



ACTION MINUTES

CAPITOLA CITY COUNCIL

REGULAR MEETING

Thursday, May 10, 2007

6:00 P.M. - CLOSED SESSION - CITY MANAGER'S OFFICE CAPITOLA REDEVELOPMENT AGENCY & CITY COUNCIL

An announcement regarding the items to be discussed in Closed Session was made by Mayor Termini in the City Hall Council Chambers at 6:00 p.m. No one addressed the Council at this time.

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Significant Exposure to litigation pursuant to Govt. Code Section 54956.9(b): Two Cases

6:50 P.M. REDEVELOPMENT AGENCY - *(See Redevelopment Agency Action Minutes)*

7:00 P.M. – CITY COUNCIL REGULAR MEETING

Mayor Termini called the Regular Meeting of the City Council to order at 7:01 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

PRESENT: Council Members Kirby Nicol, Ron Graves, Sam Storey, and Mayor Michael Termini;
City Treasurer Tony Gualtieri

ABSENT: Council Member Begun

STAFF: City Manager Rich Hill, City Attorney John G. Barisone, Finance Director Lauren Lai,
Public Works Director Steve Jesberg, Chief of Police Rick Ehle, Assistant to the City
Manager Lisa Murphy, and City Clerk Pamela Greeninger

Introduction of New Community Service Officer Tony Mendoza and Police Officer Barry Duggan

Chief of Police Ehle introduced the city's new Community Service Officer, Tony Mendoza. He said Tony started with the Police Department in January of 2003 as a Police Explorer.

Tony Mendoza thanked the chief for the opportunity to work his way up in the Police Department. He said he really enjoys working for the City of Capitola, and he hopes to continue moving his way up to realize his goal one day of becoming a full-time police officer.

Chief of Police Ehle provided background information regarding the city's new Police Officer, Barry Duggan. He said Barry graduated from the Police Academy at Gavilan College in 2005, and he started working as a reserve police officer for the city in 2006. Barry Duggan is now a police trainee and is in the midst of completing his field training with the Police Department. Officer Duggan thanked the chief and the city council for this opportunity to work in the City of Capitola.

Recognition of Capitola Police Officer Pedro Zamora, Recipient of the California MADD Award [630-20]

Chief of Police Ehle commented on the criteria for awards presented by MADD each year in Sacramento. He informed the Council that Pedro Zamora has just completed his first year probation with the Police Department and that during that time Officer Zamora made and arrested 79 DUI suspects in the City of Capitola. Chief of Police Ehle presented the MADD Heroes Award and pin to Officer Zamora, since he was unable to attend the MADD Award Ceremony in Sacramento.

**Certificate of Appreciation to Georgette Dufresne for 15 Years
of Service on the Capitola Historical Museum Board [120-40/240-40]**

Mayor Termini read and presented the city's Certificate of Appreciation to Georgette Dufresne, who served on the Museum Board from July of 1992 until March 2007. Ms. Dufresne said she thoroughly enjoyed her service on the Museum Board, and she commented on how lucky we are to have the museum and to have Carolyn Swift as its director.

1. REPORT ON CLOSED SESSION [520-25]

City Attorney John Barisone said there were two items discussed in closed session for which the city is not currently being sued but faces a significant threat of litigation. First, Chief of Police Rick Ehle and City Manager Rich Hill reported to the City Council, and received direction from the City Council, regarding ongoing settlement negotiations on that matter. The council received a brief status report from the City Attorney concerning the second matter of anticipated litigation. No reportable action was taken.

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda – None

B. Public Comments

1) Clarkie, Editor of Real Skate Online Magazine, expressed concerns regarding statements made by Council Member Nicol about skateboards and skate parks at a previous City Council meeting. She asked that the Council allocate money for a skate park in Capitola and that the council move forward with the McGregor Drive site. Clarkie provided copies of her statement for the record. **[1040-20]**

2) Juju Oyama said she would like to have the item regarding the skate park back on agenda for discussion, since the Noble Gulch site is not being pursued. **[1040-20]**

3) Amalia Chamorro, on behalf of the California Restaurant Association, expressed her frustration regarding placement of an item on the city council's meeting agenda tonight. She commented on how decisions are made to put items on an agenda, and she suggested the council look at that process. **[930-30]**

4) Michael Scanlon, President of the Santa Cruz Area Chapter of the Restaurant Association, respectfully asked that the council consider the California Restaurant Association's request to address alternative options of the environmentally acceptable food packaging materials' ordinance and repeal of that ordinance. **[930-30]**

5) Amy McKenna, Capitola resident, discussed Council Member Nicol's comments regarding skateboarders and said he has every right to make those comments. She also submitted a letter dated April 16, 2007, regarding her comments with respect to the school district's proposed preschool for Jade Street Park. Ms. McKenna commented on the district's declining enrollment and said she is angry that they want to take part of the park away for a preschool. **[1150-05]**

C. Staff Comments

City Clerk Greeninger announced that there are 4 members whose terms on the Historical Museum Board are expiring in June and that staff is conducting recruitment for those terms. She said current members are also able to request reappointment at this time.

