

**CITY OF CAPITOLA
CITY COUNCIL**June 28, 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. 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 LABOR NEGOTIATOR (Govt. Code §54957.6)

Negotiator: Jamie Goldstein, City Manager

Employee Organizations: Association of Capitola Employees, Capitola Police Captains, and Capitola Police Officers Association.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

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

1. City of Capitola Insurance Coverage Claim Against Lexington Insurance (Noble Gulch Storm Drain Failure);
2. Pacific Cove Mobile Home Park Pipe Failure and Closure;
3. Consideration of lawsuit against the Department of Finance – Disputed Recognized Obligations of the Successor Agency.

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

1. Kevin Calvert, D.D.S. and Pamela Calvert vs. 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. 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].

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Government Code §54957)

City Council's Performance Evaluation of City Attorney

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: Tracey Conklin

Claimant: Christopher Flynn

Agency claimed against: City of Capitola

Mayor Termini noted that there was no one in the audience; therefore, the City Council recessed at 6:00 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 7:10 p.m. on Thursday, June 28, 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, Public Works Director Steve Jesberg, Interim Community Development Director Susan Westman, Police Chief Rudy Escalante, and City Clerk Susan Sneddon.

2. PRESENTATIONS:

Mayor's Proclamation honoring Big Brothers Big Sisters of Santa Cruz County on their 30th anniversary. [120-40]

Mayor Termini read the proclamation honoring Big Brothers Big Sisters of Santa Cruz County's 30th anniversary and presented it to Marie Cubillas, Executive Director.

3. REPORT ON CLOSED SESSION [520-25]

City Attorney Barisone stated that items that the City Council discussed are the items listed on the June 28, 2012, Closed Session Agenda. City Manager Goldstein provided a status report to the Council regarding labor negotiations with the Capitola Police Officers Association and the Capitola Police Captains Association; however, no reportable action was taken. The Council conferred with the City Attorney concerning a City of Capitola insurance coverage claim against Lexington Insurance and took direction from the Council regarding their ongoing defense and prosecution. Council discussed the third party claims against the City, as well as the liability claims of Tracey Conklin and Christopher Flynn, relative to relocation and damages resulting from the Pacific Cove Mobilehome Park pipe failure and park closure; however, City Council took no reportable action. The Council discussed the City Attorney's performance evaluation but took no reportable action in closed session.

4. ADDITIONS AND DELETIONS TO AGENDA (None provided).
5. PUBLIC COMMENTS

Zac Friend, Santa Cruz Board of Supervisor Elect, offered his support to the Council and staff. He looks forward to his term as a County Supervisor.

Marilyn Garrett and Jim Ostrowsky stated concerns regarding Smart meters.

Nels Westman, Riverview Terrace resident, stated that with the impending closure of the Pacific Cove Mobile Home Park (Park) both the City's Traffic and Parking Commission and the General Plan Advisory Committee have recommended the construction of a parking structure on the existing parking lot as a permanent solution to the Village's longstanding parking shortfall and for future Village revitalization. He stated that when the Park is closed, the City convert the entire lower terrace to temporary parking to replace the parking lost during construction of the parking structure. The temporary parking lot could be removed as soon as the parking structure is built and the land used for such public benefit as parkland, open space, etc. He recommended that the beach shuttle transport visitors from the temporary parking lot starting in the spring of 2013. The use of pay stations will substantially increase revenues in the temporary parking lot.

6. COUNCIL/STAFF ANNOUNCEMENTS

Council Member Harlan stated that the Association of Monterey Bay Area Governments (AMAG) is having a meeting on June 29th at 6:00 p.m. to consider a candidate for the new AMAG Executive Director position.

7. COMMITTEE APPOINTMENTS (None provided)
8. CONSENT CALENDAR

Council Member Storey requested that Item 8.E. be pulled for further discussion.

