

**MINUTES OF A REGULAR MEETING
5:30 P.M. – CLOSED SESSION – CITY MANAGER'S OFFICE****CALL TO ORDER**

Mayor Termini called the meeting to order at 5:30 p.m. on Thursday, May 24, 2012, in the City Hall Council Chambers. Council Members present: Council Member Norton, Council Member Nicol, Council Member Storey, and Mayor Termini. Council Member Harlan was absent. 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: 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.

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; 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].

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

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: Bay Federal Credit Union

Claimant: Ann Schroedel

Agency claimed against: City of Capitola

Mayor Termini noted that there was no one in the audience; therefore, the City Council recessed at 5:35 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, May 24, 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, Interim Community Development Director Susan Westman, Public Works Director Steve Jesberg, Senior Planner Ryan Bane, Police Chief Rudy Escalante, and City Clerk Susan Sneddon

2. PRESENTATIONS:

Presentation by New Brighton Middle School Environmental Club.

Mimi Edgar, New Brighton Middle School, introduced students involved in the school's Environmental Club.

Mahalaya, Alyn and Luca (New Brighton Middle School Environmental Club members) shared some of the club's activities and read the club's mission statement.

3. REPORT ON CLOSED SESSION [520-25]

City Attorney Barisone stated that items that the City Council discussed are the items listed on the May 24, 2012, Closed Session Agenda; the Council received a brief status report concerning the City of Capitola insurance coverage claim against Lexington Insurance (filed with the Santa Cruz Superior Court on May 18, 2012). **Mr. Barisone** stated that City Manager Goldstein provided a status report regarding ongoing settlement negotiations with various tenants of the Pacific Cove Mobilehome Park relative to relocation benefits resulting from the park closure; however, the Council took no reportable action. **Mr. Barisone** stated that there were no developments to report on the following 6 existing litigation items: (1) Kevin Calvert, D.D.S. and Pamela Calvert vs. City of Capitola, et al.; (2) Katie Saldana vs. the City of Capitola, et al.; (3) Foremost Insurance Company vs. the City of Capitola, et al.; (4) Truck Insurance vs. the City of Capitola, et al.; (5) David Ross; Carousel Taffy Morro Bay, Inc.; Village Mouse; The Thomas Kinkadee Gallery Capitola; Judith Ferro vs. the City of Capitola, et al.; (6) American Alternative Insurance Corporation; Central Fire Protection District of Santa Cruz County vs. the City of Capitola, et al. **Mr. Barisone** stated that the City Council received a status report from Administrative Services Director Murphy and City Manager Goldstein, the City's labor negotiators, regarding the following employee bargaining organizations; (1) Association of Capitola Employees; (2) Capitola Police Captains; (3) Capitola Police Officers Association; (4) Confidential Employees; (5) Mid-Management Group; and (6) Department Head Group; Council took no reportable action. **Mr. Barisone** stated that Council provided direction regarding an amendment to the City Manager's contract; however, Council

3. REPORT ON CLOSED SESSION (continued)

did not approve the bargaining agreement. **Mr. Barisone** stated that Council received a report regarding the 2 following tort claims: (1) Bay Federal Credit Union; (2) Ann Schroedel; Council took no reportable action in closed session.

4. ADDITIONS AND DELETIONS TO AGENDA (None)

5. PUBLIC COMMENTS

Marilyn Garrett stated concerns regarding the SmartMeters.

Darrel Johnson, Seniors Council of Santa Cruz and San Benito Counties Board Member, stated concerns regarding the City Council recommending to not fund the 2012/2013 Community Grants.

Margaret Kinstler, Capitola Village Residents' Association representative, requested that the Capitola Village Residents' Association be notified of the date/time of the next City's General Plan public workshop.

Gary Richard Arnold, expressed concerns regarding political policy as it relates to government and outsourcing jobs to foreign countries.

Sandra Williams, City's representative for Seniors Council of Santa Cruz and San Benito Counties, and the Santa Cruz County representative on the Advisory Council of the Area Agency on Aging, stated concerns regarding the Council considering not funding the Community Grants in Fiscal Year 2012/2013.

Clay Kempf, Executive Director of Seniors Council of Santa Cruz & San Benito Counties, stated concerns regarding the Council reducing the Fiscal Year 2012/2013 Community Grants.

Carol Lerno, Pacific Cove Mobile Home Park, provided support for the City to continue funding the Community Grants.

