related to anticoagulant rodenticides, the resolution would encourage the state to fund research into the negative impacts and a potential restriction or ban; direct the League to consider creating a task force to study and report on the unintended negative consequences; encourage cities and property owners to eliminate use; and encourage cities to join advocacy efforts. In addition, the resolution would direct the League to endorse repeal of a statute that preempts local regulation of pesticides.

Background:

The City of Malibu is sponsoring this resolution out of concern about the effect of a certain type of rodent control (anticoagulant rodenticides) has on other wildlife. According to the City, anticoagulant rodenticides disrupt the blood clotting process and therefore cause rodents to die from bleeding or hemorrhaging. This rodenticide is commonly used on rats, mice, gophers, and squirrels. Predator animals that eat rodents can be exposed to anticoagulant rodenticides if they consume animals that have eaten the bait. These animals include owls, hawks, bobcats, bears, foxes, coyotes, and mountain lions. Furthermore, pets can also be exposed to anticoagulant rodenticides if they eat the bait or consume animals that have eaten the bait.

Some cities have passed “ceremonial resolutions” locally. For example, the City of Malibu has two ordinances in place to discontinue use of rodenticides and traps in city-owned parks, roads, and facilities, as well as encourage businesses and property owners not to use anticoagulant rodenticides on their property.

Fiscal Impact:

Costs to cities would include using alternative methods of rodent control and studying the efficacy. Since the resolution encourages, but does not mandate action by cities, city costs would be taken on voluntarily.

Fiscal impact to the League would include costs associated with the task force, scientific research, and educating League staff and members. For the task force, the League may incur costs associated with staffing, convening, and educating a task force to study anticoagulant rodenticides, as well as the cost of writing a report. This could include a need for outside experts with knowledge of pesticides and their ecological impacts. League resources would also be utilized to support proposals to repeal the statute preempting local regulation of pesticides; however, this cost may be absorbed with existing staff resources.

Comments:

Pesticides are regulated by federal and state governments. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) reserves for the federal government authority over pesticide labeling. States can adopt stricter labeling requirements and can effectively ban sale and use of pesticides that do not meet state health or safety standards.¹ For 51 years, California has reserved regulation of pesticides for the state only, preempting local regulation.² This preemption has been ratified and confirmed in subsequent court decisions and legislation. However, County Agricultural Commissioners work to enforce the state laws. Local governments may regulate or restrict pesticide use in their own operations, including use in municipal buildings or parks.³⁴

Broad direction. This resolution would direct the League to take a position allowing broad local discretion over pesticide regulation in general. Because the regulation of anticoagulant rodenticides is largely based in science, additional or outside expertise may be needed to ensure full understanding of the science behind rodent control methods. The resolution itself is not limited to allowing local governments to regulate anticoagulant rodenticides, which this resolution otherwise targets.

Rodent control methods. There are numerous methods of controlling rodents, including lethal traps, live traps, and poison baits. There are two generations of rodenticide poisons because after rodents became resistant to the first generation, the second was developed. The U.S. Environmental Protection Agency (U.S. EPA) provides the following information below related to the science and use of anticoagulant rodenticides:

Most of the rodenticides used today are anticoagulant compounds that interfere with blood clotting and cause death from excessive bleeding. Deaths typically occur between four days and two weeks after rodents begin to feed on the bait.

First-generation anticoagulants include the anticoagulants that were developed as rodenticides before 1970. These compounds are much more toxic when feeding occurs on several successive days rather than on one day only. Chlorpophacinone, diphacinone and warfarin are first-generation anticoagulants that are registered to control rats and mice in the United States.

Second-generation anticoagulants were developed beginning in the 1970s to control rodents that are resistant to first-generation anticoagulants. Second-generation anticoagulants also are more likely than first-generation anticoagulants to be able to kill after a single night's feeding. These compounds kill over a similar course of time but tend to remain in animal tissues longer than do first-generation ones. These properties mean that second-generation products pose greater risks to nontarget species that might feed on bait only once or that might feed upon animals that have eaten the bait. Due to these

¹ California Department of Pesticide Regulation (CDPR), *A Guide to Pesticide Regulation in California: 2017 Update*, pg. 9, <https://www.cdpr.ca.gov/docs/pressrls/dprguide/dprguide.pdf>.

² California Food and Agriculture Code § 11501.1 (1967).

³ CDPR, *A Guide to Pesticide Regulation in California: 2017 Update*, pg. 9, <https://www.cdpr.ca.gov/docs/pressrls/dprguide/dprguide.pdf>.

⁴ County Agricultural Commissioners work with CDPR to enforce state laws. CDPR, *A Guide to Pesticide Regulation in California: 2017 Update*, pg. 13, <https://www.cdpr.ca.gov/docs/pressrls/dprguide/dprguide.pdf>.

risks, second-generation anticoagulant rodenticides no longer are registered for use in products geared toward consumers and are registered only for the commercial pest control and structural pest control markets. Second-generation anticoagulants registered in the United States include brodifacoum, bromadiolone, difenacoum, and difethialone.

Other rodenticides that currently are registered to control mice include bromethalin, cholecalciferol and zinc phosphide. These compounds are not anticoagulants. Each is toxic in other ways.⁵

Legislative attempts to ban. Several legislative measures have been introduced to ban the use of certain anticoagulant rodenticides (AB 1687, Bloom, 2017. AB 2596, Bloom, 2016). However, neither of these measures were heard and failed to pass key legislative deadlines.

Existing League Policy:

The League does not have policy related to pesticides or rodenticides.

Related to federal regulation, League policy states:

- The League supports flexibility for state and local government to enact environmental and other standard or mandates that are stronger than the federal standards. However, the League reserves the right to question or oppose stronger standards on the merits. The League also opposes legislation that prohibits state and local governments from enacting stricter standards.

Support:

The following letters of concurrence were received: William Koehler, Mayor of Agoura Hills; Fred Gaines, Mayor of Calabasas; Brett Lee, Mayor Pro Tem of Davis; Catherine Carlton, Menlo Park City Council Member; Janice Parvin, Mayor of Moorpark; Suza Francina, Ojai City Council Member; Carmen Ramirez, Oxnard City Council Member; Tom Butt, Mayor of Richmond; Lindsey Horvath, West Hollywood City Council Member

⁵ U.S. EPA, Restrictions on Rodenticide Products, <https://www.epa.gov/rodenticides/restrictions-rodenticide-products>