D. City Council/Treasurer Comments

1) Council Member Storey announced that the Human Race for non-profit groups would be held this Saturday, May 12, starting at Natural Bridges at 8 am.

2. D. ORAL COMMUNICATIONS (Continued)

2) Council Member Graves commented on the oral communication about placing items on the agenda and said Council Member Begun asked for that matter to be brought to the council for discussion.

3) Council Member Nicol announced that the gala celebration for the Grand Opening of the Bandstand in Esplanade Park would be held on Saturday, May 19, beginning at 4 p.m. and invited everyone to come.

4) Mayor Termini commented on the following items:

a) He is in receipt of a letter from Scharlene Fulmer resigning as the city's representative on the Area Agency on Aging, and Mayor Termini asked if staff would be recruiting for the vacancy. City Clerk Greeninger said she was not aware of the resignation. Mayor Termini said he would provide the resignation letter to staff.

b) He announced that the Santa Cruz County Chapter of the American Red Cross would be honoring local heroes on Wednesday, May 23, at a special breakfast. He then read the Mayor's Proclamation for the event.

c) Mayor Termini discussed the proposed preschool at Jade Street Park and said he is hoping to schedule a joint meeting with the school board in the near future to discuss that project.

d) In response to written and oral communications regarding the request of the California Restaurant Association to place an item on the Council's agenda and the confusion that has occurred, Mayor Termini said he would like to get a consensus from the City Council to place reconsideration of the polystyrene ordinance on a future agenda. Council Members Nicol and Graves said they would support it. Council Member Storey said he does not support reconsideration. Mayor Termini clarified that tonight's agenda item was noticed as approval of an administrative policy, not reconsideration of the ordinance. Council Member Nicol asked if the council should continue policy item. Council discussion was followed by this action:

ACTION: It was the consensus of the City Council to direct staff to place the city's polystyrene ordinance (Municipal Code Chapter 8.36 Pertaining to Environmentally Acceptable Food Packaging Materials, Ordinance No. 913) on a future agenda for reconsideration.

E. Committee Reports/AppointmentsF. Approval of Check Register Report [300-10]

Staff responded to questions from Council Member Nicol regarding checks numbered 51571, 51587, 51592, 51593 and 51594.

Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Council Member Graves, to approve the Check Register Reports dated April 20, and April 27, 2007, including checks numbered 51534 through 51599 in the amount of \$102,237.07, and checks numbered 51600 through 51677 in the amount of \$177,868.85, respectively, and payroll disbursements for the 04/27/07 payroll in the amount of \$187,731.79, for a Grand Total of \$467,837.71, as submitted. The motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

3. CONSENT CALENDAR

Mayor Termini asked if there were any items members of the council or public wished to pull for separate discussion. No items were pulled; however, comments were made pertaining to Items 3.B. and 3.D. (*See comments under those items below.*)

CONSENT CALENDAR ACTION: Council Member Graves moved, seconded by Council Member Nicol, to approve the Consent Calendar as recommended. The motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

A. Waive Reading of all Ordinances and Resolutions on the Agenda.

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

B. Approval of Minutes – Special Joint Meeting of the City Council and Redevelopment Agency of April 25, 2007.

Council Member Storey said the same correction made by the Redevelopment Agency Directors to the Joint Minutes of April 25, 2007, should be made to the City Council Minutes.

