

November 13, 2008
 Capitola, California

CAPITOLA CITY COUNCIL

MINUTES OF A REGULAR MEETING

6:30 P.M. CLOSED SESSION – CITY MANAGER’S OFFICE CAPITOLA REDEVELOPMENT AGENCY & CITY COUNCIL

At 6:34 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 to be discussed in Closed Session, as follows:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Govt. Code §54956.8)

Property: Rispin Mansion Property, 2000 & 2005 Wharf Road
 APN 035-371-01 & 02

Agency/City Negotiator: Rich Hill, City Manager

Negotiating parties: Rispin Partners LLC, City of Capitola, and City of Capitola Redevelopment Agency

Under Negotiation: Lease and Development Agreement

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

Save the Habitat vs. City of Capitola (Rispin Mansion Project)
 Sequel Union Elementary School District vs. City of Capitola

Mayor/Chairperson Nicol asked if anyone wished to address items on the Closed Session agenda. Seeing no one, the council/agency recessed at 6:35 p.m. to the closed session.

REGULAR MEETING OF THE REDEVELOPMENT AGENCY (See Capitola Redevelopment Agency Minutes)

REGULAR MEETING OF THE CITY COUNCIL

Mayor Nicol called the Regular Meeting of the City Council to order at 7:22 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

PRESENT: Council Members Sam Storey, Robert "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 Jamie Goldstein, Public Works Director Steve Jesberg, Chief of Police Rick Ehle, Assistant to the City Manager Lisa Murphy, and City Clerk Pamela Greeninger

*** PRESENTATIONS ***

Introduction of Community Development Director Benjamin "Jamie" Goldstein

City Manager Hill introduced the city's new Community Development Director, Jamie Goldstein, who was hired to replace former director Juliana Rebagliati. He discussed Jamie's background, including extensive Redevelopment Agency experience, most recently with the County of Santa Barbara. City Manager Hill discussed the recruitment process and positive responses from former employers. He said Jamie is a semi-pro cyclist, husband and father of one.

PRESENTATIONS (Continued)

Jamie Goldstein said he was honored to be selected as the Community Development Director for Capitola, and he is eager to accept the responsibility of the position. He has a lot to learn about the City of Capitola, and he understands that land use and development issues are important to this community. He thanked Rich Hill and the hiring committee for their faith in him and promised he would not let them down.

Mayor Nicol welcomed Jamie to the City's team and said the council looks forward to working with him.

**Introduction of Kurt Edwards, Sports Coordinator
for the Capitola Recreation Department**

Elise Legare, Recreation Supervisor, introduced the Capitola Recreation Department's Sports Coordinator, Kurt Edwards. She said Kurt has been working with the department for a few months now, and he has brought new energy, vitality and professionalism to the city's sports program. Elise discussed Kurt's extensive experience and involvement in local sports, as well as his educational background: a B.A. in Physical Education from Cal Poly in Pomona, a teaching credential from San Jose State, and an MA in Commercial Recreation from University of the Pacific. His professional experience includes management of aquatics and equestrian programs at Kennolyn Camp, recreation services coordination for the cities of Watsonville, Burlingame and Colma, management of the Boys and Girls Club in Redwood City, and he currently owns and operates the Cougar Swim School at the San Lorenzo Valley High School pool. In addition, Kurt has coached baseball, been a sportscaster with a local cable provider, and he was part of the Wharf to Wharf telecast crew.

Kurt Edwards thanked the council for the opportunity to work in Capitola to continue building a great Recreation Program for the community. He is especially thankful to be working close to home and not having to commute on Highway 17.

Mayor Nicol welcomed Kurt to the city's team. He said Capitola loves its sport programs and is sure Kurt will help contribute to the health and fitness of the community.