- A. Approval of the City Council Minutes of the Regular Meeting of May 10, 2012.
- B. Denial of liability claims and forward to the City's liability insurance carrier: [Claims Binder]
 1. Tracey Conklin in the amount of \$89,393.15 and forward to the City's liability insurance carrier.
 2. Christopher Flynn in the amount of \$48,000 and forward to the City's liability insurance carrier.
- C. Approval of the City Check Register Reports dated May 18, May 25, June 1, June 8, and June 15, 2012. [300-10]

8. CONSENT CALENDAR (continued)
- D. Approval of the Memorandum of Understanding with the Association of Capitola Employees bargaining unit. [600-10]
 - E. Consideration of approval for a contract with the Housing Authority of the County of Santa Cruz for the reuse of housing funds in an amount not to exceed \$40,000. [750-10/500-10 A/C: Housing Authority of Santa Cruz County]
 - F. Approval of the 2012 Slurry Seal Program, approval of plans, specifications and estimate and authorization to advertise for bids. [940-60]
 - G. Approval of a Memorandum of Understanding with the Police Captain's bargaining unit. [600-10]

Motion by Council Member Norton, seconded by Council Member Harlan, to approve Items 8(A), 8(B), 8(C), 8(D), 8(F), and 8(G) on the Consent Calendar. The motion was unanimously carried.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS

Council Member Storey stated that, due to a conflict of interest, he will recuse himself from participating on Item No. 9(A) regarding the 700 Escalona Drive appeal because he resides within 500 feet of the subject property. He also stated that he will recuse himself from participating on Item No. 9(B) regarding an agreement with Community Based Health and Human Service Providers Program funding because he is the Community Bridges CEO (non-profit organization), and voting on this item would be a conflict of interest. He left the dias.

- A. Continued Public Hearing from the May 24, 2012, City Council Meeting: 700 Escalona Drive – Project Application # 12-019 Appeal of Planning Commission decision to deny a Coastal Permit and Design Permit to construct a new two-story single-family residence in the R-1 (Single-Family Residence) Zoning District [APN 036-141-20]. Filed 2/14/12. Property Owner: Lori Perpich & Alberto Munoz. Representative: Derek Van Alstine. [730-10]

Interim Community Development Director Westman stated that this item is continued from the May 24, 2012, City Council meeting when the Council directed the applicant to develop a modified design. She stated that the applicant submitted a revised design that is consistent with the City's zoning regulations, and the proposed parking plan meets the City's parking requirements. Staff recommends overturning the Planning Commission denial and approving this application, with the added condition that the three rear windows on the west elevation be modified to protect the privacy of the adjacent neighbor.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

Derek Van Alstine, Architect, reviewed the revised plans and stated that most of the neighborhood surrounding 700 Escalona Drive supports this project.

Mayor Termini opened this item for public comment.

The following Escalona Drive residents provided their support for this project.

**Connie Welch
Paul Estey
Bryan MacKenzie
Lori Mentos**

Mayor Termini closed this item for public comment.

Mayor Termini stated that he is not in favor of adding a condition to obscure any of the windows for this proposed project.

Council Member Harlan stated a granny unit would be more appropriate for this small lot and stated she does not support this project.

ACTION: Motion by Council Member Nicol, seconded by Council Member Norton, to approve Project Application # 12-019 (700 Escalona Drive/ APN 036-141-20) Appeal of Planning Commission decision to deny a Coastal Permit and Design Permit to construct a new two-story single-family residence in the R-1 (Single-Family Residence) Zoning District. The motion carried on the following vote: AYES: Council Members Norton, Nicol, and Mayor Termini. NOES: Council Member Harlan. ABSENT: None. ABSTAIN: Council Member Storey.

B. Consideration of authorizing the City Manager to enter into an agreement with Community Based Health and Human Service Providers Program funding for Fiscal Year 2012/2013. [330-30]

City Manager Goldstein introduced this item. He stated during the City's budget hearings in May 2011 the City Council authorized \$250,000 in funding for the former Community Grant Program, now entitled the Community Based Health and Human Service Provider Program (Providers) for the Fiscal Year 2012-2013 funding. He stated that Mayor Termini and Council Member Harlan formed a subcommittee to develop a recommended list for allocating the \$250,000 for City Council consideration. The subcommittee met to review funding criteria, to determine which providers receive funds, and how to allocate the funds. The submitted, established recommendations included the same funding as in Fiscal year 2011-2012 for the majority of the Providers. He reviewed the proposed changes to amounts increased and decreased for various programs:

Mayor Termini opened this item for public comment.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

The following individuals thanked the City Council for their financial support:

Carolyn Coleman, Executive Director of Santa Cruz Community Counseling Center (Center), thanked the City Council for its support in funding the Center.

Scott Winslow, Central Coast Center for Independent Living;

James Carrington, resident of the Santa Cruz Homeless Shelter (Paul Lee Loft Shelter);

Linda Robinson, Advocacy Inc.;

Dan O'Neill, Sea Odyssey.

