

October 22, 2009  
 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 6:01 p.m. in the City Hall Council Chambers, Mayor/Chairperson Begun noted that all City Council Members/Redevelopment Agency Directors were present. 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/RDA Executive Director  
 Negotiating parties: The Rispin LLC, City of Capitola, and City of Capitola  
 Redevelopment Agency  
 Under Negotiation: Lease and Development Agreement

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

Property: 4140 Jade Street, APN 034-641-08  
 City Negotiator: Rich Hill, City Manager  
 Owner: John and Karen Huffman  
 Under Negotiation: Purchase of Property by City

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

Surf and Sand, LLC vs. City of Capitola  
 Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates)  
 Los Altos/El Granada Investors vs. City of Capitola (Castle Mobile Estates)

**CONFERENCE WITH LABOR NEGOTIATOR (Govt. Code §54957.6)**

Negotiator: Rich Hill, City Manager  
 Employee Organizations: Association of Capitola Employees, Capitola Police Captains,  
 Capitola Police Officers Association, Confidential Employees, Mid-Management  
 Group, Building Official, City Manager, Community Development Director, and  
 Public Works Director

**PERFORMANCE EVALUATION (Govt. Code §54957)**

Title: City Manager

Mayor/Chairperson Begun asked if anyone wished to address items on the Closed Session agenda. Seeing no one, the City Council/Redevelopment Agency recessed at 6:04 p.m. to the Closed Session.

**CAPITOLA REDEVELOPMENT AGENCY (See Redevelopment Agency Minutes)**

**REGULAR MEETING OF THE CITY COUNCIL**

Mayor Begun called the Regular Meeting of the City Council to order at 7:18 p.m. on Thursday, October 22, 2009, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

**ROLL CALL AND PLEDGE OF ALLEGIANCE**

**PRESENT:** Council Members Ron Graves, Sam Storey, Kirby Nicol, Dennis Norton, and Mayor Robert "Bob" Begun

**ABSENT:** None

**OTHERS:** City Treasurer Jacques Bertrand

**STAFF:** Acting City Manager Steve Jesberg, Deputy City Attorney Celestial Cassman, Community Development Director Jamie Goldstein, Captain Tom Held, Assistant to the City Manager Lisa Murphy, and Deputy City Clerk Liz Nichols

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

Deputy City Attorney Celestial Cassman reported on items discussed in Closed Session. The Council discussed the Rispin Mansion Property with its Property Negotiator Jamie Goldstein sitting in for the City Manager and received a brief update and took no reportable action. The Council did not discuss the Jade Street Property. The Council discussed the three existing litigation cases referenced on the agenda, received status updates, and took no reportable action. The Council, with Lisa Murphy as the Labor Negotiator, discussed labor negotiations. The Council received an update, gave staff direction, and took no reportable action. The Council met and discussed the performance evaluation of the City Manager, but took no reportable action on that item.

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

Community Development Director Jamie Goldstein announced that Item 4.D., the Public Hearing to consider the project located at 115 San Jose Avenue, would be continued to the Council Meeting of November 12, 2009.

**B. Public Comments – None****C. Staff Comments – None****D. City Council/Treasurer Comments/Committee Reports**

1) Council Member Graves recognized Robert Bucher, who passed away this past week. Bob was a Capitola City Council Member for 12 years, and he also served on the Capitola Planning Commission.

2) Council Members Norton and Nicol recognized Rick Karleen, who also passed away recently. He was a Planning Commissioner for the City of Capitola for about 5 years. Most people remember him as being the former owner of the Capitola Wharf.

3) Council Member Storey recognized Mardi Wormhoudt, who passed away yesterday. She was on the Santa Cruz City Council for many years. She was the former Mayor of Santa Cruz during the earthquake and helped the community recover and rebuild the City of Santa Cruz. She also held multiple terms on the County Board of Supervisors for Santa Cruz County.

Mayor Begun announced that tonight's Council Meeting would be adjourned in memory of these community leaders.

**E. Committee Appointments – None**

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

Staff responded to several questions from Council Members regarding various checks.

After the discussion, the following action was taken on the Check Register Report:

**ACTION:** Council Member Nicol moved, seconded by Council Member Storey, to approve the Check Register Report dated October 2 and 9, 2009, including checks numbered 61274 through 61324 in the amount of \$101,260.79 and checks numbered 61325 through 61426 in the amount of \$280,667.94, respectively; and payroll disbursements for the October 9, 2009, payroll in the amount of \$195,289.51, for a Grand Total of \$577,218.24, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

**3. CONSENT CALENDAR**

Mayor Begun asked if there were any items on the Consent Calendar that members of the council or the public wished to pull for separate discussion.