1. REPORT ON CLOSED SESSION [520-25]

City Attorney Barisone advised that the Council/Redevelopment Agency met in Closed Session at approximately 6:00 p.m. and that all council members/directors were present. Council Member/Director Termini excused himself from the matters pertaining to the Rispin Mansion Property and Save the Habitat vs. City of Capitola due to a conflict of interest. City Attorney Barisone then reported on the items discussed in Closed Session as follows:

- Conference with Real Property Negotiator: Rispin Mansion Property, 2000 & 2005 Wharf Road – There was Council/Director discussion regarding the Lease and Development Agreement. City Manager/Executive Director Hill provided an update on those negotiations, and no reportable action was taken. Council Member/Director Termini was not present for this item.

- Conference with Legal Counsel regarding Existing Litigation: Save the Habitat vs. City of Capitola (Rispin Mansion Project) – City Attorney Barisone said there was nothing to report on this item and that no discussion took place in Closed Session.

Soquel Union Elementary School District vs. City of Capitola - The Council had a brief discussion concerning the ongoing implementation of the lawsuit settlement, and no reportable action was taken in Closed Session.

Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates) – The City Council received an update from the City Attorney on the Cabrillo Mobile Estates lawsuit, which is on appeal before the 6th District Court of Appeal, and provided direction to legal counsel regarding the ongoing defense of that appeal. No reportable action was taken.

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

Mayor Nicol announced that the City Council received additional materials regarding the following items:

Item 3.L. Additional Agenda Report from the City Clerk regarding the City's Conflict of Interest Code Resolution to add the position of Recreation Supervisor to the list of designated employees on Appendix "A" of the proposed resolution. **[570-20]**

Item 4.A. Mayor Nicol said there were copies of emails from a number of people regarding the Charter Communications Public Hearing. **[565-20]**

B. Public Comments

1) Ross Matejcek, representing the homeowners and residents of 42nd Avenue, submitted a written copy of his oral comments. He discussed their concerns regarding the parking and unregulated driveway behind the businesses on 41st Avenue. He said the residents are interested in having the City convince Longs Drugs and BevMo to extend the wall and to provide other improvements behind their businesses similar to those enjoyed by residents who border the Brown Ranch Marketplace. Mr. Matejcek also discussed the need for a comprehensive traffic plan for the area from Clares Street to Capitola Road and asked that staff in planning and public works be directed to work with commercial tenants and 42nd Avenue residents to achieve improvements. He provided a display board to show the council examples of their issues and left the board for council review at a later time. Mayor Nicol thanked Mr. Matejcek for his comments. Council Member Termini suggested placing this matter on a future agenda. The City Manager was directed to do so.

2) Boris Seibert, Capitola resident, congratulated the City on passage of Measure D, specifically Chief of Police Ehle and Public Works Director Steve Jesberg on a job well done. He then informed the Council that the Capitola Mercantile has a new policy for its parking lot and expressed concerns that they require a \$100 cash fine, payable on the spot, if a person parks his/her car without one of their parking tickets. Mr. Seibert said he does not think a penalty, payable in cash immediately, is fair. He also commented that Mercantile employees have told violators they would get a city parking enforcement officer to assist them if they do not comply, which he does not believe is right. Staff was directed to look into this situation.

Council Member Termini suggested that planning staff look at this matter as it relates to planning regulations pertaining to commercial parking/conversion to a pay parking lot.

C. Staff Comments

1) Chief of Police Ehle wished to comment on the Rescue Van (Emergency Response Vehicle) that is being donated to Capitola by the Aptos/La Selva Fire Protection District (Consent Item 3.F.) He wished to recognize Chief Tom Crosser who could not be at the meeting tonight, and Division Chief Jim Diaz and Central Fire Assistant Chief Owen Miller who were in attendance. He said the city has had to borrow transportation vehicles in the past, and this vehicle would save an immense amount of time and manpower. Chief of Police Ehle commented on the support and cooperation between the agencies. **[370-40]**

2) City Clerk Greeninger briefly reported on the City's General Municipal Election held November 4, 2008. She said the County Clerk is in the process of canvassing the County's election results, and in Capitola the race for council member is still too close to call. Updates will be posted to the Election Department website, www.votescount.com each Friday until the canvass is complete.

