

City of Capitola

City Council Meeting Agenda

Thursday, June 22, 2023 – 4:00 PM



City Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Mayor: Margaux Keiser
Vice Mayor: Kristen Brown
Council Members: Yvette Brooks, Joe Clarke, Alexander Pedersen

Regular Meeting of the Capitola City Council – 4 PM

All correspondence 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 Yvette Brooks, Joe Clarke, Alexander Pedersen, Kristen Brown, and Mayor Margaux Keiser.

2. Additions and Deletions to the Agenda

3. Additional Materials

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

[A.](#) Correspondence Received - Item 7A

[B.](#) Correspondence Received - Item 7B

4. 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.*

5. Staff / City Council Comments

Comments are limited to three minutes.

6. 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.** Approval of City Council Minutes
Recommended Action: Approve 6/8/2023 City Council Meeting Minutes
- B.** Approval of City Check Registers Dated May 26, 2023, and June 9, 2023
Recommended Action: Approve check registers.
- C.** Modification to Parking Meter Rates
Recommended Action: 1) Adopt, by title only, waiving further reading of the text, an ordinance of the City of Capitola amending Municipal Code Sections 10.36.055A and 10.38.010; and 2) Adopt a resolution authorizing submittal to the California Coastal Commission for the certification of an amendment to the Local Coastal Program for Section 10.36.055A.
- D.** Storm Damage Repair Contracts – Small Projects
Recommended Action: Authorize staff to enter into all necessary contracts to repair storm-damaged infrastructure in an amount not to exceed a total cost of \$790,000, with a net cost to the City of less than \$50,000.
- E.** 2023-24 Road Maintenance and Rehabilitation Account Expenditures
Recommended Action: Approve a resolution adopting a list of road maintenance and rehabilitation projects for Fiscal Year 2023-24, funded by Senate Bill 1: the Road Repair and Accountability Act of 2017.

7. 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.** Capitola Bar and Grill Entertainment Permit Appeal
Recommended Action: Adopt a resolution denying an appeal of the City Manager’s decision to deny an application for a 2023 Regular Entertainment Permit for Capitola Bar and Grill.
- B.** Grand Avenue Pathway
Recommended Action: Direct staff to relocate and repair existing fencing to maintain a minimum walkway width of eight feet on the Grand Avenue Pathway.
- C.** Memorials Installed on Capitola Wharf
Recommended Action: Determine the plan for memorial plaques currently installed on Capitola Wharf.
- D.** 1098 38th Avenue Project Introduction and Funding Request
Recommended Action: Receive presentation and direct staff to prepare loan agreement to assist with for predevelopment activities for a 100% affordable multifamily rental housing development located at 1098 38th Avenue.
- E.** Levy of Capitola Village and Wharf Business Improvement Area Assessments for Fiscal Year 2023-24
Recommended Action: Conduct the noticed public hearing and adopt a resolution levying the Fiscal Year 2023-24 Capitola Village and Wharf Business Improvement Area Assessments and accepting the CVWBIA Annual Plan and budget.
- F.** Fiscal Year 2023-2024 Budget and Capital Improvement Program
Recommended Action: Adopt a resolution adopting the City of Capitola’s Fiscal Year 2023-24 Budget and Capital Improvement Program.
- G.** Fiscal Year 2023-24 Fee Schedule

Recommended Action: Conduct the duly noticed public hearing on the proposed Fee Schedule for FY 2023-24 and adopt a resolution amending the current fee schedule.

8. Adjournment

Notice of In-Person & Remote Access

Meetings are open to the public for in-person attendance at the Capitola City Council Chambers located at 420 Capitola Avenue, Capitola, California, 95010

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<https://us02web.zoom.us/j/83328173113?pwd=aVRwcWN3RU03Zzc2dkNpQzRWVXAydz09>

Or dial one of these phone numbers: **1 (669) 900 6833, 1 (408) 638 0968, 1 (346) 248 7799**

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Meeting Passcode: **678550**

To make a remote public comment:

Via Zoom Application: Use participant option to “raise hand”. The moderator will unmute you

Via Zoom phone call: Dial *9 on your phone to “raise your hand”. The moderator will unmute you

Notice regarding City Council: The City Council meets on the 2nd and 4th Thursday of each month at 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.

Moss, Julia

From: Michelle Strong <info@capitolabarandgrill.com>
Sent: Friday, June 16, 2023 3:51 PM
To: Moss, Julia; City Council; Keiser, Marguax; [REDACTED]; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander
Cc: James Anthony
Subject: [PDF] Upcoming Meeting June 22nd
Attachments: 23-03-24 Declaration of Michelle Strong ISO Provisional Injunctive Relief.pdf; 23-03-24 Memo ISO Claimants' Request for Issuance of Provisional Injunctive Relief.pdf

Dear Madam Clerk:

Please forward this email and attachments to Mayor and City Council Members as soon as possible as a supplement to our previously submitted appeal documents.

Dear Mayor and City Council Members:

We were recently informed that the June 22nd meeting will be held at 4:00pm, instead of the 6:00pm start time that has been recurring from the beginning of the year and resumes to be the start time for the remainder of 2023. This change in time will greatly affect those that want to attend the meeting in person.

Attached please find supplemental legal support for our appeal written by our lawyers. Please include this email and the attached as part of our appeal record. As we said in our original appeal, if you decide to uphold the appeal and grant Capitola Bar & Grill (CPG) an Entertainment Permit for 2023, there are at least two possible legal bases for doing so:

- 1) *The ordinance* does not require a landlord consent signature, therefore the landlord consent request on *the form* is optional, and the lack of it is not grounds for denial of the permit, and as City Council we hereby uphold the appeal, reverse the denial and issue an entertainment permit for 2023; and
- 2) Even if landlord consent is required, as City Council we find as a matter of fact and of law that the Landlord, La Serena Properties, is bound by the lease contract it signed approving the CPG use of the property, which always included and still includes, the right to live music, therefore the Landlord's consent to the Entertainment Permit is deemed given and recognized even without the signature on the permit form, and as City Council we hereby uphold the appeal, reverse the denial and issue an Entertainment Permit for 2023.

After the public hearing closes, any one of you can **make a motion to "uphold the appeal, reverse the denial and issue an Entertainment Permit for 2023" for either one, or both, of the reasons given above (you can detail the reason in your motion by reading the above)**. Procedurally this is the same as adopting the staff report suggested resolution--this is just an alternative. You can vote at the hearing even if staff wants to draft a different resolution for your decision to be approved on consent at a future meeting.