Mareisa Weil, Santa Cruz Homeless Service Center Development Manager, stated concerns regarding the City's recommended reduction of funding for their services.

Clay Kempf, Executive Director of the Seniors Council of Santa Cruz and San Benito Counties, requested that the total funding for Project Scout (\$1,245) and Area Agency on Aging (\$2,032) be combined (total of \$3,277), and be allocated to Project Scout because the County of Santa Cruz has agreed to increase funding for the Area Agency on Aging.

Mayor Termini closed this item for public comment.

City Council discussion ensued regarding the distribution of funds for the Community Based Health and Human Service Providers Program for Fiscal Year 2012/2013.

Council Member Nicol stated that he does not support this item due to the City's current financial constraints.

Council Member Harlan suggested that the Homeless Services Center receive \$2,500 for the Paul Lee Loft Shelter.

Council Member Norton suggested that the total budget for funding the Community Based Health and Human Service Providers Program for Fiscal Year 2012/2013 remain at \$250,000 by reducing the funding amount for each non-profit by \$70.00 so that the Homeless Services Center (Paul Lee Loft Shelter) receives funding in the amount of by \$2,500. He suggested that the City Council develop a program in the next six months whereby the community groups become beneficiaries as the economy improves.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

City Manager Goldstein asked the City Council members if they wish to combine the proposed funding for Project Scout and the Area Agency on Aging to fund Project Scout the total of \$3,277, since Santa Cruz County has offered to fund the Area Agency on Aging.

There was Council consensus to combine the proposed funding for Project Scout (\$1,245) and the Area Agency on Aging (\$2,032) to fund Project Scout the total (\$3,277).

ACTION: Motion by Council Member Harlan, seconded by Council Member Norton, to authorize the City Manager to enter into an agreement with Community Based Health and Human Service Providers Program funding \$250,000 for Fiscal Year 2012/2013. The motion carried on the following vote: AYES: Council Members Harlan, Norton, and Mayor Termini. NOES: Council Member Nicol. ABSENT: None. ABSTAIN: Council Member Storey.

Council Member Storey returned to the dias.

C. Continued from the June 14, 2012, City Council meeting: Discussion regarding a Visitor Service Fee (Transient Occupancy Tax) Measure for the November 6, 2012, Election. [560-10]

City Manager Goldstein introduced this item. He stated that the Council is considering placing a Visitor Service Fee (Transient Occupancy Tax - TOT) increase on the November 2012 ballot along with the previously approved sales tax measure. A 2% TOT increase would generate approximately \$180,000 per year. He stated that the Santa Cruz Lodging Association (Lodging Association) requested that the City put a 2% TOT measure on the November ballot, as similarly requested of all the jurisdictions within the County. This measure would require 66% of voter approval to pass. He stated that they propose that 1% of the revenue would go to the City, and 1% would be split between the Capitola-Soquel Chamber of Commerce and the Santa Cruz County Visitors Center. This would be over a two-year period beginning July 1, 2013. He stated that the Lodging Association proposes a 10-year moratorium included in the TOT ballot measure and that the City's funds be used for tourism-related improvements. He has ascertained from communications with the County of Santa Cruz and the City of Santa Cruz that they do not think it is very likely that they would proceed with a restricted TOT measure; they would prefer to use a statement or resolution of intent rather than moving forward with a 66% TOT measure. City Manager Goldstein stated that the Council could alternatively choose a measure that would only require a 50% majority to pass, and at the same time pass a resolution of intent which would be non-binding on future Councils. He stated concerns about placing 2 City tax measures on the November ballot; since the City's residents will have 6 tax measures on the ballot which includes the

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

City's sales tax measure. He stated that Council may choose to not place a TOT measure on the ballot, or direct staff to continue working with the other local jurisdictions and return to Council at a July meeting for further discussions.

Council Member Norton asked the City Attorney if a two-thirds vote would be required for a TOT measure to be approved by the voters.

City Attorney Barisone responded that some jurisdictions propose a general tax and submit an accompanying advisory ballot measure that could state that the general tax "should" be used for a specified purpose; this type of general tax would not require future City Councils to spend the funds for a specified purpose.

Mayor Termini opened this item for public comment.