City Clerk Greeninger stated that a number of city board, committee, and commission appointments will expire in December and that staff is recruiting for those potential vacancies. Applications are available at City Hall, Capitola Library and on the city's website.

D. City Council/Treasurer Comments/Committee Reports

1) City Treasurer Gualtieri announced that the Finance Advisory Committee meeting for next Tuesday, November 18, has been cancelled, because the Rispin Pro forma and Feasibility Study for the Rispin Project is not ready. The committee is looking forward to reviewing this information and making recommendations to the City Council. He said it is anticipated a special meeting would be called once the information is available.

2) Council Member Storey reported on the following matters:

- Last Monday the Monterey Bay Unified Air Pollution Control District board interviewed candidates for a new district director.
- Nadine Winslow, Bud Winslow's wife, passed away yesterday. He said both Nadine and Bud have been active members of the community. Bud is currently the City's appointed representative to Community Action Board, and he was recently elected to the Santa Cruz County Board of Education. Council Member Storey said he wished to take this opportunity to recognize Nadine.

3) Council Member Begun reported that he attended AMBAG's Anniversary Dinner and that he presented the Mayor's Proclamations to AMBAG and to Nicolas Papadakis on his retirement. He said the event was very well done.

4) Council Member Graves said AMBAG has announced its selection of John Doughty as the new director for AMBAG. Council Member Graves also said that he would like to step down as the city's representative on that board when the Council reviews its appointments next month. He said AMBAG meets on Wednesday nights, and he believes it would be worthwhile for another council member to serve on the board.

5) Council Member Termini reported on the following matters:

- The Library Board is in the process of recruiting for a new Library Director to replace Anne Turner, who will retire at the end of this year.
- The Art & Cultural Commission revisited the "Tiki" statute at its meeting this week and reported that the Tiki will be back to the Council at a future meeting.
- The wetlands project is nearly completed. He said it should be noted that due to the efforts of former Council Member Bruce Arthur spearheading that project, this could be just the project that causes the City's stormwater pollution program to be accepted by the State.

6) Mayor Nicol commended Council Member Termini on his recent appointment to the Board of Directors of the American Red Cross.

7) Mayor Nicol thanked and acknowledged the Santa Cruz Community Churches for their inclusion of the City of Capitola in the 4th Annual Share Fest Celebration, which was held on Saturday, October 25. He said a team of volunteers painted the public restrooms at City Hall.

E. Committee Appointments – NoneF. Approval of Check Register Report [300-10]

ACTION: Council Member Storey moved, seconded by Council Member Termini, to approve the Check Register Reports for October 17, 24 and 31, 2008, including checks numbered 57230 through 57281 in the amount of \$106,098.11, checks numbered 57282 through 57364 in the amount of \$240,276.38, checks numbered 57365 through 57415 in the amount of \$70,719.04, respectively; and payroll disbursements for the October 24, 2008, payroll in the amount of \$185,893.31, for a Grand Total of \$602,986.84, as submitted. The motion carried on the following vote: AYES: Council Member Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

3. CONSENT CALENDAR

Mayor Nicol read the titles of items on the Consent Calendar for the public's information. He then asked if there were any items members of the public or the council wished to pull for separate discussion. Council Member Storey said he had a brief comment on Item 3.D., the City Council/RDA Meeting Schedule, and a question on Item 3.J. Council Member Graves said he had a comment on Item 3.G. pertaining to the Wharf Pile Report. *(See comments under individual items)*

CONSENT CALENDAR ACTION: Council Member Termini moved, seconded by Council Member Graves, to approve the Consent Calendar, as recommended and with the correction to the City Council/Rédevelopment Agency 2009 Meeting Schedule on Item 3.D. 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 - Regular/Joint Meeting of October 9, 2008, and the Regular Meeting of October 23, 2008.

ACTION: Council Member Termini moved, seconded by Council Member Graves, to approve the City Council Minutes of the Regular/Joint Meeting of October 9, 2008, and the Regular Meeting of October 23, 2008, 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.

C. Receive Planning Commission Action Minutes for the Regular Meeting of November 6, 2008. [740-50]

ACTION: The City Council unanimously approved the Planning Commission Action Minutes for the Regular Meeting of November 6, 2008, as submitted.

D. Receive and Approve the 2009 Meeting Schedules for City Council/ Redevelopment Agency and Planning Commission/Architectural and Site Review Committee. [520-40]

Prior to action being taken on the Consent Calendar, Council Member Storey noted that the date for the City Council's December meeting on the schedule, December 11, is a Friday and should be changed to December 10. City Clerk Greeninger thanked him for pointing that out and said it would be corrected prior to posting and distribution.

ACTION: Council Member Termini moved, seconded by Council Member Graves, to accept the 2009 Meeting Schedules as an informational item, with the correction to the December meeting date on the City Council/ Redevelopment Agency schedule to December 10. Staff was directed to post this information at City Hall, the Capitola Branch Library, on the City's website and to provide copies to department heads, newspapers and various groups that regularly submit items to the City. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

E. Adopt Resolution Establishing Days for Closure of City Offices during the 2009 Calendar Year. [630-10]

ACTION: Council Member Termini moved, seconded by Council Member Graves, to adopt **Resolution No. 3725, Resolution Establishing Days for Closure of City Offices during the 2009 Calendar Year**, 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. Approve the Purchase of a Rescue Van from the Aptos/La Selva Fire Protection District in the amount of One Dollar (\$1.00). [370-40]

ACTION: Council Member Termini moved, seconded by Council Member Graves, to approve the Purchase of a Rescue Van from the Aptos/La Selva Fire Protection District in the amount of One Dollar (\$1.00), as recommended. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

G. Accept Report of Damage to Pilings on the Capitola Wharf and Authorize the Public Works Department to proceed with Preparation of Plans for a Piling Replacement Project in Spring of 2009 under the existing Contract with Moffatt & Nichol. [280-40/500-10 A/C: Moffatt & Nichol]

Prior to action being taken on the Consent Calendar, Council Member Graves commented on the Wharf Pile Report. He suggested that the next time the piles are inspected a scuba diver should also inspect the files below the water. He wants to make sure the structure is safe.

Mayor Nicol also commented on this item, stating it appears the project will cost \$100,000, and there is only \$75,000 in the Wharf Fund. Finance Director Lai confirmed that the adopted budget has \$75,000 earmarked for maintenance and improvements on the Wharf. She said that when the project returns to the council for approval, staff will provide funding at that time. Finance Director Lai discussed the recommended action directing staff to proceed with preparation of plans for piling replacement utilizing the existing contract with Moffatt & Nichol.

ACTION: Council Member Termini moved, seconded by Council Member Graves, to accept the Capitola Wharf Pile Inspection Report and authorized the Public Works Department to proceed with the preparation of plans for a piling replacement project for the early Spring of 2009 under the existing contract with Moffatt & Nichol, as recommended. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

H. Receive Report on Municipal Code Section 10.36.070 Pertaining to the Use of Streets for the Storage of Vehicles, and Section 10.36.180 Pertaining to the Parking of Vehicles Six Feet or Greater in Height (Ordinance No. 931). [470-40]

ACTION: Council Member Termini moved, seconded by Council Member Graves, to accept the report on Section 10.36.070 of the Capitola Municipal Code pertaining to the Use of Streets for the Storage of Vehicles and 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, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

I. Receive Departmental Quarterly Financial Report – 1st Quarter ending September 30, 2008. [380-05]

Council Member Begun complimented the department heads for coming in very close to budget.

ACTION: Council Member Termini moved, seconded by Council Member Graves, to accept the Departmental Quarterly Financial Report for the 1st Quarter ending September 30, 2008, 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)

J. Receive City Treasurer's Report for the Month Ended September 2008 (Unaudited). [380-30]

Prior to action being taken on the Consent Calendar, Council Member Storey commented on the significant negative cash amount on Page 5, the General Fund Summary Balance Sheet, due to the state's triple flip. He questioned why the amount due to the city is not recognized as a receivable on the balance sheet.

Finance Director Lai said the Treasurer's Report for the most part is on a cash basis so accruals and receivables are not recognized during the fiscal year, except for the Pacific Cove Mobile Home Park billings and Wharf lease billings. She stated that at the end of the year when the audit report is published, receivables are fully accrued and recognized in the Audit Report and in the Treasurer's Report.

ACTION: Council Member Termini moved, seconded by Council Member Graves, to accept the Treasurer's Report for the month ending September 30, 2008, 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.

K. Approve and Publish the Fiscal Year 2007-2008 Annual "Cities Financial Transactions Report to the State Controller's Office." [380-05]

ACTION: Council Member Termini moved, seconded by Council Member Graves, to approve the Fiscal Year 2007-2008 Annual "Cities Financial Transactions Report to the State Controller's Office," as submitted, and directed the City Clerk to publish the report in the Santa Cruz Sentinel Newspaper. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

L. Adopt Resolution Adopting a Revised Conflict of Interest Code for the City of Capitola. [570-20]

ACTION: Council Member Termini moved, seconded by Council Member Graves, to adopt the proposed **Resolution No. 3726, Resolution Rescinding Resolution No. 3256 and Adopting a Revised Conflict of Interest Code**, with the "Revised" Appendix "A" which adds the position of "Recreation Supervisor" to the list of designated positions with a Category "C" Disclosure Category. 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

A. Continued Public Hearing regarding Charter Communications Compliance with Cable Television Ordinance No. 816 and the March 28, 2001, Franchise Agreement, and to Discuss Remedies for Violation. Presentation: Assistant to the City Manager. [565-20]

Assistant to the City Manager Murphy summarized the written agenda report utilizing a PowerPoint Presentation. She responded to several questions of council members pertaining to provisions of the franchise and cable television ordinance. There were several technical questions, which she recommended addressing to Charter representatives.

George Jostlin, Director of Government Affairs & Public Relations—Sierra Nevada, introduced Charter's team, who were available to answer questions of Council Members: Dan Rumrill, Operations Manager; John Carlson, Technical Operations Manager, and Ed Farmer, Western Division Headend Manager. Mr. Jostlin responded to several questions from council members.

4. A. PUBLIC HEARINGS (Continued)

Mayor Nicol invited members of the audience to address the council on this item and opened the public hearing at 8:30 p.m.

Tish Eastman, resident at Capitola Greens located at 42nd Avenue and Clares Street, said that since the previous hearing her cable problem had been resolved; however, the cable was out last night. Ms. Eastman would like to see a cable customer liaison committee established, and she would also like Charter to be more responsive and held accountable in the future.

Anne Bishop reported that on the Monday after the Council's September 25th meeting, Charter contacted her and resolved her problems. She wanted to give credit where credit is due and specifically wished to thank Tony Gavilan, John Weinman, Anthony Ramirez and John Carlson for being very courteous to her and for helping in every way they could to correct the problems with her cable service. She expressed concern about the customer service telephone line and said the people answering the 800-number do not seem to be informed, and they need to be educated. Mayor Nicol asked how much she was paying for the wiring program. Ms. Bishop replied, \$5 per month.

Tom Bonura, Depot Hill resident, is disappointed with the level of service he is receiving from Charter for cable television service. He does receive Charter's high-speed Internet service, which is good. He expressed concern about problems not being fixed and cable boxes not working.

Gayle Ortiz, Riverview Drive resident, said she was also speaking on behalf of the Varcados who live on Depot Hill who have had problems with their cable service. She then voiced her frustrations regarding the intermittent HD (high definition) sound problem, channel reception, and ghosting. Ms. Ortiz said she recently purchased a new television with high definition, but the HD picture seems to be worse than the television she replaced. She appreciates that Charter has removed the HD charge from her bill, but there has been no follow-up, and she wonders what to do now. In closing, Ms. Ortiz encouraged the council, if action is not taken tonight, not to close this matter, but to continue to review Charter cable service and to take some further action.

Emily DiFranco, resident in the Jewel Box neighborhood, expressed her concerns about the service. She said they have fewer channels than other cable providers in the county, and she would like to be able to have a choice of cable providers.

Tegan Speider, Board Member of the Brookvale Terrace Homeowner's Association, 300 Plum Street, provided a progress report regarding cable service at their mobile home park. She said there has been a positive response by Charter to service calls and customer complaints. Although Charter is addressing the residents' cable problems, there are still many challenges that need to be met. Ms. Speider reported there was genuine interest on behalf of Charter to address cable service in their mobile home park. She thanked the council for their time in dealing with this matter.

Kendra Cleary, Jewel Street, said she was here tonight to ask the Council to help Charter improve by giving them some type of competition.

Mike McCarthy, 600 Park Avenue, said his Internet service is good, but he has had problems with the some of the cable television channels having high or low volume. He commented on the various channels and problems with each, particularly channels where the volume goes way up during the commercials. Mr. McCarthy also expressed concern that rates have increased, and Charter has reduced the number of channels available to customers.

4. A. PUBLIC HEARINGS (Continued)

Frank Borges said he received positive results from Charter since the last meeting. He discussed the problems with their 800-number and said Charter should cut it out or get an 800 number for local services. He said the new team is making efforts to improve service; however, he would encourage the council to consider the continuation of inquiries into our cable service, to do further studies, and to hold Charter accountable.

Mayor Nicol brought the matter to the council for discussion at 9:04 p.m. Individual council members commented on Charter's cable system. Representatives from Charter Communications responded to technical questions from council members regarding the cable system and the issues raised by Capitola residents.

At 9:36 p.m. Mayor Nicol asked if anyone from the public wished to speak. Seeing no one, the public hearing was closed.

Considerable Council discussion and deliberation was followed by this action:

ACTION: Council Member Storey moved that the City Council commission a committee, as authorized under Section 507 of the city's ordinance, that will be tasked with the following: 1) that the City demand from Charter a special review of their system's performance under Section 508; 2) that the City hire an independent consultant, an expert in the field, to review that performance to determine whether their service is in keeping with the franchise agreement, and that Charter pay the cost for that consultant; 3) that the committee review other elements of the franchise agreement to determine whether Charter is in compliance with it and to make findings and conclusions, including the possibility of subscriber rebates and credits, and also possible fines; and 4) that the committee report back to the City Council in 120 days with their findings.

Mayor Nicol asked if the committee would also look at grounds for termination of the agreement. Council Member Storey responded, "absolutely." Council Member Storey further stated that the committee would review in detail the ordinance and franchise agreement and determine whether or not there had been material breaches to this point. If the committee finds that there were material breaches to the agreement, that information would come back to the Council, and the council would then have a solid basis for issuing a notice of termination. Council Member Storey went on to say that one other objective of the committee would be to establish, in negotiating with Charter, a lifeline rate for subscribers who may wish to choose that service option.

The motion was seconded by Council Member Graves.

Council Member Begun suggested the committee not be given specific recommendations, but that it look into the situation with staff and come back to Council with a charge for the committee. Council Member Termini commented on his committee experience, and he said the more prior direction that is given, the better. Council Member Storey reiterated the need to include the lifeline rate as an objective of the committee.

Assistant to the City Manager Murphy said the three agencies served by Charter have met and that any franchise changes would require approval by all agencies; the County of Santa Cruz, the City of Watsonville and Capitola.

Council Member Graves said he hopes the committee will be made up of more than staff. He would like to see a few members from the community on the committee, as he believes it would be important to hear from them regarding what lifeline service the community wants.

4. A. PUBLIC HEARINGS (Continued)

Council Member Begun said he is not particularly interested in fines or terminating the franchise. He then asked if another cable company could come to Capitola. City Attorney Barisone said yes, and he informed the council that AT&T has notified the city they plan to come to Capitola.

Mayor Nicol said there already is competition from dish TV. He is not in favor of another committee and explained why. He would favor hiring a consultant to review Charter's performance.

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

5. OTHER BUSINESS

A. **Bicycle Transportation Account (BTA) Grant Application. [390-25/770-05]**

Building Official and bicycle coordinator Daniel Kostelec summarized the written agenda report. He explained the 10% match and the requirement for the city council to adopt a resolution agreeing to the 10% match if the city is awarded the grant. As identified in the Fiscal Impact, Building Official Kostelec stated that the \$38,000 match is available in the City's Transportation Development Account fund, which is administered by the Santa Cruz County Regional Transportation Commission; therefore, there is no impact to the General Fund. He discussed the side benefits for the city and responded to questions of Council Members.

Council discussion was followed by this action:

ACTION: Council Member Begun moved, seconded by Council Member Termini, to adopt **Resolution No. 3727, Resolution Authorizing Staff to Submit a Bicycle Transportation Account (BTA) Grant Application for \$380,000 for the Purchase and Installation of Video Detection Systems at Signalized Intersections and Agreeing to Provide Local Match Funds in the Amount of \$38,000 should the City's Grant Application be Approved**, 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.

B. **Request from the Capitola Village & Wharf Business Improvement Area (BIA) to Broadcast Holiday Music throughout Capitola Village during the Holiday Season from 12 Noon to 9:30 p.m. daily. [140-05: BIA/390-40: Amplification Permits]**

Assistant to the City Manager Murphy summarized the written agenda report on this item.

Ted Burke, representative of the Capitola Village and Wharf Business Improvement Area, said he was available to answer any questions the council might have about the request.

Council Member Termini commented on the proposal and said it may matter to people living in the village. He said the city needs to remain responsive to the residents. If calls are received regarding the volume or timeframe of the music, perhaps a condition can be included to give the city the ability to modify its approval. Mr. Burke said they would be responsive to the residents concerns.

5. B. OTHER BUSINESS (Continued)

Council Member Graves commented on the lights in Capitola Village. He said he loves the lights in the Village; however, since many of the lights have remained throughout the year, the impact of the holiday lighting does not have the same effect as it did when the lights were displayed only during the holiday season. He asked Mr. Burke to relay that comment to the Capitola Village and Wharf Business Improvement Area members.

Council discussion was followed by this action:

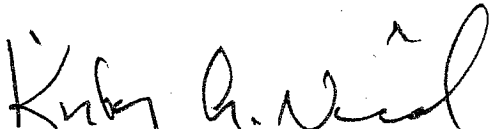
ACTION: Council Member Begun moved, seconded by Council Member Storey, to approve the Capitola Village and Wharf Business Improvement Area's (BIA) request to install speakers throughout the Village and play holiday music from December 15 through December 24, 2008, from 12 p.m. to 9:30 p.m. daily, with a BIA option to extend the music through December 31, 2008. The motion was further conditioned that if complaints were received regarding the music, the BIA will be responsive to the Village residents. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

6. COUNCIL/STAFF COMMUNICATIONS

Mayor Nicol asked if all the council members would be available for the next meeting scheduled for November 25, the Tuesday prior to the Thanksgiving holiday. All council members said they would. He then asked staff what is scheduled for the agenda and wondered if a meeting were necessary. City Clerk Greeninger noted several items that appear on the preliminary agenda. City Manager Hill said staff could take a look at the agenda next week, and a decision could be made to cancel the meeting at that time.

7. ADJOURNMENT

The Capitola City Council adjourned at 10:40 p.m. to its next Regular Meeting to be held on **Tuesday**, November 25, 2008, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Kirby A. Nicol, Mayor

ATTEST:



Pamela Greeninger, City Clerk

MINUTES WERE APPROVED BY THE CITY COUNCIL ON 12/11/08 WITH COUNCIL MEMBER NORTON ABSTAINING