

June 24, 2010
Capitola, California

**CAPITOLA CITY COUNCIL
MINUTES OF A REGULAR MEETING**

**5:15 P.M. - CLOSED SESSION - CITY MANAGER'S OFFICE
CAPITOLA REDEVELOPMENT AGENCY & CITY COUNCIL**

At 5:14 p.m. in the City Hall Council Chambers, Mayor/Chairperson Storey noted that all City Council Members/Redevelopment Agency Directors were present, with the exception of Council Member/Director Begun. (NOTE: Council Member/Director Begun was present for the Closed Session in the City Manager's Office.) Mayor/Chairperson Storey made an announcement regarding the items to be discussed in Closed Session, as follows:

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)
Julie Talbert vs. City of Capitola
City of Capitola vs. Soquel Union Elementary School District
C. Lee Horstman vs. City of Capitola Police Department

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: Dean Kim
Claimant: Surf & Sand, LLC

Mayor/Chairperson Storey noted there was no one in the audience; therefore, the City Council/ Redevelopment Agency recessed at 5:15 p.m. to the Closed Session in the City Manager's Office.

CAPITOLA REDEVELOPMENT AGENCY (See Redevelopment Agency Minutes)

REGULAR MEETING OF THE CITY COUNCIL

Mayor Storey called the Regular Meeting of the City Council to order at 8:41 p.m. on Thursday, June 24, 2010, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

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

ABSENT: None

OTHERS: City Treasurer Jacques Bertrand

STAFF: City Manager Rich Hill, City Attorney John G. Barisone, Community Development Director Jamie Goldstein, Chief of Police Michael Card, Assistant to the City Manager Lisa Murphy, and City Clerk Pamela Greeninger

***** PRESENTATIONS *****

**Presentation of Certificate of Appreciation
to Maureen O'Malley-Moore for her
Service on the Finance Advisory Committee [330-40/120-40]**

Mayor Storey stated that Maureen was unable to attend tonight's meeting, but he wanted to publicly recognize and thank her for her service on the Finance Advisory Committee from December 2008 until May 2010. Mayor Storey said he would personally deliver the certificate to her.

PRESENTATIONS (Continued)

**Presentation on the Conflict Resolution Center
of Santa Cruz County by Suzanne Koebler, Executive Director
[330-30 Community Group Funding]**

Suzanne Koebler discussed the work of the Conflict Resolution Center. She said they have only 3 people on staff; however, they have approximately 40 volunteers.

Using a PowerPoint Presentation (copy on file), Ms. Koebler discussed their mission to create more peaceful communities by improving communication and building relationships. She focused on how their organization serves residents in Capitola through affordable, community mediation. Ms. Koebler informed the Council that a new service, divorce mediation, would be launched next month. She responded to questions of council members and thanked the Council for the opportunity to discuss their programs.

**Presentation on Native Animal Rescue
by Frank Schmit, President
[330-30 Community Group Funding]**

Frank Schmit thanked the council for the opportunity to discuss the work Native Animal Rescue performs. He informed the Council that their organization was incorporated about 30 years ago and they have approximately 50 volunteers who specialize in certain animals. Mr. Schmit said they appreciate the cooperative relationship between the Capitola Police Department and their organization. Following his verbal presentation, Mr. Schmit responded to questions of Council Members.

Mayor Storey thanked the representatives from both community programs for reporting on their services.

1. REPORT ON CLOSED SESSION [520-25]

City Attorney Barisone announced that the City Council/Redevelopment Agency convened in Closed Session at approximately 5:15 p.m. in the City Manager's Office on those items listed on the posted agenda. All Council Members/Directors were present, as were City Manager Hill, Community Development Director Goldstein, Deputy City Attorney George Kovacevich and himself. He then reported on the Closed Session items as follows:

Conference with Legal Counsel – Existing Litigation

Surf and Sand, LLC vs. City of Capitola - City Attorney Barisone reported that this matter was discussed by him and Deputy City Attorney George Kovacevich. He said this is the lawsuit that was filed against the City of Capitola on June 2, 2010, following the City Council's denial of the Surf and Sand Mobile Home Park application to subdivide the property and denial of the associated coastal development permit required for that particular subdivision.

City Attorney Barisone stated that in addition to the City of Capitola being sued, the five city council members who voted to deny the subdivision application and coastal development permit have also been sued in this case. A status report was provided to the City Council and instruction was given by the Council regarding ongoing defense of the litigation. No reportable action was taken in Closed Session.

Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates) - This item was not discussed, as there was nothing to report.

1. REPORT ON CLOSED SESSION (Continued)

Los Altos/El Granada Investors vs. City of Capitola (Castle Mobile Estates) - City Attorney Barisone reported that there was a brief discussion on the current status of this litigation, and no reportable action was taken.