Peter Pethoe, Santa Cruz Hostel, provided information regarding SmartMeters.

6. COUNCIL/STAFF ANNOUNCEMENTS

Council Member Harlan, City's representative for the Santa Cruz County Sanitation District, provided a report regarding the District's May 17, 2012 meeting.

7. COMMITTEE APPOINTMENTS

- A. Appointment/Reappointment to the Capitola Historical Museum Board to fill the unexpired terms ending June 21, 2012. [240-40]**

ACTION: Motion by Council Member Norton, seconded by Council Member Storey, to accept the staff recommendation to reappoint Linda Smith and David Shoaf to fill two of the three expiring terms on the Capitola Historical Museum Board. The recommended appointments are for three-year terms expiring on June 21, 2015. The motion carried unanimously with the following vote: AYES: Council Members Harlan, Nicol, Norton, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

8. CONSENT CALENDAR

Mayor Termini and Council Member Norton stated that due to a conflict of interest they will recuse themselves from participating on **Item No. 8.B.** regarding a Capitola Municipal Code amendment to Chapter 17.50 Floodplain District; they both reside within 500 feet of the Floodplain District.

- A. Approval of City Check Register Reports dated April 20, April 27, May 4 and May 11, 2012. [300-10]**
- B. Adoption of Ordinance No 970 amending Chapter 17.50 Floodplain District in the Capitola Municipal Code as required by the Federal Emergency Management Agency (FEMA) for the community to participate in the National Flood Insurance Program (NFIP) [2nd reading]. [740-30]**
- C. Adoption of Ordinance No 971 amending Title 8 Chapter 6 (Recycling) of the Capitola Municipal Code regarding mandatory commercial recycling [2nd reading]. [930-30]**
- D. Confirmation of the City's Investment Policy, Administrative Policy Number III-1. [100-10/350-10]**
- E. Consideration of declaring a wheelchair as surplus property and direct the City Manager's Department to donate the property to Shriners Hospital. [370-10]**
- F. Deny liability claims and forward to the City's liability insurance carrier: [Claims Binder]**
- 1. Bay Federal Credit Union, in the amount of \$82,500 and forward to the City's liability insurance carrier;**
 - 2. Ann Schroedel in the amount of \$136,000 and forward to the City's liability insurance carrier.**

8. CONSENT CALENDAR (continued)

ACTION: Motion by Council Member Harlan, seconded by Council Member Storey, to approve the Consent Calendar. The motion carried on the following vote: AYES: Council Members Harlan, Nicol, Norton, Storey, and Mayor Termini (*Exception: Council Member Norton and Mayor Termini abstained from Item 8.B.). NOES: None. ABSENT: None. ABSTAIN*:

9. GENERAL GOVERNMENT/PUBLIC HEARINGS

A. 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]

Council Member Storey stated that he will recuse himself from participating on this item because he lives within 500 feet of this property; he left the dias.

Senior Planner Bane introduced this item regarding an appeal of Planning Commission's decision to deny a Coastal Permit and Design Permit to construct a new single-family house located at 700 Escalona Drive. He provided the following brief history of this item: April 19, 2012, the Planning Commission approved the demolition of the existing house and construction of a single-family residence on the standard 4,000-square-foot parcel and denied the proposed house on the smaller 1,800-square-foot parcel; April 24, 2012, staff received an appeal from the applicant; May 9, 2012, staff received revised plans that eliminate requested side yard variances. Senior Planner Bane stated that staff is recommending that the City Council overturn the Planning Commission's denial and approve the application.

Mayor Termini opened the public hearing.

Derek Van Alstine, property owner's representative, requested the Council grant the variance.

Stewart Greeninger, 701 Escalona Drive, stated he is against the project because the lot-size is too small for the proposed residence.

Resident, 603 Escalona Drive, stated he opposes this project.

DJ Pop, 722 Escalona Drive, provided her support for this project.

Mayor Termini closed the public hearing.

Council discussion ensued regarding this item.

Motion by Council Member Norton, seconded by Mayor Termini, to overturn the Planning Commission denial and approve Project Application # 12-019 for 700 Escalona Drive with the condition that no side yard fences will be deed restricted, and there will be a maintenance agreement for the tuff block.

After Council discussion Council Member Norton withdrew his motion, and the City Council took no action on the request.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

Council Member Harlan stated that she is not in favor of the proposed landscaping in the right-of-way.

