

City of Capitola

City Council Meeting Agenda

Thursday, March 24, 2022 – 7:00 PM



City Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Mayor: Sam Storey

Vice Mayor: Margaux Keiser

Council Members: Jacques Bertrand, Yvette Brooks, Kristen Petersen

REVISED

Regular Meeting of the Capitola City Council – 7 PM

All correspondences received prior to 5:00 p.m. on the Wednesday preceding a Council Meeting will be distributed to Councilmembers to review prior to the meeting. Information submitted after 5 p.m. on that Wednesday may not have time to reach Councilmembers, nor be read by them prior to consideration of an item.

1. Roll Call and Pledge of Allegiance

Council Members Kristen Petersen, Jacques Bertrand, Margaux Keiser, Mayor Sam Storey, and Yvette Brooks

2. Additions and Deletions to the Agenda

3. Presentations

Presentations are limited to eight minutes.

[A.](#) Mayor For a Day: Youth Essay Contest

4. Additional Materials

Additional information submitted to the City after distribution of the agenda packet.

[A.](#) **Item 8.A - five public comment emails**

5. Oral Communications by Members of the Public

*Please review the Notice of Remote Access for instructions. Oral Communications allows time for members of the Public to address the City Council on any "Consent Item" on tonight's agenda, or on any topic within the jurisdiction of the City that is not on the "General Government/Public Hearings" section of the Agenda. Members of the public may speak for up to three minutes, unless otherwise specified by the Mayor. Individuals may not speak more than once during Oral Communications. All speakers must address the entire legislative body and will not be permitted to engage in dialogue. **A maximum of 30 minutes** is set aside for Oral Communications.*

6. Staff / City Council Comments

Comments are limited to three minutes.

7. Consent Items

All items listed as “Consent Items” will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time the Council votes on the action unless members of the City Council request specific items to be discussed for separate review. Items pulled for separate discussion will be considered following General Government. Note that all Ordinances which appear on the public agenda shall be determined to have been read by title and further reading waived.

- A.** Consider the minutes from the March 1, 2022, Special City Council meeting and the March 10, 2022, regular City Council meeting
Recommended Action: Approve minutes.
- B.** Consider Extending an Agreement with the City of Scotts Valley for Sharing of Chief Building Official Services
Recommended Action: Extend agreement with the City of Scotts Valley to share Chief Building Official Services for an additional three years.
- C.** Computer Network Infrastructure Upgrade Agreement
Recommended Action: Authorize City Manager to enter a managed services agreement with Exceedio for upgrade of City IT network infrastructure.
- D.** Notice of Completion City of Capitola 2021 Road Repair Project
Recommended Action: 1) Approve Change Order #2 for extra work in the amount of \$41,402; 2) Approve a notice of completion for the City of Capitola 2021 Road Repair Project constructed by the McKim Corporation at the final cost of \$153,34; and 3) Authorize the release of the contract retention of \$7,667 as prescribed in the contract.
- E.** Update on Greenwaste Recovery, Inc. Providing an Optional 35-gallon Organics Bin for Residential Customers
Recommended Action: Approve the addition of a \$0.74 per month charge to residential customers who opt to receive a 35-gallon organics bin in the GreenWaste Franchise Agreement.
- F.** Receive Update on Pandemic Response and Consider Adopting Proposed Resolution Allowing for the Continuation of Teleconferencing
Recommended Action: 1) Make the determination that all hazards related to the worldwide spread of the coronavirus (COVID-19) as detailed in Resolution No. 4168 adopted by the City Council on March 12, 2020, still exist and there is a need to continue action; and 2) Adopt the proposed resolution authorizing the City Council (along with the Planning Commission and all advisory bodies) to continue to conduct teleconferencing meetings.

8. General Government / Public Hearings

All items listed in “General Government / Public Hearings” are intended to provide an opportunity for public discussion of each item listed. The following procedure pertains to each General Government item: 1) Staff explanation; 2) Council questions; 3) Public comment; 4) Council deliberation; 5) Decision.

- A.** Consider Request to Fly “Thin-Blue Line” Flag during National Police Week in Accordance with Policy V-18: Outdoor Display of Governmental and Non-Governmental Flags on City Property

Recommended Action: Deny request.

B. Eviction Moratorium and Housing Is Key Funding

Recommended Action: Receive report and direct staff to repurpose remaining \$105,000 in CDBG-CV funds toward rental assistance.

C. Discuss Possibilities for Returning to In-Person City Council Meetings

Recommended Action: Provide direction to staff regarding City Council (along with the Planning Commission and all advisory bodies) conducting virtual, in-person, or “hybrid” meetings.

9. Adjournment

Notice of Remote Access

In accordance California Senate Bill 361, the City Council meeting is not physically open to the public and in person attendance cannot be accommodated.

To watch:

- Online <http://cityofcapitola.org/meetings>
- Spectrum Cable Television channel 8
- Youtube

Join Zoom by Computer or Phone:

- Click this meeting link:
<https://us02web.zoom.us/j/81492483812?pwd=bnJjN25aYkRhRHlUajAzM3o1cnpDQT09>
- Or call one of these phone numbers:
 - 1 (669) 900 6833
 - 1 (408) 638 0968
 - 1 (346) 248 7799

- Meeting ID: 814 9248 3812
- Meeting Passcode: 426714

To submit public comment:

When submitting public comment, one comment (via phone or email, not both), per person, per item is allowed. If you send more than one email about the same item, the last received will be read.

- Zoom Meeting (Via Computer or Phone) Link:

If using computer: Use participant option to “raise hand” during the public comment period for the item you wish to speak on. Once unmuted, you will have up to 3 minutes to speak

If called in over the phone: Press *9 on your phone to “raise your hand” when the mayor calls for public comment. Once unmuted, you will have up to 3 minutes to speak

- **Send Email:** During the meeting, send comments via email to publiccomment@ci.capitola.ca.us
- Emailed comments on items will be accepted after the start of the meeting until the Mayor announces that public comment for that item is closed.

- Emailed comments should be a maximum of 450 words, which corresponds to approximately 3 minutes of speaking time.
- Each emailed comment will be read aloud for up to three minutes and/or displayed on a screen.
- Emails received by publiccomment@ci.capitola.ca.us outside of the comment period outlined above will not be included in the record.

Note: Any person seeking to challenge a City Council decision made as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that court action within ninety (90) days following the date on which the decision becomes final as provided in Code of Civil Procedure §1094.6. Please refer to code of Civil Procedure §1094.6 to determine how to calculate when a decision becomes “final.” Please be advised that in most instances the decision become “final” upon the City Council’s announcement of its decision at the completion of the public hearing. Failure to comply with this 90-day rule will preclude any person from challenging the City Council decision in court.

Notice regarding City Council: The City Council meets on the 2nd and 4th Thursday of each month at 7:00 p.m. (or in no event earlier than 6:00 p.m.), in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

Agenda and Agenda Packet Materials: The City Council Agenda and the complete Agenda Packet are available for review on the City’s website: www.cityofcapitola.org and at Capitola City Hall prior to the meeting. Agendas are also available at the Capitola Post Office located at 826 Bay Avenue Capitola. Need more information? Contact the City Clerk’s office at 831-475-7300.

Agenda Materials Distributed after Distribution of the Agenda Packet: Pursuant to Government Code §54957.5, materials related to an agenda item submitted after distribution of the agenda packet are available for public inspection at the Reception Office at City Hall, 420 Capitola Avenue, Capitola, California, during normal business hours.

Americans with Disabilities Act: Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the City Clerk’s office at least 24 hours in advance of the meeting at 831-475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

Televised Meetings: City Council meetings are cablecast “Live” on Charter Communications Cable TV Channel 8 and are recorded to be rebroadcasted at 8:00 a.m. on the Wednesday following the meetings and at 1:00 p.m. on Saturday following the first rebroadcast on Community Television of Santa Cruz County (Charter Channel 71 and Comcast Channel 25). Meetings are streamed “Live” on the City’s website at www.cityofcapitola.org by clicking on the Home Page link “**Meeting Agendas/Videos.**” Archived meetings can be viewed from the website at any time.

Capitola City Council

Agenda Report

Meeting: March 24, 2022
From: City Manager Department
Subject: Mayor For a Day: Youth Essay Contest



Background: Recently, City Council expressed interest in offering a youth event entitled Mayor for a Day. This type of event has been produced by other cities such as Mountain View and San Diego, and generally takes the form of a contest. The premise of the contest is that youth will submit essays in response to a guiding prompt; then after a review of the essays the chosen winners get to experience a City Council meeting as “Mayor for the Day” and receive recognition.

Discussion: The City is planning to host the Mayor for A Day Youth Essay Contest in October 2022. There will be two divisions, one for elementary and one for middle school students. The essay deadline will be September 30, 2022. The elementary school winner will attend the October 13 meeting and the middle school winner will attend the October 27 meeting. Prior to the Council meeting, each winner will get the opportunity to meet with the Mayor or designee and learn more about the meeting process.

It is common for essay contest to have themes or guiding prompts from which the students can then focus their essays. One prompt example is: “If you were Mayor for a Day, what action would you take for your City?” Staff welcomes any feedback on the essay prompt. The essay contest will be open to students in the Soquel Union Elementary School District.

Report Prepared By: Nikki Bryant-LeBlond, Recreation Division Manager

Reviewed By: Chloé Woodmansee, City Clerk

Approved By: Jamie Goldstein, City Manager

From: [Debbie](#)
To: [City Council](#)
Subject: Fly "Thin -Blue Line" Flag
Date: Wednesday, March 16, 2022 5:25:05 PM

Dear Council Members,

Interesting that you approved the Pride Flag for the whole month of June but won't consider flying the "Thin Blue Line" flag during National Police Week..... Sounds like you have no respect for our officers that put their lives in danger each day to protect and serve us.

The thin blue line flag features a black and white image of the American flag with the horizontal stripe beneath the field of white stars on the black background. The stars represent the citizenry who stand for justice and order. The darkness represents chaos and anarchy, and according to some, a memorial to the deaths of those law officers who have perished in the line of duty.

Consider showing some respect and approving this flag. It's only a week.

Thank you

From: [David Campbell](#)
To: [City Council](#)
Subject: Thin Blue Line Flag Proposal
Date: Wednesday, March 23, 2022 10:10:47 AM

Dear City Council Members,

My name is David Campbell. I live and pastor a local church here in Capitola.

I want to first express my gratitude to all of you for serving our city with your time and effort. All of us that live, work, and spend time in this beautiful community are very fortunate to be here. Thank you for watching over and operating our city with care. I will continue to pray for you as you do so.

I appreciate the opportunity to have you hear and consider my opinion on the current “thin blue line” flag proposal.

I understand that the proposal to fly the flag during law enforcement appreciation week has been initially denied. I honestly have a very hard time seeing how that could happen. Actually, I am extremely disappointed and disturbed by this decision. I’ve heard some of the arguments as to why that would be the decision but, frankly, they don’t hold much water and are in contradiction to past decisions this council has made to align with and support other groups. The City has chosen to align themselves in support of politicized and controversial groups in very recent history. That said, I acknowledge that as totally being your prerogative as the officials elected to run our city. I respect your authority to do so even if I don’t necessarily, personally, agree with those decisions. That is not what I am necessarily challenging here. However, to make those decisions and then turn your back on supporting the police force that protects us and our way of life here by not simply flying a flag is very disappointing.

Our own U.S. flag has found itself at the center of, or at least, connected to several controversial gatherings and/or protests. To the point that, many in our own country look down on our U.S. flag and have attributed their own false narrative and symbolism to it. So, should we refrain from flying the flag of our own country or continue to stand on the truth of its symbolism and meaning as it has always been intended?

The thin blue line flag gets its name and it’s whole intent of symbolism and meaning from the fact that law enforcement in our society is the thin blue line holding back lawlessness from completely invading our otherwise relatively lawful way of life. That line has grown thinner in recent years putting more pressure on the officers that are still serving us and literally laying their lives on that line for us every day. I believe we all need to support them and show our appreciation to them with every opportunity we get. Flying a flag for a week seems like a no brainer and an obvious and easy opportunity. Refusing to do so, seems to me, like backing down to the opposition that would want the thin blue line to disappear altogether. It would be playing into the hands of those that oppose any sort of structure and system of lawful peace that our city government is trying to uphold. Any other meaning to the flag that people want to give it is completely false, manipulative and ignorant. Bowing down to any of that, only strengthens and perpetuates the ignorance and feeds the false narrative. In this case, that hurts our way of life protected by our law enforcement. At the very least, it is a slap in their face.

Please don't get me wrong. I mean no disrespect to any of you on this council by my remarks.

I only, respectfully, ask that you reconsider your decision and show your support and appreciation of our brave officers by flying the flag.

Thank you and God bless you,
David Campbell

Capitola City Council Members
420 Capitola Ave, Capitola, CA 95010

March 23, 2020

RE: Proposal to Fly Police Flag-March 24, 2022, Agenda Item 8A

City Council Members,

I respectfully ask that you accept this letter as my response to the City Managers recommendation to deny flying the police flag during National Law enforcement week annually. It is my opinion, that if the city is going to fly non-governmental flags, they should be flags that honor city, state, and country, but not causes or political persuasions.

After spending a career in public safety, sitting on many state boards, and serving eight years as a planning commissioner for the City of Capitola, I find that facts are best suited for writing staff reports, as opposed to using talking points from the internet. I believe the city chose the latter. I will attempt to respond with factual information.

Is the police flag a desecration of the U.S. Flag?

Fact 1. The city's suggestion that the police flag is a desecration of the American flag is a false narrative that activist groups use. I have attached a copy of the flag code for your review, but it clearly states §1. Flag; stripes and stars on the flag of the United States shall be thirteen horizontal stripes, alternate red and white; and the union of the flag shall be forty-eight stars, white in a blue field. (July 30, 1947, ch. 389, 61 Stat. 642.) Two additional stars were added in 1959 and 1960 for the last two states of Hawaii and Alaska added to the union. ¹Even PolitiFact, far from a conservative source has rated this narrative as false. Staff is correct that the American Legion has not taken a position regarding the flag. This is because the police flag is not a desecrated version of the U.S. flag since it has black and white stripes, a field of black with stars and one blue stripe.

Does the police flag create an "Us vs. Them" environment?

Regarding the city staff reports statement about an article written by *The Marshall Project*, which references another article written by criminologist Michael D. White. ²The article referenced does not mention any flag or an "Us vs. Them" environment. It is written specifically about police officers killed in the line of duty by ambush. Statements such as this, is how certain groups mislead others by redefining a meaning to meet a false narrative. **Fact 2.** The thin blueline has always been defined as the courageous who stand between the lawful and lawlessness.

Regardless of the unfounded reference, the theory of a flag being divisive could be true for any flag, including the U.S. flag and even the *Progressive flag* recently adopted by the city.

I find it interesting that when a city council member brought her desire to fly the Progressive flag at city hall, the city chose to agendize the item as “Administrative Policy Regarding Proper Flag Procedures at the City Hall Complex. With one sentence regarding the Progressive flag that states *the following flag(s) are approved for the following locations and time periods. The City Council may update this list at its discretion.*

Fact 3. There is no discussion, no pros or cons or comments on *what some people say.* One might think the city was just trying to add the new policy without anyone noticing. I think it would only be fair to use the same deep dive into the Progressive flag as the city staff chose to conduct with the police flag. I am sure that you will find some of the information as inflammatory as I did.

Is the Progressive flag divisive?

There is no shortage of concerns from parents of school age children that the LGBTQ+ community is trying to indoctrinate kids in schools to the beliefs and views of the LGBTQ+ community. **Fact 4.** the state of Florida just passed the *Parental Rights in Education Bill*, that bans schools from teaching children ages kindergarten to third grade about sexual orientation and gender identity. ¹¹ Text from law states *Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age appropriate or developmentally appropriate for students in accordance with state standards.*

Why would this even have to be a law? However, the LBGTQ+ community fought the bill, ¹² falsely calling it the “Don’t say gay bill”, as they proudly displayed the Progressive flag in protest. It should not matter what your political affiliation is, or your personal sexual preferences, No one should be teaching kids about these things without parental approval. Even then, it should not be an option for kids from kindergarten to third grade to be taught sexual topics.

Fact 5. Many believe it is the parents who should have the responsibility to educate their kids. The LGBTQ+ community has made this an issue under the umbrella of acceptance. ¹³ A mother from the neighboring town of Spreckles lost her daughter to suicide and is blaming the schools pride club for her death.

FACT 6. ¹⁴ The Archives of Sexual Behavior, in a study of 229 convicted child molesters, found that “eighty-six percent of offenders against males described themselves as homosexual or bisexual.”

I could go on, but I think you get the point. The Progressive flag that represents the LBGTQ+ community does not exist without being divisive in our communities.

Is it the Police Flag or the hatred for police?

Fact 7.^{3,4,5} Flags are frequently stolen from public and private property, even those flags honoring cops who died in the line of duty. It doesn't appear to be from those afraid of racist cops either, it appears to be lawless individuals with total disdain for law enforcement. Aside from the links provided above, a local church who proudly demonstrated their support of police officers captured two young females on video stealing a police flag from the church property.

Are people intimidated by police officers?

I could not find statistics regarding individuals intimidated by police. Although, there are several articles where people state they are intimidated by a police presence. However, I have no doubt that there are those out there since so much disinformation and lies are made about our police officers. **Fact 8.** Recently,⁶ Harvard University removed their police force because students did not like being watched by police. One student interviewed stated "I am well aware that the police are not there to keep me actively safe," Instead, she said, "it implies that we're being watched and policed, which is not a pleasant feeling." These are the true anti-government and biased individuals. The same individuals who want to defund the police.

It is unfortunate, that we have come to a place in our country that people say they do not feel safe with police officers in their presence. Note that in the statement above, she states *police are **not** there to keep us actively safe.* I submit this is because of the false narratives that is continually being spread by activist groups and supported by media and politicians throughout the country.

This past year, some of our city council members participated in a demonstration by an activist group that marched through Capitola. The protesters demeaned our officers calling them names and even spitting at them. Not one city leader defended our officers. As the group walked past our police station, they stopped, took a knee and shouted *hands up don't shoot.* **Fact 9.**⁷ A false narrative born out of the Michael Brown shooting in Ferguson. The city also participated in this demonstration by not charging the required permit fees and insurance bond. I believe 100% in the first amendment and the right for groups to protest, but I do not believe the city should have made an exception for fees and insurance. This is especially true since many businesses had to close.

In contrast, weeks later the city denied a sound permit to a local church to have a paddle out for one of our community members who was killed by a shark while surfing. This person actively worked with our BIA in marketing and was admired by those who knew him. After a lot of discussion, the city finally allowed for the permit to be approved but charged the full fee schedule and required the insurance bond. All of this so a pastor and the wife could share a few words before the paddle out. I am embarrassed by a city decision that would demonstrate such bias.

Is the flag tied to white supremacist and anti-government beliefs?

This must be the most unsettling statement in the entire biased staff report. It is biased reports and statements like this that cause distrust of our government. **Fact 10.** Not all of those who attended the rally were white supremacist, extremist, or anti-government. In fact, the majority of those attending the January 6 protest are honorable upstanding citizens that just wanted to voice their concerns, which happens to be a constitutional right and separates our great country from others. Of the tens of thousands who attended the rally, approximately 725 were arrested. **Fact 11.** Of those arrested, 8.9 none of them were charged with insurrection as falsely stated by the city staff report.