Council Member Nicol pulled Item 3.E.

Mayor Begun advised Item 3.E. would be discussed at the end of the meeting following Other Business Item 5.B. (*See discussion and action on Page 11512.*)

Mayor Begun said he had questions on Items 3.C. and D. (*See comments under those items.*)

After discussion of Items 3.C. and D., the following action was taken on the Consent Calendar:

**CONSENT CALENDAR ACTION:** Council Member Norton moved, seconded by Council Member Storey, to approve the Consent Calendar with the exception of Item 3.E., as recommended. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None. (*NOTE: Council Member Graves abstained from voting on Item 3.B., Approval of the Minutes, only.*)

**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 – Special Meeting of September 23, 2009.**

**ACTION:** Council Member Norton moved, seconded by Council Member Storey, to approve the Minutes of the Special Meeting of the City Council of September 23, 2009, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: Council Member Graves.

**C. Receive City Treasurer's Report for the Month Ended September 30, 2009 (Unaudited). [380-30]**

Prior to action being taken on the Consent Calendar, Mayor Begun asked about an error the State Board of Equalization found when they looked into the sales tax paid to the city by Orchard Supply Hardware. Assistant to the City Manager Murphy advised the error is not shown in the balance sheet for this report.

3. **CONSENT CALENDAR (Continued)**

Mayor Begun had another question regarding the cash balance and fund balances on the graph on page 6. Assistant to the City Manager Murphy advised she would research the answer and report back to him.

**ACTION:** Council Member Norton moved, seconded by Council Member Storey, to receive the City Treasurer's Report for the Month Ended September 30, 2009, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

**D. Accept the Cities Financial Transactions Report to the State Controller's Office and Direct the City Clerk to Publish the City of Capitola's 2008-2009 Summary Report of Annual Financial Transactions. [380-05]**

Prior to action being taken on the Consent Calendar, Mayor Begun asked if figures contained in the report had any relation to the budget. Assistant to the City Manager Murphy advised she would research the answer and report back to him.

**ACTION:** Council Member Norton moved, seconded by Council Member Storey, to accept the Cities Financial Transactions Report to the State Controller's Office and direct the City Clerk to publish the City of Capitola's 2008-2009 Summary Report of Annual Financial Transactions in the Santa Cruz Sentinel Newspaper, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

**E. Receive the Quarterly Departmental Financial Report for First Quarter Ending September 30, 2009. [380-05]**

*This item was pulled for separate discussion. (See Page 11512 for discussion and action.)*

4. **PUBLIC HEARINGS**

**A. Public Hearing to Consider Project Application #09-004, 120 Monterey Avenue, to Determine if the Capitola Theatre Structure is a Local Historic Resource, Consider a Coastal Permit to Demolish the Structure, and Discuss Conceptual Options to Relocate the Cell Site Currently Located on the Structure. APN: 035-262-02, 04, 10, 11; Property Owner: Uchiyama-Swenson, LLC; Representative: Barry Swenson Builder, Chris Ferrante. Presentation: Community Development Department. [730-10,730-85 Zoning/740-30 LCP]**

The City Council received a staff report from Community Development Director Goldstein. Community Development Director Goldstein discussed the Capitola Theatre beginning with its historic value. A Coastal Development permit would be needed.

Building Official Kostelec said the options are demolition and repair. The main concern is the building presents the same hazard as the Rispin Mansion.

Community Development Director Goldstein discussed relocating the cell site on the building.

Mayor Begun opened the public portion of the hearing at 7:43 p.m..

The following members of the public spoke in favor of demolishing the Capitola Theatre:

Central Fire Chief Bruce Clark  
Ken Sullivan  
Dave Fox

## 4. A. PUBLIC HEARINGS (Continued)

Mayor Begun closed the public portion of the hearing at 7:47 p.m.

Council Member Norton said when the theater is gone it will be used for parking and the paving should be an all weather surface. The removal should require that the materials be recycled. There may be asbestos. The glu-lams should be saved. He is in favor of removing the theater.

Council Member Storey said it would not qualify as a State or historic landmark.

Council Member Graves mentioned parking will be a problem. He supports the demolition.

