

**CITY OF CAPITOLA  
CITY COUNCIL/REDEVELOPMENT AGENCY**

October 13, 2011  
Capitola, California

**MINUTES OF A REGULAR JOINT MEETING**

**5:30 P.M - CLOSED SESSION - CITY MANAGER'S OFFICE**

At 5:33 p.m. in the City Hall Council Chambers, Mayor/Chairperson Norton noted that all Council Members/Redevelopment Agency Directors were present. Mayor/Chairperson Norton made an announcement regarding the items to be discussed in Closed Session, as follows:

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

Surf and Sand, LLC vs. City of Capitola, et al. (Surf & Sand Mobile Home Park)  
[Superior Court of the State of California for County of Santa Cruz, Case #CV 167716]  
Surf and Sand, LLC vs. City of Capitola, et al. (Surf & Sand Mobile Home Park)  
[U.S. District Court N.D., Case No. C09-05542 RS (Judge Richard Seeborg)]  
Bill Newman, et al. (residents of Surf & Sand Mobile Home Park) vs. Surf and Sand, LLC,  
Ronald Reed, et al. (Surf and Sand, LLC; Ronald Reed, Cross-Complainants vs. City  
of Capitola) [Superior Court County of Santa Cruz, Unlimited Jurisdiction, Case No. CV  
171783]

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9:  
Two Cases: 1) Noble Gulch Storm Drain Failure in Pacific Cove Mobile Home Park  
2) American Alternative Insurance Corporation vs. City of Capitola

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Govt. Code §54956.8)**

Property: McGregor Drive, APN 36-341-02 (City of Capitola, Owner)  
City Negotiator: City Manager  
Negotiating Parties: City and Soquel Creek Water District  
Under Negotiation: Real Property Lease/Sale

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

Title: City Manager

**LIABILITY CLAIMS (Govt. Code §54956.95)**

Claimant: Capitola Associates, LLC  
Claimant: Mid-Century Insurance Company, subrogee of Blue Water Steakhouse, Inc.  
Claimant: Farmers Insurance Exchange, subrogee of Hot Feet, Inc.  
Claimant: Farmers Insurance Exchange, subrogee of Raymond Apolskis,  
dba Surf N Shack  
Claimant: Nubia R. Jordan, dba Capitola Dreams Swimwear  
Agency claimed against: City of Capitola

No one from the public was present for the announcement regarding the Closed Session; therefore, the City Council/Redevelopment Agency recessed at 5:34 p.m. to the Closed Session in the City Manager's Office.

**7:00 P.M. – OPEN SESSION****REGULAR JOINT MEETING OF THE CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY**

Mayor/Chairperson Norton called the Regular Joint Meeting of the Capitola City Council/Redevelopment Agency to order at 7:04 p.m. on Thursday, October 13, 2011, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

**ROLL CALL AND PLEDGE OF ALLEGIANCE**

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

**ABSENT:** City Treasurer Jacques Bertrand

**OTHERS:** Redevelopment Agency Treasurer Debbie Johnson

**STAFF:** City Manager/Executive Director Jamie Goldstein, City Attorney/RDA General Counsel John G. Barisone [*for Closed Session only*], Deputy City Attorney Adair Paterno, Community Development Director/Deputy Executive Director Derek Johnson, Chief of Police Michael Card, Public Works Director Steve Jesberg, Administrative Services Director Lisa Murphy, and City Clerk/Secretary Pamela Greeninger

**\*\*\* PRESENTATIONS \*\*\***

**Presentation by Dan Haifley, Executive Director of  
O'Neill Sea Odyssey [330-30]**

Dan Haifley, Executive Director of O'Neill Sea Odyssey, reported on the progress made by the O'Neill Sea Odyssey over the past 12 to 14 years in providing an ocean education program about the ocean for the youth of our community. Utilizing a PowerPoint Presentation (copy on file), Mr. Haifley discussed highlights of the basic program, the special program for physically challenged youth, awards received for the program, and positive impacts received by participants. He said over 60,000 youth have participated in the program since its inception. Mr. Haifley commented on, and passed out, preliminary information regarding their "Long-term Study," which seeks to examine the effects the O'Neill Sea Odyssey has on long-term environmental knowledge, attitudes and behaviors.

Ed Kramer wished to thank Mr. Haifley for his presentation. Mr. Kramer explained that he is blind and that he had an opportunity to go out on the Monterey Bay with about 100 low-income students from Salinas. He said it was a wonderful experience.