I completely support the arrest and conviction for anyone guilty of breaking the law, but to tie everyone there with insurrection is dishonest and an abuse of the city managers office. An important fact that the city manager left out of his report regarding the protest on that January 6th. I understand that some, including the city manager and his staff have made this flag political. But I am appalled that the city would go to the extreme depths to identify the police flag to white supremacist and the January 6 protest. **FACT 12.** Let me remind you that regardless of your political affiliation, or your view of cops, the one single group, let's call it the thin blue line, that stood between the politicians and those who broke the law, were the Capitol police officers.

There is one other important fact left out of the city staff report. **Fact 13.** ¹⁰The Progressive flag that the city adopted under the guise of a new flag policy, was also present at the January 6 protest.



[LGBTQ fly the rainbow flag at the January 6 riot.](#)

It is no secret that I have been disappointed in the actions and inactions of our city manager and city council for their lack of support of our cops. During covid the city council hid behind zoom computer meetings and city hall hid behind plexiglass, it was our cops and public workers who dealt with the public face-to-face every single day. To make matters worse, the city cut the police officers pay.

I have a question for you. Did the city consider reimbursing our employees for their loss of pay after receiving covid reimbursement money from the government that was based on the employees' salaries?

I have heard from several people in the community that you have already made your minds up on this matter and that may very well be. Despite the city managers recent statement that the city would never fly a flag of Ronald Reagan, I would just leave you one of his wise statements.

"Evil is powerless if the good are unafraid." Be Unafraid.
-Ronald Reagan

Respectfully,

TJ Welch

References

1. [Politifact factcheck Blank and white Police Flag h](#)
2. [Ambush killing of police](#)
3. [Thin Blue Line Flag stolen from memorial in Minnesota](#)
4. [Thin Blue Line flag honoring late mesa police officer stolen](#)
5. [Police flag to honor fallen officer stolen](#)
6. [Harvard to close police station](#)
7. [Reminder hands up don't shoot is a fabricated narrative from the Michael Brown case](#)
8. [January 6 Insurrection one year later](#)
9. [Reminder not one person involved with the Jan 6 riot has been charged with insurrection.](#)
10. [Protesters wave the rainbow flag at Capitol](#)
11. [Florida Bill HB 1557](#)
12. [Florida Parental Rights Bill passes protecting K-3rd Grade](#)
13. [This Mom believes that the transgender movement took her daughter's life](#)
14. [Pedophiles link to homosexuals and or bisexual](#)

From: [TJ WELCH](#)
To: [City Council](#)
Cc: [Woodmansee, Chloe](#); [Dally, Andrew \(adally@ci.capitola.ca.us\)](#)
Subject: [PDF] Flag code
Date: Wednesday, March 23, 2022 10:17:06 AM
Attachments: [U.S.C. Title 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES.pdf](#)

My apologies, I forgot to attach the flag code.

4 U.S.C.

United States Code, 2011 Edition

Title 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES

CHAPTER 1 - THE FLAG

From the U.S. Government Publishing Office, www.gpo.gov**CHAPTER 1—THE FLAG**

Sec.

1. Flag; stripes and stars on.
2. Same; additional stars.
3. Use of flag for advertising purposes; mutilation of flag.
4. Pledge of allegiance to the flag; manner of delivery.
5. Display and use of flag by civilians; codification of rules and customs; definition.
6. Time and occasions for display.
7. Position and manner of display.
8. Respect for flag.
9. Conduct during hoisting, lowering or passing of flag.
10. Modification of rules and customs by President.

AMENDMENTS

1998—Pub. L. 105–225, §2(b), Aug. 12, 1998, 112 Stat. 1498, added items 4 to 10.

§1. Flag; stripes and stars on

The flag of the United States shall be thirteen horizontal stripes, alternate red and white; and the union of the flag shall be forty-eight stars, white in a blue field.

(July 30, 1947, ch. 389, 61 Stat. 642.)

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–41, §1, July 27, 2009, 123 Stat. 1962, provided that: “This Act [amending section 6 of this title] may be cited as the ‘Korean War Veterans Recognition Act’.”

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–41, §1, June 29, 2007, 121 Stat. 233, provided that: “This Act [amending section 7 of this title and provisions set out as a note under section 7 of this title] may be cited as the ‘Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007’.”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–252, §1, July 28, 2000, 114 Stat. 626, provided that: “This Act [enacting sections 116 to 126 of this title and provisions set out as a note under section 116 of this title] may be cited as the ‘Mobile Telecommunications Sourcing Act’.”

EXECUTIVE ORDER NO. 10798

Ex. Ord. No. 10798, Jan. 3, 1959, 24 F.R. 79, which prescribed proportions and sizes of flags until July 4, 1960, was revoked by section 33 of Ex. Ord. No. 10834, set out as a note under this section.

EX. ORD. NO. 10834. PROPORTIONS AND SIZES OF FLAGS AND POSITION OF STARS

Ex. Ord. No. 10834, Aug. 21, 1959, 24 F.R. 6865, provided:

WHEREAS the State of Hawaii has this day been admitted into the Union; and

WHEREAS section 2 of title 4 of the United States Code provides as follows: “On the admission of a new State into the Union one star shall be added to the union of the flag; and such addition shall take effect on the fourth day of July then next succeeding such admission.”; and

WHEREAS the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended [see chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of Title 41, Public Contracts] authorizes the President to prescribe policies and directives governing the procurement and utilization of property by executive agencies; and

WHEREAS the interests of the Government require that orderly and reasonable provision be made for various matters pertaining to the flag and that appropriate regulations governing the procurement and utilization of national flags and union jacks by executive agencies be prescribed:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and as Commander in Chief of the armed forces of the United States, and the Federal Property and Administrative Services Act of 1949, as amended [see Short Title of 1949 Act note under section 101 of Title 41, Public Contracts], it is hereby ordered as follows:

PART I—DESIGN OF THE FLAG

SECTION 1. The flag of the United States shall have thirteen horizontal stripes, alternate red and white, and a union consisting of white stars on a field of blue.

SEC. 2. The positions of the stars in the union of the flag and in the union jack shall be as indicated on the attachment to this order, which is hereby made a part of this order.

SEC. 3. The dimensions of the constituent parts of the flag shall conform to the proportions set forth in the attachment referred to in section 2 of this order.

PART II—REGULATIONS GOVERNING EXECUTIVE AGENCIES

SEC. 21. The following sizes of flags are authorized for executive agencies:

<i>Size</i>	<i>Dimensions of Flag</i>	
	<i>Hoist (width)</i>	<i>Fly (length)</i>
(1)	<i>Feet</i> 20.00	<i>Feet</i> 38.00
(2)	10.00	19.00
(3)	8.95	17.00
(4)	7.00	11.00
(5)	5.00	9.50
(6)	4.33	5.50
(7)	3.50	6.65
(8)	3.00	4.00
(9)	3.00	5.70
(10)	2.37	4.50
(11)	1.32	2.50

SEC. 22. Flags manufactured or purchased for the use of executive agencies:

(a) Shall conform to the provisions of Part I of this order, except as may be otherwise authorized pursuant to the provisions of section 24, or except as otherwise authorized by the provisions of section 21, of this order.

(b) Shall conform to the provisions of section 21 of this order, except as may be otherwise authorized pursuant to the provisions of section 24 of this order.

SEC. 23. The exterior dimensions of each union jack manufactured or purchased for executive agencies shall equal the respective exterior dimensions of the union of a flag of a size authorized by or pursuant to this order. The size of the union jack flown with the national flag shall be the same as the size of the union of that national flag.

SEC. 24. (a) The Secretary of Defense in respect of procurement for the Department of Defense (including military colors) and the Administrator of General Services in respect of procurement for executive agencies other than the Department of Defense may, for cause which the Secretary or the Administrator, as the case may be, deems sufficient, make necessary minor adjustments in one or more of the dimensions or proportionate dimensions prescribed by this order, or authorize proportions or sizes other than those prescribed by section 3 or section 21 of this order.

(b) So far as practicable, (1) the actions of the Secretary of Defense under the provisions of section 24(a) of this order, as they relate to the various organizational elements of the Department of Defense, shall be coordinated, and (2) the Secretary and the Administrator shall mutually coordinate their actions under that section.

SEC. 25. Subject to such limited exceptions as the Secretary of Defense in respect of the Department of Defense, and the Administrator of General Services in respect of executive agencies other than the Department of Defense, may approve, all national flags and union jacks now in the possession of executive agencies, or hereafter acquired by executive agencies under contracts awarded prior to the date of this order, including those so possessed or so acquired by the General Services Administration, for distribution to other agencies, shall be utilized until unserviceable.

PART III—GENERAL PROVISIONS

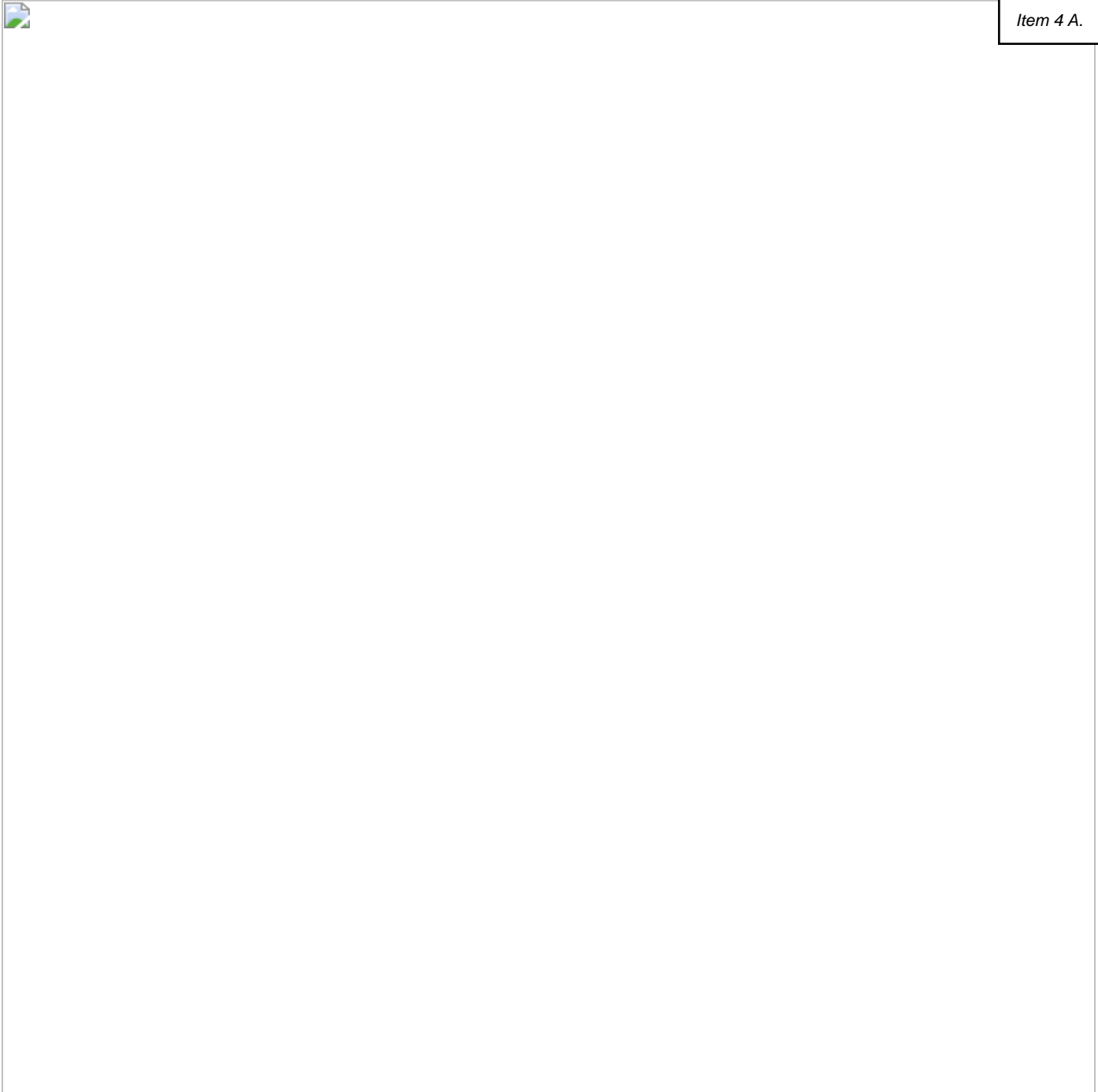
SEC. 31. The flag prescribed by Executive Order No. 10798 of January 3, 1959, shall be the official flag of the United States until July 4, 1960, and on that date the flag prescribed by Part I of this order shall become the official flag of the United States; but this section shall neither derogate from section 24 or section 25 of this order nor preclude the procurement, for executive agencies, of flags provided for by or pursuant to this order at any time after the date of this order.

SEC. 32. As used in this order, the term “executive agencies” means the executive departments and independent establishments in the executive branch of the Government, including wholly-owned Government corporations.

SEC. 33. Executive Order No. 10798 of January 3, 1959, is hereby revoked.

DWIGHT D. EISENHOWER.

Item 4 A.



Standard proportions

Hoist (width) of flag 1.0	Fly (length) of flag 1.9	Hoist (width) of Union 0.5385 (7/13)	Fly (length) of Union 0.76	0.054	0.054	0.063	0.063	Diameter of star 0.0616	Width of stripe 0.0769 (1/13)
A	B	C	D	E	F	G	H	K	L

§2. Same; additional stars

On the admission of a new State into the Union one star shall be added to the union of the flag; and such addition shall take effect on the fourth day of July then next succeeding such admission. (July 30, 1947, ch. 389, 61 Stat. 642.)

§3. Use of flag for advertising purposes; mutilation of flag

Any person who, within the District of Columbia, in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing, or any advertisement of any nature upon any flag, standard, colors, or ensign of the United States of America; or shall expose or cause to be exposed to public view any such flag, standard, colors, or ensign upon which shall have been printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed any word, figure, mark, picture, design, or drawing, or any advertisement of any nature; or who, within the District of Columbia, shall manufacture, sell, expose for sale, or to public view, or give away or have in possession for sale, or to be given away or for use for any purpose, any article or substance being an article of merchandise, or a receptacle for merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached, or otherwise placed a representation of any such flag, standard, colors, or ensign, to advertise, call attention to, decorate, mark, or distinguish the article or substance on which so placed shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$100 or by imprisonment for not more than thirty days, or both, in the discretion of the court. The words “flag, standard, colors, or ensign”, as used herein, shall include any flag, standard, colors, ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors, or ensign of the United States of America or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, colors, standard, or ensign of the United States of America.

(July 30, 1947, ch. 389, 61 Stat. 642; Pub. L. 90–381, §3, July 5, 1968, 82 Stat. 291.)

AMENDMENTS

1968—Pub. L. 90–381 struck out “; or who, within the District of Columbia, shall publicly mutilate, deface, defile or defy, trample upon, or cast contempt, either by word or act, upon any such flag, standard, colors, or ensign,” after “substance on which so placed”.

§4. Pledge of allegiance to the flag; manner of delivery

The Pledge of Allegiance to the Flag: “I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.”, should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove any non-religious headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.

(Added Pub. L. 105–225, §2(a), Aug. 12, 1998, 112 Stat. 1494; amended Pub. L. 107–293, §2(a), Nov. 13, 2002, 116 Stat. 2060.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4	36:172.	June 22, 1942, ch. 435, §7, 56 Stat. 380; Dec. 22, 1942, ch. 806, §7, 56 Stat. 1077; Dec. 28, 1945, ch. 607, 59 Stat. 668; June 14, 1954, ch. 297, 68 Stat. 249; July 7, 1976, Pub. L. 94–344, (19), 90 Stat. 813.

CODIFICATION

Amendment by Pub. L. 107–293 reaffirmed the exact language of the Pledge, see section 2(b) of Pub. L. 107–293, set out as a Reaffirmation of Language note below.

Item 4 A.

AMENDMENTS

2002—Pub. L. 107–293 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “The Pledge of Allegiance to the Flag, ‘I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.’, should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.”

FINDINGS

Pub. L. 107–293, §1, Nov. 13, 2002, 116 Stat. 2057, provided that: “Congress finds the following:

“(1) On November 11, 1620, prior to embarking for the shores of America, the Pilgrims signed the Mayflower Compact that declared: ‘Having undertaken, for the Glory of God and the advancement of the Christian Faith and honor of our King and country, a voyage to plant the first colony in the northern parts of Virginia.’

“(2) On July 4, 1776, America's Founding Fathers, after appealing to the ‘Laws of Nature, and of Nature's God’ to justify their separation from Great Britain, then declared: ‘We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness’.

“(3) In 1781, Thomas Jefferson, the author of the Declaration of Independence and later the Nation's third President, in his work titled ‘Notes on the State of Virginia’ wrote: ‘God who gave us life gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the Gift of God. That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever.’

“(4) On May 14, 1787, George Washington, as President of the Constitutional Convention, rose to admonish and exhort the delegates and declared: ‘If to please the people we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hand of God!’

“(5) On July 21, 1789, on the same day that it approved the Establishment Clause concerning religion, the First Congress of the United States also passed the Northwest Ordinance, providing for a territorial government for lands northwest of the Ohio River, which declared: ‘Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.’

“(6) On September 25, 1789, the First Congress unanimously approved a resolution calling on President George Washington to proclaim a National Day of Thanksgiving for the people of the United States by declaring, ‘a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a constitution of government for their safety and happiness.’

“(7) On November 19, 1863, President Abraham Lincoln delivered his Gettysburg Address on the site of the battle and declared: ‘It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this Nation, under God, shall have a new birth of freedom—and that Government of the people, by the people, for the people, shall not perish from the earth.’

“(8) On April 28, 1952, in the decision of the Supreme Court of the United States in *Zorach v. Clauson*, 343 U.S. 306 (1952), in which school children were allowed to be excused from public schools for religious observances and education, Justice William O. Douglas, in writing for the Court stated: ‘The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concern or union or dependency one on the other. That is the common sense of the matter. Otherwise the State and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the

Chief Executive; the proclamations making Thanksgiving Day a holiday; “so help me God” in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: “God save the United States and this Honorable Court.” ’

“(9) On June 15, 1954, Congress passed and President Eisenhower signed into law a statute that was clearly consistent with the text and intent of the Constitution of the United States, that amended the Pledge of Allegiance to read: ‘I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.’

“(10) On July 20, 1956, Congress proclaimed that the national motto of the United States is ‘In God We Trust’, and that motto is inscribed above the main door of the Senate, behind the Chair of the Speaker of the House of Representatives, and on the currency of the United States.

“(11) On June 17, 1963, in the decision of the Supreme Court of the United States in *Abington School District v. Schempp*, 374 U.S. 203 (1963), in which compulsory school prayer was held unconstitutional, Justices Goldberg and Harlan, concurring in the decision, stated: ‘But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it. Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political, and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require that it do so.’

“(12) On March 5, 1984, in the decision of the Supreme Court of the United States in *Lynch v. Donnelly*, 465 U.S. 668 (1984), in which a city government's display of a nativity scene was held to be constitutional, Chief Justice Burger, writing for the Court, stated: ‘There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789 . . . [E]xamples of reference to our religious heritage are found in the statutorily prescribed national motto “In God We Trust” (36 U.S.C. 186) [now 36 U.S.C. 302], which Congress and the President mandated for our currency, see (31 U.S.C. 5112(d)(1) (1982 ed.)), and in the language “One Nation under God”, as part of the Pledge of Allegiance to the American flag. That pledge is recited by many thousands of public school children—and adults—every year . . . Art galleries supported by public revenues display religious paintings of the 15th and 16th centuries, predominantly inspired by one religious faith. The National Gallery in Washington, maintained with Government support, for example, has long exhibited masterpieces with religious messages, notably the Last Supper, and paintings depicting the Birth of Christ, the Crucifixion, and the Resurrection, among many others with explicit Christian themes and messages. The very chamber in which oral arguments on this case were heard is decorated with a notable and permanent—not seasonal—symbol of religion: Moses with the Ten Commandments. Congress has long provided chapels in the Capitol for religious worship and meditation.’

