

**CITY OF CAPITOLA
CITY COUNCIL****June 14, 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, and Mayor Michael Termini. Council Member Sam Storey was absent. 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, Capitola Police Officers Association, Confidential Employees, Mid-Management Group, and Department Head Group

Negotiator: John Barisone, City Attorney

City Manager's Contract

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 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 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 #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: Claudia Monjaraz

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 7:00 p.m. on Thursday, June 14, 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, and Mayor Michael Termini

ABSENT: Council Member Storey

OTHERS: City Treasurer Jacques Bertrand

STAFF: City Manager Jamie Goldstein, Assistant City Attorney Adair Paterno, Public Works Director Steve Jesberg, Finance Director Tori Hannah, Interim Community Development Director Susan Westman, and City Clerk Susan Sneddon

2. **PRESENTATIONS:**A. **Proclamation honoring Amateur Radio Week - June 17 thru June 24, 2012.**

Mayor Termini read the proclamation honoring Amateur Radio Week - June 17 thru June 24, 2012.

Bill Conklin, Santa Cruz County Amateur Radio Club, provided information regarding an upcoming Amateur Radio event and general information about services provided by amateur radio operators.

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

Assistant City Attorney Paterno stated that the items the City Council discussed in Closed Session are those items listed on the June 14, 2012, Closed Session Agenda. Ms. Paterno stated the City Council received an update regarding labor negotiations, and there are various agreements listed on the Consent Calendar (**Item No. 8.D.**) on the June 14, 2012, Regular City Council Meeting Agenda for Council consideration. City Council received a status report on anticipated litigation, including Lexington Insurance Company's failure to honor the City's claim for property damages from the March 2011 pipe failure incident and the Pacific Cove Mobile Home Park pipe failure and closure. Council did not consider the anticipated litigation regarding the lawsuit against the Department of Finance. Council received an update from legal counsel regarding the six existing litigation cases listed on the Closed Session Agenda, and the Council did a public employee evaluation of the City Attorney. The Council considered the liability claim filed by Claudia Monjaraz, which will be considered by Council on the Consent Calendar Agenda.

4. ADDITIONS AND DELETIONS TO AGENDA

City Manager Goldstein stated that staff has distributed a revised staff report for **Item 9.C.** regarding a proposed Visitor Service Fee (Transient Occupancy Tax) Measure for November 6, 2012, Election.

5. PUBLIC COMMENTS

Linda Hanson, Capitola Village Residents' Association (CVRA) President, stated that last year the **CVRA** was asked to man a booth to collect donations for flood relief as a result of the March 2011 flood incidents.

Nels Westman, 507 Riverview Drive, stated concerns regarding the City needing a permanent parking structure.

Ed Bottorff, Capitola Parking and Traffic Commission representative, read a communication from the Parking and Traffic Commission requesting that the City Council initiate plans to construct a permanent parking structure in the upper Pacific Cove property.

Stuart Greeninger, 701 Escalona Drive, requested that an Airstream recreational vehicle be removed from a residential street in the Depot Hill area. In addition, he stated that tall grass is blocking a stop sign located at the Sacramento Avenue/Escalona Drive intersection and requested that it be removed.

Marilyn Garrett stated that SmartMeters cause harmful microwave radiation.

Carol Lerno, Pacific Cove Mobile Home Park, Space 66, complimented staff on the recent car show held in the City on June 9 and 10.

6. COUNCIL/STAFF ANNOUNCEMENTS

Council Member Harlan provided a report regarding a recent Santa Cruz County Sanitation District Board meeting; discussions included the hiring of a consulting firm for the design of the Soquel Creek Transmission Main Crossing.

Mayor Termini requested that the odor problem caused by exhaust at the upper end of Esplanade Park be addressed.

Council Member Nicol, City's representative on the Santa Cruz County Regional Transportation Commission, provided the following update: (1) Regional Transportation Commission (RTC) approved placing a ballot measure on the November 2012 ballot, asking voters to authorize a \$10 fee on registered motor vehicles; ballot language will be finalized at the next RTC meeting; and (2) RTC approved a draft agreement negotiated with Iowa Pacific Holdings for the operation of the Santa Cruz Branch Rail Line.

7. COMMITTEE APPOINTMENTS (None provided)

8. CONSENT CALENDAR

Council Member Nicol requested that Item 8.L. be pulled for further discussion.