Mayor Norton thanked Mr. Haifley for his presentation.

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

Deputy City Attorney Adair Paterno said all members of the city council were present for the closed session, as were City Attorney John Barisone, herself, and City Manager Jamie Goldstein. The closed session commenced at 5:30 p.m. She reported on the Closed Session as follows:

- Announced there were three matters discussed under existing litigation in Closed Session (as listed on the posted agenda), and that no reportable action was taken by the council on those matters in closed session.
- Reported that the City Council discussed two items of anticipated litigation and took no reportable action in closed session.

## 1. REPORT ON CLOSED SESSION (Continued)

- With respect to the conference with Real Property Negotiators, Deputy City Attorney Adair Paterno reported that the City Council, by a 5-0 vote, agreed to enter into an option to purchase agreement with the Soquel Creek Water District in concept, whereby the Soquel Creek Water District will have a 9-month option to purchase a portion of the McGregor Drive property to build a pump station.
- The city manager had a public employee performance evaluation, and the City Council took no reportable action in Closed Session.
- There was limited discussion of the liability claims, and those claims will be handled under the consent agenda.

## 2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda

1) Mayor Norton announced that Public Hearing Item 4.B. pertaining to Mobile Home Park Rent Stabilization would be reordered prior to Public Hearing Item 4.A. pertaining to consideration of a preliminary development plan for a proposed Planned Development rezoning at 1575 38<sup>th</sup> Avenue.

2) Mayor Norton also said that Other Business Item 5.F. regarding consideration of a resolution supporting termination of the Southern Sea Otter Translocation Program would be reordered following Item 5.C. about single-use plastic and paper carryout bags.

B. Public Comments

The following people addressed the City Council regarding their concerns relating to SmartMeters: Angela Flynn, Ed Kramer, Ms. Tucker, Marilyn Garrett, a woman living on 44<sup>th</sup> Avenue in Capitola, a woman from Cabrillo Mobile Home Estates, and a resident of Santa Cruz named Jim.

In addition, Tony Kuspa, a resident of Santa Cruz, submitted a written copy of a song, which he sang to the Council, entitled, "Confessions of a Meter-Reader-Depleter-Meter."

C. Staff Comments - NoneD. City Council/RDA Director/Treasurer Comments/Committee Reports

1) Council Member Harlan stated that she missed the AMBAG meeting last night because she attended the City Council's joint special meeting with the Finance Advisory Committee; however, she has received information from AMBAG staff she would like to report.

Council Member Harlan also commented on the blue printing report she had brought to the council's attention at a previous meeting and informed the Council the AMBAG was not going to be able to finish responding to all the comments received on the report due to lack of funding.

Council Member Harlan then reported on action taken at the October 12, 2011, AMBAG meeting, as follows: A motion was made, seconded, and passed unanimously to retain AMBAG in its current form as the Regional Council of Governments and the Metropolitan Planning Organization, and to direct staff to identify and address any and all performance-related issues going forward and to report to the Board at its January 2012 meeting, along with providing a timeline to addressing the issues.

## 2. D. 1) ORAL COMMUNICATIONS (Continued)

Council Member Harlan said the AMBAG board also directed staff to discuss the MOU between AMBAG and the RTPA (Regional Transportation Planning Agency) in order to appropriately fund the Regional Transportation Demand Model and avoid any duplication of transportation planning efforts.

2) Council Member Harlan reported that she attended the League of California Cities Annual Conference in San Francisco, where she went to several very informative sessions. She said many of the sessions at the conference were predominantly relating to economic development. She said it was good to network with other cities, and she learned that many other cities have more challenging problems than we have in Capitola.

3) Council Member Termini announced there would be a ceremony for the Tile Wall Dedication tomorrow afternoon, October 14, at 3:00 pm, at the wall located at Monterey and Bay Avenues.

4) Mayor Norton noted as much as he appreciates Target coming to our community and filling a large vacancy in our shopping center, he is disappointed that they are using outside labor when our local labor force is in need of work. He would like the city to consider a policy requiring businesses to use a certain percentage of local labor, and to set that matter for a future agenda.