“(13) On June 4, 1985, in the decision of the Supreme Court of the United States in *Wallace v. Jaffree*, 472 U.S. 38 (1985), in which a mandatory moment of silence to be used for meditation or voluntary prayer was held unconstitutional, Justice O'Connor, concurring in the judgment and addressing the contention that the Court's holding would render the Pledge of Allegiance unconstitutional because Congress amended it in 1954 to add the words ‘under God,’ stated ‘In my view, the words “under God” in the Pledge, as codified at (36 U.S.C. 172) [now 4 U.S.C. 4], serve as an acknowledgment of religion with “the legitimate secular purposes of solemnizing public occasions, [and] expressing confidence in the future.” ’

“(14) On November 20, 1992, the United States Court of Appeals for the 7th Circuit, in *Sherman v. Community Consolidated School District 21*, 980 F.2d 437 (7th Cir. 1992), held that a school district's policy for voluntary recitation of the Pledge of Allegiance including the words ‘under God’ was constitutional.

“(15) The 9th Circuit Court of Appeals erroneously held, in *Newdow v. U.S. Congress* (9th Cir. June 26, 2002), that the Pledge of Allegiance's use of the express religious reference ‘under God’ violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Pledge of Allegiance is unconstitutional.

“(16) The erroneous rationale of the 9th Circuit Court of Appeals in *Newdow* would lead to the absurd result that the Constitution's use of the express religious reference ‘Year of our Lord’ in Article VII violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Constitution itself would be unconstitutional.”

REAFFIRMATION OF LANGUAGE

Item 4 A.

Pub. L. 107–293, §2(b), Nov. 13, 2002, 116 Stat. 2060, provided that: “In codifying this subsection [probably should be “section”, meaning section 2 of Pub. L. 107–293, which amended this section], the Office of the Law Revision Counsel shall show in the historical and statutory notes that the 107th Congress reaffirmed the exact language that has appeared in the Pledge for decades.”

§5. Display and use of flag by civilians; codification of rules and customs; definition

The following codification of existing rules and customs pertaining to the display and use of the flag of the United States of America is established for the use of such civilians or civilian groups or organizations as may not be required to conform with regulations promulgated by one or more executive departments of the Government of the United States. The flag of the United States for the purpose of this chapter shall be defined according to sections 1 and 2 of this title and Executive Order 10834 issued pursuant thereto.

(Added Pub. L. 105–225, §2(a), Aug. 12, 1998, 112 Stat. 1494.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5	36:173.	June 22, 1942, ch. 435, §1, 56 Stat. 377; Dec. 22, 1942, ch. 806, §1, 56 Stat. 1074; July 7, 1976, Pub. L. 94–344, (1), 90 Stat. 810.

REFERENCES IN TEXT

Executive Order 10834, referred to in text, is set out as a note under section 1 of this title.

FREEDOM TO DISPLAY THE AMERICAN FLAG

Pub. L. 109–243, July 24, 2006, 120 Stat. 572, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Freedom to Display the American Flag Act of 2005’.

“SEC. 2. DEFINITIONS.

“For purposes of this Act—

“(1) the term ‘flag of the United States’ has the meaning given the term ‘flag, standard, colors, or ensign’ under section 3 of title 4, United States Code;

“(2) the terms ‘condominium association’ and ‘cooperative association’ have the meanings given such terms under section 604 of Public Law 96–399 (15 U.S.C. 3603);

“(3) the term ‘residential real estate management association’ has the meaning given such term under section 528 of the Internal Revenue Code of 1986 (26 U.S.C. 528); and

“(4) the term ‘member’—

“(A) as used with respect to a condominium association, means an owner of a condominium unit (as defined under section 604 of Public Law 96–399 (15 U.S.C. 3603)) within such association;

“(B) as used with respect to a cooperative association, means a cooperative unit owner (as defined under section 604 of Public Law 96–399 (15 U.S.C. 3603)) within such association; and

“(C) as used with respect to a residential real estate management association, means an owner of a residential property within a subdivision, development, or similar area subject to any policy or restriction adopted by such association.

“SEC. 3. RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES.

“A condominium association, cooperative association, or residential real estate management association may not adopt or enforce any policy, or enter into any agreement, that would restrict or prevent a member of the association from displaying the flag of the United States on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use.

“SEC. 4. LIMITATIONS.

“Nothing in this Act shall be considered to permit any display or use that is inconsistent with—

“(1) any provision of chapter 1 of title 4, United States Code, or any rule or custom pertaining to the proper display or use of the flag of the United States (as established pursuant to such chapter or any otherwise applicable provision of law); or

“(2) any reasonable restriction pertaining to the time, place, or manner of displaying the flag of the United States necessary to protect a substantial interest of the condominium association, cooperative association, or residential real estate management association.”

§6. Time and occasions for display

(a) It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaffs in the open. However, when a patriotic effect is desired, the flag may be displayed 24 hours a day if properly illuminated during the hours of darkness.

(b) The flag should be hoisted briskly and lowered ceremoniously.

(c) The flag should not be displayed on days when the weather is inclement, except when an all weather flag is displayed.

(d) The flag should be displayed on all days, especially on New Year's Day, January 1; Inauguration Day, January 20; Martin Luther King Jr.'s birthday, third Monday in January; Lincoln's Birthday, February 12; Washington's Birthday, third Monday in February; Easter Sunday (variable); Mother's Day, second Sunday in May; Armed Forces Day, third Saturday in May; Memorial Day (half-staff until noon), the last Monday in May; Flag Day, June 14; Father's Day, third Sunday in June; Independence Day, July 4; National Korean War Veterans Armistice Day, July 27; Labor Day, first Monday in September; Constitution Day, September 17; Columbus Day, second Monday in October; Navy Day, October 27; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; and such other days as may be proclaimed by the President of the United States; the birthdays of States (date of admission); and on State holidays.

(e) The flag should be displayed daily on or near the main administration building of every public institution.

(f) The flag should be displayed in or near every polling place on election days.

(g) The flag should be displayed during school days in or near every schoolhouse.

(Added Pub. L. 105–225, §2(a), Aug. 12, 1998, 112 Stat. 1494; amended Pub. L. 106–80, §1, Oct. 25, 1999, 113 Stat. 1285; Pub. L. 110–239, §1, June 3, 2008, 122 Stat. 1559; Pub. L. 111–41, §2, July 27, 2009, 123 Stat. 1962.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6	36:174.	June 22, 1942, ch. 435, §2, 56 Stat. 378; Dec. 22, 1942, ch. 806, §2, 56 Stat. 1074; July 7, 1976, Pub. L. 94–344, (2)–(5), 90 Stat. 810.

In subsection (d), the words “Veterans Day” are substituted for “Armistice Day” because of the Act of June 1, 1954 (ch. 250, 68 Stat. 168).

AMENDMENTS

2009—Subsec. (d). Pub. L. 111–41 inserted “National Korean War Veterans Armistice Day, July 27;” after “July 4;”.

2008—Subsec. (d). Pub. L. 110–239 inserted “Father's Day, third Sunday in June;” after “Flag Day, June 14;”.

1999—Subsec. (d). Pub. L. 106–80 inserted “Martin Luther King Jr.'s birthday, third Monday in January;” after “January 20;”.

§7. Position and manner of display

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

(a) The flag should not be displayed on a float in a parade except from a staff, or as provided in subsection (i) of this section.

(b) The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motorcar, the staff shall be fixed firmly to the chassis or clamped to the right fender.

(c) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy. No person shall display the flag of the United Nations or any other national or international flag equal, above, or in a position of superior prominence or honor to, or in place of, the flag of the United States at any place within the United States or any Territory or possession thereof: *Provided*, That nothing in this section shall make unlawful the continuance of the practice heretofore followed of displaying the flag of the United Nations in a position of superior prominence or honor, and other national flags in positions of equal prominence or honor, with that of the flag of the United States at the headquarters of the United Nations.

(d) The flag of the United States of America, when it is displayed with another flag against a wall from crossed staffs, should be on the right, the flag's own right, and its staff should be in front of the staff of the other flag.

(e) The flag of the United States of America should be at the center and at the highest point of the group when a number of flags of States or localities or pennants of societies are grouped and displayed from staffs.

(f) When flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the United States flag's right.

(g) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.

(h) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building, the union of the flag should be placed at the peak of the staff unless the flag is at half-staff. When the flag is suspended over a sidewalk from a rope extending from a house to a pole at the edge of the sidewalk, the flag should be hoisted out, union first, from the building.

(i) When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right, that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way, with the union or blue field to the left of the observer in the street.

(j) When the flag is displayed over the middle of the street, it should be suspended vertically with the union to the north in an east and west street or to the east in a north and south street.

(k) When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

(l) The flag should form a distinctive feature of the ceremony of unveiling a statue or monument, but it should never be used as the covering for the statue or monument.

(m) The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the

top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any State, territory, or possession of the United States or the death of a member of the Armed Forces from any State, territory, or possession who dies while serving on active duty, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff, and the same authority is provided to the Mayor of the District of Columbia with respect to present or former officials of the District of Columbia and members of the Armed Forces from the District of Columbia. When the Governor of a State, territory, or possession, or the Mayor of the District of Columbia, issues a proclamation under the preceding sentence that the National flag be flown at half-staff in that State, territory, or possession or in the District of Columbia because of the death of a member of the Armed Forces, the National flag flown at any Federal installation or facility in the area covered by that proclamation shall be flown at half-staff consistent with that proclamation. The flag shall be flown at half-staff 30 days from the death of the President or a former President; 10 days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or possession; and on the day of death and the following day for a Member of Congress. The flag shall be flown at half-staff on Peace Officers Memorial Day, unless that day is also Armed Forces Day. As used in this subsection—

(1) the term “half-staff” means the position of the flag when it is one-half the distance between the top and bottom of the staff;

(2) the term “executive or military department” means any agency listed under sections 101 and 102 of title 5, United States Code; and

(3) the term “Member of Congress” means a Senator, a Representative, a Delegate, or the Resident Commissioner from Puerto Rico.

(n) When the flag is used to cover a casket, it should be so placed that the union is at the head and over the left shoulder. The flag should not be lowered into the grave or allowed to touch the ground.

(o) When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer's left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the north, when entrances are to the east and west or to the east when entrances are to the north and south. If there are entrances in more than two directions, the union should be to the east.

(Added Pub. L. 105–225, §2(a), Aug. 12, 1998, 112 Stat. 1495; amended Pub. L. 110–41, §3, June 29, 2007, 121 Stat. 233.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
7	36:175.	June 22, 1942, ch. 435, §3, 56 Stat. 378; Dec. 22, 1942, ch. 806, §3, 56 Stat. 1075; July 9, 1953, ch. 183, 67 Stat. 142; July 7, 1976, Pub. L. 94–344, (6)–(11), 90 Stat. 811; Sept. 13, 1994, Pub. L. 103–322, title XXXII, §320922(b), 108 Stat. 2131.

AMENDMENTS

2007—Subsec. (m). Pub. L. 110–41, in sixth sentence, inserted “or the death of a member of the Armed Forces from any State, territory, or possession who dies while serving on active duty” after “present or former official of the government of any State, territory, or possession of the United States” and substituted “, and the same authority is provided to the Mayor of the District of Columbia with respect to present or former officials of the District of Columbia and members of the Armed Forces from the District of Columbia. When the Governor of a State, territory, or possession, or the Mayor of the District of Columbia, issues a proclamation under the preceding sentence that the National flag be flown at half-staff in that State, territory, or possession or in the District of Columbia because of the death of a member of the Armed Forces, the National flag flown at any Federal installation or facility in the area covered by that proclamation shall be flown at half-staff consistent with that proclamation.” for period at end.

FINDING

Pub. L. 110–41, §2, June 29, 2007, 121 Stat. 233, provided that: “Congress finds that members of the Armed Forces of the United States defend the freedom and security of the United States.”

PROC. NO. 3044. DISPLAY OF FLAG AT HALF-STAFF UPON DEATH OF CERTAIN OFFICIALS AND FORMER OFFICIALS

Proc. No. 3044, Mar. 1, 1954, 19 F.R. 1235, as amended by Proc. No. 3948, Dec. 12, 1969, 34 F.R. 19699, provided:

WHEREAS it is appropriate that the flag of the United States of America be flown at half-staff on Federal buildings, grounds, and facilities upon the death of principal officials and former officials of the Government of the United States and the Governors of the States, Territories, and possessions of the United States as a mark of respect to their memory; and

WHEREAS it is desirable that rules be prescribed for the uniform observance of this mark of respect by all executive departments and agencies of the Government, and as a guide to the people of the Nation generally on such occasions:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America and Commander in Chief of the armed forces of the United States, do hereby prescribe and proclaim the following rules with respect to the display of the flag of the United States of America at half-staff upon the death of the officials hereinafter designated:

1. The flag of the United States shall be flown at half-staff on all buildings, grounds, and naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions for the period indicated upon the death of any of the following-designated officials or former officials of the United States:

(a) The President or a former President: for thirty days from the day of death.

The flag shall also be flown at half-staff for such period at all United States embassies, legations, and other facilities abroad, including all military facilities and naval vessels and stations.

(b) The Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives: for ten days from the day of death.

(c) An Associate Justice of the Supreme Court, a member of the Cabinet, a former Vice President, the President pro tempore of the Senate, the Majority Leader of the Senate, the Minority Leader of the Senate, the Majority Leader of the House of Representatives, or the Minority Leader of the House of Representatives: from the day of death until interment.

2. The flag of the United States shall be flown at half-staff on all buildings, grounds, and naval vessels of the Federal Government in the metropolitan area of the District of Columbia on the day of death and on the following day upon the death of a United States Senator, Representative, Territorial Delegate, or the Resident Commissioner from the Commonwealth of Puerto Rico, and it shall also be flown at half-staff on all buildings, grounds, and naval vessels of the Federal Government in the State, Congressional District, Territory, or Commonwealth of such Senator, Representative, Delegate, or Commissioner, respectively, from the day of death until interment.

3. The flag of the United States shall be flown at half-staff on all buildings and grounds of the Federal Government in a State, Territory, or possession of the United States upon the death of the Governor of such State, Territory, or possession from the day of death until interment.

4. In the event of the death of other officials, former officials, or foreign dignitaries, the flag of the United States shall be displayed at half-staff in accordance with such orders or instructions as may be issued by or at the direction of the President, or in accordance with recognized customs or practices not inconsistent with law.

5. The heads of the several departments and agencies of the Government may direct that the flag of the United States be flown at half-staff on buildings, grounds, or naval vessels under their jurisdiction on

occasions other than those specified herein which they consider proper, and that suitable military honors be rendered as appropriate.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 1st day of March in the year of our Lord nineteen hundred and fifty-four, and of the Independence of the United States of America the one hundred and seventy-eighth.

[SEAL]

DWIGHT D. EISENHOWER.

§8. Respect for flag

No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing. Regimental colors, State flags, and organization or institutional flags are to be dipped as a mark of honor.

(a) The flag should never be displayed with the union down, except as a signal of dire distress in instances of extreme danger to life or property.

(b) The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise.

(c) The flag should never be carried flat or horizontally, but always aloft and free.

(d) The flag should never be used as wearing apparel, bedding, or drapery. It should never be festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white, and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of the platform, and for decoration in general.

(e) The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way.

(f) The flag should never be used as a covering for a ceiling.

(g) The flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.

(h) The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.

(i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.

(j) No part of the flag should ever be used as a costume or athletic uniform. However, a flag patch may be affixed to the uniform of military personnel, firemen, policemen, and members of patriotic organizations. The flag represents a living country and is itself considered a living thing. Therefore, the lapel flag pin being a replica, should be worn on the left lapel near the heart.

(k) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.

(Added Pub. L. 105–225, §2(a), Aug. 12, 1998, 112 Stat. 1497.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8	36:176.	June 22, 1942, ch. 435, §4, 56 Stat. 379; Dec. 22, 1942, ch. 806, §4, 56 Stat. 1076; July 7, 1976, Pub. L. 94–344, (12)–(16), 90 Stat. 812.

§9. Conduct during hoisting, lowering or passing of flag

During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in review, all persons present in uniform should render the military salute. Members of the Armed Forces and veterans who are present but not in uniform may render the military salute. All other persons present should face the flag and stand at attention with their right hand over the heart, or if applicable, remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Citizens of other countries present should stand at attention. All such conduct toward the flag in a moving column should be rendered at the moment the flag passes.

(Added Pub. L. 105–225, §2(a), Aug. 12, 1998, 112 Stat. 1498; Pub. L. 110–181, div. A, title V, §594, Jan. 28, 2008, 122 Stat. 138.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
9	36:177.	June 22, 1942, ch. 435, §5, 56 Stat. 380; Dec. 22, 1942, ch. 806, §5, 56 Stat. 1077; July 7, 1976, Pub. L. 94–344, (17), 90 Stat. 812.

AMENDMENTS

2008—Pub. L. 110–181 substituted “all persons present in uniform should render the military salute. Members of the Armed Forces and veterans who are present but not in uniform may render the military salute. All other persons present should face the flag and stand at attention with their right hand over the heart, or if applicable, remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Citizens of other countries present should stand at attention. All such conduct toward the flag in a moving column should be rendered at the moment the flag passes.” for “all persons present except those in uniform should face the flag and stand at attention with the right hand over the heart. Those present in uniform should render the military salute. When not in uniform, men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Aliens should stand at attention. The salute to the flag in a moving column should be rendered at the moment the flag passes.”

§10. Modification of rules and customs by President

Any rule or custom pertaining to the display of the flag of the United States of America, set forth herein, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander in Chief of the Armed Forces of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation.

(Added Pub. L. 105–225, §2(a), Aug. 12, 1998, 112 Stat. 1498.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
10	36:178.	June 22, 1942, ch. 435, §8, 56 Stat. 380; Dec. 22, 1942, ch. 806, §8, 56 Stat. 1077; July 7, 1976, Pub. L. 94–344, (20), 90 Stat. 813.

REFERENCES IN TEXT

Herein, referred to in text, means sections 4 to 10 of this title.

PROC. NO. 2605. THE FLAG OF THE UNITED STATES

Proc. No. 2605, Feb. 18, 1944, 9 F.R. 1957, 58 Stat. 1126, provided:

The flag of the United States of America is universally representative of the principles of the justice, liberty and democracy enjoyed by the people of the United States; and

People all over the world recognize the flag of the United States as symbolic of the United States; and

The effective prosecution of the war requires a proper understanding by the people of other countries of the material assistance being given by the Government of the United States:

NOW, THEREFORE, by virtue of the power vested in me by the Constitution and laws of the United States, particularly by the Joint Resolution approved June 22, 1942, as amended by the Joint Resolution approved December 22, 1942 [now sections 4 to 10 of this title], as President and Commander in Chief, it is hereby proclaimed as follows:

1. The use of the flag of the United States or any representation thereof, if approved by the Foreign Economic Administration, on labels, packages, cartons, cases, or other containers for articles or products of the United States intended for export as lend-lease aid, as relief and rehabilitation aid, or as emergency supplies for the Territories and possessions of the United States, or similar purposes, shall be considered a proper use of the flag of the United States and consistent with the honor and respect due to the flag.