ACTION: Council Member Graves moved, seconded by Council Member Nicol, to approve the Minutes of the Special Joint Meeting of the City Council and the Redevelopment Agency of April 25, 2007, as corrected by Director Storey at the Redevelopment Agency Meeting; i.e., correcting the first sentence of the last paragraph on the first page of the minutes where it states, "Council Member Storey clarified that Mr. Queen's concern is crossing Wharf Road from Clares..." to state that he was "questioning Mr. Queen about his experience crossing Wharf Road from Clares Street." The motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

C. Receipt of Planning Commission Action Minutes for the Regular Meeting of May 3, 2007. [740-50]

ACTION: The City Council unanimously received the Planning Commission Action Minutes for the Regular meeting of May 3, 2007, as submitted. The motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

D. Adoption of Proposed Resolution Adopting Findings and Making an Award in regard to the Cabrillo Mobile Estates Homeowner's Association Service Reduction Petition. [750-25]

Council Member Storey asked that the city attorney include in the Findings two other items that were identified during the hearings: 1) a Finding that Mr. Vieira had violated the letter agreement by not retaining and hiring a co-manager for the park, and 2) in utility section, that Mr. Vieira had removed the green waste bins and did not replace them. Council Member Storey asked that the city attorney review the record and include those findings in the exhibit to the resolution.

City Attorney Barisone commented that Mr. Vieira took away the individual green waste bins and replaced them with a single bin that filled up quickly. Mayor Termini said there was a reduction to the property owner's bill from Waste Management for that change.

Council discussion was followed by this action:

3. CONSENT CALENDAR (Continued)

ACTION: Council Member Graves moved, seconded by Council Member Nicol, to adopt **Resolution No. 3630, Resolution Adopting Findings and Making an Award in Regard to the Cabrillo Estates Homeowner's Association Service Reduction Petition**, with direction to the City Attorney to include the additional two findings to the Exhibit pertaining to co-manager for the park and green waste bins. The motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

E. Approve Annual Contract with Hope Services in the amount not to exceed \$12,900 for Cleaning of the Beach and Esplanade Sidewalk from May 29, 2007, through September 7, 2007, and authorize Public Works Director to sign agreement on behalf of the City. [1020-60/500-10 A/C: Hope Services]

ACTION: Council Member Graves moved, seconded by Council Member Nicol, to approve an agreement with Hope Services in the amount not to exceed \$12,900 for cleaning of the beach and Esplanade sidewalk from May 29 through September 7, 2007, and authorized the Director of Public Works to sign the agreement on behalf of the City. The motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

F. 2006-07 Street Resurfacing Project for work on 41ST Avenue, 42nd Avenue, Oak Drive, Sunset Drive, Beverly Avenue, Pilgrim Drive, Del Monte Avenue, Beulah Avenue, and Park Avenue: Award Contract to Granite Construction in the amount of \$1,056,056. [940-40/500-10 A/C: Granite Construction]

ACTION: Council Member Graves moved, seconded by Council Member Nicol, to award a contract to Granite Construction in the amount of \$1,056,056 for the construction of the 2006-07 Street Resurfacing Project. The motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

G. Library Tot Lot Development – Approve Plans, Specifications and Engineer's Estimate and Authorize Advertising for Bids. [1040-20]

ACTION: Council Member Graves moved, seconded by Council Member Nicol, to take the recommended action as follows:

1. Approved the plans, specifications, and engineer's estimate for the Library Tot Lot Project; and
2. Authorized advertising for bids and setting the bid date for Wednesday, June 6, 2007.

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

H. Adopt Resolution to Comply with California Penal Code Section 679.08 pertaining to "Victims of Crime: Information Card." [485-10]

ACTION: Council Member Graves moved, seconded by Council Member Nicol, to adopt **Resolution No. 3631, Resolution Approving the Victim's Rights Card Pursuant to California Penal Code Section 679.08**, as submitted. The motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

4. PUBLIC HEARINGS**A. Public Hearing and Presentation on the Economic Development Strategic Plan and Discussion of Implementation Efforts. Presentation: City Manager and Consultant, Applied Development Economics. [700-20]**

City Manager Hill introduced Doug Svensson and Peter Cheng of Applied Development Economics, who presented the Economic Development Strategic Plan for the City of Capitola, which was prepared by their firm.

Utilizing a PowerPoint Presentation, Mr. Cheng summarized the information contained in the report and responded to questions of council members.

Mayor Termini opened the public hearing at 8:21 p.m.

Toni Castro, Executive Director of the Capitola Soquel Chamber of Commerce, Jacques Bertrand, a Capitola resident, and an unidentified woman, who said she is a member of the Capitola Community Church located on Capitola Road, addressed the City Council on this matter.

Mayor Termini closed the public portion of the hearing at 8:31 p.m.

Council discussion was followed by this action:

ACTION: Council Member Nicol moved, seconded by Council Member Graves, to accept the City of Capitola Economic Development Strategic Plan prepared by Applied Development Economics dated May 10, 2007, which was funded by the State of California Community Development Block Grant (CDBG) Planning and Technical Assistance Program, as submitted. The motion carried unanimously.