- A. Denial of a liability claim of Claudia Monjaraz in the amount of \$720.00 and forwarding it to the City's liability insurance carrier. [Claims Binder]
- B. Approval of City Council Minutes of the Regular Meeting of April 26, 2012.
- C. Approval of the First Amendment to City Manager Employment Agreement. [600-10/500-10 A/C: Goldstein, Benjamin (Jamie)]
- D. Approval of the following agreements:
 1. Memorandum of Understanding with the Mid-Management Employees Bargaining Unit for a Term of July 1, 2012, expiring June 30, 2015; [600-10]
 2. Memorandum of Understanding with the Confidential Employees Bargaining Unit for a Term of July 1, 2012, expiring June 30, 2015; [600-10]
 3. Sixth Amendment to the Employment Agreement for the Public Works Director recognizing negotiated changes in salary and benefits for July 1, 2012 – June 30, 2015. [600-10/500-10 A/C: Jesberg, Steve]
 4. First Amendment to the Employment Agreement for the Finance Director recognizing negotiated changes in salary and benefits for July 1, 2012 – June 30, 2015; [600-10/500-10 A/C: Hannah, Tori]
 5. First Amendment to the Employment Agreement for the Administrative Services Director recognizing negotiated changes in salary and benefits for July 1, 2012 – June 30, 2015. [600-10/500-10 A/C: Murphy, Lisa]
- E. Adoption of Resolution No. 3917 of Intention to Levy Business Improvement Assessments for Fiscal Year 2012-2013, which receives the Capitola Village and Wharf Business Improvement Area Annual Report and the proposed Fiscal Year 2012-2013 Budget; sets a public hearing to receive oral or written protests on the levy of assessments for Fiscal Year 2012-2013 for Thursday, June 28, 2012; and directs required noticing of the public hearing by the City Clerk and the Capitola Village and Wharf Business Improvement Area. [140-05]
- F. Approval of the purchase of an unmarked detective vehicle for the Police Department in the amount of \$20,695.73 and surplus the police vehicle to be replaced. [370-40/370-10]

8 CONSENT CALENDAR (continued)

- G. Adoption of Resolution No. 3918 amending Resolution No. 3820 and Resolution No. 3869 pertaining to Gann Appropriation Limits for Fiscal Years 2010-11 and 2011-12, respectively; recommendation by Teaman Ramirez and Smith (City's previous audit firm). [330-05]
- H. Adoption of Resolution No. 3919 establishing a Gann Appropriation Limit pursuant to Article XIII B of the California Constitution for Fiscal Year 2012-2013. [330-05]
- I. Approval of awarding a janitorial bid to Clean Building Maintenance in the amount of \$47,783.50 per year. [370-40/500-10 A/C: Clean Building Maintenance]
- J. Receive Planning Commission Action Minutes for the Regular Meeting of June 7, 2012. [740-50]
- K. Adoption of Resolution No. 3920 implementing the provisions of Section 414(H)(2) of the Internal Revenue Code related to the 2.5% at 55 Retirement Plan for Miscellaneous Employees and 3% at 50 Plan for Public Safety Employees. [630-10] Resolution 3920
- L. Adoption of Resolution No. 3921 adopting the proposed 2012/2013 Fiscal Year Budget for the City of Capitola General Fund, the Capitola Successor Agency, and the Capital Improvement Budgets. [330-05 City/780-30 Successor Agency/330-20 CIP]
- M. Receive the Mayor's appointment of Frank Phanton as an alternate member to the Architectural and Site Review Committee. [740-15]
- N. Approval of a request to proceed with recruitment for the vacancy of the unexpired term youth member to the Commission on the Environment. [430-05]

ACTION: Motion by Council Member Norton, seconded by Council Member Nicol, to approve the following items on the Consent Calendar: 8(A), 8(B), 8(C), 8(D), 8(E), 8(F), 8(G), 8(H), 8(I), 8(J), 8(K), 8(M), 8(N). The motion carried on the following vote: AYES: Council Members Harlan, Norton, Nicol, and Mayor Termini. NOES: None. ABSENT: Council Member Storey. ABSTAIN: None.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS

- A. 220 Oakland Avenue – Project Application # 12-044: Appeal of Planning Commission decision to approve a Fence Permit and a Major Revocable Encroachment Permit to construct a wall within the City right-of-way as part of a single-family residential use in the R-1 (Single-Family Residence) Zoning District [APN 036-124-20]. Filed 3/29/12. Property Owner: Christann A. Bohnet. Representative: John Draga. [730-10]

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

Interim Community Development Director Susan Westman introduced this item. She stated that at the April 19, 2012, Planning Commission meeting the fence permit and major revocable encroachment permit were approved with the following added conditions: (1) the detail material for the wall shall be changed from brick to stonework; (2) a vine material shall be planted and incorporated to cover the stucco portions of the wall; and (3) the applicant shall submit a letter from an architectural historian determining that the wall is consistent with the Secretary of the Interior's Standards & Guidelines prior to building permit issuance.