2. If any article or product so labelled, packaged or otherwise bearing the flag of the United States or any representation thereof, as provided for in section 1, should, by force of circumstances, be diverted to the ordinary channels of domestic trade, no person shall be considered as violating the rules and customs pertaining to the display of the flag of the United States, as set forth in the Joint Resolution approved June 22, 1942, as amended by the Joint Resolution approved December 22, 1942 (U.S.C., Supp. II, title 36, secs. 171–178) [now sections 4 to 10 of this title] for possessing, transporting, displaying, selling or otherwise transferring any such article or product solely because the label, package, carton, case, or other container bears the flag of the United States or any representation thereof.

Capitola City Council Agenda Report



Meeting: March 24, 2022

From: City Manager Department

Subject: Consider the minutes from the March 1, 2022, Special City Council meeting and the March 10, 2022, regular City Council meeting

Recommended Action: Approve minutes.

Discussion: Attached for Council review and approval are the draft minutes from the special City Council meeting held on March 1 and the regular City Council meeting held on March 10, 2022.

Attachments:

1. March 1 draft
2. March 10 draft

Report Prepared By: Chloé Woodmansee, City Clerk

Reviewed/Approved By: Jamie Goldstein, City Manager

City of Capitola

Special City Council Meeting Minutes

Tuesday, March 01, 2022 – 5:00 PM



City Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Mayor: Sam Storey

Vice Mayor: Margaux Keiser

Council Members: Jacques Bertrand, Yvette Brooks, Kristen Petersen

Special Meeting of the Capitola City Council – 5 PM

1. Roll Call and Pledge of Allegiance

Council Members Kristen Petersen, Jacques Bertrand, Margaux Keiser, Mayor Sam Storey, and Yvette Brooks

2. Additions and Deletions to the Agenda

3. Additional Materials – none

4. Oral Communications by Members of the Public

Rory McBroom commented that west bound on Park Avenue from Soquel to Capitola can be a challenge for bike riders. He also asked that a drain be repaired underneath the overpass.

5. Staff / City Council Comments

City Manager Goldstein announced that the City is aware that the website is down and are working to get it back as soon as possible. He also said that the Leadership Academy begins the next evening and thanked those that will be participating.

Mayor Storey honored the fallen Police Officer from Salinas.

6. Consent Items

Motion: Approve Budget Calendar

Result: Passed, 5:0 (Unanimous)

Mover: Council Member Petersen

Second: Vice Mayor Keiser

Yea: Mayor Storey, Vice Mayor Keiser, Council Member Bertrand, Council Member Brooks, Council Member Petersen

A. Consider Fiscal Year 2022-23 Budget Calendar

Recommended Action: Approve Budget Calendar for Fiscal Year (FY) 2022-23

7. General Government / Public Hearings

A. Fiscal Year 2022-23 Budget Principles and Goals

Recommended Action: Adopt the Fiscal Year (FY) 2022-23 budget principles and goals and identify related key projects and programs.

Finance Director Malberg presented a summary of the FY 2021-22 adopted principals and goals, and their status. City Manager Goldstein presented potential goals for the coming year's budget as recommended by staff, based on current/anticipated fund balances.

Council Member Brooks confirmed that the feminine hygiene products would be included as an ongoing expense. She asked about the frequency of implicit bias training.

In response to a question from Council Member Bertrand, Director Jesberg explained that the Clares Street pedestrian pathway is a part of the approved complete street project.

Mayor Storey confirmed that Park Avenue project including bike lane improvements and traffic calming has funding.

There was no public comment.

Council reviewed the basic budget principals.

Motion: Confirm budget principals' three categories: 1) Fiscal Policy, 2) Public Service Principals, and 3) Public & Safety Improvement

Result: Passed, 5:0 (Unanimous)

Mover: Council Member Petersen

Second: Vice Mayor Brooks

Yea: Mayor Storey, Vice Mayor Keiser, Council Member Bertrand, Council Member Brooks, Council Member Petersen

Council reviewed the goals from the previous budget year.

Motion: Confirm carry over goals from FY 2021-22 budget, including explore grant opportunities for "youth and early education opportunities for programming"

Result: Passed, 5:0 (Unanimous)

Mover: Council Member Brooks

Second: Vice Mayor Bertrand

Yea: Mayor Storey, Vice Mayor Keiser, Council Member Bertrand, Council Member Brooks, Council Member Petersen

Council discussed the staff proposed workplan goals for FY 2022-23.

Council Member Brooks asked that bike safety be included in the street infrastructure item.

Motion: Confirm staff proposed workplan goals for FY 2022-23 as listed 1) Housing Element update 2) enhance community outreach 3) launch regional bikeshare program 4) update comprehensive city fee study 5) consider potential ballot measures for 2022 6) memorial bench replacement program 7) implement bike patrol for parking enforcement officers 8) update special event permit process

Result: Passed, 5:0 (Unanimous)

Mover: Council Member Petersen

Second: Vice Mayor Bertrand

Yea: Mayor Storey, Vice Mayor Keiser, Council Member Bertrand, Council Member Brooks, Council Member Petersen

After much discussion, Council compromised on a prioritized list, including budget allocations, for the following list of projects:

Available Funding		Balance						
Item	Amount							
General fund balance	\$2.4 million (one-time) ¹ Inc. \$400k COVID							
Additional American Rescue Plan funding	\$250,000 (one-time)							
FY 2022-23 Measure F revenues	\$1.1 million (ongoing through FY 2026-27)							
Additional unallocated ongoing revenues	\$385,000							
FY 2022-23 revenues and expenditures	TBD during budget process							
Expected minimum total available	\$4.135 million	4,135,000	(500,000)		3,635,000			
Public Improvements & Fiscal Goals								
Item	Amount	KP	Motion	JB	YB	MK	SS	
Housing Element Update (funded with special revenue)								
Enhance community outreach								
Launch regional bikeshare program								
Update comprehensive city fee study	\$50,000	50,000	50,000	50,000	50,000	50,000	50,000	
Consider potential ballot measures for 2022								
Memorial bench replacement program								
Implement bike patrol for Parking Enforcement Officers								
Update special event permit process								
Wharf Rehabilitation Project	\$2.3 million required for full funding. Project can be scaled to match budget allocation	500,000	1,500,000	2,300,000	500,000	2,300,000	#####	
Community Center	Significant facility needs. Complete building renovation costs likely \$1-2 million. Addressing near-term needs \$150,000 - \$400,000	400,000	150,000	400,000	400,000	150,000	150,000	
Library Tot Lot	\$150,000	150,000	150,000		150,000	150,000	150,000	
Local Hazard Mitigation Projects								
Funding to study City Hall options	\$50,000 - \$75,000	50,000	50,000	50,000	50,000	50,000	50,000	
Stockton Bridge reinforcement project	\$350,000 - \$4 million		350,000	400,000	350,000	350,000	50,000	
Sluff / Cliff Drive study	\$50,000	50,000	50,000	50,000	50,000	50,000	50,000	
Voble Gulch engineering feasibility analysis	\$50,000		50,000	50,000	50,000	50,000	50,000	
Fire risk reduction (eucalyptus groves)	\$20,000 - \$100,000		50,000					
Minimal City Hall maintenance	\$100,000	100,000	100,000	50,000	100,000	100,000	100,000	
McGregor Sidewalk	\$750,000 - \$1million							
Climate action plan projects								
Charging stations	\$10,000 each	20,000	20,000	20,000	20,000	20,000	grants	
Roundabout at Bay/Cap Ave	\$1.5 million	500,000	-	500,000				
Bike/Pedestrian safety projects	\$50,000 +	100,000	100,000	50,000	100,000	100,000	100,000	
Peery Park Bridge maintenance	\$100,000		50,000					
Bike Park renovation	Potentially grant/donation funded							
Allocate funding to CalPERS Trust	\$1 million to reach funding target	500,000	500,000	1,000,000	500,000	500,000	500,000	
Pavement management	Varies							
			##### 3,170,000	4,320,000	#####	3,870,000	#####	
		Resiliency Fund	385,000	385,000		385,000	385,000	385,000
			#####	#####	#####	4,255,000	#####	

Motion: Adopt New Key Projects for FY 2022-23 as prioritized in the list pictured above (approved priorities are in the yellow column)

Result: Passed, 5:0 (Unanimous)

Mover: Council Member Petersen

Second: Council Member Brooks

Yea: Mayor Storey, Vice Mayor Keiser, Council Member Bertrand, Council Member Brooks, Council Member Petersen

8. Adjournment

The meeting adjourned at 7:35PM to the next regular meeting of the City Council on March 10, 2022.

City of Capitola

City Council Meeting Minutes

Thursday, March 10, 2022 – 7:00 PM



City Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Mayor: Sam Storey

Vice Mayor: Margaux Keiser

Council Members: Jacques Bertrand, Yvette Brooks, Kristen Petersen

Regular Meeting of the Capitola City Council – 7 PM

1. Roll Call and Pledge of Allegiance

Council Members Kristen Petersen, Jacques Bertrand, Margaux Keiser, Mayor Sam Storey, and Yvette Brooks

2. Additions and Deletions to the Agenda

City Manager Goldstein announced that the person who submitted the flag request (Item 8.B) has asked to continue the item to March 24, 2022. Mayor Storey opened public comment regarding the request.

TJ Welch, the flag requester, said he wanted the Capitola Foundation to have a chance to discuss the topic prior to Council's hearing, and that the Foundation's next meeting is scheduled for March 15.

Motion: Continue Item 8.B (flag request) to the next regular City Council meeting on March 24, 2022

Result: Passed, 5:0 (Unanimous)

Mover: Council Member Bertrand

Seconder: Council Member Petersen

Yea: Mayor Storey, Vice Mayor Keiser, Council Member Bertrand, Council Member Brooks, Council Member Petersen

3. Presentations

A. Proclaim March 2022 Red Cross Month

Mayor Storey presented a proclamation to Michele Averill, CEO of the Central Coast Region of the Red Cross. Averill spoke about how the Red Cross is helping those in need in the Ukraine.

B. Proclaim March 15, 2022, Equal Pay Day

Mayor Storey presented a proclamation to Kit Hein, who spoke briefly about Equal Pay Day.

4. Additional Materials – none

5. Oral Communications by Members of the Public – none

6. Staff / City Council Comments

Mayor Storey announced that the Capitola Historical Museum has a new exhibit called Perspectives – Capitola in the Eye of the Beholder, open now, with a reception to be held on April 2.

7. Consent Items

Motion: Approve, adopt, and determine as recommended

Result: Passed, 5:0 (Unanimous)

Mover: Council Member Bertrand

Second: Vice Mayor Keiser

Yea: Mayor Storey, Vice Mayor Keiser, Council Member Bertrand, Council Member Brooks, Council Member Petersen

- A. Consider February 27, 2022, City Council meeting minutes

Recommended Action: Approve minutes.

- B. Approval of City Check Registers Dated February 4, February 10, and February 18.

Recommended Action: Approve check registers.

- C. Receive Update on Pandemic Response and Consider Adopting Proposed Resolution Allowing for the Continuation of Teleconferencing

Recommended Action: 1) Make the determination that all hazards related to the worldwide spread of the coronavirus (COVID-19) as detailed in Resolution No. 4168 adopted by the City Council on March 12, 2020, still exist and there is a need to continue action; and 2) Adopt the proposed resolution authorizing the City Council (along with the Planning Commission and all advisory bodies) to continue to conduct teleconferencing meetings.

8. General Government / Public Hearings

- A. Appoint Representative to the Commission on the Environment to fill mid-term Vacancy

Recommended Action: Appoint representatives.

Motion: Appoint Jason Shepardson to the Commission on the Environment

Result: Passed, 5:0 (Unanimous)

Mover: Council Member Petersen

Second: Vice Mayor Keiser

Yea: Mayor Storey, Vice Mayor Keiser, Council Member Bertrand, Council Member Brooks, Council Member Petersen

- B. Consider Request to “Fly Thin-Blue Line” Flag during National Police Week in Accordance with Policy V-18: Outdoor Display of Governmental and Non-Governmental Flags on City Property

Recommended Action: Deny request.

This item was continued, as indicated in Section 2: Additions and Deletions to the Agenda.

- C. Receive Work Plan for Review of Parking Meter and Permit Parking Program Rates
Recommended Action: Receive a report regarding a work plan for the review and analysis of the parking meter rates and permit parking fees in the Village and surrounding neighborhoods and establish composition of ad-hoc committee.

Public Works Director Jesberg proposed creating an ad-hoc committee and presented staff's workplan to review the parking meter and permit parking program rates.

Council Member Petersen asked if the Village business representatives on the committee must be paying members of the Business Improvement Area.

Council Member Bertrand emphasized the importance of the ad-hoc committee representing all of Capitola, not just the Village.

Mayor Sam asked about the goals of the committee, and that these be officially determined/adopted upon appointing members to the committee.

Council Member Bertrand commented that equity regarding parking is important.

In public comment, Carin Hanna said she agrees that identifying the goals of the committee is important and encouraged Council and committee members to not assume that parking rates are going to increase.

Motion: 1) Receive workplan and 2) Establish an ad-hoc committee (subject to the Brown Act); stipulating that it will be composed of two Council Members, one FAC member, three Village Business Representatives, and three Capitola Residents and that the goals of the committee will be adopted by Council upon appointing committee representatives

Result: Passed, 5:0 (Unanimous)

Mover: Council Member Petersen

Second: Vice Mayor Brooks

Yea: Mayor Storey, Vice Mayor Keiser, Council Member Bertrand, Council Member Brooks, Council Member Petersen

9. Adjournment

The meeting was adjourned at 8:14pm to the next regular City Council meeting on March 24, 2022.

Capitola City Council

Agenda Report



Meeting: March 24, 2022

From: Community Development Department

Subject: Consider Extending an Agreement with the City of Scotts Valley for Sharing of Chief Building Official Services

Recommended Action: Extend agreement with the City of Scotts Valley to share Chief Building Official Services for an additional three years.

Background: The City of Capitola has had a budgeted building official on staff since its incorporation in 1949. The Building Official is responsible for ensuring compliance with the California Building Code, the State Housing Code, and the International Existing Building Code. In addition, the Building Official serves as the City of Capitola's Americans with Disabilities Act (ADA) compliance officer.

On September 13, 2018, the City Council ratified an agreement with the City of Scotts Valley to share Building Official services. This was done in response to a challenging labor market due to the robust private construction industry. The innovative solution allowed the City to hire a Building Official, while sharing the costs with the City of Scotts Valley. Capitola's building division was reorganized to include the part-time building official, a full-time building inspector, and a part-time development service technician. When fully staffed, the division functions at a high level with dedicated customer service during counter hours, daily building inspections, and internal building plan review.

On March 8, 2022, the City's full-time building inspector vacancy was filled; the new inspector is scheduled to start work on March 21, 2022.

Discussion: Since 2018, the cities of Capitola and Scotts Valley have been sharing the Chief Building Official under the parameters of the 2018 agreement. The agreement has a three-year term and now must be extended. The following are highlights of the terms of the agreement:

- Shared model: Building Official is employed by Capitola but also serves as Building Official of Scotts Valley
- Shared services: Approximately half total working time is devoted to each City
- Term: Three years
- Termination: Either party may terminate the agreement with six months' notice.
- Contract is terminated if building official is no longer employed by the City of Capitola.
- Capitola provides a vehicle, with the cost incorporated into the contract
- Scotts Valley's share of total costs are not to exceed \$120,000 per year. (The amount increased from \$105,000 in the original contract.)
- Each party is solely responsible for any claims arising out of employee's work for each jurisdiction
- Scotts Valley participated in the interview and selection process; Annual employee evaluation is completed in coordination with both jurisdictions

Fiscal Impact: None. The shared building official wages and benefits will follow the mid-management MOU and are included in the City's budget.

Attachments:

1. Updated Agreement

Report Prepared By: Katie Herlihy

Reviewed By: Chloé Woodmansee, City Clerk; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager

AGREEMENT BETWEEN THE CITY OF CAPITOLA
AND THE CITY OF SCOTTS VALLEY FOR SHARING
OF CHIEF BUILDING OFFICIAL SERVICES

THIS AGREEMENT, effective as of January 1, 2022 by and between the CITY OF CAPITOLA ("Capitola") and the CITY OF SCOTTS VALLEY ("Scotts Valley"), (referred to individually as a "Party" and collectively as the "Parties") is made with reference to the following facts:

A. Scotts Valley desires to obtain the services of a Chief Building Official.

B. Capitola is willing to provide such services by hiring a Chief Building Official and sharing with Scotts Valley this position, as herein set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Hiring Process. Capitola shall hire a Chief Building Official in consultation with Scotts Valley. Selection of Chief Building Official shall be mutually agreed upon by both parties.

2. Sharing of Services. The Chief Building Official shall act as the Chief Building Official for both Capitola and Scotts Valley, with approximately half of his or her total working time being devoted to each Party.

3. Employment of Chief Building Official by Capitola. The Chief Building Official shall at all times during the term of this Agreement remain a full-time employee of Capitola and shall continue to receive all of his or her salary, health insurance, and other employment benefits from Capitola. During the course of this Agreement, it is expected that the Chief Building Official will take time off from employment for eligible leaves as provided under Capitola's applicable personnel rules and regulations. Scotts Valley agrees that such leaves will not constitute a breach of this Agreement, and Capitola agrees that it will provide reasonable notice of all scheduled leaves as well as prompt notice of all unscheduled leaves. Capitola will coordinate with Scotts Valley to minimize any potential scheduling impacts. It is understood that the Chief Building Official may elect to leave the employment of Capitola at any time. In such event, Capitola shall provide prompt notice of such departure to Scotts Valley.

4. Work for Capitola and Scotts Valley. For purposes of this Agreement, the Chief Building Official shall be deemed to be working for a Party once he or she begins the commute, in a vehicle owned by Capitola, to the Party's city hall or the Party's work site, and/or performing services for that particular Party.

5. Automobile Use. Capitola shall provide a vehicle owned by Capitola for the Chief Building Official's use when conducting business for either Party. The vehicle may be used to commute to and from work within Santa Cruz County. The vehicle shall not be used for personal business by the Building Official.

6. Services for Scotts Valley. The Chief Building Official shall perform the customary and usual duties of Chief Building Official for Scotts Valley and shall report directly to the Scotts Valley Community Development Director. His or her duties for the City of Scotts Valley shall include the Essential Duties and Responsibilities outlined in the City of Capitola Building Official job description.

7. Term of Agreement. The term of this Agreement shall be for (3) three years, unless terminated by either Party pursuant to section 12 herein.

8. Payment.

(a) Scotts Valley agrees to pay Capitola fifty percent (50%) of the following, for the Building Official:

- (i) Actual salary;
- (ii) Actual Health Care Premium;
- (iii) Actual Employer PERS costs;
- (iv) Overhead costs (ISFs, liability, worker's compensation insurance, payroll, HR costs, etc.) which is calculated as 40% of Actual Salary; and
- (v) \$750 per month for vehicle operation, maintenance, and replacement costs.

(b) The Parties agree that Scotts Valley's share of the total costs shall not exceed one hundred and twenty thousand dollars (\$120,000) annually.

(c) Such costs shall be payable in monthly installments in response to invoices from Capitola showing the amount due for the preceding month. In the event an invoice covers only a portion of the month, the amount shall be pro-rated based upon the actual number of days in that month. Invoices shall be paid by Scotts Valley within thirty (30) days after receipt.

