

November 25, 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 6:09 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)
Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates)

Mayor/Chairperson Nicol asked if anyone wished to address items on the Closed Session agenda. Seeing no one, the council/agency recessed at 6:10 p.m. to the closed session.

At 7:10 p.m. Mayor/Chairperson Nicol welcomed everyone to the Regular Meetings of the Capitola Redevelopment Agency and the City Council of November 25, 2008. He announced that the meetings are being broadcast live on Charter Communications Cable Channel 8 and are being recorded for rebroadcast at 12 noon on Saturday, November 29, 2008, by Community Television of Santa Cruz County.

CAPITOLA REDEVELOPMENT AGENCY – (See Redevelopment Agency Minutes)

REGULAR MEETING OF THE CITY COUNCIL

Mayor Nicol called the Regular Meeting of the City Council to order at 7:15 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, Deputy City Attorney Celestial Cassman, 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 *****

**Certificates of Appreciation to
Randy Watts for Donation of \$1,600 to the
Capitola Public Safety & Community Service Foundation
For the Police Department Canine Program
and to
Explorer Shane Presco for his efforts in
raising over \$2,100 for Canine Vests [120-40]**

Chief of Police Ehle prefaced the presentations with information regarding Shane Presco's initiative to put together a fundraising program for the Explorer's to raise money to purchase canine vests for the Police Department's Canine Program. Chief of Police Ehle said Shane is a graduate of the Explorer Program and has been assisting as a program mentor. He said their efforts were successful, with one major donation of \$1,600 from Capitola resident Randy Watts, as well as donations from a number of businesses in the community. Both canines were at the meeting, and Katie modeled the new canine vest.

Mayor Nicol presented Certificates of Appreciation to Shane Presco for his fundraising efforts in raising over \$2,100 for the Capitola Police Department Canine Program for Canine Vests, and to Randy Watts for his Generous Donation of \$1,600 to the Capitola Public Safety & Community Service Foundation.

1. REPORT ON CLOSED SESSION [520-25]

Deputy City Attorney Cassman reported that the City Council/RDA Directors met in Closed Session to discuss the two items for discussion. Council Member/Director Termini recused himself from discussions regarding the Rispin Mansion real property matter. City Manager Hill gave an update on those real property negotiations, and no reportable action was taken. The City Council received an update from its legal counsel pertaining to the Vieira Enterprises vs. City of Capitola lawsuit and took no reportable action.

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda – None

B. Public Comments

Molly Ording stated that she was attending tonight's meeting as a representative of the Capitola Village Residents' Association to observe the meeting and to report back to their members. Mrs. Ording wished to thank that council member who may not be returning to the council once the election is finalized, for his work for the residents of Capitola.

C. Staff Comments – None

D. City Council/Treasurer Comments/Committee Reports

Mayor Nicol wished to publicly recognize Steve Jesberg and the public works department for bringing to fruition the southbound right turn lane addition on 41st Avenue at the Highway 1 overcrossing. He said the lane is open and will ease traffic just in time for the holiday season.

E. Committee Appointments – None

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

ACTION: Council Member Termini moved, seconded by Council Member Storey, to approve the Check Register Reports dated November 7 and 14, 2008, including checks numbered 57416 through 57491 in the amount of \$127,679.42, and checks numbered 57492 through 57543 in the amount of \$92,156.61, respectively; and payroll disbursements for the November 7, 2008, payroll in the amount of \$195,030.54, for a Grand Total of \$414,866.57, 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 items listed under the Consent Calendar and asked if there were any items members of the council or the public wished to pull for separate discussion.

Council Member Termini said he had a question on Item 3.E. pertaining to an agreement with The Active Network, Inc. Council Member Graves said he also had a question on that item. *(The council discussed Item 3.E. at this time. See discussion under that item below.)*

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, 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 - None

C. Receive Planning Commission Action Minutes for the Regular Meeting of November 20, 2008. [740-50]

ACTION: The City Council unanimously received the Planning Commission Action Minutes for the Regular Meeting of November 20, 2008.

