

**CAPITOLA CITY COUNCIL  
REGULAR MEETING MINUTES  
THURSDAY, FEBRUARY 14, 2013 - 7:00 PM  
CLOSED SESSION – 6:00 PM  
CITY MANAGER’S OFFICE**

**CALL TO ORDER**

Mayor Harlan called the meeting to order at 6:00 PM and announced the items to be discussed in Closed Session, as follows:

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

Negotiator: Jamie Goldstein, City Manager  
Employee Organizations: Capitola Police Officers Association and Capitola Police Captains.

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

1. City of Capitola, et al. vs. Lexington Insurance Company [United States District Court, Northern District of California, Case No. 5:12-cv-03428-LHK];
2. Kevin Calvert, D.D.S. and Pamela Calvert vs. the City of Capitola, et al. [Superior Court of the State of California for County of Santa Cruz, Case No. CV 172804];
3. Katie Saldana vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case No. CV 172324];
4. Truck Insurance vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case No. CV173071];
5. David Ross; Carousel Taffy Morro Bay, Inc.; Village Mouse dba; The Thomas Kinkadee Gallery Capitola; Judith Ferro vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case No. CV 173642];
6. American Alternative Insurance Corporation; Central Fire Protection District of Santa Cruz County vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case No. CV173926];
7. California Capital Insurance Company vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case No. CV173552];
8. Trustees of the John T. Kawahara and Barbara J. Kawahara Revocable Trust vs City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case No. CV175216];
9. Schroedel et al. vs. the City of Capitola, et al. [Santa Cruz Superior Court Case No. CV 175684];
10. Foremost Insurance Company vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case No. CV 173228].

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

Property: 401 Capitola Ave., Capitola; APN 035-13-111  
Agency Negotiator: City Manager  
Negotiating Parties: City of Capitola and property owner  
Under Negotiation: Property Negotiations

**CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION  
Significant Exposure to litigation pursuant to subdivision (b) of Govt. Code  
§54956.9**

1. County of Santa Cruz regarding the Noble Gulch pipe failure;
2. County of Santa Cruz — Property Tax Administrative Fee Dispute;
3. State of California – California State Department of Finance regarding pro-rated share of interest on City/Redevelopment Agency loans.

**LIABILITY CLAIMS (Govt. Code §54956.95)**

Claimant: Rae Ellen Leonard  
Agency claimed against: City of Capitola.

Mayor Harlan noted that there was no one in the audience; therefore, the City Council recessed at 6:05 p.m. to the City Manager's Office.

**REGULAR MEETING OF THE CAPITOLA CITY COUNCIL – 7:00 PM**

**1. ROLL CALL**

PRESENT: Council Members Michael Termini, Dennis Norton, Sam Storey, Ed Bottorff and Mayor Stephanie Harlan

ABSENT: None

**2. PRESENTATIONS**

- A. Human Care Alliance presentation of Good Neighbor Award to representatives of the Capitola Village Residents Association for a donation received. [120-40]  
**Capitola Village Residents Association presented the award.**

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

City Attorney Barisone stated that Administrative Services Director Murphy and City Manager Goldstein provided a status report and received instruction from Council regarding Capitola Police Officers' Association and Capitola Police Captains' labor negotiations; there was no reportable action. The Council received a status report regarding City of Capitola, et al. vs. Lexington Insurance Company; however, no reportable action was taken. Mr. Barisone stated that Mayor Harlan will be reporting on the following settlement agreements with the City arising out of the March 2011 pipe failure incident:

1. Kevin Calvert, D.D.S. and Pamela Calvert
2. Katie Saldana
3. Truck Insurance
4. David Ross; Carousel Taffy Morro Bay, Inc.;

5. American Alternative Insurance Corporation;
6. California Capital Insurance Company
7. Trustees of the John T. Kawahara and Barbara J. Kawahara Revocable Trust

Mr. Barisone stated that a status report was provided to Council regarding Schroedel, et al. vs. the City of Capitola, et al.; there was no reportable action. The Council discussed the real property negotiations regarding property located at 401 Capitola Ave., Capitola. Council Members Norton and Bottorff were disqualified from participating due to conflicts of interest, and both were not present for the discussion; no reportable action was taken. The Council received a status report of potential litigation with the County of Santa Cruz regarding the Noble Gulch pipe failure and the Property Tax Administrative Fee Dispute; there was no reportable action. Mr. Barisone stated the the Council considered initiating litigation with the State of California – California State Department of Finance regarding pro-rated share of interest on City/Redevelopment Agency loans; there was no reportable action. Finally, the Council received a report regarding the Rae Ellen Leonard tort claim, which is on the Council's regular meeting Consent Calender this evening; no reportable action was taken in closed session.