B. Public Hearing on the Neighborhood Traffic Advisory Committee Project Report Update. Presentation: Public Works Director. [490-80]

The City Council received a PowerPoint Presentation from Public Works Director Jesberg regarding the Neighborhood Traffic Advisory Committee. He informed the Council that the focus of the committee was traffic calming and creating safer and quieter neighborhoods. He discussed the top issues of the committee and their final conclusions.

Neighborhood Traffic Advisory Committee Members Ron Burke and Jack Darrough addressed the Council. Mr. Burke said the committee was particularly interested in trying to address cut-through traffic in Capitola. Mr. Darrough commented on the number of motorists who cut down Fanmar to escape going through the Village. He also said Public Works Director Steve Jesberg was a great help to the committee and in monitoring discussions.

Council discussion was followed by this action:

ACTION: Council Member Graves moved, seconded by Mayor Termini, to accept the status report on the Neighborhood Traffic Advisory Committee's Final Report, with direction to staff not to prioritize these items, but to provide preliminary engineering on Neighborhood Traffic Advisory Committee projects to the city council before the projects move forward and before money is expended. Also included in the motion was direction to staff that attention be given to this list on an annual basis along with the CIP Program.

After further Council discussion on the motion, the motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

5. OTHER BUSINESS**A. Administrative Policy to Implement provisions of Municipal Code Chapter 8.36 Pertaining to Environmentally Acceptable Packaging Materials. [930-30]**

City Manager Hill summarized the written agenda report and responded to questions of council members.

Mayor Termini said no staff time would be taken unless a complaint was lodged. City Manager Hill confirmed that understanding.

Mayor Termini opened this item to the public at 9:32 p.m.

Peggy Karleen expressed her support for implementation of the proposed policy. She said she is perplexed that it isn't going to have a much greater effect. Ms. Karleen also commented that she witnessed and reported an incident wherein a landscape company was dumping concrete down the storm drain. She is concerned this is another ordinance that won't be enforced.

Amalia Chamorro, on behalf of the California Restaurant Association, respectfully requested that this item be tabled until the council has had an opportunity to hear from the Restaurant Association regarding their request to repeal Chapter 8.36 of the Municipal Code.

Kenneth Nemire, member of Capitola Commission on the Environment, discussed the commission's participation in drafting the ordinance that was adopted by the city council last year, and he applauded the previous city council for adopting the ordinance.

Council Members Nicol and Graves expressed concerns about the city's ordinance and believe the council should reconsider the ordinance as requested by the California Restaurant Association.

After council discussion, a motion was made by Council Member Storey and seconded by Mayor Termini, to approve the proposed policy as submitted. There was further council discussion prior to calling for the vote. The motion failed on the following vote: AYES: Council Members Nicol and Graves. NOES: Council Member Storey and Mayor Termini. ABSENT: Council Member Begun. ABSTAIN: None.

City Clerk Greeninger said a new motion to continue the item would be in order.

Council Member Graves suggested tabling the motion and bringing the matter back at such time as the ordinance is brought back for reconsideration.

Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Council Member Nicol, to continue this item to the meeting where the question regarding repeal of the ordinance will be placed on the agenda. The motion carried on the following vote: AYES: Council Members Nicol, Graves, and Storey. NOES: Mayor Termini. ABSENT: Council Member Begun. ABSTAIN: None.

Following review of the municipal code, City Attorney Barisone informed the council that Municipal Code Section 2.04.180, Quorum/Action, addresses the issue of a tie vote when less than a quorum is present. It says, "...the chair, unless overridden by a majority of present council members, may continue the matter to another meeting." City Attorney Barisone said it does not preclude the council from taking the action it just took to continue the matter.

5. OTHER BUSINESS (Continued)

B. Proposed Ordinance Amending Section 3.34.040 of the Capitola Municipal Code Pertaining to the Mobile Home Park Administrative Service Fee to Require Mobile Home Park Owners to Provide the City with Park Resident Information (1st reading). [750-25/390-40]

Assistant to the City Manager Murphy provided staff's report on this item.

Council Member Storey asked what the council's legal standing is, in view of the letter received from the attorney representing the owners of Castle Mobile Estates. City Attorney Barisone said he reviewed the letter which references a section of the Civil Code that prohibits the city from asking tenants about their financial situation. He said the proposed ordinance does not ask for financial information, just the mailing addresses for tenants. Assistant to the City Manager Murphy clarified that the information will assist staff in sending bills to appropriate mailing addresses.