(d) Any proposed adjustment by Capitola to the total salary and benefit package for the Chief Building Official during the term of this Agreement shall be submitted to Scotts Valley for review and approval at least 60 days prior to the effective date of the adjustment, which will not be unreasonably withheld.

9. Employee Evaluations. The Parties shall meet and confer on an as needed basis to prepare a joint annual employee evaluation for the Chief Building Official. Either as part of the evaluation or otherwise, both Parties may establish performance goals and objectives, as appropriate.

10. Schedule. The Parties agree the Building Official will spend approximately 50% of their time working for each Party. Within 30 days from the effective date of this Agreement, the Community Development Directors of Capitola and Scotts Valley, and the Building Official, shall develop a work schedule for review and approval by the City Manager of each Party. The Parties agree that this schedule may be modified based on changes in workload by prior mutual written consent of the Parties.

11. Independent Contractor. It is understood that Capitola and its employees, in the performance of the services agreed to be performed hereunder, shall act as and be an independent contractor and not an agent or employee of Scotts Valley. As an independent contractor, no employee of Capitola shall obtain any rights to retirement benefits, medical benefits, leave, or any other benefits that accrue to Scotts Valley employees. Capitola agrees to make its employees available to testify in any litigation brought regarding the subject of the work performed for Scotts Valley under this Agreement. Should such need arise following the termination of this Agreement, Capitola shall be compensated for its employees' costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, plus 40% overhead costs, unless such litigation is brought by Capitola or is based on allegations of Capitola's negligent performance or wrongdoing.

12. Termination. Either Party may terminate this Agreement by providing six months written notice to the other Party. However if at any time the Chief Building Official commits acts of gross negligence and/or willful misconduct, the City of Scotts Valley shall have the right to terminate this contract with 60-days notice, or upon termination of the Chief Building Official, whichever occurs first.

Notwithstanding the above, Capitola reserves its full rights to make employment decisions regarding the Chief Building Official, including disciplining and terminating the Chief Building Official, pursuant to Capitola's policies and procedures governing employment. To the extent possible, Capitola will provide reasonable notice of any such employment decisions to Scotts Valley. If, for any reason, the Chief Building Official is no longer a full-time employee of Capitola, this Agreement shall terminate immediately.

13. Indemnification. Each Party ("Indemnitor") agrees to defend, indemnify, and hold harmless the other Party, its respective officials, officers, employees and agents (collectively "Indemnitees") from any and all claims, demands, losses, damages, legal defense costs, liability of any kind or nature ("Claims"), which Indemnitee may sustain or incur or which may be imposed upon it, but only in proportion to and to the extent such Claims result from, arise out of, or in any manner are caused by the Chief Building Official's acts or omissions on behalf of the Indemnitor, provided that such hold harmless and

indemnity shall not extend to liabilities or damages caused by the sole negligence or willful misconduct of Indemnitees. Capitola and Scotts Valley shall maintain any right to subrogation which any insurer for either party may acquire against the other by virtue of payment of any loss arising out of the Chief Building Official performing services or work for that party.

14. Insurance. Capitola shall maintain workers' compensation and employment liability insurance coverage or self-insurance for the Chief Building Official as required to be provided by Capitola to its employees under California law. This Agreement shall require both Parties to continue participation in Monterey Bay Area Self Insurance Authority (MBASIA) or other comparable insurance.

15. Waiver. No failure on the part of either Party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that Party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Cruz.

17. Disputes. In the event legal action shall become necessary in order to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

18. Review of Service Sharing Arrangement. The City Managers of Capitola and Scotts Valley and the Chief Building Official may meet and evaluate the implementation of this Agreement and determine whether any changes should be made to the arrangement for sharing the services of the Chief Building Official at any time upon the request of the City Manager of Capitola or Scotts Valley or the Chief Building Official.

19. Notices. If either Party shall desire or is required to give notice to the other, such notice shall be given in writing, addressed to recipient as follows:

City of Capitola:
City Manager
420 Capitola Ave.
Capitola, CA 95010

City of Scotts Valley:
Community Development Director
One Civic Center Drive
Scotts valley, CA 95066

20. Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

21. Entire Agreement. This Agreement constitutes the entire agreement between Capitola and Scotts Valley and supersedes and cancels any prior agreement or understanding, whether written or verbal. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by Capitola and Scotts Valley.

22. Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. Electronic signatures and fully executed copies of this Agreement are deemed valid as originals.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year first above written.

CITY OF CAPITOLA

By:

Jamie Goldstein, City Manager

APPROVED AS TO FORM:

Samantha W. Zutler, City Attorney

CITY OF SCOTTS VALLEY

By:

Mali LaGoe , City Manager

APPROVED AS TO FORM:

Kirsten Powell, City Attorney

Capitola City Council

Agenda Report



Meeting: March 24, 2022

From: City Manager Department

Subject: Computer Network Infrastructure Upgrade Agreement

Recommended Action: Authorize City Manager to enter a managed services agreement with Exceedio for upgrade of City IT network infrastructure.

Background: The City of Capitola computer network infrastructure is the backbone for all the work done on the computers at the City of Capitola. This network infrastructure equipment consists of routers, switches, wireless access points, and servers.

Although the City has migrated much of its applications and data to the cloud, there is still a need for the network infrastructure for access resources and in the Police Department there is a need for data storage on servers. And though current City network infrastructure is still in use and functioning properly, much of it is nearing end of life and needs to be replaced.

At the February 24, 2022 City Council meeting, Council authorized the City Manager to negotiate an agreement for managed IT network infrastructure in an amount not-to-exceed \$6,000 per month with Exceedio; and to return to Council with a final agreement.

Discussion: City staff discussed the project with several vendors and received bids from three firms. During the evaluation process it became clear the Exceedio was the best fit for the City of Capitola and its technology needs. The proposal from Exceedio is a managed services agreement that includes installation, configuration, maintenance, support, and monitoring of the equipment and the City of Capitola network. Exceedio is based in Santa Cruz County and has several clients of similar size to Capitola. Staff has spoken with Exceedio clients and received positive feedback.

The attached managed services agreement is viewed as critical to the City due to the increased complexity of computer systems and the continued increase in bad players on the Internet. It has become more and more difficult for internal staff to stay apprised and fully understand all threats. The monitoring of systems and threats is included in the proposal. In addition, the managed services agreement will allow the Information Systems Specialist to focus on end user and desktop support, in light of her approved reduction in hours.

With the approval of this contract, the City can eliminate several existing support and licensing agreements as well as some planned hardware purchases as they are included in the agreement.

The agreement has a 5-year term. If the City wishes to end the agreement prior to 5-years, the cost would be a prorated portion of the EMS Waived services fee, which is \$7,088 for each year remaining on the 5-year agreement.

Fiscal Impact: The Fiscal Year 2021-22 fiscal impact will be \$25,000.

Attachments:

1. Exceedio Managed Services Agreement

Report Prepared By: Larry Laurent, Assistant to the City Manager

Reviewed By: Chloé Woodmansee, City Clerk; Jim Malberg, Finance Director; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager

CITY OF CAPITOLA
PROFESSIONAL SERVICES AGREEMENT
Managed Information Technology Services
Exceedio

THIS AGREEMENT is entered into on March 15, 2022, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" or "Customer" and Exceedio, hereinafter called "Consultant" or "Contractor".

WHEREAS, City desires certain services described in Appendix One and Consultant is capable of providing and desires to provide these services;

NOW, THEREFORE, City and Consultant for the consideration and upon the terms and conditions hereinafter specified agree as follows:

SECTION 1
Scope of Services

The services to be performed under this Agreement are for Managed Information Technology Services and further detailed in Appendix One ("Services").

In connection with providing Services, Consultant will have access to Personal Information consisting of City Employees' names, logins, and IP addresses ("Personal Information"). Consultant shall not have access to, collect, maintain, store, process, or handle any other personally identifiable information in the course of performing the Services. Personal Information shall remain owned by Customer.

SECTION 2
Duties of Consultant

All work performed by Consultant, or under its direction, shall be sufficient to satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Consultant's profession.

Consultant shall not undertake any work beyond the scope of work set forth in Appendix One unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Consultant by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Consultant's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Consultant's control.

Consultant shall meet with Larry Laurent called "Director," or other City personnel, or third parties as necessary, on all matters connected with carrying out of Consultant's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and City approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.

Consultant shall keep confidential all Personal Information to which it has access as a result of providing Services to Customer. Consultant shall limit access to Personal Information only to its employees, vendors, subcontractors, or third parties it elects to use to perform the Services who require access to Personal Information to perform the Services.

If Consultant elects to use any vendors, subcontractors, or third parties to perform the Services, Consultant shall require vendors, subcontractors, and/or third parties it elects to use to agree to and be bound by the

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terms of this Agreement. Consultant is accountable and liable for any acts or omissions of vendors, subcontractors, and/or third parties it elects to use in accordance with the indemnity provision (Section 9) of this Agreement.

Consultant shall implement and maintain security practices, including but not limited to, physical, administrative, and technical safeguards and controls, that meet or exceed industry standard best practices and keep up with threats as they evolve for all Services provided to Customer. Customer shall have the right to audit Consultant's controls and security used in connection with the Services upon 10 days' written notice to Consultant to ensure Consultant's compliance with this Agreement and industry standards. Consultant shall fully cooperate with any audit. In addition, Consultant shall provide Customer with the results of any audit performed by or on behalf of Consultant that assesses the effectiveness of Consultant's security program as relevant to the security of the Services provided to Customer and confidentiality of Personal Information to which Consultant has access as a result of providing Services to Customer.

Consultant warrants that any collection, access, use, storage, disposal, and disclosure of Personal Information in connection with the Services will and does comply with all applicable federal, state, and local privacy and data protection laws.

Consultant shall notify Customer within 24 hours of detection of a security incident affecting the Services or Personal Information that has a reasonable possibility of qualifying as a data breach under applicable law ("Security Incident"). Consultant shall fully cooperate with Customer in investigating the Security Incident. Consultant agrees it shall not inform any third party of any Security Incident, except if Consultant is required to notify its insurer. Customer shall have the sole right to determine whether notice of the Security Incident must be provided to any individuals, regulators, law enforcement agencies, or others and the contents of such notice.

SECTION 3 Duties of the City

City shall make available to Consultant all data and information in the City's possession which City deems necessary to the preparation and execution of the Services, and City shall actively aid and assist Consultant in obtaining such information from other agencies and individuals as necessary.

The Director may authorize a staff person to serve as his or her representative for conferring with Consultant relative to Consultant's services. City shall not control or direct the manner in which the Services are to be performed. However, the work in progress hereunder shall be reviewed from time to time by City at the discretion of City or upon the request of Consultant. If the work is satisfactory, it will be approved. If the work is not satisfactory, City will inform Consultant of the changes or revisions necessary to secure approval.

SECTION 4 Fees and Payment

Fees and payments are listed in Appendix Two

SECTION 5 Changes in Work

City may order major changes in scope or character of the work, either decreasing or increasing the scope of Consultant's services. No changes in the Scope of Work as described in Appendix One shall

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be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Appendix Two shall be approved in advance in writing by the City.

SECTION 6 Time of Beginning and Schedule for Completion

This Agreement will become effective when signed by both parties and will terminate on the earlier of:

- The date Consultant completes the Services required by this Agreement, as agreed by the City; or
- The date either party terminates the Agreement as provided below.

Work and Services shall begin on or about March 1, 2022 and the Term of this Agreement shall last for 5 years from the date of March 1, 2022 ("Term").

In the event that major changes are ordered, or Consultant is delayed in performance of its services by circumstances beyond its control, the City will grant Consultant a reasonable adjustment in the schedule for completion provided that to do so would not frustrate the City's objective for entering into this Agreement, but if Consultant delays performance of the Services for any other reason than City's order of major changes or delay caused by circumstances beyond Consultant's control, City shall not be required to grant Consultant a reasonable adjustment and shall have the right to terminate the Agreement for Consultant's failure to fulfill its obligations hereunder as further described in Section 7. Consultant must submit all claims for adjustments to City within thirty calendar days of the time of occurrence of circumstances necessitating the adjustment.

SECTION 7 Termination

City shall have the right to terminate this Agreement at any time upon giving ninety (90) days written notice to Consultant. Fees for termination prior to the completion of the 5-year term are equal to 20% of the MSA Waived Fee per year remaining on the agreement. Consultant and City may terminate this Agreement upon written notice should either party fail to fulfill its duties as set forth in this Agreement or for breach of this Agreement. No fees shall be charged to Customer for termination as a result of Consultant's breach of this Agreement or any of its duties or obligations hereunder. It shall not be considered a breach of this Agreement or failure to fulfill its duties if Customer, in good faith, disputes a charge or payment obligation.

This Agreement shall automatically terminate upon the expiration of the Term. Prior to expiration of the Term, the parties shall have the opportunity to negotiate for renewal of the Agreement. If no agreement is reached regarding renewal of the Agreement, the Agreement will terminate at the expiration of the Term.

Upon termination or any time before termination, Consultant shall follow Customer instructions regarding return and deletion of Customer data at Consultant's own cost, and shall not refuse to return or delete Customer data regardless of any open times or any disputes, including but not limited to, payment obligations, arising under this Agreement.

Upon termination, Consultant shall not access Customer systems except to comply with Customer requests to assist in transition to a subsequent service provider or wind up the Services.

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SECTION 8 Insurance

Consultant shall procure and maintain for the duration of the contract and for 2 years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California, and Employer's Liability Insurance.
4. Professional (Errors and Omissions) Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage shall include contractual liability.
5. Cyber insurance appropriate to cover the costs of a data breach, including costs associated with investigating, addressing, and responding to a data breach. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant in this agreement, and shall include, but not be limited to claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence and **\$2,000,000** in aggregate (including operations, products and completed operations) for bodily injury, personal and property damage.

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|----|---|--|
| 2. | Automobile Liability: | \$1,000,000 per accident for bodily injury and property damage. |
| 3. | Employer's Liability Insurance | \$1,000,000 per accident for bodily injury and property damage. |
| 4. | Errors and Omissions Liability:
Limits | \$1,000,000 per claim and \$2,000,000 in the aggregate. |
| 5. | Cyber Insurance | \$1,000,000 per occurrence or claim, and \$2,000,000 in the aggregate. |

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after prior written notice has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Capitola** for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

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Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SECTION 9 Indemnification

For General Services: To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its directors, officers, employees from and against any and all claims, demands, actions, liabilities, damages, judgments, or expenses (including attorneys' fees and costs) arising from the acts or omissions of Consultant's employees or vendors, subcontractors, or third parties in any way related to the obligations or in the performance of services under this Agreement, except for design professional services as defined in Civil Code § 2782.8, and except where caused by the sole gross negligence, or willful misconduct of the City.

For Design Professional Services under Civil Code §2782.8: To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its directors, officers, and employees from and against any and all claims, demands, actions, liabilities, damages, or expenses (including attorneys' fees and costs) arising from the negligence, recklessness, or willful misconduct of the Consultant, Consultant's employees, or vendors, subcontractors, or third parties in any way related to the obligations or in the performance of design professional services under this Agreement as defined in Civil Code §2782.8, except where caused by the sole gross negligence, or willful misconduct of the City. The costs to defend charged to the Consultant relating to design professional services shall not exceed the Consultant's proportionate percentage of fault per Civil Code §2782.8 and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Consultant, Consultant's employees, vendors, subcontractors, or third parties, except where caused by the sole gross negligence or willful misconduct of the City.

SECTION 10 Civil Rights Compliance/Equal Opportunity Assurance

Every supplier of materials and services and all consultants doing business with the City of Capitola shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, consultant shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. Consultant agrees to abide by all of the foregoing statutes and regulations.

SECTION 11 Legal Action/Attorneys' Fees/ Choice of Law/ Venue

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to its attorney's fees and costs in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Consultant and the City. For any disputes related

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to or arising from this Agreement, venue shall be in the Superior Court of the State of California in the County of Santa Cruz.

SECTION 12 Assignment

This Agreement shall not be assigned without first obtaining the express written consent of the Director after approval of the City Council.

SECTION 13 Amendments

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Consultant. Consultant acknowledges that no such amendment shall be effective until approved and authorized by the City Council, or an officer of the City when the City Council may from time to time empower an officer of the City to approve and authorize such amendments. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Appendix Two. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, Consultant's compensation shall be limited to that set forth in Appendix Two.

SECTION 14 Vendor Equipment

1. **Effective date.** This equipment Agreement is effective as of the Effective Date and shall remain in full force and effect for the Term.
2. **Vendor Equipment.** Vendor agrees to deliver to Customer and Customer agrees to receive, on loan, the equipment, supplies, or other materials (including any spare or maintenance parts hereafter provided) (the "Vendor Equipment") further set out on Appendix 2 or any approved SAPA's.
3. **Taxes.** Vendor shall, at Customer's expense provided Vendor obtains Customer's prior written consent, report, pay, and discharge, when due, any taxes, license or registration fees, however designated or levied, relating to the Vendor Equipment or its use during the Loan Period.
4. **Title.** Title to the Vendor Equipment shall remain vested in Vendor. Nothing in the Agreement shall be construed as conveying to Customer any right, title, or interest in the Vendor Equipment, except as a borrower and only for the limited purpose set forth herein. At Vendor request, Customer shall join with vendor in executing any financing statements regarding the Vendor pursuant to the Uniform Commercial Code. Customer shall, to the extent it is able with commercially reasonable efforts, keep the Vendor Equipment free and clear of all levies, liens, and encumbrances and shall in no event treat Vendor Equipment as a Customer Asset.
5. **Use, Maintenance, and Repair of the Vendor Equipment.** While in Customer's possession, Customer shall use the Vendor Equipment in a reasonable and ordinary manner, shall make all logical and earnest attempts to keep the Vendor Equipment safe, secure and protected, and shall comply with all applicable laws and regulations relating to its possession and use. Customer agrees that it shall not, directly or through a third party, attempt to repair or service, or tamper with, the Vendor Equipment, unless Vendor provides prior written consent.

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6. **Delivery or Loss.** Customer acknowledges and agrees that it will bear all risk of loss or damage to the Vendor Equipment once delivered to Customer or its agent. Customer's liability for physical loss or damage to the Vendor Equipment shall automatically terminate upon Customer's delivery (or Vendor's retrieval) of the Vendor Equipment except in the same condition initially provided, except for ordinary wear and tear. For physical loss of or damage to the Vendor Equipment caused by Customer's negligent or intentional acts or omissions, Customer agrees that it is obligated to reimburse Vendor in an amount equal to the replacement cost as of loss date.

7. **Location of Equipment.** Customer shall maintain the Vendor Equipment at Customer's site and shall not relocate any Vendor Equipment without the prior written consent of Vendor.

8. **Surrender.** Upon the expiration or termination of the Agreement, Customer shall return all Vendor Equipment to Vendor in good physical repair and physical condition with the exception of ordinary wear and tear resulting from proper and ordinary use. Customer agrees to cooperate fully with Vendor's efforts to retrieve the Vendor Equipment upon any such expiration or termination and agrees that Vendor may take possession of the Vendor's Equipment with notice to Customer wherever the Vendor Equipment may be located, without any court or other process of law.

SECTION 15 Miscellaneous Provisions

1. **Project Manager.** Director reserves the right to approve the project manager assigned by Consultant to said work. No change in assignment may occur without prior written approval of the City.

2. **Consultant Service.** Consultant is employed to render the Services only and any payments made to Consultant are compensation solely for such Services.

