

**CITY OF CAPITOLA  
CITY COUNCIL****May 10, 2012  
Capitola, California****MINUTES OF A REGULAR MEETING****6:00 P.M. — CLOSED SESSION — CITY MANAGER'S OFFICE****CALL TO ORDER**

At 6:00 p.m. in the City Hall Council Chambers, **Mayor Termini** noted that all Council Members were present. 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 #CV173228];
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 #CV173642];
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.

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION** (Government Code §54957)

Title: City Manager

**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 7:10 p.m. on Thursday, May 10, 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, Finance Director Tori Hannah, Police Chief Rudy Escalante, Interim Community Development Director Susan Westman, Administrative Services Director Lisa Murphy, and City Clerk Susan Sneddon

## 2. PRESENTATIONS:

## A. Introduction of new Police Officer, Steve Anderson. [480-05]

**Police Chief Escalante** introduced the new Police Officer Anderson.

## B. Presentation by New Brighton Middle School Environmental Club. [430-05]

The New Brighton Middle School Environmental Club was unable to attend the Council meeting.

## C. Presentation on the 60th Annual Begonia Festival. [1050-70]

**Lin Banks** and **Laurie Hill** provided an update regarding the 60<sup>th</sup> annual Capitola Begonia Festival.

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

**City Attorney Barisone** stated that items the City Council discussed in Closed Session are the items listed on the May 10, 2012, Closed Session Agenda. The City Council discussed the potential first-party insurance-coverage lawsuit against Lexington Insurance Company's failure to honor the City's claim for property damages from the March 2011 pipe-failure incident; a status report was received, and the City Council provided direction regarding the potential prosecution of the lawsuit. **City Attorney Barisone** stated that the City Council did not discuss the litigation cases against the City of Capitola, arising out of the March 2011 pipe failure by third-party property owners, because there were no new developments to report. He stated that the City Council received a status report from the City Manager and the Administrative Services Director, the City's

### 3. REPORT ON CLOSED SESSION (continued)

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; the Council took no reportable action. **Mr. Barisone** stated that the labor negotiators took instruction from the Council with regard to ongoing negotiations. He stated that due to time constraints the City Manager's performance evaluation did not occur.

### 4. ADDITIONS AND DELETIONS TO AGENDA (none provided)

### 5. PUBLIC COMMENTS

**Marilyn Garrett** spoke against wireless technologies.

**Lynn and John Plecque** read a letter to the City Council regarding the loss of their dog that was struck and killed by a vehicle on Gilroy Drive. They provided a neighborhood petition requesting that the Council provide direction to make the neighborhood roads safer. **[490-40]**

**A member of the Capitola Village Resident Association Board of Directors** stated that he supports reducing speed in the area of Riverview Terrace and Gilroy Drive.

**Marge Hansen, 601 Oak Drive, Capitola resident,** requested that the red curb zone be lengthened at Gilroy Drive and Beverly Avenue.

**Ernie Tavella, 615 Riverview Drive,** stated that increased police enforcement is needed in his neighborhood because people are driving too fast.

**Nathan Cross, 620 Gilroy Drive,** stated that the traffic and speeding on Gilroy Drive has been an issue.

**City Manager Goldstein** stated that the Police Chief has placed a radar detector in the area to monitor vehicle speeds, and staff anticipates bringing a proposed project to the Council with the results, as well as several options to address these issues.

**Interim Community Development Director Westman** announced that the next General Plan workshop will be held on Saturday, May 12<sup>th</sup> (9:30 a.m. to 12:30 p.m.) at the Community Center located on Jade Street; the focus will primarily be regarding the Pacific Cove and the City Hall properties.

## 6. COUNCIL/STAFF ANNOUNCEMENTS

**Mayor Termini** asked about fencing at the construction site for the Opal Cliffs Elementary School.

**Public Work Director Jesberg** responded that Soquel Union Elementary School District staff is looking into modifying the design of the temporary fencing during the construction of the school; currently it is two feet from the existing fence.

**Interim Community Development Director Westman** responded that she will research this issue, and City staff will email the City Council members the results of the investigation.

**Council Member Harlan** stated that at the May 9th Association of Monterey Bay Area Governments meeting she received the Fiscal Year 2012-2013 Draft Monterey Bay Region Overall Work Program, including the Metropolitan Transportation Plan for the three local counties. Also at the meeting they received a Caltrans presentation on the California Interregional Blueprint. She stated that St. John's Helpful Shop is requesting donations of paper bags.

**Council Member Norton** requested that a draft plastic bag ordinance be agendaized to a future City Council meeting.

**Administrative Services Director Murphy** stated that the City of Santa Cruz Transportation and Public Works Commission recently discussed amending the City's ordinance regarding environmentally acceptable packaging and products; the City of Watsonville adopted a plastic bag ordinance; the City of Carmel's plastic bag ordinance did not pass.