Julie Talbert vs. City of Capitola - There was nothing to report on this matter; therefore, it was not discussed.

City of Capitola vs. Soquel Union Elementary School District - The City Council received a status report on the CEQA lawsuit from the City Attorney Barisone. He said the parties are proceeding toward mediation in that matter. The City Council provided instructions to the City Attorney with regard to those negotiations to mediate this matter. No reportable action was taken.

C. Lee Horstman vs. City of Capitola Police Department – This item was not discussed in Closed Session as there was nothing to report on this matter.

Liability Claims

Claimant: Dean Kim - City Attorney Barisone reported that there was a brief discussion regarding the tort claim of Dean Kim, but no action was taken in closed session. He stated that the matter is on the open session consent agenda for rejection of the claim.

Claimant: Surf & Sand, LLC - City Attorney Barisone said the tort claim of Surf & Sand, LLC, which is on the City Council's consent agenda for rejection, Item 3.D., was not discussed in Closed Session. He informed the Council that the liability attorney to whom the claim was forwarded had noted a statutory defect in the way the claim was presented. Upon notification of the defect, city staff, at the liability attorney's instructions, sent a notice of claim insufficiency to Surf & Sand, LLC. Because it was sent back to Surf & Sand attorneys as insufficient, that matter should be removed from the Consent Calendar.

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda

City Attorney Barisone said Item 3.D. pertaining to the Claim of Surf & Sand, LLC should be deleted from the Consent agenda as was reported in the report on the closed session.

ACTION: Council Member Graves moved, seconded by Council Member Norton, to remove Item 3.D. pertaining to the Claim of Surf & Sand, LLC, from the Consent Calendar as recommended. The motion carried unanimously.

B. Public Comments

1) The following people addressed the City Council about their concerns regarding the significant detrimental health impacts of SmartMeter, which are being installed by PG&E: [565-30]

Karen Nevis, Capitola resident, expressed her concerns and submitted a packet of written information about SmartMeter.

Tammie Donnelly, Aptos resident, discussed the detrimental health impacts she experienced following the installation of a Smart Meter at her home in Aptos.

Carol Prettie, Soquel resident, discussed issues regarding radio frequencies and how they affect people's health. She hopes we can have a moratorium against the proposed SmartMeters.

Kim Tunilla, nutrition researcher, discussed the negative health influence electromagnetic frequencies/radiation have on people.

2. B. 1) ORAL COMMUNICATIONS (Continued)

Marilyn Garrett reminded the City Council that she was at the Council's May 27 meeting requesting that the council place a moratorium against installation of SmartMeter. She discussed the effects of SmartMeter and urged the council to put a halt to the installation of these meters.

Council members discussed the public comments relating to installation of SmartMeter by PG&E. There was Council interest to agendaize this matter on a future agenda and to invite a representative from PG&E to attend.

Council Member Graves said there was a recommendation from Council Member Norton to agendaize the matter relating to SmartMeter. Since a great portion of his income and retirement comes from PG&E, and he would need to recuse himself from that item, he requested placement on an agenda where he would be able to leave the meeting at that time.

City Attorney Barisone said he has a copy of the PUC petition and informed the council that he has been in contact with the San Francisco attorney concerning that matter. According to the attorney, time is of the essence if cities are interested in joining San Francisco's petition. He will email a copy of the petition to the council members and place the matter on the Closed Session agenda as an anticipated litigation item, unless the council would like to place it on the open session agenda.

Council Member Begun commented on a study that was done regarding electric blankets. The engineering society (IEEE) did a study on it which showed there was little likelihood of any danger from that. He wonders if a similar study has been done on SmartMeter. Council Member Begun will provide contact information to Community Development Director Goldstein for follow-up.

Marilyn Garrett addressed the Council to say time is of the essence as full deployment of the SmartMeter is scheduled for July.

Council Member Begun suggested we request a suspension of installation in Capitola.

Mayor Storey recommended staff request that PG&E come to the second meeting in July and, pending that meeting, ask that they restrain from beginning installation of the SmartMeter in the City of Capitola. If they refuse or don't respond to the request, the City Attorney could bring the petition to Council on July 8 to consider whether the city should join the lawsuit. There was discussion about having it on the Closed Session agenda for July 8 under anticipated litigation.

ACTION: Council Member Nicol moved, seconded by Council Member Norton, to place this matter on a future agenda for Open Session. There was discussion about scheduling this item. City Clerk Greeninger advised July 1 is the deadline to get an item on the July 8 agenda. Staff was directed to communicate with PG&E to invite a PG&E representative to a hearing on July 22, and to ask that PG&E restrain from beginning installation of the SmartMeter in the City of Capitola until after the July 22 hearing. The Council agreed if PG&E declined to attend the July 22 meeting or indicated they would begin installing the meters prior to July 22, the matter should be placed on the July 8 agenda in Open Session.