Mayor Termini asked if members of the public wished to address the council on this item. No one came forward to speak.

Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Mayor Termini, to pass the proposed Ordinance Amending Section 3.34.040 of the Capitola Municipal Code Pertaining to the Mobile Home Park Administrative Service Fee, as submitted, to a second reading for adoption. The motion carried on the following vote: AYES: Council Members Nicol, Storey, and Mayor Termini. NOES: Council Member Graves. ABSENT: Council Member Begun. ABSTAIN: None.

C. Ordinance Adding Capitola Municipal Code Section 10.36.065 Pertaining to Parking Meter Tampering (1st reading). [470-30]

Chief of Police Ehle summarized the written agenda report and discussed the need to have an ordinance in place in order to prosecute offenders. He said staff is asking the council to adopt the proposed ordinance.

Council Member Storey expressed concern regarding the proposed language of the ordinance and how we would separate someone who unintentionally deposited a defaced or bent coin in the meter. City Attorney Barisone suggested adding the word "knowingly" after "No person shall..." He also said the city has the ability to set bail for such offenses.

Council Member Graves said it would be appropriate for staff to suggest a bail schedule at the time this ordinance is brought back for final adoption.

Mayor Termini asked if anyone from the public wished to address this item. There was no one.

Council discussion was followed by this action:

ACTION: Council Member Nicol moved, seconded by Council Member Storey, to pass the proposed Ordinance Adding Section 10.36.065 to the Capitola Municipal Code Pertaining to Parking Meter Tampering to a second reading with insertion of the word "knowingly" as follows: "No person shall knowingly deposit or cause to be deposited..." The motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

5. OTHER BUSINESS (Continued)

D. City Council discussion regarding Change in Regular City Council Meeting Day. [520-40]

City Clerk Greeninger summarized the written agenda report and responded to questions of council members. City Manager Hill commented that there is a certain staff advantage for holding meetings on a day other than Thursday and explained.

Council Member Graves said he asked that this item be brought to the Council for discussion. He feels Thursday is too late in the week to meet. He also said there was a time when the Council met on Monday nights, but that was changed due to Monday Night Football. Council Member Graves also commented on conflicts with special meetings held on Wednesday, and he said he would like special meetings scheduled on another day other than Wednesday. Mayor Termini said the first and third Tuesday seem not to conflict with other meetings. Council Member Storey said he has a conflict on the 3rd Tuesday. Council Member Nicol said he thinks we should have a full council discuss this matter and suggested postponing this item until Council Member Begun returns.

ACTION: Council Member Graves moved, seconded by Council Member Storey, to direct staff to continue this item for full council discussion. Council Member Graves suggested everyone come back with a day that would work best for them. The motion carried unanimously.

Finance Director Lai commented on the budget study sessions scheduled on Wednesdays that were approved by the council. She said the practice has been to schedule some of the budget study sessions on Wednesday in order to allow Planning Commissioners the ability to attend those meetings.

E. Set Date and Time for Public Meeting on Village Circulation and Parking Improvements. Staff recommendation: set the date and time for the public meeting on either Saturday, May 26 or June 2, 2007, at Jade Street Community Center. [520-40/490-20]

ACTION: It was the consensus of the City Council to schedule a public meeting on Tuesday, June 5, 2007, at 7 p.m., in the City Council Chambers to discuss ideas and options for addressing traffic circulation and parking improvements in the Village.

F. Public Employee Retirement System (PERS) Unfunded Liability Refinancing. Staff recommendation: receive information and provide direction. [340-20]

Finance Director Lai summarized the written agenda report advising that the financial advisor misspoke regarding the callability of the bonds and has since disclosed that information. Finance Director Lai said the item before the council is to re-approve staff's recommendation to privately place the Pension Obligation Bond with DEPFA Bank. She also said that staff is prepared to come back with final documentation on May 30.

Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Council Member Nicol, to re-approve staff's recommendation to privately place the Pension Obligation Bond with DEPFA Bank as set forth in DEPFA's proposal dated April 11, 2007, and, based on the updated information regarding the prepayment of the bonds in advance of maturity, directed staff and the finance team to continue to prepare the necessary documents to complete the sale of the Bonds to DEPFA Bank. The motion carried on the following vote: AYES: Council Members Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: Council Member Begun. ABSTAIN: None.

6. ORAL COMMUNICATIONS – None

7. ADJOURNMENT

The City Council adjourned at 10:45 p.m. to a Special Joint Budget Study Session of the City Council and the Redevelopment Agency to be held on Wednesday, May 16, 2007, beginning at 6:00 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.