3. **Licensure.** Consultant warrants thereby represents that he or she has an established trade, occupation, or business in the same nature of services Consultant is performing under this Agreement. Consultant warrants that he or she has complied with any and all applicable governmental licensing requirements.

4. **Other Agreements.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.

5. **City Property.** Upon payment for the work performed, or portion thereof, all drawings, specifications, records, or other documents generated by Consultant pursuant to this Agreement are, and shall remain, the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the City's use and/or occupancy of the project. The drawings, specifications, records, documents, and Consultant's other work product shall not be used by the Consultant on other projects, except by agreement in writing and with appropriate compensation to the City.

6. **Consultant's Records.** Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Consultant's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Consultant's services.

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7. *Independent Contractor.* In the performance of its work, it is expressly understood that Consultant, including Consultant's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Consultant shall not be considered an employee of the City for any purpose. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee of the City.

8. *Conflicts of Interest.* Consultant stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Consultant's work product prepared pursuant to this Agreement.

9. *Preservation Notices and PRA Requests.* Consultant shall cooperate with Customer in preserving all Customer's data pursuant to any legal or litigation hold, or to comply with a Public Records Act request Customer may receive.

10. *Notices.* All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

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CITY
CITY OF CAPITOLA
420 Capitola Avenue
Capitola, CA 95010
831-475-7300

CONSULTANT
Name Exceedio Inc.
Address 5900 Butler Lane #205
Phone Scotts Valley, CA 95066

By: _____
Benjamin Goldstein, City Manager

DocuSigned by:
By: *Mat Gafke*

Mat Gafke President

Dated: _____

Dated: 3/17/2022

Approved as to Form:

Samantha W. Zutler, City Attorney

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APPENDIX ONE Scope of Services

Infrastructure as a Service – The Network – Included

- Firewall device and protection services
- Network switching backbone multi VLAN
- Wireless access system multi VLAN
- Wan / ISP Monitoring

Platform as a Service – The Server(s) – Included

- Microsoft Server 2016/2019
- Azure Hosted Server systems
- High speed SSD disk systems
- Enterprise server configurations

IT as a Service - The Support Desk – Included

- User Account Administration
- Server Administration
- Printer Management
- Performance Monitoring
- Drive Space Monitoring
- Error & Event Log Monitoring
- Application & Database Monitoring
- Network Firewall & ISP Monitoring
- Microsoft Patch Management
- Antivirus License & Management
- Antispyware License & Management
- Backup Monitoring & Administration
- VPN Setup and Administration
- Security Administration
- Asset Inventory

Software as a Services – The Applications

- Azure Virtual Server Host System Local – Microsoft 2019 Hyper V – Included for City
- Azure Virtual Operating Systems Local – Included for City

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Remote Response Times and Resolution Times

Normal Business Support Hours: 8:00am to 5:00pm Monday through Friday - Time Zone: PST

Priority	Issue	Response Time Normal	Response Time After Hours
1	Major outage, affects all users	60 minutes	60 min / \$145 per hour
2	Significant service problem, affects business critical	90 minutes	90 min / \$145 per hour
3	Limited problem, business can continue	Next business Day	90 min / \$145 per hour

Support Request and Escalation for managed IT assets

- Support tickets initiated by Customer via e-mail, telephone, or online ticketing system
- Tickets are created within Vendor and acknowledged to Customer, documenting the issue and priority
- Escalation is handled through service desk system, user class and by ticket category
- Customer will be informed of ticket status changes by phone or e-mail
- Ticket closure will be based on Customer's satisfaction of completion
- Support is provided remotely, client will provide staff resource for hands and eyes
- Onsite work is scheduled through service coordinator and is billable unless is related to HaaS Device
- Any hardware or software changes will be documented using Vendors change management system

Service Coverage and Exclusions

1. Technical Standards:
 - a. All servers, laptops and desktops to be patched using Vendors management system.
 - b. All servers and desktops to be running using a legal and current (supported) copy Windows
 - c. Only legal software is to be installed on any devices supported by Exceedio
 - d. All machines will be standardized to support only those applications required by the business. Once a machine is standardized, it will be locked down so no modifications can be made by anyone. Requests for modifications can be submitted to the help desk and reviewed on an as needed basis.
2. Audit Standards: on a quarterly basis, vendor will:
 - a. Provide Active directory report for verifying users, computers, security groups and distribution groups
 - b. Provide O365 Active license report
 - c. Provide Active Asset report
 - d. Provide WAN/LAN Security report
3. Prior to dispatching on-site, vendor will:
 1. We will work with the Single Point of Contact (SPOC), a staff member you designate.
 2. The SPOC will act as the eyes and hands of our engineer if needed.
 3. Service coordinator will seek budget approval for on-site work
4. Hardware repairs are covered for all requests and tasks executed on CUSTOMER machines holding a valid manufacturers or extended warranty.

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Lifecycle Management

Active IT assets will be managed by Vendor throughout the lifecycle. This will include infrastructure items such as router, switches, access points, workgroup printers, servers, data storage devices, backup devices as well as end user desktops, and laptops.

- Purchase of equipment and systems for Customer will be quoted and approved by Customer's Management.
- Asset list will be maintained in real time to keep track of equipment and software systems
- Maintenance contracts must be active on all devices and software
- Recommended and implement patches in a timely manner.
- Backups performed regularly and before any major changes or server patching
- End of support and end of life dates will be known and planned around
- Retirement and removal includes notifying Customer and destroying Customer data after one year, but in any event following Customer instructions regarding Customer data deletion and return.

Proactive Monitoring

Vendor will setup monitoring, alerting, and reporting capabilities as follows:

- Server disk space
- Server availability, memory, CPU
- Server Logs (Critical and Error)
- Server UPS events
- Network availability of LAN and WAN
- Services considered critical: DNS, DHCP, Switches, Wi-Fi, File Services.

Backups

Data backups will be performed using Vendors system if purchased. The standard also calls for periodic testing of backup recovery to ensure that backup and recovery methods work properly should the need arise.

Backup System	Datto Enterprise or Microsoft Azure
Data Retention Period	One year or longer based on City requirements
Offsite Storage Approach	Cloud
Data not covered by backup	Servers and selected desktop

Service Reviews Periodically, we would like to review the service. At a high level: the agenda would include:

- Review Business Objectives
- Service Desk: Incident Management and Service Request Performance
- All services: Availability, uptime/downtime, Change Orders

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- Compliance with policies for licensing, anti-virus, patching
- Billing, IT Road Map and Planned Expenditure
- Planning, referencing budget and maturity model
- Continuous Improvement Targets
- Single Point of Failure and risk and mitigation review

What Is Not Covered

- Parts and labor are not covered for machines or applications owned by CUSTOMER that do not have a valid manufacturer warranty or 3rd party support contract.
- Any hardware and/or software product support proving to be unreliable, and problematic may need to be replaced if it needs to be supported by Exceedio. We will review unreliable and problematic machines as needed, or during our regular review meetings.
- Rollouts or installation of new software, PC's, laptops, servers, printers, network devices, prototypes of devices not previously in use at CUSTOMER, capital projects and other items not specifically mentioned here, are not covered under this agreement. These items will be budgeted under separate Quote or SOW, as needed, with separate approvals required.
- Coverage will not be provided on national holidays, weekends and after hours unless specifically requested. We will prepare a separate budget in response to your request for additional services outside the scope of this agreement.
- Exceedio reserves the right to bill for labor incurred during a server recovery on CUSTOMER owned devices that are not listed on the SAPA with Backup and Disaster Recovery services.

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IT Support Agreement Coverage Check List				
		Yes	No	Comment
Telephony	Moves, Adds and Changes		X	
	Systems Documentation / Configuration Management & Backup / Asset Management / Lifecycle Management / Capacity Planning / Maintenance Agreement Management		X	
	3rd party (including carrier) support management, maintenance agreement and interaction		X	
Video Conferencing	Configuration Management / Asset Management / Lifecycle Management / Maintenance Agreement Management		X	
	Directory Management		X	
Email	Administration of mailboxes and distribution lists	X		
	Spam service management	X		
Systems Management	Database and Application Systems Maintenance and Support		X	
	List specific DB's and app's here: NONE		X	
			X	
	Server Printer Management	X		
	Systems Documentation	X		
	Configuration Management	X		
	Asset Management	X		
	Lifecycle Management	X		
	Capacity Planning	X		
	Maintenance Agreement Management	X		
Patch Management	X			
Devices and Applications	Local Users listed in service desk system	X		
	Desktops and Laptops <ul style="list-style-type: none"> - Antivirus and encryption, and infection clean-up - Configuration and Asset Management - Maintenance Agreement Management - License Management within Customer policy - Remote Access Solutions / Server Gateways - User Backup (must be called out by device) - Desktop UPS Replacement 			Customer manages PC's and users
	Smartphones and Tablets <ul style="list-style-type: none"> - Patch Management for Smartphones using MDM - Configuration Management / Asset Management/ Lifecycle 		X X	Customer manages phones.
Infrastructure	Active Directory <ul style="list-style-type: none"> - Manage Adds / Moves and Changes 	X		
	Servers <ul style="list-style-type: none"> - Disk Space Monitoring - SAN / NAS Drive monitoring / hot swapping - Availability / Server Health Monitoring - Preventative Maintenance Processes - Performance Monitoring and Summary Reporting - Systems Documentation / Configuration Management 	X X X X X X		

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IT Support Agreement Coverage Check List				
		Yes	No	Comment
	<ul style="list-style-type: none"> - Asset Management / Lifecycle Management - Capacity Planning / Maintenance Agreement Management - Patch Management - License Management - AntiVirus Management - Backup and Restore (proactive and reactive) - UPS Configuration 	X X X X X X X		Azure - City
Infrastructure	Firewall <ul style="list-style-type: none"> - Hardware and on-site replacement 	X		
	Routers / Switches / WIFI <ul style="list-style-type: none"> - Availability / Health Monitoring - Preventative Maintenance - Systems Documentation / Configuration Management - Backup / Asset Management / Lifecycle Management - Maintenance Agreement Management - Capacity Planning / Patch Management - HaaS Device On-Site replacement 	X X X X X X X		
	WAN / Internet connection <ul style="list-style-type: none"> - Carrier Negotiation - Availability / Performance Monitoring - Capacity Planning - Troubleshooting 	X X X X		
	Server UPS <ul style="list-style-type: none"> - Asset Management / Lifecycle Management - Capacity Planning / Maintenance Agreement Management - Device On-Site replacement if client owned 	X X	X	

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APPENDIX TWO Fees and Payments

Exceedio Managed Services are billed on the number of physical hardware assets and software products we are asked to Manage. Exceedio core services are billed monthly and due in advance.

This Service and Payment Agreement dated 3/15/2022 is made between ("Customer") listed above and Exceedio Inc.

Customer agrees to purchase Services listed below from Exceedio on a monthly basis. This Agreement is subject to the provisions regarding termination set forth in the Agreement.

Projected monthly fee of \$5,476.62. Invoice amount may vary depending on number of active assets.

Service Description - Price List	Qty	Cost	Total
1211 - EMS ITaaS Network Site - 420/422 Capitola	1	299.00	299.00
1211 - EMS ITaaS Network Site - Jade, Kennedy, Mall	3	99.00	297.00
1213 - EMS ITaaS Server Device - City (2) PD (6)	8	199.00	1,592.00
1379 - EMS HaaS Cisco Advanced Firewall MX85 - Capitola	1	109.00	109.00T
1377 - EMS HaaS Cisco Advanced Firewall MX64 - Jade	1	59.00	59.00T
1392 - EMS HaaS Cisco Advanced Switch 8 Port L2	2	17.00	34.00T
1394 - EMS HaaS Cisco Advanced Switch 48 Port POE L3	1	92.00	92.00T
1393 - EMS HaaS Cisco Advanced Switch 24 Port POE L2	4	54.00	216.00T
1394 - EMS HaaS Cisco Advanced Switch 48 Port POE L2	5	72.00	360.00T
1371 - EMS HaaS Ruckus Enterprise Access Point	6	39.00	234.00T
1324 - EMS HaaS Dell Server R550 Host VM's 14TB with licenses	2	313.00	626.00T
1325 - EMS HaaS Dell Server NX440 Host Storage 24TB	1	128.00	128.00T
1640 - MS Azure SaaS Networking	1	250.00	250.00
1610 - MS Azure SaaS Virtual Machine(s)	1	305.00	305.00
1630 - MS Azure SaaS Backups - Daily 30 days	1	530.00	530.00
1751 - MS Azure Server Standard Processor 8 Core Pack	2	22.00	44.00
1549 - EMS SaaS Anti Virus System	84	1.60	134.40
1101 - EMS Waived Fee for In-Service, early return, and deinstallation per year	5	7,088.00	35,440.00
1100 - EMS Waived services with 5 year agreement		-100.00%	-35,440.00
Sales Tax		9.00%	167.22

Capitola City Council

Agenda Report



Meeting: March 24, 2022

From: Department of Public Works

Subject: Notice of Completion City of Capitola 2021 Road Repair Project

Recommended Action: 1) Approve Change Order #2 for extra work in the amount of \$41,402; 2) Approve a notice of completion for the City of Capitola 2021 Road Repair Project constructed by the McKim Corporation at the final cost of \$153,34; and 3) Authorize the release of the contract retention of \$7,667 as prescribed in the contract.

Background: In June 2021 City Council approved a list of streets for pavement resurfacing. Staff divided the scope of work into two phases. The first phase was the 2021 Road Repair Project, which involved removing and replacing the most structurally deficient sections of roadway. The second phase will be completed in coordination with the County of Santa Cruz as part of the 2022 Measure D Project. The roads addressed in these projects include all of Ruby Court, Diamond Street, Bay Avenue, Fanmar Way, and portions of Capitola Road.

On October 14, 2021, City Council approved the plans, specifications, and construction estimate for the 2021 Road Repair Project and authorized advertising for construction bids with an approved budget of \$135,380. Following this approval, the project was advertised, and bids were received on Wednesday December 8, 2021. The low bid received was less than the approved budget and did not require any additional action from Council.

Discussion: Construction of the project was completed in January and February 2022. During construction of the failed roadway sections on Diamond Street a thicker section of repair was required due to the amount of damage caused by tree roots. Additional areas of failed roadway were also added to the project on Fanmar Way, Terrace Way, Bay Avenue, and Capitola Road. At the direction of staff these areas were added to the scope of work and resulted in an increase of approximately 3,000 square feet to the originally planned 5,300 square feet. This additional work increased the amount of asphalt used on the job by 90 tons at a cost of \$41,401.74. This addition to the scope of work is captured in Change Order #2 (Attachment 2)

Fiscal Impact: The funding for both phases of this project come out of the Pavement Management Plan budget. The final project funding and expenditures are as follows:

Funding:

SB 1 RMRA funds	\$ 386,802
RTC Measure D	\$ 500,000
RTIP	\$ 505,264
Total	\$1,392,066

Budgeted Expenses:

2021 Road Repair Project	\$ 135,380
2022 Road Resurfacing	\$ 385,000
Clares Street Project	\$ 570,000
Total	\$1,090,380
Fund Balance	\$301,666

Realized Expenses:

2021 Road Repair Project	\$ 153,345 – final costs
2022 Road Resurfacing	\$ 428,699 – approved agreement with County
<u>Clares Street Project</u>	<u>\$ 570,000 – funding portion of larger project</u>
Total	\$1,152,044
Fund Balance	\$ 240,002

Staff anticipates some, or most, of this remaining fund balance will be needed for the Clares Street project. The plans and specifications for this project are 95% complete and the project is anticipated to go to bid this Spring.

Attachments:

- 1. Change Order #2
- 2. Notice of Completion
- 3. Project Cost Summary

Report Prepared By: Kailash Mozumder, Public Works Project Manager

Reviewed By: Chloé Woodmansee, City Clerk; Steven Jesberg, Public Works Director

Approved By: Jamie Goldstein, City Manager

CITY OF CAPITOLA
DEPARTMENT OF PUBLIC WORKS
CONTRACT CHANGE ORDER

Project: 2021 Road Repair Project Change Order No. 2

Contractor: McKim Corporation Date: February 21, 2022

Scope of Work or Change: Additional 90 Tons of asphalt associated with increased work areas located on Bay, Fanmar, and Capitola Rd. Additional work was completed at the contract unit price.

Table with 5 columns: Description, Add/Subtract, Unit, Change in price, Notes. Row 1: CO2 - 90 Extra tons, Bid Item 5, Add, LS, \$41,401.74. Row 2: Total, \$41,401.74.

This Change Order will [X] increase the contract amount by \$ 41,401.74
[] decrease
[] not change

and is based on [] Agreed lump sum/unit price proposal.
[X] Contract unit prices.
[] Cost plus 15 percent (Force Account)

NOTE: Approval of this Change Order by the Contractor constitutes agreement as to the final compensation for the scope of work listed in accordance with Section 4.03 of the Standard Specifications.

Approved for Contractor By: _____ Date: _____
Title: _____

Approved for City of Capitola By: _____ Date: _____
Title: Public Works Director

Summary of Amounts Payable Under Contract

Table with 2 columns: Description, Amount. Net effect of previous Change Orders: \$ 1,840.00. This Change Order: \$ 41,401.74. Net effect of all Change Orders: \$ 43,241.74. Original contract amount: \$ 110,103.20. New contract amount: \$ 153,344.94.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Capitola
Public Works Department
Attn: Steven Jesberg
420 Capitola Avenue
Capitola, California 95010

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS INSTRUMENT IS BEING RECORDED FOR THE BENEFIT OF THE CITY OF CAPITOLA
NO RECORDING FEE IS REQUIRED PURSUANT TO GOVERNMENT CODE §27383

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN that the City of Capitola, owner of the property hereinafter described, whose address is 420 Capitola Avenue, Capitola, California, has caused a work of improvements more particularly described as follows:

PROJECT NAME: City of Capitola 2021 Road Repair Project

PROJECT DESCRIPTION: Curb, gutter, and pavement improvements

to be constructed on property more particularly described as follows:

DESCRIPTION: Construction of road repairs to six (6) City streets (Bay Ave, Capitola Rd, Diamond St, Fanmar Way, 42nd Ave, and Ruby Ct) with curb and gutter repair on Diamond St.

ADDRESS: N/A

APN: N/A

The work of the improvement was completed by:

CONTRACTOR: McKim Corporation

ADDRESS: 60 W. 4th St., #210, Gilroy, CA 95020

The work of the improvements was actually completed on the 18th day of February 2022 and accepted by the City Council of said City on the 24th day of March 2022.

Signature of City Official: _____

The undersigned certifies that he is an officer of the City of Capitola, that he has read the foregoing Notice of Completion and knows the content thereof; and that the same is true of his own knowledge, except as to those matters which are therein stated on information or belief, and as to those matters that he believes to be true. I certify under penalty of perjury that the foregoing is true and correct. Executed at the City of Capitola, County of Santa Cruz, State of California.

