

**CAPITOLA CITY COUNCIL
REGULAR MEETING MINUTES
THURSDAY, JULY 25, 2019**

CALL TO ORDER

Mayor Bertrand called the meeting to order at 8:30 a.m.

Council Member Yvette Brooks: Present, Council Member Ed Bottorff: Present, Council Member Sam Storey: Present, Vice Mayor Kristen Petersen: Present, Mayor Jacques Bertrand: Present.

No members of the public were present and the Council adjourned to the Community Room with the following items to be discussed in Closed Session. A recess was taken at 4:30 p.m. and the closed session resumed at 6 p.m. in the City Manager's Office:

PUBLIC EMPLOYEE APPOINTMENT [Govt. Code § 54957(b)]

Title: City Attorney

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Gov't. Code § 54956.9(d)(2)
(One potential case)

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

[Govt. Code § 54956.9 (d)(1)]

(Two cases)

City of Capitola v. Water Rock Construction, Inc.
Santa Clara Superior Court Case No. 16CV295795

Savanah Smith and Thanh-Thanh Hoang v. County of Santa Cruz, et. al
Luke Smith, et al. v. County of Santa Cruz
U.S. Northern California District Court Case Nos. 17-CV-05095 and 17-CV-06594

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL – 7 PM

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Member Yvette Brooks: Present, Council Member Ed Bottorff: Present, Council Member Sam Storey: Present, Vice Mayor Kristen Petersen: Present, Mayor Jacques Bertrand: Present.

2. REPORT ON CLOSED SESSION

City Attorney Reed Gallogly reported that Council met from 8:30 a.m. to 4:30 p.m. on the appointment item and after a recess reconvened at 6 p.m. to discuss the litigation matters. No reportable action was taken.

3. ADDITIONAL MATERIALS

A. Item 9.A – Six public comment emails

B. Item 9.D – Copy of related municipal code section, public comment letter, appellant's reply to staff report, letters in support of appellant's position

4. ADDITIONS AND DELETIONS TO AGENDA - None**5. PUBLIC COMMENTS**

Cherrie McCoy, resident, spoke to safety on 41st Avenue, red light cameras, and the impacts of housing in a mall redevelopment on traffic.

6. CITY COUNCIL / STAFF COMMENTS

Council Member Brooks asked the City to consider updating the water fountain by the bandstand with a water bottle hydration station, and asked to recruit for an alternate to the Santa Cruz County Children's Network.

Council Member Petersen reminded the community that Food Truck Friday debuts tomorrow at Monterey Park at 4:30 p.m.

7. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS**A. Historical Museum Board Appointment**

RECOMMENDED ACTION: Appoint Dean Walker to a three-year term on the Capitola Historical Museum Board as recommended by its trustees.

MOTION:	APPOINT DR. WALKER AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kristen Petersen, Vice Mayor
SECONDER:	Sam Storey, Council Member
AYES:	Brooks, Bottorff, Storey, Petersen, Bertrand

B. Appointment of Youth Member to Advisory Boards

RECOMMENDED ACTION: Appoint Bryce Ebrahimian to a one-year term as a youth member of the Commission on the Environment and the Finance Advisory Committee.

Council Member Petersen noted the new youth member already attended a Finance Advisory Commission and expressed her enthusiasm to have youth participation.

MOTION:	APPOINT BRYCE EBRAHIMIAN AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Yvette Brooks, Council Member
SECONDER:	Kristen Petersen, Vice Mayor
AYES:	Brooks, Bottorff, Storey, Petersen, Bertrand

8. CONSENT CALENDAR

Council Member Storey noted he has a conflict of interest with Item 7.E and recused himself. A separate vote was held for that item.

Council Member Brooks had a question about the seasonal salary schedule for Item 7.F and pulled the item to be heard during General Government.

MOTION:	APPROVE ITEMS A, B, C, D, AND G AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Kristen Petersen, Vice Mayor
AYES:	Brooks, Bottorff, Storey, Petersen, Bertrand

MOTION:	APPROVE ITEM F AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Kristen Petersen, Vice Mayor
AYES:	Brooks, Bottorff, Petersen, Bertrand
RECUSED:	Storey

- A. Consider the June 13 and June 27, 2019, City Council Regular Meeting Minutes
RECOMMENDED ACTION: Approve minutes.
- B. Receive the June 6, 2019, Planning Commission Regular Meeting Action Minutes
RECOMMENDED ACTION: Receive minutes.
- C. Approval of City Check Registers Dated June 7, June 14, June 21, and June 28, 2019
RECOMMENDED ACTION: Approve check registers.
- D. Update on the Capitola Branch Library Project
RECOMMENDED ACTION: Receive report.
- E. Consider Community Grant Review Contract
RECOMMENDED ACTION: Authorize the City Manager to enter into a contract with Optimal Solution Consulting in the amount not to exceed \$7,000 to review the City's Community Grant Program.
- F. Consider a Resolution Approving Recreation Job Classifications [1050-10]
RECOMMENDED ACTION: Consider a Resolution approving new Recreation job classifications for Afterschool Coordinator and Afterschool Leader and amending the Part-Time/Seasonal Pay Schedule.

This item was heard under General Government following 9.D. Council Member Brooks requested the job descriptions include the specific ages or grade levels and asked why a starting level was \$14.39 rather than the 2022 minimum wage of \$15 an hour. She would like to create a foundation of better wages during the pilot program to attract quality applicants and encourage longevity.

Assistant to the City Manager Larry Laurent explained that the new afterschool position salaries were set 5 percent above the Camp Capitola leader and coordinator. He also noted that staff annually reviews the seasonal schedule for both minimum wage standards and adjustments to avoid compaction of other positions' rates.

Mayor Bertrand asked about salary steps. Recreation Supervisor Nikki Bryant LeBlond agreed that a higher rate is appropriate, which is how it is designed. She explained that a hire who meets minimum requirements would start at step 0 and after the six-month probation would be eligible for a step increase. A candidate with a degree could come in at a higher step.

MOTION:	ADOPT THE RESOLUTION INCLUDING DESCRIPTIONS AND SALARY SCHEDULE AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Sam Storey, Vice Mayor
AYES:	Brooks, Bottorff, Storey, Petersen, Bertrand

G. Second Reading of an Ordinance Amending Title 5, Business Taxes, Licenses and Regulations, and Title 8, Health and Safety, of the Capitola Municipal Code Pertaining to Prohibiting Sales of Flavored Tobacco Products

RECOMMENDED ACTION: Adopt an Ordinance adding Municipal Code Chapter 5.38 Tobacco Retailer License Required, amending 8.38.120, and relocating 8.38.130 Regulating the Sale of Tobacco Products.

9. GENERAL GOVERNMENT / PUBLIC HEARINGS

A. Consider a Report on the Jewel Box Traffic Calming Project Results

RECOMMENDED ACTION: Accept report and provide direction to staff.

Public Works Director Steve Jesberg presented the staff report including a history of hearings and public outreach, the actions taken this spring, and related traffic monitoring.

Council Member Bottorff confirmed there appeared to be a reduction in overall traffic counts post-action.

Neal Savage, Opal Street resident, praised the lower speeds and wished the turn restriction was more successful.

Shelle Thomas, Opal Street resident, asked Council to address the increase in traffic and speed.

Alan Cable, Topaz Street resident, felt there has been an overall improvement in redirecting traffic to larger collector and arterial streets. He asked for more enforcement at 47th Avenue and larger signs.

An Opal Street resident expressed concern about increased traffic on streets other than Topaz Street.

Melinda Vento, Topaz Street resident, thanked Council for its efforts and asked for enforcement numbers. She agreed with the previous speaker that the intent is not to push traffic to other residential streets.

Jim Hobbs, Topaz Street resident, said he has noticed a decrease in traffic, but some drivers claim not to see signs.

Linda Smith, Prospect Street resident, supports current efforts and speed tables.

Cherry McDonald, Jewel Street resident, said she has seen little change especially in speed and weekend drivers.

Dave Aaron, Garnet Street resident, asked for studies on the other side of 47th Avenue.

Ron Burke, 47th Avenue resident, said he appreciates efforts to reduce pass-through traffic. The speed tables are especially successful and he requested that the City replace a 47th Avenue speed "hump" with a table.

Joanne Kisling, Wharf Road resident, asked for a look at wider impacts and balance.

Council Member Storey said overall efforts have been effective reducing traffic on Topaz and more measures may be needed. Highway 1 traffic backup is a huge factor in local traffic. He would like Public Works to investigate other, better signage and encouraged more enforcement, discussion, and outreach.

Council Member Petersen said equalizing traffic is not achievable and acknowledged overall poor behavior by some individuals. She supports maintaining current efforts and perhaps increasing sign visibility.

Council Member Brooks confirmed there was outreach to online mapping services and agrees impacts are regional.

Council Member Bottorff noted color changes on signs may not be permitted but lighting could be an option.

MOTION:	MAINTAIN CURRENT TRAFFIC CALMING EFFORTS AND RETURN IN A YEAR WITH UPDATED TRAFFIC COUNTS, PUBLISH AN ITEM ON LOCAL TRAFFIC IN THE CITY NEWSLETTER, AND LOOK INTO MORE VISIBLE SIGNAGE AND REPLACING A SPEED BUMB WITH A TABLE ON 47TH AVENUE.
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kristen Petersen, Vice Mayor
SECONDER:	Ed Bottorff, Council Member
AYES:	Brooks, Bottorff, Storey, Petersen, Bertrand

B. Consider a Resolution for the Levy of Capitola Village and Wharf Business Improvement Area Assessments for Fiscal Year 2019/2020 [140-05]

RECOMMENDED ACTION: Conduct the public hearing and adopt the proposed Resolution levying the Fiscal Year 2019/2020 Capitola Village and Wharf Business Improvement Area (CVWBIA) Assessments and accepting the CVWBIA Annual Plan and budget.

Council Member Storey is a Village business owner and therefore recused himself and left the dais.

Finance Director Jim Malberg presented the staff report, noting the Capitola Wharf and Village Business Improvement Association converted two restaurant categories to four to better reflect current businesses. The City received one letter opposing the assessments. Carin Hanna and Vice President Daniel Castagnola of the CVWBIA said it was also looking at increased hydration stations as part of its improvement programs.

There was no public comment.

MOTION:	ADOPT THE RESOLUTION AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Kristen Petersen, Vice Mayor
AYES:	Brooks, Bottorff, Petersen, Bertrand
RECUSED:	Storey

C. Sidewalk Vending and Compliance with Senate Bill 946

RECOMMENDED ACTION: Provide staff direction on future regulations for sidewalk vending in Capitola.

Community Development Director Katie Herlihy presented the staff report, offering approaches to regulate time, place, and manner standards for sidewalk vending with examples of limited and more protective restrictions.

Council Member Storey confirmed that food vendors would be subject to health and food safety permitting and inspections.

Council also asked for clarification about whether the legislation includes the Wharf and pathways such as the river walk and Depot Hill pathway.

In public comment, Carin Hanna said the CWVBIA discussed this item at a recent meeting and a unanimous straw vote supported a more restrictive approach.

MOTION:	DIRECT STAFF TO RETURN WITH A HIGHLY RESTRICTIVE SIDEWALK VENDING ORDINANCE
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Yvette Brooks, Council Member
SECONDER:	Kristen Petersen, Vice Mayor
AYES:	Brooks, Bottorff, Storey, Petersen, Bertrand

D. Consider an Appeal by Embarc Capitola of the Selection Committee's Decision to Issue Cannabis Retail Licenses to The Apothecarium Capitola and TreeHouse Capitola

RECOMMENDED ACTION: Hold requested public appeal hearing and uphold staff's issuance of preliminary retail cannabis licenses to The Apothecarium Capitola and TreeHouse Capitola.

Following a short recess, City Council Members each shared ex parte communication with Embarc about its application prior to the selection. Council Members Petersen, Brooks, and Storey said they met with Embarc prior to the permit decision and Council Member Brooks and Mayor Bertrand noted they had been contacted by Embarc.

Police Chief Terry McManus walked the Council through the timeline and process for the development and implementation of the retail cannabis application.

Attorney for the appellant Mark Masara provided a written last-minute response to the staff report and other additional materials, and requested an additional five minutes for his presentation. He was granted two additional minutes. He challenged the process according to the municipal code, asserting that the only legal evaluation is the first phase application. He also claimed Embarc partner Jason Sweatt misled the panel and used knowledge and site information to benefit the Apothecarium application.

In the City rebuttal, staff said that no other applicant claimed to have a lease for 1850 41st Avenue and that Mr. Sweatt's participation with Embarc was considered a positive rather than a negative. City Attorney Reed Gallogly addressed specific issues raised in the appeal, challenging the appellant's interpretation of code and the use of "may."

In public comment, Scott Hawkins of Apothecarium noted the firm submitted a response to allegations and reiterated that Apothecarium did not receive any materials from Mr. Sweatt. He told Apothecarium he had another partner. Apothecarium spoke with the leasing agent for 1850 41st Avenue and knew the lease was contingent.

Mr. Masara disputed the City's discretion to establish specific, additional criteria.

Mayor Bertrand asked if other applicants were able to answer the ownership question. City Manager Goldstein recalled that the top two applicants were able to clearly answer the question.

Mr. Gallogly summarized the content of the appellant's written response to the staff report.

Council Members agreed that it was made clear that a lease was not required for the application and that a multi-phase evaluation process with an interview is a best practice and was expected.

Council Member Petersen said she found the appeal has a "conspiratorial" tone that is not appropriate to what has been shown to be a well-thought-out and considered application process.

Council Member Storey said the difference is clear between may and shall and noted 5.36.030(12) allows for additional criteria. He also noted the appellant did not object to the interview process at the time.

Mayor Bertrand said he finds the evasive answer to a topic provided ahead of time (ownership) concerning.

MOTION:	UPHOLD STAFF'S ISSUANCE OF PRELIMINARY RETAIL CANNABIS PERMITS AS RECOMMENDED
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ed Bottorff, Council Member
SECONDER:	Kristen Petersen, Vice Mayor
AYES:	Brooks, Bottorff, Storey, Petersen, Bertrand

Following a short recess, the Council heard the pulled consent calendar item 8.F.

E. Consider Public Banking Legislation

RECOMMENDED ACTION: No recommended action. Council discretion to consider directing the Mayor to send a letter Regarding Assembly Bill 857 or Senate Bill 528 to the City's State legislative delegation and to the bills' authors, or take no action at this time.

City Manager Goldstein presented the staff report overview of two recent pieces of state legislation related to public banking. He noted that Senate Bill 528 is more similar to the

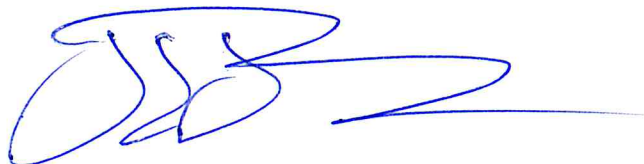
successful Bank of North Dakota but it has been tabled for this legislative session.

There was no public comment.

MOTION:	AUTHORIZE THE MAYOR TO SEND LETTERS OF SUPPORT FOR BOTH PROPOSED LEGISLATIONS.
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Sam Storey, Council Member
SECONDER:	Ed Bottorff, Council Member
AYES:	Brooks, Bottorff, Storey, Petersen, Bertrand


10. **ADJOURNMENT**

The meeting adjourned at 10:38 p.m.



Jacques Bertrand, Mayor

ATTEST:



Linda Fridy, City Clerk

MINUTES APPROVED AUGUST 22, 2019