

May 22, 2008  
 Capitola, California

## CAPITOLA CITY COUNCIL

### MINUTES OF A REGULAR MEETING

#### 5:30 P.M. CLOSED SESSION – CITY MANAGER’S OFFICE CAPITOLA REDEVELOPMENT AGENCY & CITY COUNCIL

At 5:30 p.m. 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 the items listed on the Posted Agenda to be discussed in Closed Session, as follows:

#### CONFERENCE WITH LABOR NEGOTIATORS (Govt. Code §54957.6)

Bargaining Units: Police Captains & Capitola Police Officers’ Association  
 Negotiator: Rich Hill, City Manager

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

Soquel Union Elementary School District vs. City of Capitola  
 Surf & Sand LLC vs. City of Capitola (Surf & Sand Mobile Home Park)  
 Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates)  
 Save the Habitat vs. City of Capitola (Rispin Mansion Project)

#### LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: Debra Rodkey

#### 6:50 P.M. REDEVELOPMENT AGENCY – (See Redevelopment Agency Minutes)

#### 7:00 P.M. - CITY COUNCIL REGULAR MEETING

Mayor Nicol called the Regular Meeting of the City Council to order at 7:09 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, Michael Termini, and Mayor Kirby Nicol;  
 City Treasurer Tony Gualtieri

**ABSENT:** Council Member Graves

**STAFF:** City Manager Rich Hill, City Attorney John Barisone, Community Development Director Juliana Rebagliati, Finance Director Lauren Lai, Public Works Director Steve Jesberg, Chief of Police Rick Ehle, Assistant to the City Manager Lisa Murphy, and Deputy to the City Clerk Liz Nichols

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

#### Mayor’s Proclamation Recognizing Eric Marlatt for his Service to the City on the Capitola Planning Commission [120-40]

Mayor Nicol presented Eric Marlatt with a Mayor’s Proclamation for his service on the Capitola Planning Commission from December 12, 2000, to April 30, 2008.

Eric Marlatt said he was honored to work for the City and thanked Council Members Mike Termini and Bruce Arthur for appointing him. He also thanked his family for their support.

## PRESENTATIONS (Continued)

**Information on Propositions 98 and 99 on the June 2008 Ballot  
by Deanna Sessums, Monterey Bay Regional  
Public Affairs Manager of the League of California Cities [560-10]**

Deanna Sessums discussed the propositions. Proposition 98 stretches far beyond eminent domain in definition and scope. Additionally, she felt there is a hidden agenda found in Proposition 98 affecting mobile home park residents in Capitola and in Santa Cruz County, and Proposition 98 is the worst kind of dishonest, special interest proposition. She maintained landlords want this and care nothing about eminent domain, and it undermines affordable housing programs such as Capitola's inclusionary housing ordinance. Courts have ruled that every land use decision a city makes transfers economic benefit from one person to another. Ms. Sessums encouraged the City Council to pass the resolution opposing Proposition 98. If Proposition 98 passes, we would be saddled with thousands of frivolous lawsuits.

Ms. Sessums concluded that Proposition 99 was created to give voters the opportunity to vote for eminent domain reform without the hidden agendas that are included in Proposition 98.

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

City Attorney John Barisone reported that the City Council met in Closed Session at 5:30 p.m. in the City Manager's Office. He identified the 4 items of existing litigation on the posted agenda that were discussed. He also said there was one item on labor negotiations with the Police Captains & the Capitola Police Officers' Association. He mentioned there was one liability tort claim from Debra Rodkey against the City. No reportable action was taken in closed session.

**2. ORAL COMMUNICATIONS**

A. Additions and Deletions to Agenda – None

B. Public Comments

Marilyn Garrett spoke on the public's physical health and how cell phone use and low-frequency emissions adversely affect our health.

C. Staff Comments - None

D. City Council/Treasurer Comments/Committee Reports

1) Council Member Termini commented on the Sea Wall Tile Art Project and the story it relates of Capitola. Former Capitola Mayor Dennis Norton spearheaded this project to mount tiles on the sea wall.