Public Works Director: _____ Date: _____
Steven E. Jesberg

Project Title: City of Capitola 2021 Road Repair Project
Bid Opening: December 8, 2021

Item	Description	Unit	Bid Quantity	Actual Final Quantity	Difference	Unit Cost	Final Cost	Difference
1	Traffic Control	LS	1	1	0	\$8,515.20	\$8,515.20	\$0
2	Mobilization	LS	1	1	0	\$10,800.00	\$10,800.00	\$0
3	Temporary Water Pollution Control	LS	1	1	0	\$2,000.00	\$2,000.00	\$0
4	Tree Root Removal	EA	5	5	0	\$300.00	\$1,500.00	\$0
5	4-inch asphalt remove and replace	TON	133	223	90	\$460.02	\$102,584.46	\$41,402
6	Curb & Gutter remove and replace	LF	284	284	0	\$91.92	\$26,105.28	\$0
7	Added Excavation	LS			\$1.00	\$1,840	\$1,840	\$1,840

Sub - Total	\$153,345	\$43,242
5% Retention	\$7,667	

Summary	
Original Bid:	\$110,103.14
Changes:	\$43,242
Final Cost:	\$153,344.94

Capitola City Council

Agenda Report

Meeting: March 24, 2022

From: City Manager Department

Subject: Update on GreenWaste Recovery, Inc. Providing an Optional 35-gallon Organics Bin for Residential Customers



Recommended Action: Approve the addition of a \$0.74 per month charge to residential customers who opt to receive a 35-gallon organics bin in the GreenWaste Franchise Agreement.

Background: At the October 14, 2022, City Council meeting, City Council authorized the City Manager to enter into an amended and restated Franchise Agreement with GreenWaste Recovery, Inc. valid through 2030.

Included in the agreement was the addition of a 64-gallon yard waste and food scraps (organics) bin for all residential customers.

Since that time, it has become apparent the 64-gallon organics bin does not work for residential customers who have limited space. At the February 24, 2022, City Council meeting, this concern was discussed after a presentation by GreenWaste.

Discussion: GreenWaste is now able to offer 35-gallon organics bins to residential customers. Because this size was not included in the original agreement, GreenWaste must charge customers to pay for the purchase costs of 35-gallon organics bins. The charge for the 35-gallon organics bin will be \$0.74 per month. This charge is only for those customers requesting the 35-gallon organics bin, the 64-gallon organics bin is included in the current rates.

Fiscal Impact: No fiscal impact for the City. Customers will pay GreenWaste directly for this service.

Report Prepared By: Larry Laurent, Assistant to the City Manager

Reviewed By: Chloé Woodmansee, City Clerk

Approved By: Jamie Goldstein, City Manager

Capitola City Council

Agenda Report

Meeting: March 24, 2022

From: City Manager Department

Subject: Receive Update on Pandemic Response and Consider Adopting Proposed Resolution Allowing for the Continuation of Teleconferencing



Recommended Action: 1) Make the determination that all hazards related to the worldwide spread of the coronavirus (COVID-19) as detailed in Resolution No. 4168 adopted by the City Council on March 12, 2020, still exist and there is a need to continue action; and 2) Adopt the proposed resolution authorizing the City Council (along with the Planning Commission and all advisory bodies) to continue to conduct teleconferencing meetings.

Background: In December 2019, an outbreak of a respiratory illness linked to the novel coronavirus (COVID-19) was first identified. In March 2020, the State of California, the County of Santa Cruz, and the City of Capitola each declared a state of emergency due to the virus. Also in March 2020, the World Health Organization declared COVID-19 a pandemic.

State and local health officers issued health orders to stop the spread of COVID-19; in Santa Cruz County this included March, April, and May 2020 Shelter-In-Place orders that were more restrictive than statewide guidance. Since then, the County Health Officer has incorporated all Orders of the State Public Health Officer, which set baseline statewide restrictions on travel and business activities.

As of March 2, 2022, more than 6 million people worldwide have died of COVID-19. This is likely an undercount of all those that have died from the virus. There have been 465 million cases reported worldwide. At least 5.2 million children have lost a parent or caretaker due to the virus.

Since the beginning of the pandemic in the United States more than 968,663 people have died from the virus and more than 79.5 million COVID-19 cases have been reported. According to November 2021 reports, one in 500 children in the U.S. has lost a parent or caregiver to COVID.

Discussion: Since the beginning of the pandemic in California, 87,194 deaths due to COVID-19 have been reported; there is currently a daily average of 95 deaths a day, down from 174 two-weeks ago. According to data from March 18, 2022, the average new COVID-19 case count per 100k was 6.5 (down from 15.4 on March 2, 42.3 on February 17 and from 127.6 on February 4).

General Decline in Cases vs. Rising Cases in the U.K.

Since January, the County, State, and Country has seen a steady decrease in COVID-19 cases. However, it is uncertain this trend will continue indefinitely. In some European Countries, including the United Kingdom, cases have again climbed in the past several weeks. The increase in cases, seen in the U.K. and Germany in particular, comes after weeks of solid decline from the Omicron peak and may be due to a lack of COVID-19 restrictions (which were ended in recent weeks) and due to a subvariant of Omicron, known as BA.2, which is overtaking the original Omicron in many parts of the world.

On Tuesday, March 15, ABC Bay Area news reported that “in the last two weeks, the U.K. and other parts of Europe are reporting a spike in COVID-19 cases due to an Omicron sub-variant, which is believed to be 30% more transmissible than the initial strain.” The report went on to

explain that the past two years have shown that “what happens in Europe with COVID, tends to happen in the U.S. four to six weeks later”.

Local Case Numbers and Statistics in Santa Cruz County

On February 17, the total known case count was at 45,272 with 4,115 active cases.

On March 3, the total known case count was at 46,601 with 1,433 active cases.

Now on March 18, the total known case count is at 47,308 with 717 active cases, and an average case count per 100k of 13.8 in Santa Cruz County.

While it appears that Santa Cruz County experienced an intense Omicron surge like the rest of the Country, the County has peaked locally and has been seeing steadily decreasing cases, though not at as fast a rate of other places in the State.

Over the past two weeks, two County residents have been lost to COVID, bringing the total deaths due to COVID-19 count to 256.

Changes to State Mask Mandate

On February 28, the California Department of Public Health updated its guidance on facial coverings. There are no longer distinctions regarding vaccination status in the masking guidance.

Everyone is required to wear masks in:

- Public transit and in stations, terminals, and airports
- Healthcare settings
- Emergency shelters and cooling and heating centers
- State and local correctional facilities and detention centers
- Homeless shelters
- Long-term care settings and adult and senior care facilities

Masks are strongly recommended for everyone in:

- Indoor public settings (now including K-12 schools and daycare, since March 12)
- Retail
- Restaurants
- Theaters
- Family entertainment centers
- Meetings
- State and local government offices that serve the public

The U.S. Government is giving out free N95 masks to those that need them. Each person is eligible for three masks, and masks will be available at community health centers, pharmacies, and other stores. Locally, Walgreens and CVS are currently distribution points.

At-home tests are now more readily available at many drug stores. Four free rapid antigen at-home tests are also available for all residents, provided by the federal government. Shipments are limited per household, and you can sign up for your free delivery through the United States Postal Service with this link: <https://special.usps.com/testkits>. Tests are generally delivered within a week-and-a-half of ordering.

City Hall Operations

City Hall has been open to the public since June 2020 in one configuration or another, dependent upon applicable health guidance and local COVID-19 case levels. Now that the Omicron surge is seemingly on a decline, Staff has returned to the COVID-default setup, with the lobby open to one member of the public at a time.

Virtual/Teleconferencing Meetings & In-Person Meetings

The Governor signed Assembly Bill 361 on September 16, 2021. The Bill allows cities to continue virtual meetings (much as Capitola City Council Meetings function now) as long as the state is under a proclaimed state of emergency; through 2024 when the bill will sunset. The Bill requires legislative bodies to comply with the requirements set forth in Government Code section 54953(e)(2) to ensure the public can safely participate and observe local government meetings. One of the requirements is for Council to adopt findings every thirty days.

Attached is a resolution that makes the following findings:

- 1) Find that current conditions authorize teleconference public meetings, based on the Governor's state of emergency regarding the COVID-19 Pandemic
- 2) Authorize legislative bodies to conduct teleconference meetings, allowing Capitola City Council, Planning Commission, and other advisory bodies to continue to meet using Zoom.

On the General Government section of the agenda this evening, Council will review options and provide feedback regarding conducting teleconferencing, in-person, or hybrid meeting types in the coming weeks/months.

Fiscal Impact: Fiscal impacts are continually reviewed by Staff as business restrictions and consumer behaviors change in our community. In addition, the City Council has set aside \$600,000 to help ensure the City has available resources should the pandemic result in further unforeseen impacts, which remains in the approved FY 2021/22 Budget.

Attachments:

1. Proposed Teleconferencing resolution

Report Prepared By: Chloé Woodmansee, City Clerk

Approved By: Jamie Goldstein, City Manager

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA AND ON BEHALF OF COMMISSIONS AND COMMITTEES CREATED BY THE CITY COUNCIL PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 54952(b) AUTHORIZING TELECONFERENCE MEETINGS IN COMPLIANCE WITH AB 361 (GOVERNMENT CODE SECTION 54953(e)) TO CONTINUE TO ALLOW MEMBERS OF THE PUBLIC TO SAFELY PARTICIPATE IN LOCAL GOVERNMENT MEETINGS

WHEREAS, the City Council is committed to ensuring public access to observe and participate in local government meetings; and

WHEREAS, all meetings of the City Council and other legislative bodies created pursuant to Government Code Section 54952(b) are open and public, as required by the Ralph M. Brown Act, so that any member of the public may participate in local government meetings; and

WHEREAS, the recently adopted AB 361, codified at Government Code section 54953(e), makes provisions for remote teleconferencing participation in local government meetings, without compliance with the requirements of 54953(b)(3), during a Governor-proclaimed state of emergency and if the local legislative body determines, by majority vote, that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, and

WHEREAS, on March 4, 2020, Governor Newsom proclaimed a State of Emergency due to the outbreak of respiratory illness due to a novel coronavirus (now known as COVID-19) and that State of Emergency is still in effect in the State of California; and

WHEREAS, on March 12, 2020, the Capitola City Council proclaimed the existence of a local emergency due to the worldwide spread of the coronavirus with Resolution No. 4168, pursuant to Section 8.08.020 of the Capitola Municipal Code and Section 8625 of the California Emergency Services Act in response to the COVID-19 pandemic; and

WHEREAS, COVID-19 continues to threaten the health and lives of City residents; and

WHEREAS, the SARS-CoV-2 Delta Variant (Delta Variant) is highly transmissible in indoor settings; and

WHEREAS, on July 28, 2021, the California Department of Public Health issued guidance calling for the use of face coverings and stating that the Delta Variant is two times as contagious as early COVID-19 variants, leading to increasing infections, the Delta Variant accounts for over 80% of cases sequenced, and cases and hospitalizations of COVID-19 are rising throughout the state; and

WHEREAS, the Delta Variant has caused, and will continue to cause, conditions of imminent peril to the health safety of persons within the City; and

WHEREAS, on October 14, November 23, and December 9, 2021, January 13, February 10, and February 27, and March 10, 2022, the City Council adopted a resolution proclaiming the need to meet by teleconference pursuant to Government Code Section 54953; and

WHEREAS, the City Council, acting as a legislative body pursuant to Government Code section 54952(a) and for the benefit of the commissions, committees and other bodies that were created by the City Council pursuant to Government Code section 54952(b) (collectively referred to as "Legislative Bodies"), finds that the current conditions meet the circumstances set forth in Government Code section 54953(e)(3) to allow Legislative Bodies to continue to use teleconferencing to hold open and public meetings if the Legislative Bodies comply with the

requirements set forth in Government Code section 54953(e)(2) to ensure the public can safely participate in and observe local government meetings.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Capitola that the City Council does hereby:

1. Recitals. The Recitals set forth above are true and correct and are hereby incorporated by this reference.
2. Find that Current Conditions Authorize Teleconference Public Meetings of Legislative Bodies. The City Council has reconsidered the circumstances of the state of emergency and finds that based on the California Governor's continued declaration of a State of Emergency and current conditions, meeting in person would present imminent risks to the health or safety of attendees, such that the conditions continue to exist pursuant to Government Code section 54953(e)(3) to allow Legislative Bodies to use teleconferencing to hold public meetings in accordance with Government Code section 54953(e)(2) to ensure members of the public have continued access to safely observe and participate in local government meetings.
3. Authorize Legislative Bodies to Conduct Teleconference Meetings. The Legislative Bodies are hereby authorized to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e)(2) and other applicable provisions of the Brown Act.

I HEREBY CERTIFY that the foregoing resolution was PASSED and ADOPTED by the City Council of the City of Capitola on the 24th day of March 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Sam Storey, Mayor

ATTEST: _____
Chloé Woodmansee, City Clerk

Capitola City Council

Agenda Report



Meeting: March 10, 2022

From: City Manager Department

Subject: Consider Request to Fly “Thin-Blue Line” Flag during National Police Week in Accordance with Policy V-18: Outdoor Display of Governmental and Non-Governmental Flags on City Property

Recommended Action: Deny request.

Background: This item was on the agenda for the March 10, 2022, City Council meeting. In response to the requester asking for the item to be continued, Council voted to continue the item to the next regular City Council meeting on March 24, 2022. In the interim, the Capitola Public Safety and Community Services Foundation discussed the matter during its regular meeting on March 15, 2022. A motion to recommend City Council approve the request to fly the Thin-Blue Line flag during National Police Week was defeated with six “nay” and five “yea” votes.

The following material was originally published in the March 10, 2022, Capitola City Council meeting agenda packet.

On May 27, 2021, City Council adopted Policy V-18: Outdoor Display of Governmental and Non-Governmental Flags on City Property. Section IV: Non-Governmental Flag Procedure states that:

“Any person wishing for the City to display a Non-Governmental flag that is not on the “Approved Non-Governmental Flags List” ... must submit a request to the City Manager’s office. Requests should be submitted at least 60 days in advance of the first date on which the flag is requested to be flown. The request must include a photograph and dimensions of the flag, and the dates on which the flag is requested to be flown. The City Council shall determine whether the request will be granted, denied, or granted in part.”

Discussion: On February 2, 2022, a member of the public submitted a flag request to the City Manager. That request was forwarded to City Council on February 3. In summary, the request is for the City to fly the “Thin Blue Line Flag” (Flag) during National Police Week, which is May 11 to May 16, 2022. The submitter writes that their intention is to fly the Flag in support of the Capitola Police and their job in protecting Capitola residents and the greater community.

National Police Week occurs every May as a collaborative effort of organizations dedicated to honoring American’s law enforcement community. Three primary organizers are responsible for the Week: the National Law Enforcement Officers Memorial Fund, the Fraternal Order of Police/Fraternal Order of Policy Auxiliary, and the Concerns of Police Survivors. The Week is generally dedicated to honoring fallen officers and supporting their families. The Thin Blue Line Flag is not officially associated with any of the three organizations and is not an official symbol of National Police Week.

The notion of the “thin blue line” can be traced back to 1854 and British battle formations. The idea of drawing a line between law/order and anarchy is the underlying sentiment of the commonly

used phrase, which was popularized by Los Angeles Police Chief William H. Parker in the 1950s. Chief Parker is remembered for, among other things, his controversial and problematic legacy¹.

The official Thin Blue Line Flag was designed in 2014 by the company Thin Blue Line, USA, which reports the Flag was designed and is sold to honor the work of law enforcement officers in the United States. The Flag is a black-and-white representation of the United State flag, with the sixth stripe in blue.

The Flag is also a meaningful symbol to some in law enforcement. However, the Flag has recently become controversial for a number of reasons. This is a complicated issue that can be emotionally charged for some people. Staff has attempted to include information here that gives an overview of different perspectives.

Supporters of the Flag

The Flag is regarded by some as a symbol of law enforcement, and a way to show support of the policing vocation, law enforcement community, and the sacrifice fallen officers and their families have made for their community. Imagery of a thin blue line is commonly used by the law enforcement community, and by others to indicate support of police and the unique community to which officers and their families belong. For some the thin blue line symbol honors the commitment officers make to their community and is seen as a symbol of police solidarity.

Association & Controversy of the Flag

Several sources argue the design of the Flag conflicts with the U.S. Flag Code², which forbids the desecration of the United States Flag; stating that, “The flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature”. The company website describes the design’s symbolism as “the black space above the blue line represents society, order and peace, while the black below, crime, anarchy, and chaos. The Thin Blue Line running between them, ‘law enforcement,’ keeps crime from pervading into society”. Ultimately, the American Legion, which helped draft the Flag Code, has not taken an official position regarding the Thin Blue Line Flag.

Academic publications by criminologists discuss how language and imagery such as the thin blue line can emphasize an “us versus them” mentality; creating a perceived barrier between police and those they are sworn to protect. This mentality challenges the very ideas of community policing, which Capitola Police Department is dedicated to³.

Since its creation eight years ago, the Flag has, in some high-profile cases, been displayed by extremist groups espousing white supremacist and anti-government beliefs; unfortunately, for some this is now a prominent connotation for the Flag. For those not in law enforcement and previously unfamiliar with thin blue line imagery and the Flag, this may be their only association. The Flag’s presence during the Insurrection on January 6, 2021, was so pervasive that it prompted a response from Thin Blue Line, USA, who issued the following statement: “We reject in the strongest possible terms any association of the flag with racism, hatred, bigotry, and violence. To use it in such a way tarnishes everything it and our nation stands for.”

Flag Request

¹ <https://www.sandiegouniontribune.com/news/public-safety/story/2020-07-06/the-thin-blue-line-the-complex-history-and-thoughts-behind-the-police-emblem>

² <https://www.police1.com/legal/articles/3-things-to-consider-before-you-raise-a-thin-blue-line-flag-yTymSYXUqtXZUOYi/>

³ <https://www.themarshallproject.org/2020/06/08/the-short-fraught-history-of-the-thin-blue-line-american-flag>

The community member states his request is to demonstrate support for our police officers, who stand ready to protect our community every day. The current Flag Policy was written and adopted to directly address how the American flag is flown to honor fallen officers if tragedy takes them from duty. The Policy outlines that when an officer or first responder working for a neighboring department is lost, the City's American flag will be flown at half-staff. Sadly, the City is currently observing this in honor of fallen Salinas Police Department officer Jorge Alvarado Jr.

Alternative Potential Actions

Staff understands the desire to honor our law enforcement personnel and the undeniable dedication they demonstrate to our community. To respond to the request, and avoid potentially alienating some members of community, staff researched the history of the Thin Blue Line flag, and alternatives that other jurisdictions have developed to better accomplish the goal of honoring our Capitola Police. An "In Memoriam Flag" (Attachment 2), designed by the National Law Enforcement Officers Memorial Fund, could be added to the Policy to be flown during National Police Week to directly support the central mission of National Police Week, honoring officers and their families who made the ultimate sacrifice for their community.

As another alternative, since the City is not required to display non-governmental flags on the City flagpole, Council could repeal the "Non-Governmental Flag Procedure" portion of Administrative Policy V-18 Flag Policy (Policy) and amend the Policy to indicate that only the California State and American flags shall be flown on the City flagpole. The purpose of including the Non-Governmental Flag section in the new Policy was to allow for the City to support and build community, and to allow for the flying of non-governmental flags approved by Council. However, if Council determines the Non-Governmental Flag Procedure section is problematic or vulnerable to controversy, it can be removed from the Policy.

Council can also grant the flag request, amending Policy V-18 to fly the Thin Blue Line Flag during National Police Week.

Fiscal Impact: None.

Attachments:

1. February 2, 2022, Flag Request
2. Image of National Law Enforcement "In Memoriam" Flag
3. Administrative Policy V-18: Flag Policy

Report Prepared By: Chloé Woodmansee, City Clerk; Samantha Zutler, City Attorney

Reviewed/Approved By: Jamie Goldstein, City Manager

TJ Welch
410 Escalona Drive
Capitola, CA 95010

February 2, 2022

VIA EMAIL ONLY (jgoldstein@ci.capitola.ca.us)

City of Capitola City Manager
Capitola City Hall
420 Capitola Avenue
Capitola, CA 95010

Dear Mr. Goldstein,

I am writing to formally request the addition of the flag representing law enforcement to the approved list of Non-Governmental Flags per the City Flag Policy Number: V-18, issued May 27, 2021.

