

**CITY OF CAPITOLA
CITY COUNCIL****September 13, 2012
Capitola, California****MINUTES OF A REGULAR MEETING
6:00 P.M. — CLOSED SESSION — CITY MANAGER'S OFFICE****CALL TO ORDER**

Mayor Termini called the meeting to order at 6:00 p.m. on Thursday, September 13, 2012, in the City Hall Council Chambers. Council Members present: Council Member Stephanie Harlan, Council Member Dennis Norton, Council Member Kirby Nicol, Council Member Sam Storey, and Mayor Michael Termini. Mayor Termini made an announcement regarding the items to be discussed in Closed Session, as follows:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of GC §54956.9: Three cases:

1. City of Capitola Insurance Coverage Claim Against Lexington Insurance (Noble Gulch pipe failure);
2. Negotiations with Santa Cruz County regarding the Noble Gulch pipe failure;
3. Pacific Cove Mobile Home Park closure.

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

1. Kevin Calvert, D.D.S. and Pamela Calvert vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case #CV 172804];
2. Katie Saldana vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case #CV 172324];
3. Foremost Insurance Company vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case #CV 173228];
4. Truck Insurance vs. the City of Capitola, et al. [Superior Court of the State of California for the County of Santa Cruz, Case #CV173071];
5. David Ross; Carousel Taffy Morro Bay, Inc.; Village Mouse dba; The Thomas Kinkade 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 #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 #CV173926];
7. California Capital Insurance Company [Superior Court of the State of California for the County of Santa Cruz, Case #CV173552].

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: Brad and Cathy Sutton

Claimant: Larry Machado

Agency claimed against: City of Capitola

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

7:00 P.M. – OPEN SESSION

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL

CALL TO ORDER

Mayor Termini called the Regular Meeting of the Capitola City Council to order at 7:01 p.m. on Thursday, September 13, 2012, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

1. **ROLL CALL AND PLEDGE OF ALLEGIANCE**

PRESENT: Council Members Stephanie Harlan, Dennis Norton, Kirby Nicol, Sam Storey, and Mayor Michael Termini

ABSENT: None

OTHERS: City Treasurer Jacques Bertrand

STAFF: City Manager Jamie Goldstein, City Attorney John Barisone, General Plan Coordinator, Susan Westman, Public Works Director Steve Jesberg, Administrative Services Director Lisa Murphy, Police Chief Rudy Escalante, and City Clerk Susan Sneddon

2. **PRESENTATIONS**A. **Proclamation celebrating the anniversary of the Ocean Conservation in the Central Coast [120-40].**

Mayor Termini read the proclamation celebrating the anniversary of the Ocean Conservation in the Central Coast.

B. **Proclamation honoring September 23, 2012, as “National Plug-In Day” to heighten awareness of plug-in electric vehicles [120-40].**

Mayor Termini read the proclamation honoring September 23, 2012, as “National Plug-In Day”.

Sharon Sarris, Monterey Bay Electric Vehicle Alliance Outreach Team Leader, received the proclamation.

Beverly DesChaux, President of the Electric Auto Association, announced the September 23, 2012, National Plug-in Day event to be held at Staff of Life Natural Food Market, 1266 Soquel Avenue, Santa Cruz, from 12:00 (Noon) to 3:00 p.m.

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

City Attorney Barisone stated that the items that the City Council discussed in closed session are the items listed on the September 13, 2012, Closed Session Agenda. The City Council received status reports from the City Attorney and the City Manager on all the litigation that the City is involved in arising out of the March 2011 pipe failure and subsequent water damage to properties at City Hall and the Capitola Village. These included the following: (1) City’s insurance coverage case against Lexington Insurance Company; (2) negotiations with Santa Cruz County regarding the Noble Gulch pipe failure; (3) Pacific Cove Mobile Home Park closure; (4) Kevin Calvert, D.D.S. and Pamela Calvert; (5) Katie Saldana; (6) Foremost Insurance Company; (7) Truck Insurance; (8) David Ross, Carousel Taffy Morro Bay, Inc.,

3. REPORT ON CLOSED SESSION (continued)

Village Mouse dba; (9) American Alternative Insurance Corporation and Central Fire Protection District of Santa Cruz County; and (10) California Capital Insurance Company. City Attorney Barisone stated that the City Council discussed the following tort claims: (1) Brad and Cathy Sutton; and (2) Larry Machado. The City Council took no reportable action.

4. ADDITIONS AND DELETIONS TO AGENDA

Council Member Storey requested that Item No. 7.A. regarding his appointment to the City's Finance Advisory Committee be continued and that the application period be reopened.

5. PUBLIC COMMENTS

Natalie Oliver, 504 Pilgrim Drive, stated concerns regarding the proposed parking at the former Pacific Cove Mobile Home Park.

The following local residents stated concerns about the distracting light from the Target sign.

- **John Silva**
- **Matt Jaspersen**

Peter Pethoe, Santa Cruz Hostel, stated concerns regarding fining those who do not have bicycle licenses.

Police Chief Escalante introduced the following outstanding Police Department Employees of the Year for 2011: (1) Senior Police Officer Pedro Zamora; and (2) and Lorrie Wilson, Administrative Assistant.

6. COUNCIL/STAFF ANNOUNCEMENTS

Mayor Termini announced that there is a vacancy for a four-year appointment to the Community Television of Santa Cruz County Board of Directors.