Mayor Harlan summarized the settlement agreements listed above.

**4. ADDITIONS AND DELETIONS TO AGENDA (None provided)**

**5. PUBLIC COMMENTS**

Marilyn Garrett spoke against wireless technology.

Jerry Totes, Community Against Gun Violence (CAVG), introduced the newly formed CAVG organization with the mission to fight the growing problem of gun violence in our local and national communities.

**6. COUNCIL/STAFF ANNOUNCEMENTS**

Council Member Termini announced the Santa Cruz public libraries reading program.

Council Member Norton provided information about the Santa Cruz County Regional Transportation Commission (SCCRTC) recent meeting. He stated that the SCCRTC hired an engineer to supervise the construction of the Santa Cruz rail line bridge retrofit project.

**7. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS**

- A. City Council appointment to the Traffic and Parking Commission.  
[110-10]

Mayor Harlan recommended appointing Steven Ross to the Traffic & Parking Committee, and Danielle Uharriet to the Oversight Board to be the representative for the employees of the former redevelopment agency. Mayor Harlan stated that the appointment for the Seniors Council will be continued.

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**ACTION** Motion made by Council Member Storey, and seconded by Council Member Norton, to appoint Steven Ross to the Traffic & Parking Committee, and Danielle Uharriet to the Oversight Board.

**8. CONSENT CALENDAR**

- A. Consideration of approving the City Council Minutes of the Regular Meetings of September 27, 2012; October 25, 2012; November 8, 2012; November 20, 2012; December 13, 2012; and January 10, 2013. In addition, consideration of approving the City Council Minutes of the December 5, 2012, and the January 3, 2013, Special Meetings, and the City Council Minutes of the October 11, 2012, Regular Meeting and Special Closed Session.
- B. Receive Planning Commission Action Minutes for the Regular Meeting of February 7, 2013. [740-50]
- C. Consideration of the Notice of Completion for the Noble Gulch Pipeline Repair Project. [900-20/500-10 A/C: Ebert Corporation]
- D. Consideration of denying liability claim of Rae Ellen Leonard for an undetermined amount and forwarding it to the City's liability insurance carrier. [Claims Binder]

**ACTION** Motion made by Council Member Norton, seconded by Council Member Termini, to approve the Consent Calendar. The motion was approved with the exception of Council Member Bottorff abstaining from Item 8.A.

**9. GENERAL GOVERNMENT/PUBLIC HEARINGS**

- A. Discussion and consideration of modifications of the City of Capitola Zoning Ordinance, Chapter 17.39 - Planned Development. [730-85]

**ACTION** Motion made by Council Member Termini, seconded by Council Member Norton, to agendize the first reading of a Planned Development Ordinance to allow the Planning Commission's decision regarding a Planned Development to be appealable to the City Council.

- B. Receive informational report on gun regulations for the City of Capitola. [485-10]

Richard Emigh, local resident, asked if gun sales within twenty feet of a school entrance would be subject to arrest.

**ACTION** Motion made by Council Member Termini, seconded by Council Member Norton, to direct the City Attorney to draft an urgency for the February 28, 2013, City Council Meeting to limit the number of gun retailers in the City. The motion unanimously carried with the following vote: **AYES:** Council Members Norton, Storey, Bottorff, Termini, and Mayor Harlan. **NOES:** None. **ABSENT:** None. **ABSTAIN:** None.