Council Member Nicol stated that he supports a smaller house, which is more acceptable to the neighborhood.

Council Member Norton withdrew his motion, and recommended that Council give the applicant an opportunity to provide a redesign to be reviewed by the Planning Commission.

ACTION: Motion by Council Member Norton, seconded by Mayor Termini, to continue this item regarding 700 Escalona Drive (Project Application # 12-019) to the June 28, 2012 City Council meeting. The motion carried with the following vote: AYES: Council Member Norton, Council Member Nicol, and Mayor Termini. NOES: Council Member Harlan. ABSENT: None. ABSTAIN: Council Member Storey.

Council Member Storey returned to the dias.

B. 115 San Jose Avenue – Project Application #11-100: Appeal of Planning Commission decision to deny a Conditional Use Permit for a take-out restaurant with the sale and dispensing of alcohol in the CV (Central Village) Zoning District [APN 035-221-27]. Filed 9/15/11. Property Owner: Peter Dwares. Representative: Ron Hirsch. [730-10]

Council Member Norton and **Mayor Termini** recused themselves from participating on this item since the project application property is located within 500 feet of their properties; they left the dias.

Senior Planner Bane provided a brief background of this item:

1. October 20, 2011, the Planning Commission denied the requested Conditional Use Permit followed by a submittal of an appeal to City Council;
2. December 1, 2011, the application was returned to the Planning Commission for reconsideration;
3. Planning Commission requested additional information;
4. Planning Commission continued this application at their February 2, 2012, and March 1, 2012, meetings;
5. April 5, 2012, the Planning Commission denied the application.

Senior Planner Bane stated that under the Central Village Zoning District a conditional use permit is required for take-out restaurants and business establishments that sell/dispense alcoholic beverages. He stated that staff recommends that the City Council uphold the Planning Commission denial of this application.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

Chris Shoemaker, property owner representative, provided a brief history regarding seeking approval for this application. He stated that they are seeking a continuance to allow for additional time in order to present a successful proposal to the Planning Commission. He stated that his understanding was that this application would be continued to the May 3, 2012 Planning Commission when they were prepared to present a complete application. Staff advised Mr. Shoemaker that he did not need to attend the April 5, 2012 Planning Commission meeting as they were simply recommending a continuance to bring the application to the May 3, 2012 Planning Commission meeting. He stated that they were notified after the April 5, 2012, Planning Commission that the continuation was not granted, and a new application fee would be required if they wanted to re-apply. He appealed the application in order to present this application to the City Council.

Senior Planner Bane stated he met with the applicant in late March 2012; the applicant stated they were compiling information requested by the Planning Commission. **Senior Planner Bane** stated that he requested the Planning Commission continue this application to the May 3, 2012 meeting; however at the April 5, 2012, meeting the Planning Commission did not accept staff's recommendation to continue this item and denied the application.

City Manager Goldstein stated that the Planning Commission continued this application multiple times; both the commissioners and residents were becoming discouraged that this application kept being continued. The Planning Commission requested that the applicant resubmit the application. **City Manager Goldstein** suggested that the Council could deny the project and allow the applicant time to resubmit their application, and the City could apply the applicant's existing credit to the future application and waive the reapplication fee.

Chris Shoemaker, property owner representative, requested that the Council grant the applicant a continuance until the July 5, 2012, Planning Commission meeting as the final opportunity to present the application.

Interim Community Development Director Westman stated that the applicant did obtain approval from the Planning Commission for a portion of the project. She stated that the Planning Commission felt discouraged because the item was noticed, public attended, and then the item had to be continued. She suggested that, as a courtesy to the public, the project be denied and the applicant be allowed to start over and reapply.

City Manager Goldstein stated that this item could be agendaized for the July 5, 2012, Planning Commission meeting, provided that the staff has a complete application by the first week in June 2012.

Interim Community Development Director Westman suggested that the Council deny this application without prejudice so the applicant can return with a new application.

Council Member Harlan opened the public hearing.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

There was no public comment.

Council Member Harlan closed the public hearing.

Motion by Council Member Nicol, seconded by Council Member Harlan to deny the application without prejudice and to require the applicant submit a new application. The motion failed.

Council Member Storey stated he does not support requiring the applicant to re-start the process. He is in favor of allowing the applicant to go to the July 5, 2012, Planning Commission meeting with the condition that, if they do not have the proper materials to staff in the time required, then the application would be denied.