E. Committee Appointments – None

F. Approval of Check Register Reports1) City: Approval of City Check Register Reports dated September 16, 23 and 30, 2011. [300-10]

**ACTION:** Council Member Harlan moved, seconded by Council Member Termini, to approve the Check Register Reports dated September 16, 23, and 30, 2011, including checks numbered 67547 through 67581 in the amount of \$61,258.82, checks numbered 67582 through 67674 in the amount of \$1,121,591.93, and checks numbered 67675 through 67734 in the amount of \$197,844.95, respectively; and payroll disbursements for the September 23, 2011, payroll in the amount of \$176,187.73, for a Grand Total of \$1,556,883.43, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

2) RDA: Approval of Redevelopment Agency Check Register Report dated September 23, 2011. [760-25]

**ACTION:** Director Harlan moved, seconded by Director Storey, to approve the Check Register Report dated September 23, 2011, including checks numbered 2996 through 2999 in the amount of \$8,040.00, as submitted. The motion carried on the following vote: AYES: Directors Harlan, Termini, Nicol, Storey and Chairperson Norton. NOES: None. ABSENT: None. ABSTAIN: None.

3. **CONSENT CALENDAR**

Mayor/Chairperson Norton asked if there were any items on the Consent Calendar that members of the public or the City Council/Redevelopment Agency Directors wished to pull for separate discussion.

Mayor/Chairperson Norton said he had a question regarding Item 3.C. pertaining to an Amendment to Design, Community & Environment DCE contract. [See discussion under that item on Page 12090.]

## 3. CONSENT CALENDAR (Continued)

Council Member Termini and Mayor Norton announced that they would recuse themselves from voting on Item 3.E.1), the Liability Claim of Capitola Associates, LLC, due to a conflict of interest.

Council Member Harlan noted that she would be abstaining on Item 3.B., the Minutes to the meeting of September 20, 2011, since she was absent.

**CONSENT CALENDAR ACTION:** Council Member Nicol moved, seconded by Council Member Storey, to approve the Consent Calendar, as recommended. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None. *[Note: Council Member Harlan abstained from voting on Item 3.B., Minutes of the September 20, 2011 Special Meeting, since she was absent.]* DISQUALIFIED: Council Member Termini and Mayor Norton *[for Item 3.E.1) Capitola Associates, LLC, only.]*

**A. Approve Reading by Title of all Ordinances and Resolutions and declare that said Titles which appear on the Public Agenda shall be determined to have been read by Title and Further Reading Waived.**

**ACTION:** The City Council/Redevelopment Agency Directors unanimously approved the reading by title of all Ordinances and Resolutions and declared that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

**B. Approve Minutes of the Special Closed Session Meeting of the City Council of September 20, 2011.**

**ACTION:** Council Member Nicol moved, seconded by Council Member Storey, to approve the Minutes of the Special Closed Session Meeting of the City Council of September 20, 2011, as submitted. The motion carried on the following vote: AYES: Council Members Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: Council Member Harlan.

**C. Approve 1st Amendment to the Agreement with The Planning Center|Design, Community & Environment (formerly Design, Community & Environment) in an amount not to exceed \$30,000 for work on the Village Hotel Project. [500-10 A/C: The Planning Center|Design, Community & Environment]**

Prior to action on the Consent Calendar, Mayor Norton questioned the original contract with Design, Community & Environment, stating he thought there was a provision in that original contract that addressed a Capitola Village hotel.

Community Development Director Johnson discussed the cooperation agreement entered into a between the City and Barry Swenson Builders to expand the scope of work for hotel planning. There was some amount of planning for a Village hotel called for in the original agreement; however, additional work is recommended to prepare for the EIR. Community Development Director Johnson also stated that the \$30,000 for this additional work was provided by Barry Swenson Builders.

**ACTION:** Council Member Nicol moved, seconded by Council Member Storey, to authorize the City Manager to execute a contract amendment with The Planning Center|Design, Community & Environment (formerly Design, Community & Environment) in an amount not to exceed \$30,000 for inclusion of the Capitola Village Hotel Facilitation and Design Project, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

## 3. C. CONSENT CALENDAR (Continued)

- D. **Accept update report on the Rispin Property Hazard Abatement Project and, by 4/5 vote approval, make the determination that all hazards at the Rispin Property have not been eliminated and there is need to continue action. [275-60]**

**ACTION:** Council Member Nicol moved, seconded by Council Member Storey, to accept the update report on the Rispin Property Hazard Abatement Project and made the determination that all hazards at the Rispin Property, as detailed in the March 1, 2011, Notice of Summary Abatement Order to Abate Dangerous Buildings and Grounds, have not been eliminated, and there is a need to continue action. The motion carried on the following vote: AYES: Council Member Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