2) Council Member Termini also spoke about the Kelp Art project in front of the Bandstand and funded by the Capitola Art & Cultural Commission. Pavers have been installed in time for the Memorial Day celebration, and the Kelp Art Project should be installed prior to the Capitola Custom Rod & Classic Car show.

3) Council Member Storey mentioned the 50<sup>th</sup> Anniversary of St. John's Helpful Shop situated on the corner of Capitola and Monterey Avenues in Capitola.

4) Mayor Nicol announced the free Capitola Beach Shuttle starts Saturday, May 24, 2008, and he invited the public to ride on the inaugural shuttle with the Mayor and dignitaries on that day.

2. ORAL COMMUNICATIONS (Continued)  
 E. Committee Appointments – None

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

Mayor Nicol asked if there were any questions regarding the check register report.

Seeing none, the following action was taken:

**ACTION:** Council Member Termini moved, seconded by Council Member Begun, to approve the Check Register Reports dated May 2 and May 9, 2008, including checks numbered 55360 through 55421, in the amount of \$118,177.64, checks numbered 55422 through 55490 in the amount of \$81,271.87, and payroll disbursements for the May 9, 2008, payroll in the amount of \$186,110.13, for a total amount of \$385,559.64, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Termini, and Mayor Nicol. NOES: None. ABSENT: Council Member Graves. 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. Bill Newman, resident at Surf & Sand Mobile Home Park, commented on Item 3.H. pertaining to Opposition of Proposition 98 on the June ballot, and he expressed his support of the proposed resolution. Council Member Begun pulled Items 3.I. and 3.J. (NOTE: Items 3.I. and 3.J. were discussed following Public Hearing Item 4.A. See discussion and action on Page 11109.)

**CONSENT CALENDAR ACTION:** Council Member Termini moved, seconded by Council Member Storey, to approve the Consent Calendar as recommended. The motion carried on the following vote: AYES: Council Members Storey, Begun, Termini, and Mayor Nicol. NOES: None. ABSENT: Council Member Graves. 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 – Regular Meeting of April 24, 2008, and the Special Closed Session Meeting of April 30, 2008.**

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

- C. **Receive Planning Commission Action Minutes for the Regular Meeting of May 15, 2008. [740-50]**

**ACTION:** The City Council unanimously received the Planning Commission Action Minutes for May 15, 2008, as submitted.

- D. **Adopt Ordinance Amending Title 17 of the Capitola Municipal Code by Adding Chapter 17.10 Pertaining to Green Building Regulations, Creating Green Building Regulations for all New and Substantially Remodeled Buildings and Additions Thereto. [2nd Reading] [750-10]**

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to adopt Ordinance No. 930, Ordinance Amending Title 17 of the Capitola Municipal Code by Adding Chapter 17.10, Green Building Regulations, Creating Green Building Regulations for all New and Substantially Remodeled Buildings and Additions Thereto, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Termini, and Mayor Nicol. NOES: None. ABSENT: Council Member Graves. ABSTAIN: None.

## 3. CONSENT CALENDAR - Continued

- E. **Adopt Ordinance Amending Section 10.36.070 of the Capitola Municipal Code Pertaining to the Use of Streets for the Storage of Vehicles and Adding Section 10.36.180 to the Municipal Code Pertaining to the Parking of Vehicles Six Feet or Greater in Height. [2nd Reading] [470-40]**

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to adopt **Ordinance No. 931, Ordinance Amending Section 10.36.070 of the Capitola Municipal Code Pertaining to the Use of Streets for the Storage of Vehicles and Adding Section 10.36.180 Pertaining to the Parking of Vehicles Six Feet or Greater in Height**, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Termini, and Mayor Nicol. NOES: None. ABSENT: Council Member Graves. ABSTAIN: None.

- F. **Deny Claim of Debra Rodkey for an undetermined amount and forward to City's Liability Insurance Carrier. [Liability Claims Binder]**

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to deny the claim of Debra Rodkey and forward it to the City's Liability Insurance Carrier. The motion carried on the following vote: AYES: Council Members Storey, Begun, Termini, and Mayor Nicol. NOES: None. ABSENT: Council Member Graves. ABSTAIN: None.

- G. **Donation of Lifeguard Towers by California State Parks. [1020-20]**

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to accept the donation of two lifeguard towers on behalf of the City of Capitola from California State Parks. The motion carried on the following vote: AYES: Council Members Storey, Begun, Termini, and Mayor Nicol. NOES: None. ABSENT: Council Member Graves. ABSTAIN: None.

- H. **Adopt Resolution in Opposition to Proposition 98 on the California June 2008 Ballot. [560-10]**

Prior to action being taken on the Consent Calendar, Bill Newman, resident at Surf & Sand Mobile Home Park, commented on the proposed Resolution in Opposition to Proposition 98 on the June ballot, and he expressed his support of the resolution.

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to adopt **Resolution No. 3698, Resolution in Opposition to Proposition 98**. The motion carried on the following vote: AYES: Council Members Storey, Begun, Termini, and Mayor Nicol. NOES: None. ABSENT: Council Member Graves. ABSTAIN: None.

- I. **Village and Wharf Business Improvement Area (CVWBIA) FY 2008-2009 Assessments. Staff recommendation: Adopt Resolution of Intention to Levy Business Improvement Assessments for FY 2008-2009, receive the CVWBIA Annual Report & Proposed FY 2008-09 Budget, and set a Public Hearing for June 12, 2008, on the Levy of Assessments for FY 2008-09. [140-05]**

*This item was pulled for separate discussion. (See Page 11109 for discussion and action.)*

- J. **Approve Letter of Support for the Santa Cruz County Regional Transportation Commission Application for the Use of Proposition 116 Funds for the Purchase of the Santa Cruz Branch Rail Line. [770-20]**

*This item was pulled for separate discussion. (See Page 11109 for discussion and action.)*

**4. PUBLIC HEARINGS****A. Public Hearing on the Light Brown Apple Moth (LBAM). Presentation: City Manager. [430-05]**

City Manager Hill discussed the Light Brown Apple Moth. This matter has been heard in the Santa Cruz County Superior Court, and a decision was rendered that the next successive sprayings for the Light Brown Apple Moth required compliance with CEQA and an environmental impact report. In another ruling in Monterey County, an EIR is needed prior to the next spraying.

Mayor Nicol opened the public hearing at 7:42 p.m.

The following people spoke against the proposed light brown apple moth spraying: Dr. Dennis Knepp, Karen Nevis, Kenneth Nemire, Mary Michael Meteague, Roy Upton, Cyro Milazzo, Glen Chase, Mike Delay, Romney Fulfer, Elsa Dooling, and Marilyn Garrett.

Mayor Nicol closed the public hearing at 8:29 p.m.

Council Member Termini commended the public who commented on this matter and said he was not in favor of the spraying. He motioned to direct staff to draft a resolution opposing the California Department of Food & Agriculture Aerial Spraying Program to eradicate the Light Brown Apple Moth. He asked the City Manager to contact all relevant state officials and the CDFA to let the state know the City opposes spraying for the Light Brown Apple Moths. The City of Capitola prefers the use of pheromone based sticky traps for monitoring and control of the Light Brown Apple Moth.

Council Member Storey seconded the motion and echoed Council Member Termini's comments. He would like to encourage our state elected officials to implement procedures that require future assertions of statutory emergency or categorical exemptions from CEQA be subject to a review panel made up of independent scientists, health officials and others interested in the field.

Council Member Termini asked Council Member Storey if it should be a secondary action. Mayor Nicol asked Council Member Storey if he would apply the clear and present danger test.

Council Member Begun would like to see two separate motions. He received 108 emails against spraying. He would like Mayor Nicol to send a letter to Governor Schwarzenegger to stop wasting money on this effort.

Mayor Nicol said in this case the Light Brown Apple Moth clearly does not present a clear and present danger, and there should have been at least an environmental impact report on this proposal in the beginning.

Council discussion was followed by this action:

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to direct staff to draft a resolution opposing the California Department of Food & Agriculture Aerial Spraying Program to eradicate the Light Brown Apple Moth. He requests the City Manager contact all relevant state officials and the CDFA to let the state know the City opposes spraying for Light Brown Apple Moths, and the City of Capitola prefers the use of pheromone-based sticky traps for monitoring and control of the Light Brown Apple Moth. He would like to encourage our state elected officials to implement procedures that require future assertions of statutory emergency or categorical exemptions from CEQA be subject to a review panel made up of independent scientists, health officials and others interested in the field.

The city council took a short break at 8:45 p.m. and reconvened at 8:55 p.m.

Following the break, Mayor Nicol reordered pulled Consent Calendar Items 3.I. and 3.J. for discussion at this time.

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

I. **Village and Wharf Business Improvement Area (CVWBIA) FY 2008-2009 Assessments. [140-05]**

Supervising Accountant Lisa Saldana stated there is a two-step process to renew the Business Improvement Area for FY 2008-2009. She asked Council to pass the resolution of intent to set the public hearing for June 12, 2008, and to receive the annual plan.

Council Member Begun requested that the Capitola Village and Wharf Business Improvement Area clean the sidewalks in the Village, and he would like them to come back with a solution to the dirty sidewalks at the public hearing.

Council discussion was followed by this action:

**ACTION:** Council Member Begun moved, seconded by Council Member Termini, to take the recommended action as follows:

1. Adopted **Resolution No. 3699, Resolution to Levy Business Improvement Assessments for Fiscal Year 2008/2009;** and
2. Received the Annual Report and Proposed FY 2008/2009 Budget prepared by the Capitola Village & Wharf Business Improvement Area; and
3. Set a Public Hearing on the Levy of Assessments for FY 2008/2009 for Thursday, June 12, 2008, after the hour of 7:00 p.m., directing the City Clerk to give required notice in the newspaper, and directing the CVWBIA to give required notice to each proposed affected business.

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

J. **Approve Letter of Support for the Santa Cruz County Regional Transportation Commission Application for the Use of Proposition 116 Funds for the Purchase of the Santa Cruz Branch Rail Line. [770-20]**

Council Member Begun asked if the council is being asked to approve purchase of the rail trail or something else.

Public Works Director Jesberg said staff is asking the council to approve a letter of support that is going to the California Transportation Commission to award Proposition 116 Funds to the Regional Transportation Commission that would go toward the purchase of the rail trail.

Council Member Begun said he could not vote for something without knowing the fiscal impact.

Council discussion was followed by this action:

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to authorize the Mayor to sign a letter to the California Transportation Commission supporting the Santa Cruz County Regional Transportation Commission's application for Proposition 116 Funds for Acquisition of the Santa Cruz Branch Rail Line. The motion carried on the following vote: AYES: Council Members Storey, Termini, and Mayor Nicol. NOES: Council Member Begun. ABSENT: Council Member Graves. ABSTAIN: None.

**5. OTHER BUSINESS****A. Results of the 2008 Capitola Voter Survey Conducted by Fairbank, Maslin, Maullin & Associates. [160-50]**

City Manager Hill introduced the voter survey and Mr. David Metz from Fairbank, Maslin, Maullin & Associates.

Mr. Metz provided a detailed presentation on the results of the Capitola Voter Survey. The survey was positive, and it was a follow-up to a survey from 5 years ago. 95% of Capitola residents rated their quality of life as excellent.

Council Member Termini noted two thirds of the population want a new library. He said it was interesting that in 2003, 13% of the population thought the condition of the streets were not good, and after the City put in two or three million dollars worth of repairs, 31% of the people think the streets need repair.

Council Member Storey questioned the likelihood of voters approving an extension of the Measure P tax and asked how many would actually vote yes. Mr. Metz said of the group starting out favorably inclined, the vast majority usually ends up staying on the yes side. Those who are undecided usually end up moving much more toward the no side.

Council discussion was followed by this action:

**ACTION:** It was the consensus of the City Council to receive the results of the 2008 Capitola Voter Survey conducted by Fairbank, Maslin, Maullin & Associates, as submitted.

**B. Extension of the City's .25% Transactions and Use Tax. [390-70/560-10]**

City Manager Hill commented on the current Measure P revenues and said it has been very successful in the city. He would like to see the tax extended to 2021 and receive direction to prepare ballot measure language.

Mayor Nicol would prefer it be extended to 2017 or 2018 to concur with the revenue bond. He would like the motion amended to 2018 rather than 2021.

Council Member Termini said he would like it to see it continued to the year 2020 when the Pension Obligation Bond debt is paid off.

City Treasurer Gualtieri said the public has responded to this 5-year period very well. He would support adding a year or two. The accountability factor and the public will support it. The public will be here in 2020, but the council will not. He would opt for a lesser time. He supports what the Mayor is suggesting to renew it until 2017, because the Pension Obligation Bond would be completed at that time.

Council Member Storey does not think it matters if it is 5, 8 or 10 years.

Council Member Termini said the overriding issue is that 90% of the .25 percent sales tax is paid by visitors. Council Members Termini and Begun agreed on setting the term to 2018.

Considerable Council discussion was followed by this action:

**ACTION:** Council Member Termini moved, seconded by Council Member Begun, to direct staff to include a measure for the continuation of a .25% Transactions and Use Tax through 2018 to be Administered by the State Board of Equalization when it returns to Council with the City's Resolution Ordering an Election and Requesting Consolidation of the General Municipal Election in the City on November 4, 2008. The motion carried on the following vote: AYES: Council Members Storey, Begun, Termini, and Mayor Nicol. NOES: None. ABSENT: Council Member Graves. ABSTAIN: None.

## 5. OTHER BUSINESS (Continued)

**C. Work Plan for Parking Meter Rate Increase. [470-30]**

Public Works Director Jesberg presented the work plan. Items of discussion included in the parking program are the two-hour parking limit and the hours of operation of meters. He proposed to call on the Village Master Plan Advisory Committee who were very helpful the last time meter rates were reviewed. He recommended holding a Special Council Meeting on June 11, 2008, to get public input.

Council Member Begun asked if the Coastal Zone affects the Pacific Cove Parking Lot. Public Works Director Jesberg confirmed it is in the Coastal Zone.

Council discussion was followed by this action:

**ACTION:** Council Member Storey moved, seconded by Council Member Begun, to approve the City Parking Meter Rate Increase Work Plan and to Schedule a Special Council Meeting on June 11, 2008, for review of the City's Parking Meter Program. The motion carried on the following vote: AYES: Council Members Storey, Begun, Termini, and Mayor Nicol. NOES: None. ABSENT: Council Member Graves. ABSTAIN: None.

**D. City of Capitola's 60<sup>th</sup> Birthday Celebration. [160-10]**

Mayor Nicol introduced this item. City Manager Hill provided a brief staff report.

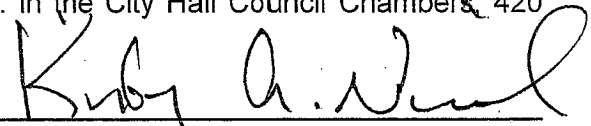
Council discussion was followed by this action:

**ACTION:** Council Members Begun and Termini volunteered to help, and appointed Toni Castro, CEO of the Capitola-Soquel Chamber of Commerce, to be part of an ad hoc committee to work with staff to develop a program to celebrate the City of Capitola's 60<sup>th</sup> Birthday.

## 6. ORAL COMMUNICATIONS - None

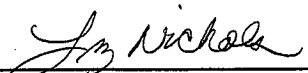
## 7. ADJOURNMENT

The Capitola City Council adjourned at 9:36 p.m. to a Joint Budget Study Session of the City Council, the Redevelopment Agency, and the Finance Advisory Committee to be held on Wednesday, May 28, 2008, at 6:00 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Kirby A. Nicol, Mayor

ATTEST:



Liz Nichols, Deputy City Clerk

MINUTES WERE APPROVED BY THE CITY COUNCIL ON 7/24/08 WITH COUNCIL MEMBER GRAVES ABSTAINING