2) Toni Castro, Capitola Soquel Chamber of Commerce, invited everyone to attend Bikes on the Bay, the Vintage Motorcycle Show, to be held at Capitola Mall on Sunday, June 27, 2010, from 9 to 4 p.m.

C. Staff Comments

1) Community Development Director Goldstein announced that the Capitola's Junior Lifeguard Program is celebrating "30 Years of Junior Lifeguards" with a fundraising event to be held on Friday, July 9, from 12 to 8 p.m. at Capitola Beach. There will be an Adult/Alumni competition from 12 to 5 p.m., a BBQ and award ceremony from 5 to 7 p.m., and live music with the Dig Beat's on the Bandstand until 8 p.m.

2) City Clerk Greeninger announced that the deadline for applications for the vacancy on the Finance Advisory Committee is next Wednesday, June 30.

3) City Clerk Greeninger also announced that the City of Capitola would be hosting a Candidate Information Night in the City Hall Council Chambers on Tuesday evening, June 29, at 6 p.m. The County Elections Department staff will be available to answer questions. This is an excellent opportunity for prospective candidates to learn about running for elective office.

D. City Council/Treasurer Comments/Committee Reports

Council Member Norton commended and thanked the Capitola Public Safety & Community Service Foundation for the Rod & Custom Car Show Event. He said Gary Wetsel, owner of Paradise Beach Grille, informed him they had their busiest day ever on Saturday.

E. Committee Appointments - None

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

Council Member Nicol referred to Check #63300 on Page 12 to Akers & Associates, Inc., in the amount of \$3,800. City Manager Hill explained the check was for preliminary engineering on the ADA Path to the parking lot behind City Hall, which does not meet current ADA regulations. Community Development Director Goldstein explained ADA regulations have changed over the years, and although it may have met regulations at the time it was built, the regulations have changed.

Council Member Graves asked why this project could not wait until a parking garage is built, stating that ADA requirements only require bringing it up to the current standard if reconstruction is being made.

City Manager Hill commented that he is not certain it was up to the ADA standards at the time it was built. He informed the Council that staff received a complaint about the ramp and had the survey performed.

Council Member Nicol expressed concern about this type of situation occurring at other locations, including the ADA ramp at Esplanade Park which was fixed at the time the Bandstand was built, and the Rispin/Peery Trail.

Council Member Graves said the City should construct ADA improvements as part of a project and said he would like to hear from the City's former ADA compliance representative, Daniel Kostelec, regarding the city's obligation to construct the improvements now or if they can be done at the time of a project.

Mayor Storey clarified that there would be a report off agenda pertaining to the City Hall ADA Ramp to the parking lot.

Council discussion was followed by this action:

ACTION: Council Member Begun moved, seconded by Council Member Norton, to approve the Check Register Reports dated June 4 and 11, 2010, including checks numbered 63237 through 63296 in the amount of \$166,876.92, and checks numbered 63297 through 63360 in the amount of \$52,059.59, respectively; and payroll disbursements for the June 4, 2010, payroll in the amount of \$182,043.83, for a Grand Total of \$400,980.34, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

3. CONSENT CALENDAR

Mayor Storey asked if there were any items on the Consent Calendar that members of the council or the public wished to pull for separate discussion. He noted that Item 3.D. had been removed from the Consent Calendar. No items were pulled for separate discussion.

CONSENT CALENDAR ACTION: Council Member Norton moved, seconded by Council Member Nicol, to approve the Consent Calendar as recommended, with the exception of Item 3.D. which was removed. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. 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 – The Regular Meetings of May 27 and June 10, 2010, and the Special Joint Budget Study Session of the City Council/ Redevelopment Agency of June 2, 2010.

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to approve the Minutes of the Regular Meetings of May 27 and June 10, 2010, and the Special Joint Budget Study Session of the City Council/Redevelopment Agency of June 2, 2010, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None. *(NOTE: Council Member Norton abstained on the Minutes of June 10, 2010.)*

C. Deny Claim of Dean Kim in the amount of \$36,000 and forward the Claim to the City's Liability Insurance Carrier. [Claims Binder]

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to deny the claim of Dean Kim in the amount of \$36,000 and to forward it to the City's Liability Insurance Carrier, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

D. Deny Claim of Surf & Sand, LLC, in the amount of \$25,000,000 and forward the Claim to the City's Liability Insurance Carrier. [Claims Binder]

This item was removed from the Consent Calendar by action taken under Item 2.A.