Interim Community Development Director Westman stated procedurally it would need to be on the City Council and the Planning Commission agenda to be denied.

There was further discussion and deliberation prior to calling for a vote on this item.

ACTION: Motion by Council Member Harlan, seconded by Council Member Nicol, to deny the application regarding 115 San Jose Avenue (Project Application #11-100) regarding a Conditional Use Permit for a take-out restaurant with the sale and dispensing of alcohol in the CV (Central Village) Zoning District. This application will be denied without prejudice, and the applicant may submit a new application with the reapplication fee waived. The motion carried with the following vote: AYES: Council Member Harlan and Council Member Nicol. NOES: Council Member Storey. ABSENT: None. ABSTAIN: Council Member Norton and Mayor Termini.

Council Member Norton and Mayor Termini returned to the dias.

C. Progress report on the City's General Plan Update. [740-40]

Interim Community Development Director Westman introduced Ben Noble of DC&E (City's General Plan consultant).

Ben Noble, DC&E, provided an update on the primary project components and the completed tasks related to the City's General Plan Update and the Environmental Impact Report. He stated that 9 General Plan Advisory Committee meetings have occurred; 4 community workshops; 4 stakeholder interviews, and other community meetings. He stated that draft goals, policies and actions for all the elements of the General Plan will be prepared. He summarized the vision of the updated General Plan that encompasses unique values of the community, promotes sustainability, and a balance of visionary thinking with practical solutions.

9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

Interim Community Development Director Westman commented that there was low attendance at the last General Plan community workshop. She stated that DC&E will provide the first draft of the General Plan Update to the General Plan Advisory Committee and the community will be notified regarding the meeting date and time; followed by Planning Commission public hearings; and then to the City Council for the final adoption. She stated that staff will take an extra step in notifying the community of future workshops.

Mayor Termini opened the public hearing.

Jacques Bertrand and **Anna Marie Gotti** stated there was inadequate notice for the General Plan Update Community Workshops.

Mayor Termini closed the public hearing.

- D. Presentation regarding streaming web video services of City Council and Planning Commission meetings; authorize the City Manager to execute a two-year agreement with SIRE Technologies in an amount not to exceed \$25,000 and reaffirm the implementation of action minutes as the City's formal record of City Council meetings. [160-80/500-10 A/C: SIRE Technologies]

City Clerk Sneddon introduced this item.

Information System Specialist Laurent briefly reviewed proposed SIRE Technologies streaming web video services.

ACTION: Motion by Council Member Nicol, seconded by Council Member Norton, to approve a two-year agreement with SIRE Technologies in an amount not to exceed \$25,000, and reaffirm the implementation of action minutes as the City's formal record of City Council meetings. The motion carried unanimously with the following vote: AYES: Council Members Harlan, Nicol, Norton, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

- E. Proposal for July 4, 2012, Police Department Public Safety Operation for Capitola Beach. [485-10]

Police Chief Escalante reviewed staff's recommendation to provide adequate public safety services and requested Council's approval of the proposed program.

ACTION: Motion by Council Member Norton, seconded by Council Member Harlan, to approve the proposal for July 4, 2012, Police Department Public Safety Operation for Capitola Beach. The motion carried unanimously with the following vote: AYES: Council Members Harlan, Nicol, Norton, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

7. COUNCIL/STAFF COMMUNICATIONS**A. Staff Comments**

Council Member Norton requested that the proposed Plastic Bag Ordinance be agendaized to a July City Council meeting. He stated that there will be a Memorial Day celebration in front of City Hall on May 21 at 10:00 a.m. He requested that a Visitor Service Fee (Transient Occupancy Tax) Measure be placed on the next Council Agenda for consideration to be included in the November ballot along with the sales tax measure.

Council Member Harlan stated that Santa Cruz is hosting a Memorial Day event with a barbeque and a tour of Evergreen Cemetery.

Mayor Termini stated that on May 16 he attended the Red Cross Heroes Breakfast sponsored by the American Red Cross of Santa Cruz County.

Jacques Bertrand suggested that the Red Cross schedule a blood donation drive on the weekends.

B. City Council/Treasurer Comments/Committee Reports (none provided)**8. ADJOURNMENT**

Mayor Termini adjourned at 10:30 p.m. to the next Special Budget Study Session of the City Council to be held on Thursday, May 31, 2012, at 6:00 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 JULY 26, 2012