D. Receive California Public Employees' Retirement System Annual Actuarial Valuation Report for June 30, 2007. [630-10]

ACTION: Council Member Termini moved, seconded by Council Member Storey, to receive the California Public Employees' Retirement System Annual Actuarial Valuation Report for June 30, 2007, 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. Approve Agreement with The Active Network, Inc., for Capitola Recreation Department Credit Card Transaction Processing and Management Programming for a minimum amount of \$10,000 per year, and an additional \$2,800 in the first year for training. [370-05/1050-20/500-10 A/C: The Active Network, Inc.]

Prior to action being taken on the Consent Calendar, Council Member Termini questioned the proposed agreement with The Active Network, Inc. He said this company would be collecting demographic information concerning the folks who register for classes with the Recreation Department, and he wanted to make certain that the information would be kept private for use by city staff only and that the company was not in the business of selling that information. Assistant to the City Manager Murphy assured him priority information would not be sold and that the program is more secure than the one currently being used.

Council Member Graves commented on the fiscal impact contained in the agenda report on page 2. According to the example, the total cost would be \$25,000; yet the final terms are for a cost of \$12,800, and he asked about the disparity. Assistant to the City Manager Murphy explained. Council Member Graves also asked if the new computer program for finance would integrate with this program. Assistant to the City Manager Murphy said the revenue aspect of the program would, but not the demographic information.

3. E. CONSENT CALENDAR (Continued)

Council Member Termini asked if the increase in fees would cover the additional cost, even if it were \$25,000. Assistant to the City Manager Murphy said it would. She also clarified that the \$17,000 currently paid to Bank of America for processing the transactions, plus the revenues from the proposed increase in recreation fees would cover the costs.

Council discussion was followed by this action:

ACTION: Council Member Termini moved, seconded by Council Member Storey, to approve the Agreement with The Active Network, Inc., for Capitola Recreation Department credit card transaction processing and management programming for a minimum amount of \$10,000 per year, and an additional \$2,800 in the first year for training, 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.

F. Adopt Resolution Amending the City's Fee Schedule by Increasing Various Recreation Department Fees. [390-40/1050-20]

ACTION: Council Member Termini moved, seconded by Council Member Storey, to adopt **Resolution No. 3728, Resolution Amending the City's Fee Schedule Resolution No. 3703 by Increasing Various Recreation Department Fees** to go into effect for the Early Spring Recreation Programs starting in March 2009, 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.

4. PUBLIC HEARINGS - None

5. OTHER BUSINESS

A. Reconsideration of Tiki Statue Public Art Donation. [1010-10/1040-20/500-10 A/C: Krull, Steve]

Assistant to the City Manager Murphy summarized the written agenda report prepared by Art & Cultural Commission Administrative Assistant, Kelly Barreto, and responded to questions of council members.

Council Member Termini commented on the Art & Cultural Commission's review of this item. He discussed Municipal Code Section 2.56.060, which provides a definition for "Work of Art" that includes various art forms and "any other element recommended by the Art & Cultural Commission." He said that was the finding the commission used to recommend the Tiki to the City Council. Council Member Termini also responded to questions of council members regarding the commission's review of this item.

Council Member Begun asked if the commission considered Municipal Code Section 2.58.090 C. Council Member Termini said they did not, because Chapter 2.58 speaks entirely of developer fees and funding of the public art program fund. It does not speak to art donated to the City to be placed on City property. Council Member Begun also questioned the city's liability and asked about a written agreement pursuant to the California Art Preservation Act wherein the artist waives his rights under the Act.

Mayor Nicol asked if anyone from the public wished to address the Council on this item.

Steve Krull, Tiki owner, commented on his donation of the Tiki and apologized for not following the city's donation process initially. Since the Tiki donation was denied, they have found there is tremendous public support for the Tiki. He urged that the council approve the Art & Cultural Commission's recommendation to accept the donation of the Tiki. He also wished to thanked city staff, Lisa Murphy and Kelly Barreto, for their assistance with this matter.