E. Adopt Ordinance Adding Chapter 1.40 to the Capitola Municipal Code Pertaining to Limitations on Campaign Contributions. [2nd Reading] [560-10]

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to adopt Ordinance No. 948, Ordinance Adding Chapter 1.40 to the Capitola Municipal Code Pertaining to Campaign Finance, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

F. Direct staff to Review the City of Capitola's Conflict of Interest Code and Submit the "2010 Local Biennial Notice" to the City Council no later than October 1, 2010. [570-20]

3. F. CONSENT CALENDAR (Continued)

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to approve recommended action directing staff to review the City's Conflict of Interest Code, determine whether the code needs to be amended, and to submit the "2010 Local Biennial Notice" to the City Council no later than October 1, 2010. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

G. Adopt Resolution Ordering an Election, Requesting County Elections to Conduct the Election, and Requesting Consolidation of the General Municipal Election in the City of Capitola on Tuesday, November 2, 2010. [560-10]

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to adopt **Resolution No. 3822, Resolution Ordering an Election, Requesting County Elections to Conduct the Election, and Requesting Consolidation of the General Municipal Election in the City of Capitola on Tuesday, November 2, 2010**, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

H. Receive City Treasurer's Report for the Month Ended May 31, 2010 (Unaudited). [380-30]

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to receive the City Treasurer's Report for the Month ended May 31, 2010 (Unaudited), as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

4. PUBLIC HEARINGS

A. Public Hearing to Consider a Resolution Amending the City's Fee Schedule to Increase Various City Fees by the Consumer Price Index or by Actual Cost of Service, to Eliminate Fees No Longer Applicable, and to Add a New Fee for Notary Services to be effective July 1, 2010. Presentation: City Manager's Department. [390-40]

Assistant to the City Manager Murphy summarized the written agenda report and responded to questions of council members.

Mayor Storey opened the public hearing at 9:53 p.m. Seeing no one, the public hearing was closed.

Council Member Norton commented that he made less money last year and that many other self-employed individuals experienced a similar reduction in work as a result of the economy. He believes there should be no fee increases for FY 2010/2011.

Council Member Begun commented on the drain on the City's treasury from recreation programs.

Council Member Graves said he agrees with Council Member Norton.

Mayor Storey asked if the City's budget is dependent upon the proposed fee increases. City Manager Hill replied no, it is not.

Council Member Nicol moved, seconded by Council Member Begun, to approve the staff recommendation to adopt the proposed new fee schedule resolution as submitted. The motion **failed** on the following vote: AYES: Council Members Nicol and Begun. NOES: Council Member Graves, Norton, and Mayor Storey. ABSENT: None. ABSTAIN: None.

4. A. PUBLIC HEARINGS (Continued)

Mayor Storey prefaced his no vote, stating that in view of the fact that the City's budget is not dependent upon these fee increases, and recognizing the difficult economic times, he will vote no on the motion in order to demonstrate to the community that the City is doing its part to hold the line on City fees. Mayor Storey would suggest that if the economy and the City's projections don't meet projected targets, the fee schedule return to the city council at the mid-year review.

ACTION: Council Member Norton then moved to adopt a fee schedule resolution, **Resolution No. 3823**, effective July 1, 2010, with no increases in fees, with the addition of a new fee for notary services, and with the removal of fees no longer applicable recommended by staff. Council Member Graves seconded the motion. The motion carried on the following vote: AYES: Council Members Graves, Norton, and Mayor Storey. NOES: Council Member Nicol and Begun. ABSENT: None. ABSTAIN: None.

Council Member Norton recommended that staff issue a Press Release regarding the council's action to retain current fees without increases.

5. OTHER BUSINESS - None

6. COUNCIL/STAFF COMMUNICATIONS

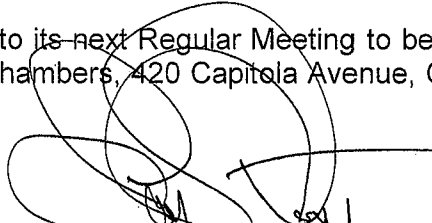
1) Council Member Norton said there have been some problems with use of the Bandstand, and he believes the council should review the policy. City Manager Hill said he is researching a situation that occurred there. Council Member Begun asked for a copy of the Bandstand Rental Policy.

2) Mayor Storey commented on the request from the Library Ad Hoc Committee for the City to issue a response to the Grand Jury Report pertaining to the Capitola Branch Library.

City Manager Hill suggested that the mayor and the city manager craft a response for approval by the council at the next meeting.


7. ADJOURNMENT

The City Council adjourned at 10:08 p.m. to its next Regular Meeting to be held on Thursday, July 8, 2010, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Sam Storey, Mayor

ATTEST:



Pamela Greeninger, City Clerk

MMC