The flag, also known as the “Thin Blue Line” flag has a long history throughout the world. According to Wikipedia, its origins begin in 1854 with the Scottish highlanders who wore red coats and were identified as the thin red line, which is now associated with firefighters. In 1922, Police Commissioner Richard Enright used the phrase and in the 1950’s, Los Angeles Police Chief Bill Parker popularized the term “thin blue line” in speeches and even a TV show called The Thin Blue Line. Chief Parker used the term to reinforce the role of LAPD. As he explained, the thin blue line, representing the LAPD, was the barrier between law and order and social and civil anarchy.

Today, like no other time, our law enforcement representatives need support from the communities they serve. One only needs to watch the one news cycle to see the chaos and lack of order when our police are not supported. We are in unprecedented times regarding the unprovoked killing of police officers killed in the line of duty. The City of Capitola has an opportunity to demonstrate their support for OUR police officers that stand ready to protect our community every day by adopting the law enforcement flag as part of the Non-Governmental Flag policy and flying that flag each year during National Police Week observed in May. This year national Police Week will be observed May 11-16, 2022.

On behalf of neighbors and friends in Capitola who appreciate our police officers, I am requesting the adoption of the law enforcement flag and the flying of that flag at City Hall during National Police Officer Week.

Flag Description: US Flag in black and white with a blue stripe on the 6th row from the bottom (picture attached).

Dimensions: 4' x 6'





APPAREL

BOOKS

COLLECTIBLES

IN MEMORIAM

POLICE WEEK

ome (product-list.php?) / (product-list.php?category_id=)

Flag Memorial 3 x 5 ft. with Grommets

Price: \$ 100.00

3' x 5' flag with grommets featuring the Memorial logo. Weatherproof construction.



Qty:

1

ADD TO CART

BACK

Check Balance

ADMINISTRATIVE PROCEDURE

Number: V-18
Issued: May 27, 2021
Jurisdiction: City Council

Outdoor Display of Governmental and Non-Governmental Flags on City Property

I. Purpose

The purpose of this administrative policy is to establish uniform policies to govern the flying of the United States and California flags (“Governmental Flags”) on City-owned flagpoles, and the flying of flags other than the United States and California flag (“Non-Governmental Flags”) as an expression of the City’s official sentiments on City-owned flagpoles. The City’s flagpoles are intended to serve as a forum for expression by the City, and not a forum for expression by the public.

II. Applicability

The City shall regularly fly, on official, City-owned flagpoles, the flags of the United States of America and the State of California, and Non-Governmental flags pursuant to this Policy. Nothing set forth in this Policy is intended to prohibit or curtail individuals from displaying a flag on private property under his or her control or wearing or carrying a flag. City employees must comply with City policy.

III. Half-Staff

National flags and/or the California flag on City-owned property shall be flown at half-staff upon order of the President of the United States, or authorization by the Governor of California or the City Council of the City.

National and/or California flags on City-owned property shall also be flown at half-staff upon the death of:

- A City Councilmember, past or present;
- A current City employee;
- A City retiree having served the City for 25 or more years;
- A public safety officer (police officer, Sheriff’s deputy, or firefighter) killed in the line of duty and employed by an agency in Santa Cruz County, San Mateo County, Santa Clara County, San Benito County or Monterey County; and
- A person whose accomplishments and contributions to the community demonstrated a significant commitment to the Capitola community, as determined by the City Manager and the Mayor.

In most of the above circumstances, flags will ordinarily be flown at half-staff as soon as practicable following the notification of a death, and for an additional 48 hours. For public safety officer line of duty deaths, the flag will fly at half-staff immediately from notification of death to sunset on the day of service/funeral.

IV. Non-Governmental Flag Procedure

Any person wishing for the City to display a Non-Governmental flag that is not on the “Approved Non-Governmental Flags List” below must submit a request to the City Manager’s office. Requests should be

submitted at least 60 days in advance of the first date on which the flag is requested to be flown. The request must include a photograph and dimensions of the flag, and the dates on which the flag is requested to be flown. The City Council shall determine whether the request will be granted, denied, or granted in part.

If the request is approved, this policy may be updated to include the approved flag, time when the flag shall be displayed, and approved flag image. If the request is not approved, it shall be deemed to have been denied and shall not be reconsidered for a period of six (6) months. The City Council’s determination shall be final and not subject to appeal.

Unless otherwise noted herein, or approved by the City Council, Non-Governmental flags shall only be flown at City Hall and, when raised, shall replace the flag of the State of California, not the flag of the United States.


If, while a Non-governmental flag is flying for its approved time, there is reason to fly flags at Half-Staff, the Non-governmental flag shall follow the same protocol as outlined above.

The City will take responsibility for obtaining and paying for any approved Non-Governmental Flags.


Nothing set forth in this Policy is intended to prohibit or curtail individuals from displaying a flag on private property under his or her control or wearing or carrying a flag. City employees must comply with City policy.

V. Approved Non-Governmental Flag List

The following flag(s) are approved for the following locations and time periods. The City Council may update this list at its discretion.

Flag	Location	Time Period	Approved Flag Image
LGBTQ+ Pride “Progress” Flag	City Hall	June 1 – June 30	

APPROVED:

DocuSigned by:

 D05A9A7B5900485

Jamie Goldstein, City Manager

Capitola City Council

Agenda Report



Meeting: March 24, 2022

From: City Manager Department

Subject: Eviction Moratorium and Housing Is Key Funding

Recommended Action: Receive report and direct staff to repurpose remaining \$105,000 in CDBG-CV funds toward rental assistance.

Background: At the March 10 City Council meeting, Council Member Bertrand requested a discussion item regarding evictions.

Discussion: On March 16, 2020, Governor Newsom signed Executive Order N-28-20, which permitted local governments to enact eviction moratoria to protect tenants from evictions for nonpayment of rent through May 31, 2020. Subsequent Executive Orders extended that deadline until September 30, 2020, for residential evictions. With these Executive Orders, the Governor suspended provisions of state law that restrict the power of local governments to impose prohibitions on evictions. Again, the Executive Orders that permitted local governments to enact eviction moratoria for residential tenants expired on September 30, 2020.

Thereafter, California Assembly Bill 3088 replaced local ordinances in providing eviction protections for residential tenants. The Bill took effect August 31, 2020, and was set to expire on February 1, 2021, but was extended by California Senate Bill 91, which was set the expiration as July 1, 2021. Subsequently, California Assembly Bill 832 extended eviction protections under certain circumstances until March 31, 2022¹.

The *Housing is Key Rental Assistance Program* covers 100% of unpaid rent and utilities for qualifying households. Anyone who has fallen behind on rent and is earning below the 80% of the Area Median Income (AMI) is eligible to apply. Priority is given to very low-income household with income below 30% AMI. According to the California COVID-19 Rent Relief Dashboard (https://housing.ca.gov/covid_rr/dashboard.html), less than half of the Housing is Key applicants in Santa Cruz County have received funds. Also, \$15.3 million of the \$17.8 million allocated to Santa Cruz County has been distributed, leaving only \$2.5 million in available funds countywide. In total, Santa Cruz County residents requested more than \$55.5 million in assistance from the Housing Is Key program.

In Capitola, 113 households applied and 50 have been served. The average household assistance in Capitola is \$14,379. City staff does not know if the remaining 63 unserved households have pending applications, failed to qualify, or moved. Staff has requested more information from the state on the 63 remaining households.

The City has received communication from several local nonprofit groups who provide aid to this community expressing concern that, when AB 3088 expires on March 31, individuals who have applied for, but not received funds, will be vulnerable to eviction.

In response, staff reached out to Santa Cruz County staff who indicated that on March 22, 2022, the County Board of Supervisors will be considering contract amendments with local partners to

¹ Prior to March 31, 2022, evictions of residential tenants for rental debt accumulated due to COVID-19 cannot proceed unless the landlord has applied for and been denied rental assistance funding to cover the rental debt.

administer additional services related to eviction protections. The County is proposing to designate approximately \$500,000 of one-time funding from existing grants and approved budgets that can be used for strategic investments in legal assistance and mediation, flexible finance assistance, tenant rights education and counseling, and brief housing-related problem solving and case management. These services would be available to Capitola residents.

Staff was notified by the California Department of Housing and Community Development (HCD) that they anticipate the Housing is Key Rental Assistance Program to end on March 31, 2022. While the program was in effect, local jurisdictions cannot use Community Development Block Grant (CDBG) funds to provide rental assistance programs to avoid the duplication of benefits. In the recent notification, HCD informed jurisdictions that CDBG grantees with funding awards for Emergency/Subsistence Payment Programs will be able to administer rental assistance once the Housing is Key Program ends.

The City currently has \$105,000 of CDBG-CV funds, including \$20,000 remaining in CDBG-CV1 funds of unutilized mortgage assistance and \$85,000 remaining in CDBG-CV2 funds from small business assistance. These funds may be repurposed for rental assistance for households not served through the state program. If directed by City Council, staff will return to Council at a future date with a proposed resolution to redirect the funds.

Fiscal Impact: None. If Council votes to redirect funds, existing CDBG grant funding will be used.

Attachments:

1. California COVID-19 Rent Relief Dashboard

Report Prepared By: Katie Herlihy, Director of Community Development

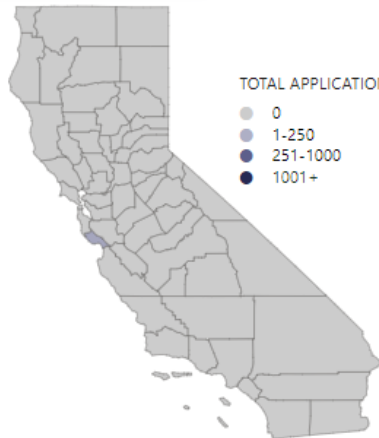
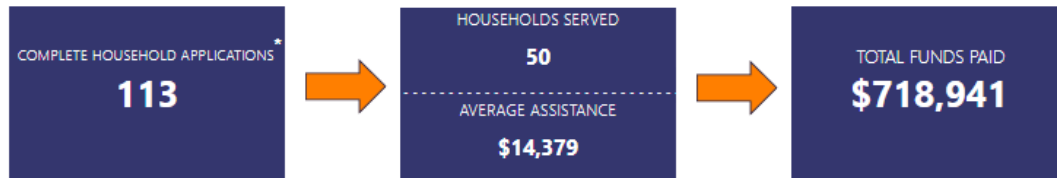
Reviewed By: Chloé Woodmansee, City Clerk; Samantha Zutler, City Attorney

Report Prepared/Approved By: Jamie Goldstein, City Manager

This dashboard does NOT include data for jurisdictions that are not participating in the State program.

COUNTY
Santa Cruz

CITY
Capitola



RACE

American Indian or Alaska Native	1.83%
Asian	3.67%
Black or African American	6.42%
Other Multi-Racial	17.43%
Refuse to Answer	17.43%
White	53.21%

ETHNICITY

Hispanic or Latino	28.43%
Non-Hispanic or Latino	51.96%
Refuse to Answer	19.61%

AGE GROUP

21-30	9.57%
31-40	25.22%
41-50	23.48%
51-60	26.96%
61-70	9.57%
71-80	3.48%
Not Reported	1.74%

GENDER

Female	50.47%
Male	49.53%

INCOME**

<= 30% AMI	74.00%
> 30%-50% AMI	8.00%
> 50%-60% AMI	4.00%
> 60%-80% AMI	14.00%

This dashboard only reflects data for the jurisdictions supported by the State program.

*Complete household applications are defined under Health and Safety Code section 50897. Total figures are subject to revision, in part, based on factors including the submission of duplicate applications and determinations of applicant ineligibility.

**AMI Level is defined as a household's income level in relation to the median income for the specified area.

All data updates on a weekly basis.

If you are interested in conducting research related to the CA COVID-19 Rent Relief Project, please contact grap@hcd.ca.gov.

Capitola City Council

Agenda Report



Meeting: March 24, 2022

From: City Manager Department

Subject: Discuss Possibilities for Returning to In-Person City Council Meetings

Recommended Action: Provide direction to staff regarding City Council (along with the Planning Commission and all advisory bodies) conducting virtual, in-person, or “hybrid” meetings.

Background: On March 4, 2020, Governor Newsom declared a state of emergency due to the spread of COVID-19. On March 12, 2020, City Council adopted a resolution declaring a state of emergency in the City of Capitola.

For much of the pandemic, and in compliance with Executive Order N-29-20, which waived certain requirements of the Brown Act, public agencies were allowed to conduct public meetings by teleconference. Executive Order N-29-20 expired on September 30, 2021.

In September 2021, Assembly Bill 361 was approved by the Governor. The Bill amends the Brown Act to allow cities to hold virtual meetings if the state is under a proclaimed state of emergency (as Capitola City Council meetings currently function), and the city has made certain findings. The Bill sunsets in 2024 and is not tied to COVID-19, but instead allows for virtual meetings in the instance of any Governor-declared state of emergency. The Bill requires legislative bodies to comply with the requirements set forth in Government Code section 54953(e)(2) to ensure the public can safely participate and observe local government meetings. One of the requirements is for Council to adopt findings to hold virtual meetings, and then every 30 days thereafter.

Also in September 2021, Assembly Bill 339 was passed by State Senate. This Bill requires all open and public meetings of a city council or county board of supervisors for a jurisdiction of 250,000 people or more to be accessible virtually (by two-way telephonic or internet-based service) and in person (allowing for in person public comment). In summary, the Bill requires large cities and counties to conduct “hybrid” public meetings. The City of Capitola does not fall into this category and is not subject to this Bill.

As of March 18, 2022, the Governor’s emergency declaration remains in place. On the Consent agenda this evening, Council adopted a resolution in compliance with Assembly Bill 361, allowing for City Council (and Planning Commission and all advisory bodies) to conduct teleconferencing meetings for the next 30 days.

Discussion: Due to the continued decrease in COVID-19 case numbers in the County, State, and generally across the country, Council has expressed interest in discussing when Council (and advisory bodies) should return to conducting in-person meetings. The Watsonville City Council has resumed in-person meetings, and is in the process of a large-scale remodel of their Chambers to allow for virtual attendance. The meetings of Scotts Valley and Santa Cruz City Councils remain virtual and are only accessible remotely.

While for the last several weeks the County and wider community has seen a steady decrease in COVID-19 cases, it is uncertain this trend will continue indefinitely. In some European countries, including the United Kingdom, cases have again climbed in recent weeks. During the pandemic, the United States and California have often looked to the U.K. as an early indicator of what to expect from COVID-19, though by no means is this a perfect comparison. The increase in cases,

seen in the U.K. and Germany in particular, comes after weeks of solid declines from the Omicron peak. These increases may be due to a lack of COVID-19 restrictions (which were ended in recent weeks) and/or a subvariant of Omicron, known as BA.2, which is overtaking the original Omicron in many parts of the world. It is impossible to predict exactly what will happen locally, however the changing nature of the virus should be considered when deciding to resume in-person meetings.

A meeting of the City Council, with Council Members remotely attending (using Zoom), requires the adoption of a resolution in compliance with AB361 and a continued state of emergency as declared by the Governor. This type of meeting will be referred to as a “virtual” option, with Council Members, staff, and the public able to attend from remote locations. If the Governor ends the state of emergency, virtual meetings are no longer an option.

Under the Brown Act, it is legally permissible for members of the public to participate remotely, regardless of whether a state of emergency exists or not. This type of meeting will be referred to as a “hybrid” option, where Councilmembers are in-person but some members of the public are not. Though not dependent on a state of emergency, if this option is selected it should still be considered temporary at this time as the current Council Chambers setup is not conducive to a permanent hybrid solution.

Technology & Virtual Attendance

Staff can allow the public to attend meetings virtually using currently available and affordable technology should Council return to in-person meetings. However, currently available options will not be state-of-the-art and will likely have audio and camera challenges. This would provide more of a “work-around” solution than a permanent and professional setup.

Permanent Hybrid Meetings

If Council wishes to pursue permanent virtual attendance for members of the public in the longer term, direction should be given to staff. A permanent hybrid solution would most likely require staff or a contractor to moderate the virtual component at each meeting. Additionally, there may be significant financial cost to purchase and install the equipment required to facilitate virtual attendance for the public on a permanent basis.

Remote Testimony

An additional option to allow for the public to remotely participate in meetings, and legally possible under the Brown Act (regardless of a state of emergency), is to conduct Council Meetings with only in-person attendance, with the added ability for the public to provide remote testimony by emailing during Oral Communications and Public Comment periods. This would require the least amount of staff moderation and technology updates. In returning to in-person meetings, the public will (as always) have access to watch Council meetings live on Community Television, on YouTube, or on the City website. With the added option of emailing Oral Communications or Public Comments, members of the public could participate in the meeting remotely, while watching the meeting from home in the same way as before the pandemic. In addition, the live meeting feed on Community Television and YouTube is managed by the City’s audio-visual technician, who selects the appropriate camera angle for each speaker and actively monitors sound quality to ensure viewers can hear the broadcast.

COVID-19 Precautions & Metrics

Several safety precautions are possible when resuming in-person public meetings. Requiring masks, vaccination verification, or limiting the room capacity/attendance is possible if Council so wishes, however these precautions may counter the benefits of returning to in-person attendance and can be challenging to administer.

One option to consider is to establish a case-rate metric when Council could return to in-person meetings without masks or without restrictions like masking or requiring vaccines. If a metric were established, staff suggests picking a target return-date, then the first in-person meeting would be held when the target date was reached and case rates were below the established metric one week prior to the meeting.

As a reference point, under the original California COVID-19 Blueprint for a Safer Economy, each county in California was given a tier status based on how many cases per 100k people were detected. Under the Purple Tier, when case rates exceeded 7 per 100,000, most in-person events were not allowed. As of March 18, 2022, the Santa Cruz County case rate is 13.8 per 100,000.

Regardless of case rate, staff recommends taking common-sense measures when returning in-person, such as keeping doors open to increase air flow, recommending people wear masks when not speaking, and offering the Community Room as an “overflow” room for members of the public to sit and view the meeting.

The following options are outlined only to help frame the discussion for Council, and do not represent all the variations available. Council may establish another option made up of elements listed below.

	Option A	Option B	Option C	Option D
Target date	May 12	April 28	May 26	Continue virtual meetings at this time
Meeting room rules	No mask or vaccine requirements. No limits on attendance	Require masks. No vaccine requirement or attendance limit	No mask or vaccine requirement. Attendance limited to 50%	NA
Metric	Cases less than 7/100k on May 5	None	Cases less than 4/100k on May 19	NA
Remote Council attendance option	No	Yes <i>Governor-declared state of emergency required</i>	No	Yes <i>Governor-declared state of emergency required</i>
Remote testimony for public	By email	By Zoom and email Single room camera	By Zoom and email Single room camera <i>Required with attendance limit</i>	By Zoom and email
Meeting room management	Maintain air flow Offer Community Room as overflow space	Same	Same	

Fiscal Impact: Unknown. If Council directs staff to pursue a longer-term hybrid option, the financial impact will be assessed by staff and report to the City Council at a future City Council meeting.

Report Prepared By: Chloé Woodmansee, City Clerk

Reviewed By: Larry Laurent, Assistant to the City Manager; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager