

February 28, 2008  
 Capitola, California

## CAPITOLA CITY COUNCIL

### MINUTES OF A REGULAR MEETING

#### 6:00 P.M. CLOSED SESSION – CITY MANAGER’S OFFICE CAPITOLA REDEVELOPMENT AGENCY & CITY COUNCIL

At 6:02 in the City Hall Council Chambers, Mayor/Chairperson Nicol noted that all City Council Members/Redevelopment Agency Directors were present, and he made an announcement regarding three matters to be discussed in Closed Session as follows:

#### CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Surf & Sand LLC vs. City of Capitola (Surf & Sand Mobile Home Park)

#### CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to Litigation Pursuant to Subdivision (b) of Govt. Code §54956.9  
 Number of Potential Cases: One (Save the Habitat claim re: Rispin Mansion Project)

#### CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION Govt. Code §54956.9

Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates)

He asked if anyone wished to address items on the Closed Session agenda. Seeing no one, the council/agency recessed at 6:03 p.m. to the closed session.

#### REGULAR MEETING OF THE CITY COUNCIL

Mayor Nicol called the Regular Meeting of the City Council to order at 7:03 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

#### ROLL CALL AND PLEDGE OF ALLEGIANCE

**PRESENT:** Council Members Sam Storey, Bob Begun, Ron Graves, Michael Termini, and Mayor Kirby Nicol; City Treasurer Tony Gualtieri  
**ABSENT:** None  
**STAFF:** City Manager Rich Hill, City Attorney John G. Barisone, Finance Director Lauren Lai, Community Development Director Juliana Rebagliati, Public Works Director Steve Jesberg, Chief of Police Rick Ehle, Assistant to the City Manager Lisa Murphy, and City Clerk Pamela Greeninger

#### \*\*\* PRESENTATIONS \*\*\*

#### Presentation on Second Harvest Food Bank by Executive Director Willy Elliott-McCrea

Willy Elliott-McCrea, Executive Director of Second Harvest Food Bank, thanked the City Council for the opportunity to share what they have been doing and some exciting plans that are coming up with the council. He said the city council's ongoing and steadfast support over the years has been enormous and has had a profound impact on the lives of hundreds of seniors, working poor moms and children. An average of 900 people are served monthly by their network of agencies. The City's support provides food assistance to those in need, specifically, \$200,000 worth of food and grocery products a year to Capitola residents. Mr. Elliot-McCrea announced that Second Harvest Food Bank is launching a public campaign for its facility expansion project. He said they have raised \$3.8 Million of the \$4.3 Million needed for the project. He then showed a short video of their services.

## PRESENTATIONS (Continued)

Mayor Nicol thanked Mr. Elliott-McCrea for an excellent presentation. He also said he was looking forward to attending the Annual Second Harvest Food Bank Awards Dinner on March 6, where he would be honoring Hunger Fighter of the Year Jane Hurlbut with a Mayor's Proclamation.

### 1. REPORT ON CLOSED SESSION [520-25]

Mayor Nicol identified the three items discussed in closed session and stated that Council Member/Director Termini recused himself from discussion on the Rispin matter due to a conflict of interest. He then asked the City Attorney for a report on the Closed Session. City Attorney Barisone reported as follows:

With respect to the first two items that were discussed pertaining to pending litigation, Surf & Sand, LLC, vs. City of Capitola (Surf & Sand Mobile Home Park) and Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates), the city attorney and the staff provided status reports and answered questions regarding those items. No reportable action was taken.

The staff and the city attorney also provided an update and responded to questions of Council Members/Directors on the one item of anticipated litigation, Save the Habitat claim regarding the Rispin Mansion Project, and staff responded to questions. As noted by Mayor Nicol, Council Member Termini excused himself from participating for conflict of interest considerations. No reportable action was taken.

### 2. ORAL COMMUNICATIONS

#### A. Additions and Deletions to Agenda

1) Mayor Nicol announced that the city council has received letters from Kim Clary of The CORE, and Lisa Carter of the Santa Cruz SPCA, for Item 5.B.

2) City Attorney Barisone announced that the protesting party for Item 5.D. pertaining to the Esplanade Restroom Remodel project has withdrawn its protest; therefore, it is not necessary to take any action on that item.

#### B. Public Comments

1) Marilyn Garrett, Aptos resident, said the light brown apple moth spraying appalls her and she expressed concerns regarding the effects of the spraying. She believes we need to stop what she considers to be domestic chemical warfare. She announced there would be a Community Town Hall Meeting this Sunday, March 2, from 4 to 6 p.m., at the City of Santa Cruz City Council Chambers regarding an update on the upcoming light brown apple moth spraying. She provided copies of the announcement to the city council. She then asked if the council has considered passing a resolution against the spraying and said the cities of Albany, Berkeley and Santa Cruz have passed such resolutions.

Mayor Nicol said the city's website has a link to information and reports on the light brown apple moth spraying.

#### C. Staff Comments – None

#### D. City Council/Treasurer Comments/Committee Reports

1) Council Member Termini discussed the difficulty of reaching a quorum at the Commission on the Environment meetings and said the commission has expressed interest in increasing its membership. City Clerk Greeninger said an amendment to the implementing resolution would be necessary.

**ACTION:** It was the consensus of the city council directing staff to bring back the Commission on the Environment's resolution for amendment.

## 2. D. ORAL COMMUNICATIONS

2) Council Member Storey said, as the Santa Cruz County representative on the Monterey Bay Unified Air Pollution Control District Board, he has asked the board to consider their position concerning the light brown apple moth spraying. He announced that item would be on the agenda of the Monterey Bay Unified Air Pollution Control District Board Meeting to be held on March 19 at 1:30 p.m. in Monterey. He encouraged interested parties to email the board or come to the meeting.

3) City Treasurer Gualtieri reported that the Finance Advisory Committee met on Monday to discuss some of the items being considered later by the council on tonight's agenda. He said there was a recommendation made by the Finance Advisory Committee, which he will bring up at the time the council discusses the item.

E. Committee Appointments

Mayor Nicol announced he had several appointments to make. He was informed that the terms of the city's appointments on the Santa Cruz County Regional Transportation Commission Bicycle Committee would be expiring soon. He has spoken to the current members, Daniel Kostelec and Andy Ward, who are interested in continuing to serve on that committee. Mayor Nicol said he would like to commend them for their service and nominate them for reappointment to the committee. [770-05/110-10]

**ACTION:** It was the consensus of the City Council directing the Mayor to nominate Daniel Kostelec as Capitola's representative on the SCCRTC Bicycle Committee, with Andy Ward as his alternate.

1) **Appointment of Upper Village Resident Representative to the Village Master Plan Advisory Committee [740-20/110-10]**

Mayor Nicol said we received one application for the Upper Village Resident Representative vacancy on the Village Master Plan Advisory Committee from Mara Palandrani who lives in the Upper Village on Depot Hill. He commented on his interview with her, and her interest in serving on this committee. He then said he would like to appoint Mara Palandrani as an Upper Village Resident Representative to the Village Master Plan Advisory Committee.

**ACTION:** Council Member Storey moved, seconded by Council Member Termini, to ratify the Mayor's appointment of Mara Palandrani as an Upper Village Resident Representative to the Village Master Plan Advisory Committee. The motion carried unanimously.

F. Approval of Check Register Report [300-10]

Council Member Begun referred to page 3 and asked why we are borrowing money from the contingency reserve rather than the general fund for the worker's compensation fund. Finance Director Lai explained the current practice of using contingency reserve funds. Council Member Graves commented on the contingency reserve balance and said he sees no reason to change things.

Council Member Graves also commented on the emergency reserve fund and concerns that if the city has money in such a fund, the city could not avail itself to federal disaster funds as it did following the storms that occurred in the 1980's. Mayor Nicol asked if the existence of an emergency reserve fund would compromise the city's ability to apply for federal disaster funds. Finance Director Lai said staff would need to research that question as legislation may have changed since that time.

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to approve the Check Register Reports dated February 6 and February 15, 2008, including checks numbered 54542 through 54626, in the amount of \$118,794.26, checks numbered 54627 through 54695 in the amount of \$93,694.14, and payroll disbursements for the February 15, 2008, payroll in the amount of \$198,056.77, for a total amount of \$410,545.17, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

### 3. CONSENT CALENDAR

Mayor Nicol asked if there were any items members of the council or public wished to pull for separate discussion. He then read the title of each item on the consent calendar. Council Member Begun pulled Item 3.H. pertaining to endorsement of the ¼ Cent Tax Ballot Measure for library services. Council Member Storey said he had comments on that item as well. (See discussion and action on Item 3.H. following Consent Calendar Item 3.I. on Page 11028)

Council Member Graves commented on Item 3.D. (See comments under that item.)

**CONSENT CALENDAR ACTION:** Council Member Graves moved, seconded by Council Member Termini, to approve the Consent Calendar as recommended, with the exception of Item 3.H., which was pulled for separate discussion. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

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

**ACTION:** The City Council 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. Approve City Council Minutes - Minutes of the Regular Meeting of January 24, 2008, and the Special Goal Setting Session of January 30, 2008.**

**ACTION:** Council Member Graves moved, seconded by Council Member Termini, to approve the Minutes of the Regular Meeting of January 24, 2008, and the Special Goal Setting Session of January 30, 2008, as submitted. The motion carried unanimously.

**C. Receive Planning Commission Action Minutes for the Regular Meeting of February 21, 2008. [740-50]**

**ACTION:** The City Council unanimously received the Planning Commission Action Minutes for February 21, 2008, as submitted.

**D. Adopt Resolution Repealing Resolution No. 3395 and Establishing Parking Penalties to Include Four-Hour Parking Meters. [470-40]**

Council Member Graves said he spoke to staff about the research that was done not addressing his request. He explained that he was concerned with the grant applications and grant monies received when the wharf was reconstructed after the storms of 1982 and 1983, and whether there were any apron strings attached to those grants that the city may have to repay in the future. He is happy to go along with staff's recommendation tonight, but he would still like staff to research his concerns.

**ACTION:** Council Member Graves moved, seconded by Council Member Termini, to adopt **Resolution No. 3679, Resolution Repealing Resolution No. 3395 and Establishing Parking Penalties**, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

**E. Receive Treasurer's Report for the Month Ended January 31, 2008. [380-30]**

**ACTION:** Council Member Graves moved, seconded by Council Member Termini, to receive the Treasurer's Report for the Month Ended January 31, 2008 (Unaudited), as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

## 3. CONSENT CALENDAR (Continued)

- F. **Adopt Resolution Amending the Budget to Accept FY 2007/2008 Homeland Security Grant Funds and Authorizing Budget Expenditures for FY 2007/2008 of \$12,900. [330-10]**

**ACTION:** Council Member Graves moved, seconded by Council Member Termini, to adopt **Resolution No. 3680, Resolution Amending the General Fund FY07/08 Budget to Accept the Homeland Security Grant Funds and Increase Expenditures by \$12,900**, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

- G. **Approval of Plans and Specifications and Authorization to Advertise for Bids for the 41<sup>st</sup> Avenue Overcrossing Traffic Improvements Project. [940-40]**

**ACTION:** Council Member Graves moved, seconded by Council Member Termini, to approve the plans and specifications for the 41<sup>st</sup> Avenue Overcrossing Traffic Improvements Project and authorized the Public Works Department to advertise for bids, setting the bid opening date for Wednesday, April 2, 2008. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

- H. **Adopt Resolution Endorsing the June 3, 2008, Ballot Measure Continuing the ¼ Cent Sales Tax for Library Services. [230-10]**

This item was pulled for separate discussion (*See following Item 3.I. below.*)

- I. **Adopt Resolution Amending the FY 2007/2008 General Fund Budget Accepting a State Office of Traffic Safety Grant and Authorizing Budget Expenditures for FY 2007/2008 of \$3,000. [330-10]**

**ACTION:** Council Member Graves moved, seconded by Council Member Termini, to adopt **Resolution No. 3681, Resolution Amending the Fiscal Year 1007/08 General Fund Budget to Accept a State Office of Traffic Safety (OTS) Grant in the Amount of \$3,000 for the State Seatbelt Enforcement Program, and Authorizing Expenditures of \$3,000 in FY 2007/08**, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

Mayor Nicol asked if anyone from the public wished to address the council on Item 3.H. After acknowledging that there were several individuals who wished to speak to this item, Mayor Nicol reordered Item 3.H. for discussion at this time.

- H. **Adopt Resolution Endorsing the June 3, 2008, Ballot Measure Continuing the ¼ Cent Sales Tax for Library Services. [230-10]**

City Manager Hill summarized the written agenda report and discussed the service the Capitola Branch Library provides to the community.