**ACTION:** Council Member Nicol moved, seconded by Council Member Norton, to take the following action:

1. Determined that the Capitola Theatre structure was not a local historic resource; and
2. Directed staff to issue a Coastal Development Permit to demolish the Capitola Theatre structure with the conditions that portions of the site which are utilized for parking shall be improved with an all-weather surface prior to May 1, 2010, and that all material from the demolition shall be recycled, to the extent feasible.

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

**B. Public Hearing to Consider Options to Amend the City's Municipal Code to Ban Smoking in Certain Locations in the Village and at Other Locations in the City. Presentation: Community Development Department. [460-70]**

The City Council received a staff report from Community Development Director Goldstein.

Mayor Begun opened the public hearing at 8:11 p.m.

The following members of the public spoke against the smoking ban:

Hasan Ayyad, owner of Havana Village  
Tim Thomas  
Dave Fox

The following members of the public spoke in favor of the smoking ban:

Bob Yount  
Andrea Silva-Solano  
Lou Fineman  
Richard Salazar, Pajaro Valley Prevention  
Sandy Erickson  
Laura Kasa, Executive Director of Save our Shores  
Steve Pleich, Sanctuary Steward of Save our Shores

Mayor Begun closed the public portion of the hearing at 8:36 pm.

## 4. B. PUBLIC HEARINGS (Continued)

Council Member Nicol said we have to do whatever we can to protect our environment. There are no favorable arguments for smoking. A broader public hearing should be brought back.

Council Member Graves said a beach or a wharf is the best place to smoke. He doesn't go to restaurants where smoking is allowed. He has a problem with picking out a demographic area and putting a ban on it. He would support a ban on smoking.

Council Member Storey is in favor of banning smoking all along the Esplanade. He would like a broader ban brought back to Council.

Council Member Norton would vote for a ban on smoking in the entire Village. 90% of Californians are nonsmokers.

Mayor Begun would ban smoking in the entire City.

Council discussion was followed by this action:

**ACTION:** Council Member Norton moved, seconded by Council Member Nicol, to take the following actions:

1. Directed staff to prepare an ordinance that prohibits smoking at the following locations:
  - Any portion of the Esplanade right of way
  - Any portion of the Stockton Avenue right of way between Wharf Road and the Esplanade
  - Any portion of Monterey Avenue south of Lawn Way
  - The Capitola Wharf
  - The Esplanade Park
  - Jade Street Park
  - Library property at 2005 Wharf Road
  - Rispin Mansion property
  - Peery Park
  - Soquel Creek Park
  - Public Parcel located north of Stockton Bridge at 101 Stockton Avenue
  - City Hall Property
  - Noble Gulch Park
  - Monterey Park
  - Cortez Park; and
2. Directed staff to look at signage concepts to add to the ordinance, and directed staff to advertise to merchants and residents who may be affected by this ordinance; and
3. Directed staff to come back at a future date to look at a wider smoking ban within Capitola Village.

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

**C. Public Hearing to Consider a Resolution Amending the City's Fee Schedule Resolution No. 3777 to Amend the General Plan Maintenance Fee. Presentation: Community Development Department. [390-40]**

Community Development Director Goldstein provided staff's report on this item and responded to questions of Council Members.

Mayor Begun opened the public portion of the hearing at 9:03 p.m..

## 4. C. PUBLIC HEARINGS (Continued)

The following members of the public spoke against amending the General Plan Maintenance Fee:

Dave Fox  
Sandy Erikson

The Mayor closed the public portion of the hearing at 9:05 p.m..

Mayor Begun asked what the percentage was needed to get \$100,000. Community Development Director Goldstein said .6%

Considerable Council discussion was followed by this action:

**ACTION:** Council Member Norton moved, seconded by Council Member Nicol, to adopt **Resolution No. 3781, Resolution Amending the City's Fee Schedule, Resolution Nos. 3756 and 3777, to Amend the General Plan Maintenance Fee to 0.6% of the Total Building Valuation;** not using the proposed scale in the draft resolution. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

**D. Public Hearing to Consider Project Application #09-093, 115 San Jose Avenue, Conceptual Review for a 10-Unit Residential Infill Project with Public Promenade in the CV (Central Village) Zoning District. APN: 035-221-17; Filed 8/19/09; Property Owner: Capitola Associated, LLC; Representative: Matthew Peek, Studio Peek Ancona. Presentation: Community Development Department. [730-10/730-85 Zoning]**

Community Development Director Goldstein noted that under Oral Communication Item 2.A., he had announced that this item has been continued to the November 12, 2009, meeting.