**Council Member Storey** requested that staff report to the Council what other local cities that recently adopted plastic bag ordinances did regarding California Environmental quality Act (CEQA) issues.

## 7. COMMITTEE APPOINTMENTS (none)

## 8. CONSENT CALENDAR

**Council Member Storey** stated that he will recuse himself from participating on Item # 8.E. regarding 700 Escalona Drive (Project Application # 12-019); since the project application property is located within 500 feet of his property.

**Council Member Norton** stated that he will recuse himself from participating on Item # 8.D. regarding 115 San Jose Avenue Appeal (Project Application #11-100) due to a conflict of interest. He stated that he is not the applicant's representative.

**Mayor Termini** stated that he will recuse himself from participating on Item # 8.D. regarding 115 San Jose Avenue Appeal (Project Application #11-100) due to a conflict of interest.

## 8. CONSENT CALENDAR (continued)

- A. Consideration of the approval of the City Council Minutes of the Special Closed Session of April 5, 2012, and the minutes of the Regular Meeting of April 12, 2012.
- B. Receive Planning Commission Action Minutes for the Regular Meeting of May 3, 2012. [740-50]
- C. Consideration of adopting Ordinance No. 969 amending Title 10 (Vehicles and Traffic) of the Capitola Municipal Code to prohibit commercial traffic on Reposa Avenue. [490-40]
- F. 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. (Set public hearing for June 14, 2012). [730-10]
- G. Mayor’s Proclamation honoring the American Red Cross of Santa Cruz County and designating May 16, 2012, as “Heroes Day.” [120-40]

***ACTION: Motion by Council Member Harlan, seconded by Council Member Nicol, to approve Items No. 8. A, B, C, F, and G on the Consent Calendar. The motion was unanimously carried.***

*The City Council voted separately on the following Consent Calendar items (Item # 8.D. and Item # 8.E).*

- D. 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: Dennis Norton Designs. (Set public hearing for May 24, 2012). [730-10]

***ACTION: Motion by Council Member Harlan, seconded by Council Member Nicol, to set a public hearing for the May 24, 2012, City Council meeting regarding 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]. The motion carried with the following vote: AYES: Council Members Harlan, Nicol, and Storey. NOES: None. ABSENT: None. ABSTAIN: Council Member Norton and Mayor Termini***

## 8. CONSENT CALENDAR (continued)

- E. **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. (Set public hearing for May 24, 2012). [730-10]

***ACTION: Motion by Council Member Harlan, seconded by Council Member Nicol, to set a public hearing for the May 24, 2012 City Council meeting regarding 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]. The motion carried with the following vote: AYES: Council Members Harlan, Norton, Nicol, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: Council Member Storey.***

## 9. GENERAL GOVERNMENT/PUBLIC HEARINGS

- A. Receive report on Clares Street and 41<sup>st</sup> Avenue intersection options. [940-40]

**Public Works Director Jesberg** introduced this item. He stated that staff is recommending to modify the No. 3 lane in the eastbound direction on Clares Street by eliminating the left turn movement from the curb lane (right lane) resulting in 2 dedicated left turn lanes and a through/right-turn lane. He stated the analysis concludes that this change would appear to improve the approach operations by better distributing the traffic volumes. In addition he reviewed other recommended modifications to this intersection.

**Mayor Termini** opened this item for public comment.

**Ed Bottorff, 321B Capitola Avenue**, stated that he is in favor of this recommendation.

**Mayor Termini** closed this item for public comment.

***Motion by Council Member Nicol, seconded by Council Member Storey, approve staff's recommendations but without restricting the right turn on red from westbound Clares Street onto northbound 41<sup>st</sup> Avenue. Motion failed.***

**Mayor Termini** stated that he is in favor of having a “no right-hand turn on red” onto northbound 41st Avenue at the red traffic signal for vehicles traveling westbound on Clares Street as recommended by the Police Department.

## 9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

**Police Chief Escalante** stated that traffic at this intersection frequently backs up when vehicles in the 41<sup>st</sup> Avenue northbound left-hand turn lane are making U-turns resulting in a backup and causing delays for the vehicles westbound on Clares Street making a left turn onto 41<sup>st</sup> Avenue (northbound) at this intersection.