Mayor Termini asked if a letter was provided by an historian regarding this item and if there will be a place to park in front of the property after the proposed wall is built.

Interim Community Development Director Susan Westman responded that Carolyn Swift, the City's historian, provided a letter regarding this project. In addition, she stated that there will not be parking on the Escalona Drive side of the property; however, there is a concrete area in the front of the Oakland Avenue side for parking.

Council Member Harlan stated that she appealed this project because she would like the City Council to consider the historical compatibility of the proposed fence, including the style and type of materials to be used. She would like to run this proposal by Carolyn Swift and Kathryn Gualtieri (local historians) and is concerned that the landscaping be compatible with the Secretary of Interior's design guidelines.

Christy Bohnet, Property Owner, stated that the intent of the proposed wall design and landscaping is to allow for privacy.

John Draga, Representative, reviewed his proposal regarding the style and design of the wall and landscaping.

The following Capitola residents provided support for this application:

Sandy Erickson

Stuart Greeninger

Steve Walsh

Brian MacKenzie, neighbor of property owner Bohnet, stated concerns regarding the proposed landscaping affecting the visibility when children play in the area.

Council Member Nicol complimented the process of this item prior to coming to the City Council and provided his support for this proposal.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

ACTION: Motion was made by Council Member Nicol, seconded by Council Member Norton, to uphold the Planning Commission approved to grant Project Application # 12-044 and approve a Fence Permit and a Major Revocable Encroachment Permit to construct a wall within the City right-of-way as part of a single-family residential use in the R-1 (Single-Family Residence) Zoning District at 220 Oakland Avenue [APN 036-124-20]. The motion carried on the following vote: AYES: Council Members Norton, Nicol, and Mayor Termini. NOES: Council Member Harlan. ABSENT: Council Member Storey. ABSTAIN: None.

B. Consider report and presentation on traffic evaluation for Gilroy Avenue. [490-40]

Mayor Termini stated that since Council Member Norton and he reside within 500 feet of the 600 block of Gilroy Avenue, and there are four Council Members present, they will flip a coin to see which Council Member leaves the dias to maintain a quorum.

Mayor Termini left the dias.

Police Chief Escalante provided a brief status report regarding a survey that was conducted. He stated that staff met with the residents of Gilroy Avenue and the surrounding neighborhood on April 26, 2012, and again on May 29, 2012. The goal of the meetings was to facilitate information and partner with the community to identify options that could be reasonably explored to provide a safe street within the applicable laws. He stated that staff recommends the Police Department continue future discussions with residents to identify viable solutions.

ACTION: Motion was made by Council Member Nicol, seconded by Council Member Norton, to accept the report on a traffic evaluation for Gilroy Avenue and to continue working with the residents to identify viable solutions. The motion carried on the following vote: AYES: Council Members Harlan, Norton, and Nicol. NOES: None. ABSENT: Council Member Storey. ABSTAIN: Mayor Termini.

Mayor Termini returned to the dias.

C. Consideration of a Resolution regarding a Visitor Service Fee (Transient Occupancy Tax) Measure for November 6, 2012, Election [560-10].

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

City Manager Goldstein stated that City Council received a revised staff report recommending that Council not take action at this meeting regarding placing a Transient Occupancy Tax (TOT) Measure on the November 2012 ballot. He stated that the City's Finance Advisory Committee and staff developed a list of proposed revenue generators and expenditure reductions to help close the City's long-term funding gap. He stated that in January 2012 the Council directed staff to engage in a public opinion poll for the purpose of gauging community sentiment regarding various measures and tax initiatives. In March 2012 the Council approved Resolution No. 3912 to place a Permanent Quarter-Cent Sales Tax Measure on the November 2012 ballot and directed staff to not proceed with a TOT Measure. He stated that the Council may consider placing a 12% TOT Measure on the November 2012 ballot, or alternatively to consolidate efforts with the Sales Tax Measure.

Mayor Termini opened this item for public comment.

Chris Ferrante, Coast Santa Cruz Hotel, stated that discussions should have occurred with the local hotel industry prior to this item going to City Council.

Dan Aspromonte, Best Western and Marriott Fairfield Inn, stated that he agreed with Ms. Ferrante, that discussions should have occurred with the local hotel industry first; however, he is not opposed to the proposed TOT Measure.