Gayle Ortiz, former council member, said she represented the city on the Library JPA Board for over 5 years when she held office. Mrs. Ortiz commented on the huge difference it made to the library system to receive funding from the sales tax. She hopes the council will consider adopting the resolution endorsing the measure.

Barbara Gorson, citizen member on the Library board and a resident of Capitola, expressed how she values our library. She explained that over half of the funding for the libraries comes from the tax and that drastic cuts would occur if the tax were not continued. She said the board wants to get the tax approved early so that it can focus on long term planning. As a campaign committee member, Ms. Gorson urged the council to endorse the measure.

## 3. H. CONSENT CALENDAR (Continued)

Council Member Begun expressed his concerns regarding the \*additional cost of up to \$200,000 for placing the measure on the June ballot, rather than the November ballot. Council Member Termini explained the Library JPA Board's reasoning and their decision to include the measure on the June ballot. He also said the Board of Supervisors has approved the ballot measure for June. (*\*Correction made by Council Member Begun 3/13/08*)

Council Member Storey said he wholeheartedly supports the tax measure. In reading the draft resolution, he found that the sixth paragraph, which begins, "Whereas, fair, level playing-field competition..." may be a clerical error. City Manager Hill agreed that paragraph should be omitted.

Council Member Graves said he is always uncomfortable endorsing a ballot measure without seeing the actual ballot measure. He would have liked to see the ballot measure text included in the agenda report.

Council discussion was followed by this action:

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to adopt **Resolution No. 3682, Resolution Endorsing the June 3, 2008, Ballot Measure Continuing the ¼ Cent Sales Tax for County Library Services**, with the deletion of the sixth paragraph in the draft resolution ("Whereas, fair, level playing-field competition..."). The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

## 4. PUBLIC HEARINGS - None

## 5. OTHER BUSINESS

**A. Report on City Impacts if Measure P (the ¼% Transactions and Use Tax Approved by the Voters on November 2, 2004) is not Renewed. [390-70]**

Using a PowerPoint Presentation, Finance Director Lai summarized the written agenda report and responded to questions of council members. She showed photos of the various projects and services that have been accomplished with Measure P funds and identified future projects for the funds.

There was discussion regarding the precise date the tax ends, the list of city projects, requirements for placing a ballot measure to extend the tax at a regular election, a potential street improvement tax by the County of Santa Cruz, and the city's voter survey.

Considerable Council discussion was followed by this action:

**ACTION:** Council Member Storey moved, seconded by Council Member Begun, to receive the report as an informational item. The motion carried unanimously.

**B. City FY 2007/2008 Fiscal Mid-Year Report. [330-05/330-30]**

Mayor Nicol suggested that the council deal with each item separately, and he numbered each item requiring council action as follows: 5.B.1) Mid-year Budget Report; 5.B.2) Webstreaming, and 5.B.3) New Community Grant Funding Applications.

5.B.1) Mid-Year Budget Report

Finance Director Lai summarized the written agenda report pertaining to the City's Mid-Year Budget review, including recap of the General Fund and amendments for other funds, and responded to questions of council members regarding impacts to the city's budget pertaining to reduction of gas tax, sales tax, and property tax revenues. Council Member Storey commented on increased mobile home park litigation and whether funding should be increased in that area. Assistant to the City Manager Murphy said staff is reviewing costs with the law firm and may return to the council with a budget amendment.

## 5. B. OTHER BUSINESS (Continued)

Mayor Nicol asked if anyone from the public wished to address the council on this item. Seeing no one, the following action was taken by the City Council:

**ACTION:** Council Member Graves moved, seconded by Council Member Begun, to adopt **Resolution No. 3683, Resolution Accepting the City 2007/2008 Mid-Year Budget Report and Amending the Fiscal Year 2007/2008 City Budgets Accordingly**, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

5.B.2) Direction to staff regarding Council Meeting Webstreaming

Finance Director Lai summarized the written agenda report. She and City Manager Hill responded to questions of council members pertaining to PEG funds, using Redevelopment Agency funds, and Community Television. Mayor Nicol said he would be interested to know how many people are using the city's website and Webcam and how many hits the website receives. Council Member Graves suggested including a question in the voter survey regarding this item.