***ACTION: Motion by Council Member Norton, seconded by Council Member Harlan, to direct the Public Works Department to modify the lane configuration on eastbound Clares Street between 40th Avenue and 41st Avenue to eliminate the left turn movement from the curb lane (right lane) resulting in two dedicated left turn lanes and a through/right-turn lane and related actions. The motion carried with the following vote: AYES: Council Members Harlan, Norton, Nicol, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None***

**B. Consideration of an Ordinance amending Title 17 Chapter 50 (Floodplain District) of 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), and consideration of a Resolution authorizing the City Manager to submit a Local Coastal Program Amendment to the California Coastal Commission for certification. (Introduce Ordinance) [740-30]**

**Public Works Director Jesberg** introduced this item. He stated that the recommended action required by the Federal Emergency Management Agency (FEMA) is to amend the City's municipal code pertaining to floodplain management to comply with new regulations. He stated that the proposed ordinance better defines the building hazards and provisions for allowing construction in the flood hazard areas; the variance and appeal processes are also better detailed in the revised code.

**Mayor Termini** opened the public hearing.

No public comment provided.

**Mayor Termini** closed the public hearing.

**Council Member Norton** asked if the property owners affected by the proposed ordinance were notified. (**Public Works Director Jesberg** responded that the property owners were not notified). **Council Member Norton** requested an interpretation by the City's Building Inspector of commercial properties in the village. He stated his concern that commercial properties, unless they are in the historic district, will not be able to be built with a commercial area on the first floor.

## 9. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

**Public Works Director Jesberg** stated that the City's Building Inspector's opinion is that the regulations will not change with the adoption of the proposed ordinance. He stated that Building Inspector Wheeler will be present at the second reading of the ordinance to answer any questions.

***ACTION: Motion by Council Member Nicol, seconded by Council Member Harlan, to approve the introduction of the proposed ordinance amending Title 17 Chapter 50 (Floodplain District) of 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); and the adoption of Resolution No. 3916 authorizing the City Manager to submit a Local Coastal Program Amendment to the California Coastal Commission for certification. AYES: Council Members Harlan, Norton, Nicol, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.***

C. Consideration of an Ordinance amending Title 8 Chapter 6 (Recycling) of the Capitola Municipal Code regarding mandatory commercial recycling. (Introduce Ordinance) [930-30]

**Administrative Services Director Murphy** introduced this item. She stated that Assembly Bill 32 pursuant to the California Global Warming Solutions Act mandates commercial recycling for all businesses and multifamily residential dwellings with five or more units beginning July 1, 2012.

***ACTION: Motion by Council Member Norton, seconded by Council Member Storey, to introduce an ordinance amending Title 8 Chapter 6 (Recycling) of the Capitola Municipal Code regarding mandatory commercial recycling. AYES: Council Members Harlan, Norton, Nicol, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.***

## 10. COUNCIL/STAFF COMMUNICATIONS

A. Staff Comments (none provided)

B. City Council/Treasurer Comments/Committee Report (None provided)

**Council Member Norton** asked about the City's contract with Charter Communications.

**Administrative Services Director Murphy** responded that Charter Communications entered into a state franchise agreement earlier this year; therefore, they are no longer operating under the City's jurisdiction. She stated that she will continue to process issues related to Charter Communications.



## 10. COUNCIL/STAFF COMMUNICATIONS (continued)

**Council Member Storey** stated that since the City no longer has authority over Charter Communications, he is concerned that the public may assume that it is the City's responsibility to respond to concerns related to Charter Communications services.

**Council Member Harlan** suggested that the Mayor send a letter to Charter Communications that the City has concerns regarding their services

**Mayor Termini** stated that a letter will be mailed, with a copy being provided to the state's representatives, regarding the City's concern over the state franchise.

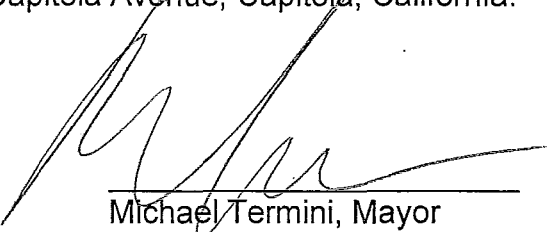
**Mayor Termini** stated that the only Caltrans sign on Highway 1 for the Capitola exits that direct drivers to the "beach" is at the Park Avenue exit. He suggested that staff request Caltrans post two more "beach" signs for the other two Capitola exits.

**City Treasurer Bertrand, member of the City's Finance Advisory Committee**, asked when a report of the City's benchmark analysis comparing similar cities' costs, revenues and services would be available.

**Mayor Termini** responded that the results of the benchmark analysis will be reported when the information is compiled.

## 11. ADJOURNMENT

At 8:50 p.m. **Mayor Termini** adjourned to the next Special Budget Study Session of the City Council to be held on Wednesday, May 23, 2012, at 6:00 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 JUNE 28, 2012