**ACTION:** It was the consensus of the City Council to continue this item to November 12, 2009, as recommended.

## 5. OTHER BUSINESS

**A. A Resolution Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the Sale of the Seller's Proposition 1A Receivable from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith. [390-70/500-10 A/C: California Statewide Community Development Authority]**

Public Works Director Jesberg summarized the written agenda report.

Council Member Storey asked what interest rate the State is paying. Community Development Director Goldstein said he believed it was about 2 or 3%. Council Member Storey asked if the city could have more time to get more information.

Council discussion was followed by this action:

**ACTION:** Council Member Nicol moved, seconded by Council Member Norton, to adopt **Resolution No. 3782, a Resolution Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the sale of the Seller's Proposition 1A Receivable from the State; and Directing and Authorizing Certain other Actions in Connection Therewith,** as submitted. The motion carried on the following vote: AYES: Council Members Graves, Nicol, Norton, and Mayor Begun. NOES: Council Member Storey. ABSENT: None. ABSTAIN: None.

## 5. OTHER BUSINESS (Continued)

**B. Reclassification of Building Official Position and Setting of Salary. [600-10]**

Community Development Director Goldstein provided a brief explanation of the proposed reclassification plan. Building Official Kostelec discussed the details of the plan and responded to questions of council members.

Council discussion was followed by this action:

**ACTION:** Council Member Norton moved, seconded by Council Member Graves, to adopt **Resolution No. 3783, a Resolution Creating the Building Official Mid-Management Class within the Community Development Department, Eliminating the Building Official Management Class, and Setting the Salary for Building Official Mid-Management Class**, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

AT THIS POINT, ITEMS REMOVED FROM CONSENT CALENDAR WILL BE CONSIDERED

3. CONSENT CALENDAR (*Items pulled for separate discussion.*)**E. Receive the Quarterly Departmental Financial Report for First Quarter Ending September 30, 2009. [380-05]**

Assistant to the City Manager Murphy summarized the Quarterly Departmental Financial Report and responded to questions of council members pertaining to overtime in the Police Department and SLESF.

Council Member Graves suggested that those department heads whose budgets are over at the next quarterly report be available to respond to the council at that time. Council Member Nicol said he would be interested in staff's recommendations for remediation for departments that are over budget.

Council discussion was followed by this action:

**ACTION:** Council Member Nicol moved, seconded by Council Member Storey, to receive the Quarterly Departmental Financial Report for First Quarter Ending September 30, 2009, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

## 6. COUNCIL/STAFF COMMUNICATIONS

A. Council Member Norton commented that he has noticed a lot of vehicles speeding in Capitola. He would be interested in designating the month of November as "Speed Control Month" and get the Police Department more active in issuing tickets to people who are speeding. Council Member Graves suggested citing cell phone use as well. He would be interested in receiving a report on citations issued for cell phone use, as he sees people talking on cell phones while driving constantly.

B. Sandy Erickson, Capitola resident, commented on the following items:

1) She complimented the City Council on the restroom remodel, saying they are fabulous.

2) She expressed concern about three large motor homes that were parked in the loop on the Esplanade and explained the potential hazards with other vehicles and pedestrians, as well as safety issues. She wondered if it would be possible to ban motor homes or extra long vehicles from parking on the Esplanade.



6. COUNCIL/STAFF COMMUNICATIONS (Continued)

3) Ms. Erickson also commented that it is becoming common for people who have corner lots to reorient their front door facing what had been the side yard. She would like the city to look at that and make a determination as to how the city will treat the reorientation of corner lots.

Council Member Graves said he went to the Police Department to inquire about the motor homes parked on the Esplanade, and he said one of them has a handicap permit. He also said the Planning Commission has requested that the Council meet with them to get clarification on the side yard/front yard issues.

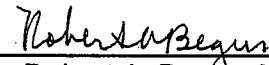
Mayor Begun asked that Ms. Erickson email her requests to the City Council.

7. **ADJOURNMENT**

The City Council adjourned at 9:48 p.m. in memory of Robert Bucher, Rick Karleen, and Mardi Wormhoudt to a Special Joint Meeting of the City Council/Redevelopment Agency regarding Library Site Options to be held on Wednesday, November 4, 2009, at 6:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ATTEST:

  
\_\_\_\_\_  
Liz Nichols, Deputy City Clerk



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Robert A. Begun, Mayor

MINUTES WERE UNANIMOUSLY APPROVED AS SUBMITTED BY THE CITY COUNCIL ON 11/12/09