Council Member Harlan provided an update regarding the recent annual Association of Monterey Bay Area Governments (AMBAG) meeting. She stated that October is "Ride Share Month" sponsored by AMBAG. As the City's voting delegate to the League of California Cities Annual Conference, she reported the results on the League's September 7, 2012, business meeting. **[150-50]**

Council Member Norton thanked the City's Public Works and Police Departments for helping to make the Annual Begonia Festival and the Annual Capitola Art and Wine Festival successful events.

Council Member Nicol thanked the City's Public Works Department for the slurry project on Depot Hill and the Jewel Box neighborhood. He discussed the 31-mile Iowa Pacific rail line from Pajaro Junction to Davenport.

Council Member Storey reported that the Santa Cruz County Public Library has increased the hours of some of the branch libraries effective the week of September 10; updated hours may be found on the Santa Cruz County Public Library's website. He requested that the City Manager report at the next Council meeting the results of the recent Target community meeting.

6. COUNCIL/STAFF ANNOUNCEMENTS (continued)

Mayor Termini thanked the Public Works and Police Departments for their assistance with the recent Capitola Art and Wine Festival. He requested that the City Council be emailed web links of any Planning Commission items that are placed on City Council agendas for further action so they may be reviewed prior to a Council meeting. He asked the Police Chief to investigate the number of abandoned vehicles in the Jewel Box neighborhoods. (**Police Chief Escalante** stated that the officers will continue to investigate this issue and aggressively pursue abandoned vehicles that they find).

7. COMMITTEE APPOINTMENTS

A. Council Member Storey's appointment to the Finance Advisory Committee. [330-40]

As stated under *Item No. 4 (Additions and Deletions to the Agenda)* this item will be continued to a future City Council meeting because the application process is to be reopened pursuant to Council Member Storey's request.

8. CONSENT CALENDAR

- A. Consideration of approving the City Council Minutes of the Regular City Council Meeting of June 14, 2012 and June 28, 2012, and the June 21, 2012, City Council Special Closed Session Minutes.
- B. Deny liability claims and forward to the City's liability insurance carrier: (1) Brad and Cathy Sutton in the amount of \$59,000; and (2) Larry Machado in the amount of \$100,000 [Claims Binder].
- C. Receive Planning Commission Action Minutes for the Regular Meeting of September 6, 2012 [740-50].
- D. Approval of City Check Register Reports dated July 20, 2012; July 27, 2012; August 3, 2012; August 10, 2012; August 17, 2012; August 24, 2012; and August 31, 2012 [300-10].
- E. Adoption of *Ordinance No. 974* amending Section 12.56.090 (Right-of-way Obstructions) of the Capitola Municipal Code pertaining to the removal of items from public property [2nd Reading] [485-70].
- F. Adoption of *Resolution No. 3934* amending the City's Bail Schedule to add new fines pursuant to adoption of City Council Ordinances [390-20].

Council Member Norton requested clarification from staff on specific items related to the City's Check Register Reports (*Item No. 8.D.*). Clarification was provided by staff.

ACTION: Motion by Council Member Nicol, seconded by Council Member Storey, to approve the Consent Calendar. The motion was unanimously carried.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS**A. Consideration of an Ordinance adding Section 9.34.010 of the Capitola Municipal Code prohibiting urination and/or defecation in public [1st Reading] [485-70].**

Police Chief Escalante introduced this item. He stated that as part of the Police Department's continuous review of programs and processes, it was identified that the City has no language authorizing the local enforcement of public urination/defecation. Currently, the Police Department relies on the Health & Safety Code for enforcement for these misdemeanors. These violations are prosecuted by the County District Attorney's Office and are commonly reduced to infractions requiring a police officer to go through an extensive process. With the adoption of the proposed Ordinance the police officers will be able to write a municipal code citation.

Mayor Termini opened the public hearing.

There was no public comment.

Mayor Termini closed the public hearing.

ACTION: Motion by Council Member Norton, seconded by Council Member Harlan, to introduce a proposed Ordinance adding Section 9.34.010 of the Capitola Municipal Code prohibiting urination and/or defecation in public. The motion carried unanimously with the following vote: AYES: Council Members Harlan, Norton, Nicol, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

B. Consideration of authorizing a City Council response to the 2011-2012 Santa Cruz County Grand Jury Final Report: "Known Soil Contamination and Building Permit Applications" [100-30].

Public Works Director Jesberg reviewed the City's response to the 2011-2012 Santa Cruz County Grand Jury Final Report, entitled, "Known Soil Contamination and Building Permit Applications." He stated that additional language will be added to the City's building permit application to notify applicants if they are concerned about contaminated soil to contact Santa Cruz County Environmental Health.

City Council discussion ensued regarding this item.

Mayor Termini opened the public hearing.

There was no public comment.

Mayor Termini closed the public hearing.

ACTION: Motion by Council Member Nicol, seconded by Council Member Storey to authorize a City Council response to the 2011-2012 Santa Cruz County Grand Jury Final Report: "Known Soil Contamination and Building Permit Applications." The motion carried unanimously with the following vote: AYES: Council Members Harlan, Norton, Nicol, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

10. COUNCIL/STAFF COMMUNICATIONS**A. Staff Comments (None)****B. City Council/Treasurer Comments/Committee Reports (None)****11. ADJOURNMENT**

Mayor Termini adjourned at 8:00 p.m. to the next Regular Meeting of the City Council to be held on Thursday, September 27, 2012, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.


Michael Termini, Mayor

ATTEST:


Susan Sneddon, City Clerk, CMC**MINUTES WERE UNANIMOUSLY APPROVED ON JANUARY 10, 2013**