Council Member Norton recommended continuing this item to the June 28, 2012, City Council meeting to allow time for discussions with the local hotel industry.

Mayor Termini stated that if a TOT Measure were approved by the voters, 1% of the additional tax increase could fund the Santa Cruz County Visitors Center and the Capitola/Soquel Chamber of Commerce.

ACTION: Motion made by Council Member Nicol, seconded by Council Member Harlan, to continue considering a Visitor Service Fee (Transient Occupancy Tax) Measure for November 6, 2012, Election to the June 28, 2012, City Council meeting. The motion carried with the following vote: AYES: Council Members Harlan, Norton, Nicol, and Mayor Termini. NOES: None. ABSENT: Council Member Storey. ABSTAIN: None.

- D. Consideration of adopting a Resolution authorizing certain Council Members to file written arguments for or against City Measure(s) and to file rebuttal arguments for City Measure(s) submitted at the November 6, 2012, General Municipal Election, and approve the timeline for filing Arguments/Rebuttals for City Measure(s). [560-10]**

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

ACTION: Motion made by Council Member Norton, seconded by Council Member Nicol, to adopt Resolution No. 3922 authorizing all five Council Members to collectively file written arguments for the City Measure(s) and to file rebuttal arguments for the City Measure(s) submitted for the November 6, 2012, General Municipal Election Ballot, and approve the timeline for filing arguments/rebuttals for City Measure(s). The motion carried with the following vote: AYES: Council Members Harlan, Norton, Nicol, and Mayor Termini. NOES: None. ABSENT: Council Member Storey. ABSTAIN: None.

City Manager Goldstein stated that the Argument in Favor of a Permanent Quarter-Cent Sales Tax Measure will be agendaized for approval at the next regular City Council meeting.

E. Designation of Voting Delegate and Alternate for the League of California Cities Annual Conference in San Diego, California, from September 5 to 7, 2012. [150-50]

Mayor Termini stated that Council Member Harlan said she would be happy to serve as the City's voting delegate as she plans to attend the conference; Mayor Termini offered to be the alternate voting delegate.

ACTION: Motion made by Council Member Harlan, seconded by Council Member Nicol, to appoint Council Member Harlan as the City's Voting Delegate and Mayor Termini as the Alternate Voting Delegate for the League of California Cities Annual Conference in San Diego, California, from September 5 to 7, 2012. The motion carried with the following vote: AYES: Council Members Harlan, Norton, Nicol, and Mayor Termini. NOES: None. ABSENT: Council Member Storey. ABSTAIN: None.

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

L. Adoption of a Resolution adopting the proposed 2012/2013 Fiscal Year Budget for the City of Capitola General Fund, the Capitola Successor Agency, and the Capital Improvement Budgets. [330-05 City/780-30 Successor Agency/330-20 CIP]

Council Member Nicol stated that the City now has a budget that is "precariously" balanced because the City did not generate any new money. He stated that the City missed the opportunity to bring in some of the incongruence's in the City revenues and payroll expenses over the past 10 years. He stated that the City should have a healthier emergency reserve.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

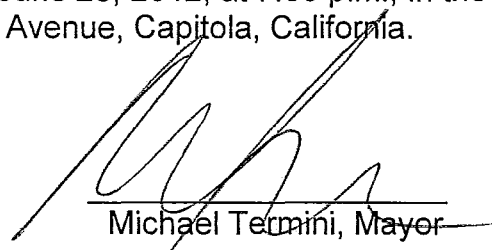
ACTION: Motion made by Council Member Harlan, seconded by Council Member Norton, Resolution No. 3921 adopting the proposed 2012/2013 Fiscal Year Budget for the City of Capitola General Fund, the Capitola Successor Agency, and the Capital Improvement Budgets. The motion carried with the following vote: **AYES:** Council Members Harlan, Norton, and Mayor Termini. **NOES:** Council Member Nicol. **ABSENT:** Council Member Storey. **ABSTAIN:** None.

Council Member Harlan stated that the City has experienced a very unusual year financially. The City's Fiscal Year 2012/2013 Budget is in balance; the City is required by law to pass a balanced budget.

10. COUNCIL/STAFF COMMUNICATIONS (none provided)

11. ADJOURNMENT

Mayor Termini adjourned at 9:00 p.m. to the next Regular Meeting of the City Council to be held on Thursday, June 28, 2012, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Michael Termini, Mayor

ATTEST:



Susan Sneddon, CMC
Susan Sneddon, City Clerk

MINUTES WERE UNANIMOUSLY APPROVED ON SEPTEMBER 13, 2012