5. A. OTHER BUSINESS (Continued)

Mayor Nicol asked about the history of the Tiki. Mr. Krull said he purchased it in San Diego about 6 years ago, and he does not know who the artist is.

At this time, Deputy City Attorney Cassman responded to Council Member Begun's question pertaining to the city's liability, saying that the donation agreement does have the owner indemnifying the city against any claims from third parties, which would include the artist.

James Wallace, member of the Art & Cultural Commission and Village Master Plan Advisory Committee, commented on the sequence of events that occurred for the Tiki donation. He said that the city's Museum Director, Carolyn Swift, has shown that the Tiki does have some historical significance. In closing, Mr. Wallace encouraged the council to accept the Tiki.

Michael McGee said he wrote a letter to the City Council, as if being written by the Tiki, and he would like to encourage acceptance of the Tiki.

Elizabeth Stevens addressed the Council, stating that there were a number of people in the audience in support of the Tiki. In the spirit of moving this item along, she asked anyone attending the meeting to support the Tiki to please stand. A group of approximately 20 people stood.

Council discussion was followed with this action:

ACTION: Council Member Termini moved to approve the Art & Cultural Commission's recommendation to accept the Public Art Donation of the Tiki and to have it reinstalled in its original resting place in Esplanade Park. Council Member Storey seconded the motion.

There was further discussion regarding the length of time the Tiki would be in place. Council Member Termini said the Art & Cultural Commission recommends accepting it for an indefinite amount of time.

City Clerk Greeninger asked if the motion includes approval of the Sculpture Donation Agreement. Council Member Termini said it does; Council Member Storey agreed.

Deputy City Attorney Cassman pointed out that the agreement provides for the display for five years. City Clerk Greeninger clarified that in the Donation Agreement, paragraph 5, it states it shall be displayed for a minimum of five years, and that at the end of five years the City shall have no further obligation to display the sculpture in the city.

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

B. Update by the City Clerk regarding the Results of the City's General Municipal Election held November 4, 2008. [560-10]

City Clerk Greeninger said that after providing the election update agenda report in the agenda packet, staff has learned that the Planning Commission has cancelled its meeting on December 4. She advised the current elected officials, the city treasurer-elect, and council member-elect would all be available on that date. Since the County Clerk won't be certifying the election until Tuesday, December 2, before 5 pm, staff recommends that the Special City Council Meeting to Recite the Results of the Election be rescheduled to Thursday, December 4, 2008, at 6 p.m., in the City Hall Council Chambers.

5. B. OTHER BUSINESS (Continued)

Limited council discussion was followed by this action:

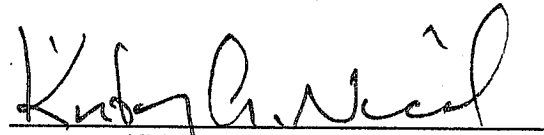
ACTION: Council Member Graves moved, seconded by Council Member Termini, to reschedule the Special Council Meeting to Recite the Results of the Election on Thursday, December 4, 2008, at 6 p.m. in the City Hall Council Chambers. The motion carried unanimously.

6. COUNCIL/STAFF COMMUNICATIONS


Council Member Termini had a question for the Public Works Department regarding the status of restroom project at Esplanade Park, as well as a question raised by the Commission on the Environment relating to whether the urinals are waterless. Public Works Director Jesberg said the rough plumbing is being done now, and the contractor will be working on the rock wall installation soon. He also confirmed that waterless urinals would be installed.

7. ADJOURNMENT

Mayor Nicol adjourned the meeting at 7:59 p.m. to a Special Meeting of the City Council to recite the Capitola Election Results to be held on **Thursday, December 4, 2008, at 6:00 p.m.**, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California. Mayor Nicol said Capitola has a lot to be thankful for, and he extended a Happy Thanksgiving to everyone.


Kirby A. Nicol, Mayor

ATTEST:

 CMC
Pamela Greeninger, City Clerk

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