- E. **Deny liability claims and forward to the City's liability insurance carrier. [Claims Binder]**

- 1) **Capitola Associates, LLC: \$541,724.72 (Continued from 9/22/11) [Note: Council Member Termini and Mayor Norton recused themselves on this claim only.]**
- 2) **Mid-Century Insurance Company; subrogee of Blue Water Steakhouse, Inc.: \$4,784.00**
- 3) **Farmers Insurance Exchange; subrogee of Hot Feet, Inc.: \$13,531.54**
- 4) **Farmers Insurance Exchange; subrogee of Raymond Apolskis, dba Surf N Shack: \$886.00**
- 5) **Nubia R. Jordan, dba Capitola Dreams Swimwear: \$102,320.00**

**ACTION:** Council Member Nicol moved, seconded by Council Member Storey, to deny the claims of the above-listed claimants and directed staff to forward the claims to the City's liability insurance carrier. The motion carried on the following vote: AYES: Council Members Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: Council Member Harlan. ABSTAIN: None. DISQUALIFIED: Council Member Termini and Mayor Norton *[for Item 3.E.1) Capitola Associates, LLC, only.]*

- F. **Adopt Resolution providing for the extension of Additional Vehicle Registration Service Fees for the Operation of the City's Vehicle Abatement Program. [490-10/500-10 A/C: Santa Cruz County JPA Abandoned Vehicle Abatement Program]**

**ACTION:** Council Member Nicol moved, seconded by Council Member Storey, to adopt **Resolution No. 3892, Resolution Extending the Additional Vehicle Registration Service Fees for Operation of the Vehicle Abatement Program**, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

- G. **Receive and file the Fourth Quarter and Full Year Sales Tax and Transient Occupancy Tax Status Report for FY2010-2011 (Unaudited) for the City of Capitola. [390-70]**

**ACTION:** Council Member Nicol moved, seconded by Council Member Storey, to receive and file Fourth Quarter and Full Year Sales Tax and Transient Occupancy Tax Status Report for FY2010-2011 (Unaudited) for the City of Capitola, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

#### 4. PUBLIC HEARINGS

##### B. Public Hearing to consider adoption of an Ordinance Repealing Capitola Municipal Code Chapter 2.18 pertaining to Mobile Home Park Rent Stabilization. [2nd Reading] Presentation: City Attorney. [750-25]

Deputy City Attorney Adair Paterno provided a brief report on the proposed ordinance repealing Mobile Home Park Rent Stabilization and responded to questions of Council Members. Utilizing a PowerPoint Presentation she provided background information on the first reading of the ordinance, notification to interested parties, a Park Summary for Castle, Cabrillo, Surf & Sand and Pacific Cove Mobile Home Parks and current park status for each park. In addition, she commented on the Surf & Sand Mobile Home Park litigation and recommended action.

Mayor Norton asked how many people wished to speak to this item, and he announced that each speaker would be given 2 minutes to address the council.

Mayor Norton opened the public hearing at 7:55 p.m.

The following people spoke against adoption of the proposed ordinance. Several speakers urged the council to postpone this item to the next meeting, as the city would still be within the deadline for adopting the ordinance to repeal rent control.

Nicholas Whitehead, resident of a Santa Cruz County mobile home park

Emily Zimmerman, Worker's Benefit Council, urged the council to do its job and safeguard low-income housing for mobile home park residents.

Rod Quartararo, employee and representative of Bay Federal Credit Union, believes the council needs to put more time into considering the effects of the ordinance and also must support people who need affordable lending.

Marcos Brindall, resident of a mobile home park in Soquel, believes the affect of repealing the city's rent control ordinance will affect the entire state.

Stephanie Johnson, the daughter of a resident at Surf and Sand Mobile Home Park

Mardi Brick, resident of De Anza Mobile Home Park in Santa Cruz

Carol Terrence, member of GSMOL

Melinda Taylor, resident of Surf and Sand Mobile Home Park

Sharon Shelgren, resident of Surf and Sand Mobile Home Park

Margaret Dixon, resident of Surf and Sand Mobile Home

Laurie Beamish, resident of Surf and Sand Mobile Home Park

Mark Saint John asked about a request by Council Member Termini concerning how many people had leases at Surf & Sand Mobile Home Park.