Dilip Patel, Santa Cruz County Lodging Association President, clarified that the Lodging Association proposal is a "win-win" situation for both the City and the lodging properties. The Lodging Association proposes that if approved by the voters, the first percent of the TOT measure would go to the City; the second percent would be earmarked for marketing/tourism. He recommended that the City continue this item to the July 12, 2012, Council meeting so that the other local jurisdictions will be more fully realized.

Ed Bottorff, 321 Capitola Avenue, stated that if the City's sales tax measure is approved by voters in November, it would help to build up the City's reserves and possibly assist with the acquisition of the Pacific Cove property. He stated that he is in favor of the proposed TOT measure; he supports it passing with just over 50% of the voters. He supports giving increased funding to the Capitola-Soquel Chamber of Commerce and the Santa Cruz County Visitors Center, and also, helping to fund a new parking structure.

Gary Wetsel, 304 Grand Avenue, stated that he is not in favor of the proposed TOT measure revenue going into the City's General Fund. He suggested that the Council hold off on placing the measure on the November ballot and consider it in a future election.

Nels Westman, Riverview Terrace resident, stated that he does not support proceeds of the proposed TOT measure going to the Lodging Association; however, he does support giving one-half of the funds to the Capitola-Soquel Chamber of Commerce and the Santa Cruz County Visitors Center, and some of the proceeds going towards the proposed parking structure.

Dan Aspromonte, Best Western and Marriott Fairfield Inn, supports revenue from the proposed TOT measure going to promote tourism.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

Mayor Termini closed this item for public comment.

Council Member Nicol stated that he does not support funding the Lodging Association if the proposed TOT measure is approved by the voters. He stated if the Council approves the TOT measure to be placed on the November 2012, ballot it would set the standard with the County of Santa Cruz and the City of Santa Cruz to pursue a TOT measure as well.

Council Member Storey stated that the City could jeopardize losing both measures by including an additional measure to the November 2012 ballot, due to the large number of measures already slated for the ballot.

Council Member Harlan stated that the focus should be on the sales tax measure only.

Council Member Norton suggested discussing this item at the next City Council meeting, after it is determined what direction the County of Santa Cruz and the City of Santa Cruz will take with a TOT measure.

ACTION: Motion by Council Member Norton, seconded by Council Member Harlan, to continue the discussion regarding a Visitor Service Fee (Transient Occupancy Tax) Measure for the November 6, 2012, Election to the July 26, 2012, City Council meeting. The motion carried on the following vote: AYES: Council Members Harlan, Norton, Nicol, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

D. Consideration of a Resolution to Levy the Capitola Village and Wharf Business Improvement Area (CVWBIA) Assessments for Fiscal Year 2012/2013. [140-05]

Carin Hanna, representing the Capitola Village and Wharf Business Improvement Area (BIA), provided information regarding the benefits and services provided by the Capitola Village and Wharf Business Improvement Area utilizing a PowerPoint Presentation.

ACTION: Motion by Council Member Storey, seconded by Council Member Norton, adopting Resolution No. 3923 to levy the Capitola Village and Wharf Business Improvement Area (CVWBIA) Assessments for Fiscal Year 2012/2013. The motion carried on the following vote: AYES: Council Members Harlan, Norton, Nicol, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

E. Consideration of the acceptance of the Rispin property title and review the Rispin Park proposed development plans. [810-10/780-30/780-40/500-10]

Public Works Director Jesberg introduced this item. He stated that staff is requesting the Council accept the transfer of the Rispin Property to the City from the Success Agency and approve 3 proposed conceptual phased development options for the Rispin property which he received.

City Manager Goldstein stated that the Successor Agency directed staff to prepare the necessary documentation to transfer the Rispin property from the Successor Agency to the City. He stated that the City Council, acting as the Successor Agency directed the property transfer, which was reviewed by the Oversight Board. He stated that this is the final step in accepting the transfer.

Council discussion ensued regarding the 3 proposed conceptual phased development options for the Rispin property.

Police Chief Escalante stated concerns regarding trip and fall hazards and criminal activity at the Rispin property and summarized the police calls for services for this property. He stated that the fence surrounding the property has provided a reduction of criminal and public nuisance activity.

Council Member Nicol stated that there are periodic gang tagging incidents on the Rispin property, which will continue until the perimeter wall is changed to allow more visibility from the street.

Mayor Termini opened this item for public comment.

Peter Pethoe, Santa Cruz Hostel, suggested that the Rispin property be used as a hostel; he provided material for the record.

Mayor Termini closed this item for public comment.

Council Member Storey asked if there is any jeopardy in continuing this item to a future Council meeting to allow time to review the proposed trailer bill language.

City Manager Goldstein responded that Council considered the outcome of the Rispin property at 2 separate public hearings. At this time it is unclear what the Department of Finance is going to do with the trailer bill language. The Capitola Successor Agency Oversight Board has already approved the transfer of the Rispin property. He recommended, given the previous actions, that the City Council accept the property; however if Council wants to examine selling the property on the private market, then Council may want to continue this item.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

A motion was made by Council Member Nicol, seconded by Mayor Termini, to continue this item until clarification on the Redevelopment Agency trailer bill is realized. The motion FAILED on the following vote: AYES: Council Member Nicol; NOES: Council Members Harlan, Norton, Storey, and Mayor Termini. ABSENT: None. ABSTAIN: None.

Action: Motion by Council Member Harlan, second by Council Member Storey, adopting Resolution No. 3924 accepting the transfer of the Rispin Property to the City of Capitola; terminating the \$1,350,000 Purchase and Sale Agreement between the City of Capitola and the Successor Agency for the purchase of the Rispin Property; making related declarations; reviewing conceptual phased development options for the Rispin property, investigating hiring a caretaker for the Rispin property; and setting a public design process in place. The motion carried on the following vote: AYES: Council Members Harlan, Norton, Storey, and Mayor Termini. NOES: Council Member Nicol. ABSENT: None. ABSTAIN: None.

The City Council took separate action on the following Consent Calendar item (Item 8.E.):

- E. Consideration of approving a contract with the Housing Authority of the County of Santa Cruz for the reuse of housing funds in an amount not to exceed \$40,000. [750-10/500-10 A/C: Housing Authority of Santa Cruz County]

Council Member Storey stated in the proposed contract with the Housing Authority of the County of Santa Cruz (Housing Authority) the \$40,000 seems to be earmarked for administration. He asked if some of the funds could be directed toward low-income housing programs or the mobile home assistance programs.

Mayor Termini asked why the contract does not include the administration of the First-time Homebuyer Program.

Interim Community Development Director Westman stated that the terms of the proposed contract with the Housing Authority are fairly general. The contract includes a category allowing additional items that are mutually agreed upon between the City and the Housing Authority. The contract was put in place because the Housing Authority has the City's Redevelopment Agency funds that have come back from various projects. She stated that Council will have the opportunity in the future to define how the funds are spent; some of which will go to the First-time Homebuyers Program. This is an ongoing contract spanning multiple years.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

Council Member Harlan requested periodic updates on how this program is performing.

Action: Motion by Council Member Storey, second by Council Member Harlan, approving a contract with the Housing Authority of the County of Santa Cruz for the reuse of housing funds in an amount not to exceed \$40,000. The motion carried on the following vote: AYES: Council Members Harlan, Norton, Nicol, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

10. COUNCIL/STAFF COMMUNICATIONS

Council Member Nicol asked staff about the extensive removal of trees at 4400 Capitola Road, the shopping center where Dharma's restaurant is located.

Interim Community Development Director Westman responded that the City received a request for the property owners to remove the trees in the parking lot because they were damaging the pavement. They worked with the City's arborist to develop a long-term plan to re-vegetate the area and have already planted some small trees.

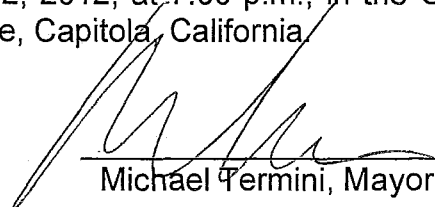
Council Member Nicol asked Public Works Director Jesberg about the timeline for the restriping and reconfiguration of eastbound Clares Street at 41st Avenue.

Public Works Director Jesberg responded that the nose of the island on 41st Avenue will be removed next week, and staff is currently seeking a striping contractor.

Police Chief Escalante stated that fireworks and alcohol are not allowed at the beach on July 4th; the beach will closed at 10:00 p.m. and reopen at 4:30 a.m. on July 5th.

10. ADJOURNMENT

Mayor Termini adjourned at 9:45 p.m. to the next Regular Meeting of the City Council to be held on Thursday, July 12, 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

MINUTES WERE UNANIMOUSLY APPROVED ON SEPTEMBER 13, 2012