Mayor Nicol asked if anyone from the public wished to address the council on this item. Seeing no one, the following action was taken by the City Council:

**ACTION:** Council Member Graves moved, seconded by Council Member Termini, to include Webstreaming in the preliminary FY2008-09 budget, and to allow the council to make a decision after it receives the survey. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

5.B.3) Consideration of New Community Grant Funding Applications for the FY2008-09

Council Member Storey recused himself from discussion of this item as his organization receives community grant funds, and he has a conflict of interest.

City Treasurer Gualtieri reported that the Finance Advisory Committee, in view of the fact that the city's revenues are questionable, have recommended that the council not consider new applications for community grant funding in the 2008/09 FY.

Mayor Nicol asked if anyone wished to address the council on this item.

Kim Clary, founder and director of The CORE, provided information about what The CORE does for the youth of the community and discussed their interest in being able to submit an application for community grant funds. The following members of The CORE shared their experiences and how their participation has positively impacted their lives: Jake Logan, Nick Alheit, and Matt Rockwell.

Kim Clary responded to several questions of Council Member Begun regarding The CORE's budget, activities, participants, fundraisers, and how much money they would be requesting. Council Member Graves suggested that their literature include an address for making donations, as not everyone has access to the website.

City Manager Hill noted that the website is: [www.thecoresc.org](http://www.thecoresc.org).

Council discussion was followed by this action:

## 5. B. OTHER BUSINESS (Continued)

**ACTION:** Council Member Graves moved, seconded by Council Member Termini, to direct staff **not** to entertain new community grant applications for the FY2008-09 budget. The motion carried on the following vote: AYES: Council Members Graves, Termini, and Mayor Nicol. NOES: Council Member Begun. ABSENT: None. ABSTAIN: None. DISQUALIFIED: Council Member Storey.

**C. Art & Cultural Commission Public Art Project - Esplanade Plaza Medallion. [1010-10]**

Assistant to the City Manager Murphy summarized the written agenda report utilizing a PowerPoint presentation. She explained the art selection and how it would be situated at Esplanade Park near the Bandstand. It is the council's job to approve the art design. The next step is for the Planning Commission to approve a site plan. She commented on the kelp feature on the Monterey Bay Sanctuary sign and said the proposed art project would tie in with that theme.

Council Member Storey noted that the diagram shown in the PowerPoint Presentation is different than what was provided in the agenda report packet material. Assistant to the City Manager Murphy said the one she was showing is an updated version of the site plan. Council Member Storey noted the PowerPoint version should be made part of the record on this item, since it is different from what went out in the packet.

Council Member Termini said two concrete contractors, Keith Bridges and Tom Ralston, would be donating their work on this project, as well as Slatter Construction. Council Member Termini said the target date for completion is in May prior to the Car Show.

Council Member Graves said he is not fond of the proposed pavers, as he does not believe they will hold up. He commented on several areas that have pavers, and said he would prefer brushed concrete.

Council discussion was followed by this action:

**ACTION:** Council Member Termini moved, seconded by Council Member Begun, to approve the Art & Cultural Commission Public Art Project for the Esplanade Plaza Medallion and directed staff to prepare a site plan for Planning Commission consideration and approval. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini, and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

**D. Protest of BCI Builders on the Award of Contract for the Esplanade Restroom Remodel Project. [270-10]**

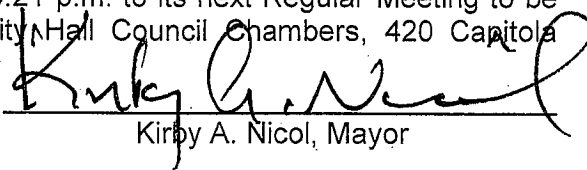
As noted by City Attorney John Barisone under Oral Communications Item 2.A.2), BCI Builders withdrew their protest; therefore, no action was necessary on this item.

## 6. ORAL COMMUNICATIONS - None

## 7. ADJOURNMENT

The Capitola City Council adjourned at 9:21 p.m. to its next Regular Meeting to be held on Thursday, March 13, 2008, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ATTEST:  CMC  
Pamela Greeninger, City Clerk

  
Kirby A. Nicol, Mayor

MINUTES WERE UNANIMOUSLY APPROVED AS CORRECTED BY THE CITY COUNCIL ON 3/13/08