Jack Olson, resident of Surf and Sand Mobile Home Park

Allen Roselle, resident of Santa Cruz

Carol Lerno, Space 56 at Pacific Cove Mobile Home Park, commented on property taxes when a coach sells.

Mayor Norton closed the public hearing at 8:38 p.m.

After comments from each council member, the following action was taken:

**ACTION:** Council Member Nicol moved, seconded by Mayor Norton, to adopt **Ordinance No. 963, Ordinance Repealing Chapter 2.18 of the Capitola Municipal Code pertaining to Mobile Home Park Rent Stabilization**, as submitted. The motion carried on the following vote: AYES: Council Members Nicol, Storey, and Mayor Norton. NOES: Council Members Harlan and Termini. ABSENT: None. ABSTAIN: None.

The Council took at short break at 8:55 p.m. and reconvened at 9:07 p.m.

Mayor Norton announced that he is reordering Item 5.A. at this time since Supervisors' Ellen Pirie and John Leopold were in attendance.

**5. A. Discussion regarding Redistricting of Supervisorial Boundaries. Staff recommendation: receive report. [580-20]**

Community Development Director Johnson summarized the written agenda report. The proposed redistricting map was placed on the screen for view during the discussion.

Santa Cruz County Supervisors John Leopold and Ellen Pirie addressed the council and responded to questions regarding the supervisorial boundary redistricting. Supervisor Pirie thanked the council for reordering this agenda item.

Mayor Norton explained his reasons for placing this matter on the agenda. He believes the most logical boundary would be Soquel Creek. Council members responded to the mayor's comments.

Mayor Norton thanked Supervisors Pirie and Leopold for attending tonight's meeting to respond to the council's concerns and questions regarding the redistricting issue.

**ACTION:** The City Council received the report and comments from Supervisors Pirie and Leopold. No action was taken.

The City Council then considered Public Hearing Item 4.A.

**4. PUBLIC HEARINGS**

**A. Public Hearing to consider Application #11-060, a Preliminary Development Plan for a proposed Planned Development Rezoning to construct a four-story, 67-unit Senior Housing Project in the CN (Neighborhood Commercial) Zoning District, located at 1575 38<sup>th</sup> Avenue (APN 034-181-17). Property owner: Maureen A. Romac; Representative: Steve Thomas. Presentation: Community Development Department. [730-10]**

Senior Planner Bane summarized the written agenda report and, utilizing a PowerPoint Presentation, discussed the proposed planned development project. He first discussed the plans reviewed by the Planning Commission and concerns that were expressed. Six members of the public spoke in opposition to the project at the Planning Commission meeting, expressing concerns regarding the mass, scale, and height of the proposed development.

Senior Planner Bane then discussed revised plans that were submitted after the Planning Commission meeting. Following his presentation, Senior Planner Bane responded to questions of Council Members.

Community Development Director Johnson commented that this site has been identified as an opportunity site. This could be one of the first projects to remake 38<sup>th</sup> Avenue and set the stage for future development.

At 9:45 p.m. Mayor Norton opened this item to the applicant for presentation.

Ric de la Cruz, representative for the applicants, introduced the applicants, Maureen Romac and Steve Thomas, who addressed the Council.



## 4. A. PUBLIC HEARINGS (Continued)

Maureen Romac discussed the benefits this project will have for active seniors in their community. This project will benefit commercial businesses adjacent to the site.

Steve Thomas, operator of Capitola Freight and Storage, currently located on the site, discussed the environmental aspects of the proposed building, the new plans resulting from comments from the Planning Commission, the need for this type of housing for seniors in our community, etc.

Mr. de la Cruz reviewed the proposed project utilizing a PowerPoint Presentation. He said their project team is interested in hearing from the council members as to whether he and his team are on the right track for this type of development.

Mayor Norton opened the public hearing at 10:12 p.m.

The following people expressed their **opposition** to and concerns about the impacts the development, as proposed, would have on the single family residences adjacent to the site. There were concerns about not enough green space, inadequate parking, mass and height of the building, density, inadequacy of the site for this type of development, proposed change in the zoning for the site, etc.

Kim Frey, resident on Bulb Avenue (submitted written information entitled, "*Green Space, urbanity, and health: how strong is the relation?*")

Don Mosegaard, resident on Bulb Avenue

Teresa, resident on Bulb Avenue

Bart, the owner of the commercial property adjacent to the site

The following people spoke in **support** of the proposed development:

Terry Westberg, encouraged the City to work with Maureen and Steve to develop this type of project in Capitola. She believes a development of this nature geared for active senior living would benefit the community.

Robert, resident since 1965, offered his support of the proposed development, as there is a need in our community for a project of this type.

Mayor Norton closed the hearing at 10:27 p.m.

Council Members asked staff for a comparison between the current CN Zoning requirements and Planned Development requirements for the site. They expressed concerns about the design, the scale, the zoning change to Planned Development, second-floor side yard setbacks, pedestrian safety along 38<sup>th</sup> Avenue, adequate parking for customers, residents, and guests, and impacts to the neighboring properties. The Council would hope that the applicant would work with the neighbors to address their concerns and create buffers between the project and the neighbors.

There was considerable council discussion and responses to council members' questions from Mr. de la Cruz, project architect Nancy Huyck, and property owner Steve Thomas.

**ACTION:** The City Council considered the proposed project in concept and provided comments to the applicant. No action was taken on this item.

At 11:05 p.m., Council Member Storey suggested looking at the agenda to see if there were any items that could be continued. The council decided to continue with the agenda items.

## 4. PUBLIC HEARINGS (Continued)

- B. Public Hearing to consider adoption of an Ordinance Repealing Capitola Municipal Code Chapter 2.18 pertaining to Mobile Home Park Rent Stabilization. [2nd Reading] Presentation: City Attorney.**

This item was reordered prior to Item 4.A. *[See Page 12092 for discussion and action.]*

## 5. OTHER BUSINESS

- A. Discussion regarding Redistricting of Supervisorial Boundaries.**

This item was reordered for discussion after Item 4.B. *[See Page 12093 for discussion.]*

- B. Continued consideration of adoption of an Ordinance Amending Sections 8.36.010, 8.36.020, 8.36.030, 8.36.040, 8.36.050, 8.36.060 and 8.36.070 of the Capitola Municipal Code pertaining to the use of Polystyrene Foam and Biodegradable and Compostable Disposable Food Service Ware [1st Reading]. Staff recommendation: adopt ordinance. [930-30]**

Administrative Services Director Murphy discussed the changes that were made based on council's direction at the last meeting and responded to questions of council members.

Community Development Director Johnson commented on the CEQA Notice of Exemption that was prepared for this ordinance.

Mayor Norton asked if anyone from the public wanted to address this item.

Laura Kasa, Save Our Shores, thanked the council for taking up this issue. She discussed her participation in speaking to store managers about removing Styrofoam from their businesses. Ms. Kasa was impressed with the positive responses from the business owners and urged the Council to approve the proposed ordinance tonight.

**ACTION:** Council Member Harlan moved approval of the ordinance.

Under discussion of the motion, Council Member Nicol commented that the staff report speaks to banning the sale of all Styrofoam products; however, the ordinance talks only about the use, not the sale, of such products. He referred to Section 8.36.035, paragraph T., under Section 1 of the draft ordinance. Council Member Nicol also expressed concern that the council is adopting an unclear ordinance that is unenforceable.

After discussion of Council Member Nicol's concerns and additional council discussion, Administrative Services Director Murphy suggested eliminating the words, "the use of" from the first sentence of paragraph T. under Section 8.36.010, so that the sentence would read, "Restricting polystyrene foam products that are not wholly encapsulated or encased by a more durable material..." Council Member Nicol then suggested that those words also be eliminated from the ordinance title.

Council Member Harlan then moved, seconded by Council Member Termini, to pass the proposed Ordinance Amending Sections 8.36.010, 8.36.020, 8.36.030, 8.36.040, 8.36.050, 8.36.060 and 8.36.070 of, and Adding Section 8.36.035 to, the Capitola Municipal Code pertaining to Polystyrene Foam and Biodegradable and Compostable Disposable Food Service Ware to a second reading, as modified. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

## 5. OTHER BUSINESS (Continued)

**C. Conceptual review of an Ordinance to Reduce Single-Use Plastic and Paper Carryout Bags. Staff recommendation: provide direction to staff. [930-30]**

Administrative Services Director Murphy said the draft ordinance is modeled after the ordinance adopted by the County of Santa Cruz and is before the council for conceptual review and direction. She said the ordinance would not apply to low-income residents, and she clarified that single-use plastic carry-out bags are not the plastic bags used to contain produce. Following her presentation, she responded to questions from council members.

Community Development Director Johnson commented on CEQA requirements. He said one approach would be to use a Notice of Exemption (NOE); however, there is potential for a challenge of such an ordinance. Deputy City Attorney Paterno agreed with Community Development Director Johnson that there is a potential the city could be challenged.

Mayor Norton said volunteers from Save our Shores and the Capitola Commission on the Environment would be willing to promote education of the ordinance.

Mayor Norton asked if anyone from the public wanted to address this item.

Laura Kasa, Save our Shores, said these plastic bags are the types of bags found during their Coastal Clean-Ups.

Uriah Langmeyer, member of the Capitola Commission on the Environment, read a letter from the commission supporting adoption of the proposed ordinance.

Community Development Director Johnson responded to questions of council members pertaining to the financial implications, including a cost of \$10,000 for a negative declaration and possible challenge.

**ACTION:** No action was taken. Staff will return at a future meeting with an ordinance for consideration.

**D. Resolution Approving the Submission of an Application to the Santa Cruz County Regional Transportation Commission for Funding under the 2012 State Transportation Improvement Program (STIP) for the Bay Avenue/Capitola Avenue Roundabout and the Park Avenue Sidewalks Transportation Projects in Capitola. Staff recommendation: adopt resolution. [770-05/940-40]**

Public Works Director Jesberg summarized the written agenda report and responded to questions of council members. He said the two projects staff is recommending are the Bay Avenue/Capitola Avenue Roundabout and the Park Avenue Sidewalks. He said the city needs to establish a priority, and staff would recommend the Park Avenue sidewalks be the first priority.

Council Member Termini commented that there would not be enough money for a roundabout. Public Works Director Jesberg stated that other funding may be available.

Council Member Storey discussed the proximity of his residence to the Park Avenue Sidewalk Project and said he believes he is within 500 feet of the project and would need to recuse himself from voting on this item.

**ACTION:** Council Member Nicol moved, seconded by Council Member Harlan, to adopt **Resolution No. 3893, Resolution Approving the Submission of Applications to the Santa Cruz County Regional Transportation Commission (SCRTC) for Transportation Funding for the Bay Avenue/Capitola Avenue Roundabout and Park Avenue Sidewalks**, as submitted, and prioritizing the Park Avenue Sidewalk Project. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None. DISQUALIFIED: Council Member Storey.

## 5. OTHER BUSINESS

- E. **Consideration of the City of Capitola's participation in the Code for America 2012 City Fellowship Program in the amount of \$2,500. Staff recommendation: Council discretion. [330-05]**

City Manager Goldstein summarized the written agenda report and responded to questions of council members.

Limited discussion was followed by this action:

**ACTION:** Council Member Harlan moved, seconded by Mayor Norton, to authorize the City Manager to contribute \$2,500 to the City of Santa Cruz for the Code for America 2012 City Fellowship Program. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

- F. **Consider adoption of a Resolution Supporting Termination of the Southern Sea Otter Translocation Program. Staff recommendation: Council discretion. [400-10]**

Mayor Norton commented on this item as he asked to have it included on the agenda.

Limited Council discussion was followed by this action:

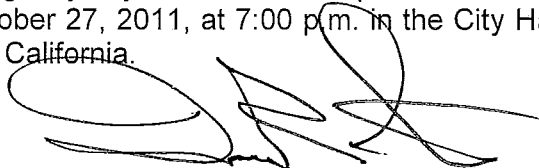
**ACTION:** Council Member Termini moved, seconded by Council Member Harlan, to adopt **Resolution No. 3894, Resolution Supporting the Termination of the Southern Sea Otter Translocation Program**, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

## 6. COUNCIL/RDA DIRECTORS/STAFF COMMUNICATIONS

Council Member Harlan asked staff to look at the new palm trees located in front of the new Marriott Fairfield Inn hotel. She said the manager pointed out to her that the trees are growing up to the power lines.

## 7. ADJOURNMENT

The City Council/Redevelopment Agency adjourned at 11:52 p.m. to its next Regular Joint Meeting to be held on Thursday, October 27, 2011, at 7:00 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Dennis R. Norton, Mayor  
Redevelopment Agency Chairperson

ATTEST:

  
Pamela Greeninger, City Clerk  
Redevelopment Agency Secretary

MMC

MINUTES WERE UNANIMOUSLY APPROVED ON NOVEMBER 22, 2011