Motion made by Council Member Norton, seconded by Council Member Storey, to consider an Ordinance prohibiting gun shows within the City limits; to continue investigating the possibilities of a gun turn-in or buy-back program; to establish a gun-free zone within 1,000 feet of schools

pursuant to federal and state laws; to explore potential land-use changes that would prohibit or limit the sale of guns and ammunition; to consider requiring existing gun owners to complete a background check prior to purchasing ammunition. The motion unanimously carried with the following vote: **AYES:** Council Members Norton, Storey, Bottorff, Termini, and Mayor Harlan. **NOES:** None. **ABSENT:** None. **ABSTAIN:** None.

- C. Consideration of an Ordinance amending Sections 8.38 of the Capitola Municipal Code Pertaining to Smoking Regulations [1<sup>st</sup> Reading]. [460-70]

**ACTION** Motion made by Council Member Norton and seconded by Council Member Termini to approve the introduction of an Ordinance amending Sections 8.38 of the Capitola Municipal Code pertaining to smoking regulations and to waive the first reading.

- D. Discussion and consideration of a St. Patrick's Day Special Event. [1050-70]

**ACTION** Motion made by Council Member Bottorff, seconded by Mayor Harlan, to deny the proposal to have a City-sponsored St. Patrick's Day Special Event. The motion was carried with the following vote: **AYES:** Council Members Storey, Bottorff, and Mayor Harlan. **NOES:** Council Members Termini and Norton. **ABSENT:** None. **ABSTAIN:** None.

- E. 835 BAY AVENUE #12-161 (APN: 035-011-03, 035-381-01)

One year review of a temporary Conditional Use Permit to permanently permit a model manufactured home in conjunction with an existing manufactured home sales business (Ideal Homes), in addition to a Sign Permit for a new monument sign in the CC (Community Commercial) Zoning District. Environmental Determination: Categorical Exemption.

Property Owner: Redtree Properties, owner/filed: 12/31/12. Representative: Richard Emigh. [730-10]

Council Member Termini stated that, due to a conflict of interest, he will recuse himself from participating on this item because his company (Triad Electric) has provided services to Ideal Homes over the past 24 months. Council Member Termini left the Council Chambers and did not return to the meeting.

John Barrs, Owner of Ideal Homes, provided comments regarding the proposed signage.

Motion by Council Member Bottorff, seconded by Council Member Storey, to approve a Conditional Use Permit for the future and not to bring it back to review annually only if there are problems. The motion failed with the following vote: **AYES:** Council Members Storey and Bottorff. **NOES:** Council Member Norton and Mayor Harlan. **ABSENT:** None. **ABSTAIN:** Council Member Termini.

**ACTION** Motion by Council Member Norton, seconded by Council Member Storey, to approve a temporary Conditional Use Permit to be reviewed in two years, and if any sign ordinance violation does occur, the Conditional Use Permit is revoked. The motion was carried with the following vote: **AYES:** Council Members Norton, Storey, and Bottorff. **NOES:** Mayor Harlan. **ABSENT:** None. **ABSTAIN:** Council Member Termini

Motion by Council Member Storey, seconded by Council Member Norton, to allow a sign permit for a new monument sign in the CC (Community Commercial) Zoning District at the Ideal Home Office or on the parcel (APN: 035-011-03, 035-381-01) after the removal of the existing Ideal Homes sign located at their office. The use permit and monument sign permit shall be good for two years from the date of approval. The motion was carried with the following vote: AYES: Council Members Norton, Storey, and Bottorff. NOES: Mayor Harlan. ABSENT: None. ABSTAIN: Council Member Termini.

10. COUNCIL/STAFF COMMUNICATIONS

City Manager Goldstein acknowledged Senior Planner Bane, who has accepted a position with the City of Santa Cruz. In addition, he stated that a staff taskforce is being formed to assist with the development of the City's website provided by aHa! Consulting; Council Member Termini has offered to be a member of the taskforce.

11. CITY COUNCIL/TREASURER COMMENTS/COMMITTEE REPORTS (None provided)

12. ADDITIONAL MATERIALS (None provided)

13. ADJOURNMENT

Mayor Harlan adjourned the meeting at 10:10 p.m. to the next Special Meeting of the City Council on Thursday, February 21, 2013, at 6:00 PM, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

  
Stephanie Harlan, Mayor

ATTEST:

  
Susan Sneddon, City Clerk

MINUTES WERE UNANIMOUSLY APPROVED ON MARCH 14, 2013