Either reason is enough by itself, and both is an even stronger legal basis to support your decision if challenged. Two of you could decide together to make the motion and second it. (More than two of you cannot come to agreement before the meeting; the final majority decision must be made at the meeting in public.)

Thank you,
 Lasalle & Michelle Strong

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7 Attorneys for
 8 MICHELLE STRONG and LASALLE STRONG

JAMS ARBITRATION

9 MICHELLE STRONG, an individual; and
 10 LASALLE STRONG, an individual;
 11 Claimants,
 12 vs.
 13 LA SERENA PROPERTIES, LLC, a
 14 California limited liability company
 15 Respondent.

JAMS Ref. No. 5130000363

**MEMORANDUM OF POINTS &
 AUTHORITIES IN SUPPORT OF
 CLAIMANTS' REQUEST FOR
 ISSUANCE OF PROVISIONAL
 INJUNCTIVE RELIEF**

Date: TBD
Time: TBD
Location: Virtual

Arbitrator: Hon. Glenda Sanders

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I. INTRODUCTION & SUMMARY

Claimants hereby seek **emergency provisional injunctive relief** restoring the *status quo ante* in place prior to Respondent’s wrongful interference and disruption of Claimants’ live music permit issued by the City of Capitola to prevent irreparable harm to Claimants’ business. Emergency relief pursuant to JAMS Rules 2(c) is appropriate because (1) disputes between these parties are subject to arbitration, (2) Claimants are likely to prevail on the merits of the dispute, (3) Claimants can demonstrate that immediate irreparable harm or damage will result to Claimants in the absence of emergency relief and (4) Claimants are entitled to such relief.” (See JAMS Rules 2(c)).

This is a commercial landlord-tenant dispute involving a restaurant space located at 231 Esplanade, Capitola, CA. The primary issues to be addressed through arbitration generally are: (1) whether landlord is in breach of contract for obstructing Claimants’ live entertainment permit, and (2) whether Landlord and its agents have engaged in deliberate bad faith tactics to evade and/or frustrate service of legal notice of Claimants’ exercise of the option to extend the applicable Lease Agreement (the “Lease Option”).

As set forth in the accompanying declaration of Claimant Michelle Strong, Claimants are currently subtenants of a commercial unit in mixed-use commercial building on the Capitola Esplanade, a well-known scenic locale frequented by locals and tourists. The premises have commercial and residential space alike. Claimants purchased the assets, including the liquor license, from the prior operator JJJ Group Inc., who is currently the Master Tenant. Prior to signing the Sublease, Claimants had extensive communication with Master Tenant, Landlord, and Landlord’s manager Steven Yates. In those communications, Claimants unequivocally communicate their intent in writing to have live music at the restaurant. Having extensive knowledge of this intention, Steven Yates executed the sublease agreement on behalf of Landlord La Serena Properties LLC.

For approximately 10-12 months, Claimants operated their restaurant with live music without any dispute with Landlord or any other tenants. Steven Yates’s son, Ryan Yates, lives on one of the

residential units located in the building. In the beginning of 2022, Ryan Yates began to behave in an increasingly erratic and hostile way, at one point acting highly inappropriately with a minor hostess working at Claimants' restaurant. Claimants believe that the evidence in this matter will demonstrate that much of Steven Yates's unreasonable conduct in this matter is best explained by his relationship with his son Ryan Yates who lives in the building. After Claimants complained to Landlord about Ryan Yates's behavior to Steven Yates in May of 2022, Steven Yeats conduct shifted dramatically in tone and the relationship between the parties began to deteriorate.

In June of 2022, Landlord sent a written communication to Claimants through Landlord's property manager. Although the communication's purpose and form were unclear as to what it was, Claimants treated it as a notice to cure and began to work on addressing the alleged issues identified in this letter. Despite multiple attempts, in writing and otherwise, to communicate with Landlord, Landlord abandoned the matter and did not respond to or otherwise engage in any process to communicate what cures Landlord considered to be required in the circumstances.

Despite abandoning any semblance of process regarding the "notice to cure", In August of 2022, Landlord communicated to Master Tenant its position that Claimants had done nothing to address the alleged problems and Landlord would, therefore, not be honoring the option to extend the lease despite having received written notice of it. Likewise, Landlord has formally withdrawn its consent for the live entertainment permit and Claimants' application to the County of Capitola for a 2023 entertainment permit has been denied on the basis that the application does not have landlord consent.

Throughout this dispute, Steven Yates's conduct may be characterized as petty and unreasonable. He routinely equates his personal distaste of Claimants as legally actionable violations of the Lease Agreement. Likewise, the inappropriate and unreasonable conduct of his son Ryan Yates, who chose to live in a mixed-use building in area known for night life and live music, is undoubtedly exacerbating the entire matter. Claimants have an exceptional record with the City of

1 Capitola, the Capitola Police Department, and enjoy a good reputation in the community. By
2 interfering with Claimants' live music, Claimants weekly revenue has been reduced by approximately
3 \$5,000.00 a week, which is a **conservative** estimate. Patrons no longer think of Claimants' restaurant
4 in the same way and the extreme competitive advantage of having live music has been wholly
5 removed. Claimants' business's reputation, good will, and brand value has been immeasurably
6 damaged.
7

8 An emergency injunction is essential to prevent unknown destruction to Claimants' business.
9 Indeed, there is an overt existential risk that Claimants' very business will become insolvent because
10 of the abrupt change to what was otherwise a lucrative business model. Because this harm includes
11 issues of reputation, business goodwill, brand, and long-term business value, money alone cannot
12 make Claimants whole largely because the true monetary damage is unknown and unknowable. The
13 effects of Landlord's conduct will have a damaging ripple effect across the coming months and years.
14

15 Conversely, Respondents will suffer no harm if Claimants continue to lawfully operate their
16 business as they did for almost 18 months prior to Respondent's wrongful termination of their
17 entertainment permit. Respondent will still receive rent, Claimants will continue to pay CAM charges
18 and other shared expenses, and the subject premises will not be damaged or devalued in any way.
19 Claimants will continue to be subject to local and state law regarding the operation of the business.
20 Respondent cannot reasonably argue that Claimants lawful operation of their business will cause
21 Claimants harm. Likewise, if Respondent tries to argue that Claimants might unlawfully operate their
22 business in the future, the emergency order can be carefully tailored to ensure an expedient process
23 to address that unlikely possibility.
24

25 Under the total circumstances, fundamental notions of justice and fair play requires that an
26 emergency order must issue.
27
28

II. FACTUAL TIMELINE & CONTEXTUAL BACKGROUND

A. Acquisition of Commercial Lease, Assets, Liquor License, and Commencement of Operation of Capitola Bar & Grill by Claimants

In June 2021, Claimants responded to a commercial real estate listing by Broker Bob Brooks offering for sell the assets, including the lease, of a restaurant business in downtown Capitola at 231 Esplanade in Capitola, California 95010 (the “Subject Premises”). (Dec. of M. Strong ¶ 3). Mr. Brooks became broker for seller Jill Ealy, managing member of JJJ Group Inc., and Claimants. The landlord was La Serena Properties LLC (Steven Yates, managing member). (Dec. of M. Strong ¶ 3).

The restaurant, Capitola Bar & Grill (“CBG”) is in the scenic seaside village of Capitola, a longtime resort destination surrounded by restaurants, bars, and hotels. During the due diligence period, prior to execution of the Sublease and Assignment, Claimants learned that many dining establishments in the area offer live music, including Mr. Toots, the coffee shop located in the same mixed-use building. (Dec. of M. Strong ¶¶ 5,6). Claimant also learned that another restaurant in the same building Margaritaville, previously owned by Steven Yates, likewise offered live music and live DJ’s during the time that Mr. Yates operated that business. (Dec. of M. Strong ¶ 6). Claimants concluded that live music would be necessary to run a profitable business in that area. (Dec. of M. Strong ¶ 6).

Extensive communications with Mr. Yates expressing Claimants interest in hosting live music and his approval to do so materially affected Claimants decision to purchase the business and agree to the Sublease. (Dec. of M. Strong ¶ 7). On July 15, 2021, for example, Mr. Brooks forwarded a summary of Claimants’ business plan to Steven Yates which stated that it was important for Claimants “...to offer live music...” (Dec. of M. Strong ¶ 8, Ex. A). Subsequently, Claimants purchased the assets of JJJ Group Inc. for \$240,000.00, including the lease and entered into the Sublease and Assignment Agreement with JJJ Group and the Landlord. (Dec. of M. Strong ¶ 9, Ex. B). Claimants executed the Sublease on July 21, 2021. (Dec. of M. Strong ¶ 9, Ex. C).

On August 20, 2021, Mr. Brooks sent an email to Mr. Yates that stated in part: “Michelle and Sal are working with a sign company that will help them with any necessary approvals. They're planning on getting an entertainment permit so they can have a two or three-person bands to provide dinner music and will need your sign off on that.” (Dec. of M. Strong ¶ 10, Ex. D).

On August 20, 2021, Mr. Yates responded, “The property manager does all the leasing-lease work. I informed him of the new tenant a month ago and a lease was prepared. Jill should be aware of all this to assist the new tenant in the transition. Thanks for the info.” (Dec. of M. Strong ¶ 11, Ex. D).

An annual fire inspection was required to be performed prior to submitting an application to the City of Capitola for an entertainment permit. (Dec. of M. Strong ¶ 12).

On September 22, 2021 Claimants sent an email to the property manager Russell Gross, stating in part, “We needed to get an inspection done for entertainment permit. Here are the items that need to be addressed. The items inside our unit have been taken care of, however there are some that pertain to the common area.” (Dec. of M. Strong ¶ 13, Ex. E).

On that same day, Mr. Gross replied that he approved SSS Fire Protection to complete the “5-year fire inspection”. (Dec. of M. Strong ¶ 14, Ex. E).

Claimants expended not less than \$10,000 in improvements as required for the entertainment permit, including but not limited to, soundproofing, wood paneling, ceiling treatment, curtains, self-closing doors, and cameras. (Dec. of M. Strong ¶ 15)

In November 2021, the entertainment permit was issued from the City of Capitola for the remainder of that year. On January 27, 2022 the entertainment permit was renewed for 2022 without issue. (Dec. of M. Strong ¶ 16, Ex. F). During that time, Claimants implemented their business plan involving live music. (Dec. of M. Strong ¶ 17).

Beginning in April 2022, Ryan Yates, an upstairs residential tenant who is also the son of Steven Yates, complained about noise violations and involved Capitola Police, who took no action

on the complaints. After Capitola Police declined further action, Ryan Yates began engaging in intimidating and inappropriate behavior to CBG employees—including inappropriate conduct toward a 16-year-old hostess. (Dec. of M. Strong ¶ 18). Michelle Strong immediately reported Ryan Yates’ behavior to Steven Yates. (Dec. of M. Strong ¶ 18).

Ryan continued to speak in threatening tones to CBG employees, unreasonably using his relationship to the landlord as authority and posting “notices” on the door purporting to instruct claimants to cease certain conduct. (Dec. of M. Strong ¶ 19) Additionally, Claimants complained to Steven Yates and property manager Russell Gross regarding issues with the condition of the Premises. Notably, that the ADA chair lift to the restaurant never worked and the roof of the residential unit that Claimants are also in possession of constantly leaked during the rainy seasons. (Dec. of M. Strong ¶ 20)

Progress on repairs were very slow. Some minor work was done, but not professionally. The chair lift has since been removed and half-replaced, remaining undone. (Dec. of M. Strong ¶ 21).

B. Landlord Escalation of Dispute Regarding Claimants' Live Entertainment Use

Ryan Yates on or about April 2, 2022 and May 5, 2022, raised allegations of noise and alleged municipal code violations relating to CBG’s live music to Capitola Police. (Dec. of M. Strong ¶ 22).

Capitola Police investigated the allegations and made no finding of any alleged violations, issued no citations, arrested no persons, issued no warrants, and performed no follow up. (Dec. of M. Strong ¶ 23). Specifically, in the case of the May 5, 2022 complaint, Police came to CBG. (Dec. of M. Strong ¶ 23). When Police arrived, it was obvious to them that no such violation had occurred, and they characterized the complaint as **unfounded**. (Dec. of M. Strong ¶ 23, Ex. H).

Until Claimants reported Ryan Yates’ behavior, CBG hosted live music performances smoothly, with no complaints or requests to lower music volume from patrons, neighbors or upstairs residential tenants. (Dec. of M. Strong ¶ 24). Nor did Capitola Police issue any reports or citations at any time before or after Ryan Yates’ complaints. (Dec. of M. Strong ¶ 24).

2 Nonetheless, on May 17, 2022, property manager Russell Gross sent Claimants an email
 3 which stated in part: “Michelle, I am receiving a number of complaints regarding the music at the
 4 premises.” The email further provided for adjustments the owner [Steven Yates] required Claimants
 5 to “stay in compliance” with the “entertainment permit and lease agreement.” (Dec. of M. Strong ¶
 6 25, Ex. I).

7 On May 17, 2022, Ms. Strong replied to Russell’s email detailing CBG’s compliance with the
 8 lease and explaining that CBG received confirmation from Officer Brantley, who responds to noise
 9 ordinance complaints on behalf of the City of Capitola, that CBG was in compliance with local law
 10 including the entertainment permit. (Dec. of M. Strong ¶ 26, Ex. J). Ms. Strong further requested
 11 more details on the alleged “number of complaints” so that she could provide CBG’s security camera
 12 footage, as she was not aware of any complaints aside from the two complaints made by Steven’s son
 13 on April 2, 2022, and May 5, 2022. (Dec. of M. Strong ¶ 26 Ex. J).

14 Despite not being required to do so, Claimants installed curtains and sound boards and kept
 15 doors closed after 8pm. (Dec. of M. Strong ¶ 27). On weekends CBG stopped all music by 10pm
 16 even though the permit allowed them to play music until 12:00 am October through April and 12:30
 17 am May through September. (Dec. of M. Strong ¶ 27, Ex. J).

18 Ms. Strong did not receive a response to her May 17, 2022, email. (Dec. of M. Strong ¶ 28).
 19 Claimants continued to operate their business and provide music to their customers. (Dec. of M.
 20 Strong ¶ 28, Exs. F & J). On May 22, 2022, Ryan Yates placed a notice on the door of the premises
 21 that purported to tell Claimants to “cease and desist. (Dec. of M. Strong ¶ 28, Ex. S). The same day,
 22 Claimants responded in writing addressing the alleged violations requesting a meeting from the
 23 Landlord. (Dec. of M. Strong ¶ 28, Ex. S). Landlord never responded to Claimants’ email of May 22,
 24 2022.
 25
 26

27 On June 1, 2022, the property manager sent a perplexing email stating that “[t]he Tenants at
 28 the complex would like to know if you have a plan to continue "as is" with the music. They are

stating that DBA levels over 100. steady level between 90 and 100. Hearing loss can occur at 15
 2 minutes of 90 dba. (Dec. of M. Strong ¶ 28, Ex. S). On June 1, 2023, Claimants responded that:

3 “It’s impossible for them to read 90-100 in their units, as it would have to be 140-150 on the
 4 dance floor. That would mean, everyone in our unit would be deaf? What device is Ryan
 5 Yates using, as the Capitola Police Department has never documented that our levels are
 louder than allowed with our permit.

6 In our bar area, the music is rarely over 80, and has its own music as they can't hear the live
 7 music in the bar. In our apartment unit #200, we cannot hear the music at all. We have
 8 requested to meet and have not heard back. This matter needs more attention than requiring
 9 us to give you a yes or no answer. Noise ordinance in its standard everyday allowance is
 10pm, we have already compromised to end at 10pm, however there is still expected noise
 levels in our restaurant till closing.

10 Ryan Yates has harassed my staff and I want to have a meeting before this continues to
 11 escalate.”

12 (Dec. of M. Strong ¶ 28, Ex. S).

13 On June 1, 2022, Steven Yates emailed Michell Strong stating that the Landlord had opened a
 14 harassment investigation due to Claimants’ complaint regarding Ryan Yates’ conduct. (Dec. of M.
 15 Strong ¶ 29, Ex. K). The subject line of the email was “Noise and harassment claim.” It stated in
 16 part, “Commercial tenant [CBG] has alleged that it has been harassed by either a tenant in the
 17 landlords [*sic*] property or by landlord...” (Dec. of M. Strong ¶ 29, Ex. K). on June 9, 2022, the
 18 property manager forwarded a letter from Steven Yates from June 8, 2022, that perplexingly
 19 concluded that Claimants were harassing Ryan Yates and then used the harassment investigation to
 20 reiterate the disputed noise complaints. (Dec. of M. Strong ¶ 29, Ex. K).

22 Without evidence, Ryan Yates implied Claimants involvement in “slashing” his bicycle tires.
 23 (Dec. of M. Strong ¶ 31). He made no police report about that purported damage. (Dec. of M.
 24 Strong ¶ 31). Yet Steven Yates characterized Ryan Yates’ vandalism claim as “harassment” by
 25 Claimants. The letter further commanded, “reverse course and be a responsible tenant in the building
 26 and in the village.” (Dec. of M. Strong ¶ 31 Ex. K).

Steven Yates also claimed that he used a cell phone application to measure live music at 105-110 decibels outside of the building. (Dec. of M. Strong ¶ 32, Ex. K). The nature of these readings and the precise locations where they were taken were not stated, nor did the letter advise whether other restaurants in the area were open and contributing to the sound. (Dec. of M. Strong ¶ 32, Ex. K).

On June 9, 2022 Michelle Strong responded to Steven Yate’s June 8, 2022 letter explaining that his letter completely mischaracterized Ryan Yates and his conduct. (Dec. of M. Strong ¶ 33, Ex. L). She further explained that his decibel readings were grossly inaccurate, and Claimants kept videos and A-weighted decibel readings evidencing that their music remained within compliant levels, that the music did not reach the bar seating area or the residential unit above the premises, and that Capitola Police never issued a citation in response to Ryan Yates’ complaints. (Dec. of M. Strong ¶ 33, Ex. L).

Claimants made multiple requests to have Steven Yates perform an on-site inspection to confirm compliance with the entertainment permit, the lease and the Capitola Municipal Code. (Dec. of M. Strong ¶ 34). Mr. Yates refused to do so. (Dec. of M. Strong ¶ 34, Ex. L).

To appease Mr. Yates, on June 16, 2022, Michelle Strong sent another email to Steven and Russell requesting to install sound insulation to non-working vents to minimize vibration. (Dec. of M. Strong ¶ 35, Ex. M). The email also informed them that several hotels in the area and tenants in the building, were supportive of their business even promoting the live music to their guests. (Dec. of M. Strong ¶ 35, Ex. M).

In June 21, 2022, Steven Yates replied to Michelle’s June 16, 2022 email that he saw “no further point in attempting to rationalize”... “the impact your live music-bands-kereoke [sic] is having on the building tenants.” Despite having no actual complaint from any residential or commercial tenant aside from his son, Ryan Yates, Mr. Yates further stated, “you [CBG] are in default under the lease...” (Dec. of M. Strong ¶ 36, Ex. M).

2 Claimants never received proper direct notice of the alleged breach and Mr. Yates refused to
3 communicate with them in any capacity regarding their efforts to comply with the improper “notice
4 to cure”. (Dec. of M. Strong ¶ 37).

5 Subsequently, Claimants met with Police Chief Andrew Dally to discuss any compliance
6 issues due to the confusing “notices” from the landlord. The Chief said there were no significant
7 issues or complaints and that he was not concerned with CBG’s use of music. (Dec. of M. Strong ¶
8 38). The Chief, however, informed Claimants that Steven Yates had asked Capitola Police to cancel
9 Claimants’ entertainment permit. (Dec. of M. Strong ¶ 38).

10 During the week of August 22, 2022, Master Tenant, Jill Ealy sent written notice of exercise
11 of the option to extend the Lease by registered mail. (Dec. of M. Strong ¶ 39). On August 29, 2022,
12 Ms. Ealy communicated with Mr. Yates by email to confirm his receipt of the notice. (Dec. of M.
13 Strong ¶ 39, Ex. N).

14 On August 30, 2022, Steven Yates responded to Jill Ealy that Claimants were in “default of
15 the lease” and made “zero attempt” to cure the alleged music breach, and “may not exercise the
16 option while in default and that period to correct the default has passed.” (Dec. of M. Strong ¶ 40,
17 Ex. N). In fact, Claimants installed curtains and sound boards, closed their doors early, reduced
18 music days, times and volume, installed cameras, kept decibel readings, requested permission to add
19 insulation and requested multiple meetings with Mr. Yates. (Dec. of M. Strong ¶ 40, Ex. N)

20 On September 1, 2022, Jill Ealy responded to Steven’s August 30, 2022 email to address the
21 supposed non-compliance and exercise of the option to extend the lease agreement. (Dec. of M.
22 Strong ¶ 42 Ex. N). Claimants hired a law firm to assist with the conflict. (Dec. of M. Strong ¶ 43). In
23 October 2022 Claimants met with Chief of Police Andrew Dally to discuss the renewal of the
24 entertainment permit. Claimants offered to file the same annual renewal form for 2023 that was filed
25 for 2021 and 2022. (Dec. of M. Strong ¶ 43). It became an unexpected issue that Steven Yates
26
27
28

refused to sign the renewal form even though he had not signed the forms in 2021 or 2022 and the permits were still issued. (Dec. of M. Strong ¶ 43).

On January 31, 2023 Claimants received a letter from the City Manager officially denying their entertainment permit application for 2023, wholly because Landlord did not give his consent by signing the form. There was no other reason listed for denial of the permit. (Dec. of M. Strong ¶ 44, Ex. O).

On February 1, 2023 Steven Yates emailed the Broker Bob Brooks to ask if he had any record of communications between us regarding “implied consent” that live music was a prior or contemporaneous understanding of the parties prior to executing the Sublease. (Dec. of M. Strong ¶ 45, Ex. P). Broker Bob Brooks responded “I checked my email and found the attached business plan Michelle Strong sent me and that I forwarded to you on July 15, 2021. It does mention live music”. (Dec. of M. Strong ¶ 45, Ex. P).

Claimants have several communications informing Mr. Yates they intended to have live music/bands. (Dec. of M. Strong ¶ 46, Exs. A, D, & E). On the other hand, Claimants do not have any communications from Mr. Yates opposing live music prior to the complaints of his son. (Dec. of M. Strong ¶ 46).

On February 21, 2023, Claimants filed an appeal of the entertainment permit denial. (Dec. of M. Strong ¶ 47, Ex. Q).

On March 1, 2023 Steven Yates and Claimants, through their respective counsel, participated in mediation pursuant to the lease agreement to address the alleged default of lease and other outstanding issues, including an exercise of the option to extend the lease agreement. (Dec. of M. Strong ¶ 48).

Steven Yates mediation statement consisted of multiple unfounded and untrue statements. For example, Mr. Yates claimed, “The Landlord has been informed that due to past violations of its permit, the CPD [Capitola Police Department] intends to issue a cease-and-desist order to Capitola

Strong prohibiting it from making loud music noises”. (Dec. of M. Strong ¶ 49 Ex. R). To the contrary, CPD has never issued a cease-and-desist order of any kind, nor have they issued a citation or violation of any kind through the date of filing of this brief. (Dec. of M. Strong ¶ 50).

Mr. Yates mediation statement further stated, “The Subtenant has not been a desirable tenant from the Landlord’s viewpoint and noise disturbances to others in the vicinity are unacceptable.” (Dec. of M. Strong ¶ 51, Ex. R).

The vicinity consists of restaurants, bars and hotels. The only reports of alleged noise disturbances from Claimants’ restaurant came from the Landlord’s son, Ryan Yates, after Claimants complained about his harassing behavior. (Dec. of M. Strong ¶ 52).

Despite Claimants efforts to compromise, Steven Yates refused to negotiate or agree to allow Claimants to offer musical performances at any level. (Dec. of M. Strong ¶ 53).

As of the date of this brief, Claimants have been forced to stop all music. Landlord’s other commercial tenants in the same building still engage in live music. (Dec. of M. Strong ¶ 54).

Live music assisted Claimants in sales especially through slow months. (Dec. of M. Strong ¶ 55). Claimants are losing an estimate \$5,000 each week since the entertainment permit has been cancelled. (Dec. of M. Strong ¶ 55). Claimants are still paying rent and landlord is accepting it. (Dec. of M. Strong ¶ 57). Claimants incurred damages associated with cancelling entertainment contracts and lost revenue for the planned performances by complying with Mr. Yates demands. (Dec. of M. Strong ¶ 58).

C. Landlord’s Bad Faith Refusal to Honor Lease Option and Improper Notice of Termination

1. The Lease Option

The lease agreement contains an option to renew and certain notice provisions. The option to renew clause in the Lease agreement states in pertinent part:

“Option to Renew. Provided that this Lease is in full force and effect and the Tenant is not in default of the Lease at the time of Tenant's election to exercise an option to

renew, Tenant shall have one (1) option to renew this Lease, for a five (5) year term. The renewal term commences upon termination of the initial term. The option shall be exercised by written notice of Tenant's election to exercise the option. Tenant's written notice shall be delivered no sooner than 180 days and no less than 90 days prior to the end of the initial term. **Tenant's notice shall be delivered to Landlord only by certified mail, return receipt.** If Tenant neglects to timely exercise the option, the right to exercise such option automatically expires without notice from Landlord of Tenant's failure to exercise such option. All terms and conditions of this Lease apply during the renewal term, except monthly rent as indicated below.”

(Dec. of M. Strong ¶ 9, Ex. C emphasis added)

Pursuant to the language of the lease, the first date after which notice to exercise the option to extend the Lease was August 4, 2022. The last day for notice was November 2, 2022.

General notice provisions in the Lease state:

“All notices required or permitted under this Lease shall be in writing and shall be personally delivered, sent via reputable overnight courier, or sent by certified mail, return receipt requested, postage prepaid. Notice to Tenant shall be delivered to the address specified in Section 1 above, except that upon Tenant’s taking possession of the Premises, the Premises shall be Tenant’s address from notice purposes. Notices to Landlord shall be delivered to the address specified in Section 1 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.”

(Dec. of M. Strong ¶ 9, Ex. C emphasis added)

The only reference to any mailing address to which notices may be sent is contained in section 1.02 of the Lease, which states: “LA SERENA PROPERTIES, LLC, C/O STEVEN A. YATES 283 CANYON OAKS SANTA CRUZ, CALIFORNIA 95065.” Notably, the address is an uninhabited residential home located in Santa Cruz, California, and is unmonitored. Steven Yates resides in Hawaii.

(Dec. of M. Strong ¶ 3, 9...Ex. C)

2. Master Tenant’s Exercise of Option

As demanded by Claimants, Master Tenant sent written notice of exercise of the option to extend the Lease sometime during the week of August 22, 2022, by registered mail. On Monday, August 29, 2022, Jill Ealy, on behalf of Master Tenant sent an email communication to Steven Yates regarding the registered mailing of the notice to exercise the option, which stated in pertinent part:

“Hello Steve,

I sent the letter exercising the options registered mail. I just wanted to confirm receipt. I haven't heard anything further about CBG's music. I'm hoping that as a good thing and everything has been worked out.

~Jill”

(Dec. of M. Strong ¶ 39, Ex. N.)

On August 30, 2022, Steven Yates replied:

“Jill,

I have not received any letter from you as of yet. I will let you know when I do. You, through your subtenant, are in default of the lease. You have been notified of this default prior and had 30 days to correct the default. The subtenant has made zero attempt to resolve the noise issue or correct the default. The upstairs apartment remains half rented as no one could withstand the noise level. Your sub tenant remains a major problem.

Bottom line is per the lease you may not exercise the option to renew the lease while in default and that period to correct the default has passed.”

(Dec. of M. Strong ¶ 40, Ex. N.)

On September 1, 2022, Ms. Ealy responded:

“Hi Steve,

I actually just received the letter back and it stated there was no receptacle. Is there a better address that I should resend the letter? I know Michelle and Lasalle have reduced their music days, times, and volume all in attempt to appease you and the tenant. It is my understanding they have continually reached out to you for a meeting to no avail. I have informed the tenant that until we are paid in full or the two of you come to some solution, the music needs to stop. We never wanted to be in the middle of this situation nor do we want to spend the time and money hiring an attorney etc.

What do you want or expect us to do at this point? They have an entertainment permit per the city and are well within its guidelines.

~Jill”

(Dec. of M. Strong ¶ 42, Ex. N emphasis added)

3. Claimants Exercise of Option

On October 24, 2022, Claimants delivered, via Federal Express ("FedEx") overnight courier, a "Notice of Exercise of Option" to La Serena at the address provided for in the Master Lease. The Notice arrived on October 25, 2022. (Dec. of M. Strong ¶ 67, Ex. T.)

On November 1, 2022, Claimants delivered executed copies of the previously served Notice of Exercise of Option via FedEx. (Dec. of M. Strong ¶ 68, Ex. U)

III. ARBITRATION AGREEMENT AND LEGAL STANDARD

Pursuant to Section 11.03. of the Lease Agreement, "Arbitration of Disputes", the Arbitrator shall have the power to resolve any dispute between the parties not resolved through mediation except with respect to an unlawful detainer based on nonpayment of rent. (Dec. of M. Strong ¶ 9, Ex. C).

Here, there is no issue of nonpayment of rent as Claimants have been paying rent and Respondent has accepted rent. (Dec. of M. Strong ¶ 57). The parties completed mediation on March 1, 2023. (Dec. of M. Strong ¶ 48).

The Lease Agreement further provides if the dispute between the parties is not resolved by mediation, "such dispute shall be resolved by arbitration governed by California law and, to the extent not inconsistent with that statute, conducted in accordance with the rules of practice and procedure for the arbitration of commercial disputes of Judicial Arbitration and Mediation Services, Inc. ("JAMS")" (Lease Agreement § 11.03). Because emergency provisional relief is available under California law and JAMS Rules, an arbitrator has the power to award Claimants provisional relief pursuant to California Code of Civil Procedure §§ 526 & 527 and JAMS Rule 2(c) [providing provisional remedies, such as emergency injunctive relief, where the party seeking emergency relief has "shown that immediate loss or damage will result in the absence of emergency relief and whether the requesting Party is entitled to such relief."] (See JAMS Rules 2(c)).

In deciding whether to issue preliminary injunctive relief, "a court must weigh two 'interrelated' factors: (1) the likelihood that the moving party will ultimately prevail on the merits and

(2) the relative interim harm to the parties from issuance or non-issuance of the injunction.” (*Midway Venture LLC v. Cty. of San Diego*, 60 Cal. App. 5th 58, 76 (2021); *Hunt v. Superior Court*, 21 Cal. 4th 984, 999 (1999).) These two factors operate on a sliding scale: where the likelihood of success is high, the court may issue injunctive relief even if the likelihood of irreparable harm is lower, or vice versa. (*Common Cause of California v. Bd. of Supervisors*, 49 Cal. 3d 432, 446-47 (1989); see also *King v. Meese* (1987) 43 Cal.3d 1217, 1227 [held that “the more likely it is that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue”]).

To determine whether an injunction is **mandatory or prohibitory**, the court should “look to its substance to determine its real nature.” *Paramount Pictures*, 228 Cal. App. 2d at 835. Where an injunction “merely has the effect of preserving the subject of the litigation in status quo” it is prohibitory. See *Dosch v. King*, 192 Cal. App. 2d 800, 804 (1961); see also *Ojye v. Fox*, 211 Cal. App. 4th 1036, 1048 (2012) (“an injunction designed to preserve the status quo as between the parties and to restrain illegal conduct is prohibitory, not mandatory”). Further, the “status quo is not simply any situation before the filing of the lawsuit, but rather that last uncontested status that preceded the parties’ controversy.” *Dep’t of Parks & Rec. for State of Calif. v. Bazaar Del Mondo, Inc.*, 448 F.3d 1118, 1124 9th Cir. 2006); see also, *People v. Hill*, 66 Cal. App. 3d 320, 331 (1977) (defining status quo as “the ‘last actual peaceable, uncontested status which preceded the pending controversy’”).

IV. LEGAL ARGUMENT

The facts above provide substantial evidence demonstrating Landlord is in breach of contract for obstructing Claimants’ live entertainment permit. Claimants are likely to prevail on that claim. Respondent’s chicanery regarding the notice of the Lease Option is self-serving and notice was properly given. Claimants have the right to occupy the premises pursuant to the Lease Option. Respondent equates his own person frustration with Claimants to actionable violations of the Lease Agreement. Claimants are and Claimants have been in compliance with the lease. The withdrawal of Landlord Consent constitutes a unilateral material change to the Agreement that was not agreed

upon and for which no consideration as given. The Arbitrator must restore the *status quo ante* while the arbitration proceeds.

A. An Emergency Arbitrator Should Grant Claimants Provisional Relief because Claimants are likely to Prevail on the Merits of their Claims

Claimants are entitled to provisional injunctive relief because their underlying claims against Landlord will likely succeed, and Landlord has no defense. Claimants are likely to prevail on the merits of this matter, because (a) the lease agreement is ambiguous as to whether the term “restaurant” did or did not include live music, (b) the parties’ contemporaneous written communications demonstrate unequivocally that the parties reasonably intended for live music to be a part of the Agreement, (c) Claimants possession of a live permit for approximately 18 months demonstrate that intention of the parties, (d) Respondent undisputedly decided to withdraw local approval for the purpose of terminating the live entertainment permit, (e) Respondent had no basis to do so as Respondent’s claims that Claimants were not in compliance with the Lease or otherwise creating a nuisance are devoid of any basis in provable fact, and (f) Claimants properly exercised the relevant option to extend the Lease and have the right to occupy the premises.

1. Claimants have the Lawful Right to Occupy the Premises and have Properly Exercised the Option to Extend the Lease

The factual record in this matter is replete with Tenant and Claimants multiple and extensive efforts to notice Landlord of the intent to exercise the Lease Option. Landlord’s agent Steven Yates’ deliberate and conscientious efforts to engage in gamesmanship and evade service of the notice are apparent. Landlord has admitted to actual receipt of the notice in the notice period (Dec. of M. Strong ¶ 65, Ex. N.) and has stated in writing that Landlord would not be honoring the option regardless due to Steven Yates’s apparent personal grudge against Claimants and his personal desire to stop live music at the premises. (Dec. of M. Strong ¶ 65, Ex. N.) Landlord’s insistence that the option was not exercised because the notice was not sent registered mail return receipt to the unattended, uninhabited residence owned by the Yates family where there is no one available during

business hours to sign a return receipt is patently absurd and an improper weaponization of a trivial aspect of notice to frustrate and destroy Claimants use of the premises. Landlord’s alternative argument that Claimants were not in compliance with Lease is idle fancy. Landlord did not follow any process or procedure to establish such noncompliance, nor did Landlord respond to multiple written attempts to address the supposed non-compliance, and Steven Yates’s personal opinion of Claimants and the music being played at the restaurant does not constitute a violation of the Lease or the Capitola Municipal Code.

a. Master Tenant and Claimants Independently Properly Notified Landlord of Intent to Exercise the Lease Option and Extend the Lease Agreement on Three Distinct Occasions, Landlord Actually Received the Notice, and Notice in the Manner Identified in the Lease was Impossible.

As identified in the factual summary above, Tenant began the process of attempting to notify Landlord of the exercise of the option as early as August 2022. Written communication between Jill Ealy and Steven Yates even reveal that Ms. Ealy requested an address to send the notice since the address in the Lease was unattended and had no receptacle to receive mail. (Dec. of M. Strong ¶ 66, Ex. N.) A finding that it was impossible to send a notice to the address in the Lease in the manner specified in the Lease will result in a holding that performance of that aspect of the notice provision was impossible under law. Steven Yates’s email stated in writing that “[b]ottom line is per the lease you may not exercise the option to renew the lease while in default and that period to correct the default has passed.” (Dec. of M. Strong ¶ 65, Ex. N.) Steven Yates’ written communication reveals that even if the option had been served with return receipt requested, Landlord had no intention of extending the option.

On October 19, 2023, Claimants sent a detailed letter to Landlord addressing many of the disputes between the parties including detailed explanation that Claimants had exercised the Option indicating Claimants’ desire to exercise the option, which itself constituted notice of the intent to exercise the Lease Option. On October 25, 2022, Claimants’ unsigned notice of exercise of the Lease

Option by FedEx overnight arrived at the notice address. (Dec. of M. Strong ¶ 67, Ex. T.) On November 2, 2022, Claimants signed notice of exercise of the Lease Option by FedEx overnight arrived at the notice address. (Dec. of M. Strong ¶ 68, Ex. U.)

A lessor’s refusal to accept a lessee’s exercise of an option to renew constitutes a breach of that covenant of the lease. (Gilman v. Nemetz (1962) 203 Cal.App.2d 81, 87.) Where a lessee has exercised an option to renew a lease, his right to possession of the premises for the additional term cannot be defeated by the actions of the landlord. The lessee is entitled to specific performance of the covenant to renew. (Cicinelli v. Iwasaki (1959) 170 Cal.App.2d 58, 65.) Under the terms of the Master Lease, the 2019 Amendment, and the 2021 Sublease & Assignment, the Master Tenant and Claimants are the only parties entitled to exercise or decline the First Option. The Master Lessor has no right to interfere where no default exists and the Master Lessor’s may not deprive Claimants of the right to cure to create a potential claim of a default. Steven Yates has confirmed in writing that Landlord did not want to extend the option due to an alleged noncompliance with the Lease. Landlord is not permitted under law to refuse to accept notice of the lease option exercise because Landlord’s agent Steven Yates thinks the music is too loud. The record reflects Landlord’s blatant attempt to refuse the exercise of the Lease Option for reasons unrelated to the supposed form of notice, and the multiple attempts by Tenant and Subtenant to exercise the option, as well as Landlord’s actual receipt thereof, constitute legally valid service of the exercise of the Lease Option.

Master Tenant sent the notice certified mail. The main difference between certified mail and registered mail is the level of security and tracking provided. Certified mail provides a signature confirmation of delivery, while registered mail provides a signature confirmation and added security measures such as tracking and insurance. Additionally, registered mail may require the recipient to present identification before being able to receive the package, whereas certified mail does not have this requirement. Here, the notice provision permits Landlord to refuse to sign the return receipt and thus block notice of the option. It is legal improper for the form of notice of an option to require an

2 action by the landlord for notice to be tendered. Once mailed and received, service of the notice to
3 exercise the Lease Option was legally sufficient.

4 **b. There is Ambiguity in the Lease Notice Provisions that Must be**
5 **Resolved in Favor of Claimants**

6 Section 12.07 of the Lease states:

7 “All notices required or permitted under this Lease shall be in writing and shall be personally
8 delivered, sent via reputable overnight courier, or sent by certified mail, return receipt
9 requested, postage prepaid. Notice to Tenant shall be delivered to the address specified in
10 Section 1 above, except that upon Tenant’s taking possession of the Premises, the Premises
11 shall be Tenant’s address from notice purposes. Notices to Landlord shall be delivered to the
12 address specified in Section 1 above. All notices shall be effective upon delivery. Either
13 party may change its notice address upon written notice to the other party.”

14 (Dec. of M. Strong ¶ 9, Ex. C).

15 “If a proposal prescribes any conditions concerning the communication of its acceptance, the
16 proposer is not bound unless they are conformed to; but in other cases, any reasonable and usual
17 mode may be adopted.” (Civil Code § 1582.) The Lease is self-contradictory. On the one hand it
18 requires notice of acceptance of the option to “be delivered to Landlord only by certified mail, return
19 receipt.” (Dec. of M. Strong ¶ 9, Ex. C). On the other hand, it also provides, “All notices required or
20 permitted under this Lease shall be personally delivered, sent via reputable overnight courier, or sent
21 by certified mail, return receipt requested, postage prepaid.” (Dec. of M. Strong ¶ 9, Ex. C). There is
22 no doubt that the notice of exercise of the Lease Option was properly sent by overnight mail and
23 actually received by Landlord. See *In re Crossman's Estate* (1964) 231 Cal.App.2d 370, 372–373, and
24 *id.* at 374 [similar provision stating notices “shall” be sent by registered mail construed as merely
25 suggesting a permissive method of renewal such that “notice of exercise of the option was complete,
26 without registration, upon its conceded deposit in the mail”].) At the very least, the inclusion of the
27 alternate notice provision creates serious confusion as to whether registered mail was an absolute
28 condition or merely suggested a permissible manner.

2 Here, if the word “only” in section 1.06 is read as suggestive rather than limiting (like the
 3 word “shall” in *In re Crossman’s Estate*, supra) and read together with section 12.07, then registered
 4 mail is a permissive (perhaps preferred) method of giving notice of renewal. But, if the words “all”
 5 and “or” in section 12.07 are not given effect, then overnight mail is a permissible way to give notice
 6 except as to renewal, creating a trap for the unwary tenant that could lead to forfeiture of the
 7 leasehold interest. Therefore, the second construction must be avoided.. “A condition involving a
 8 forfeiture must be strictly interpreted against the party for whose benefit it is created.” (Civ. Code §
 9 1442.) Regarding lease renewals, construing provisions of a lease relating to renewals, if there is any
 10 uncertainty, the tenant rather than the landlord is to be favored.” (*Buck v. Cardwell* (1958) 161
 11 Cal.App.2d 830, 836.)

12 Landlord seeks to destroy Claimants’ business, involving hundreds of thousands of dollars of
 13 investment, on an ambiguous Lease. The established law of California favoring interpretation of
 14 Leases in favor of tenants when forfeiture is contemplated is harmonious with the present case.
 15 Claimants risk the ruinous loss of hundreds of thousands of dollars on an ambiguous provision of
 16 the Lease, largely made moot by Landlord’s actual receipt of the Lease Option exercise and in light of
 17 Landlord’s stated intention to not honor the Lease Option regardless of notice.

18
 19 **c. Even If Renewal Was Required to Be Made By Registered Mail, the**
 20 **Landlord’s Failure to Timely Object Constitutes a Waiver or Estoppel**

21 Civil Code section 1501 states: “All objections to the mode of an offer of performance,
 22 which the creditor has an opportunity to state at the time to the person making the offer, and which
 23 could be then obviated by him, are waived by the creditor, if not then stated.” “The rationale of the
 24 requirement of specific objection is that the offeror should be permitted to remedy any defects in his
 25 tender; the offeree is therefore not allowed to remain silent at the time of the tender and later
 26 surprise the offeror with hidden objections.” (*Riverside Fence Co. v. Novak* (1969) 273 Cal.App.2d 656,
 27 661–662 quoting *Layton v. West* (1969) 271 Cal.App.3d 508, 512 in turn citing *Thomassen v. Carr* (1967)
 28

250 Cal.App.2d 341, 350.) Further, “an optionor who has given an irrevocable option to purchase property may not do any act or omit to perform any duty calculated to cause the optionee to delay exercising the option within the specified period. The optionor's good faith is a relevant consideration; his evasion or prevention of exercise of the option may excuse tender of performance and other conditions precedent to acceptance.]” (*Riverside Fence Co. v. Novak* (1969), 273 Cal.App.2d 656, 662–663.)

Landlord is acting in bad faith for the purpose of removing Claimants from the building as stated by Steven Yates. This bad faith is highly relevant to the consideration of whether Landlord has calculated to delay or thwart Claimants from exercising the option. Landlord did not object to Jill Ealy’s notice of the exercise of the Lease Option on the basis of form, but rather on the basis that Claimants were in alleged noncompliance of the Lease. Neither did Landlord object to the certified mailing from October 24, 2022, and November 2, 2022, until well after the option period had elapsed.

d. Claimants Were not in Default of the Lease During the Lease Option Period

See Argument Section A(4)(b).

e. Requiring Return Receipt Signature by Landlord or its Agent is an Improper Impediment to Claimants’ Exercise of the Lease Option

An optionor who has given an irrevocable option regarding property may not do any act or omit to perform any duty calculated to cause the optionee to delay exercising the option within the specified period. (*Riverside Fence Co. v. Novak* (1969) 273 Cal.App.2d 656, 662-663). It is well understood that an option places right in the optionee to enact an agreement between the parties by taking a prescribed and agreed-upon action. An optionor may not place conditions on the exercise of the option. By requiring that notice be sent return receipt, Landlord has generated a situation where he can prohibit the option form being exercised by refusing to sign for the notice. This provision

places power in the hands of the Landlord to unilaterally nullify the option by refusing to sign the return receipt. This is an improper requirement and unenforceable.

2. The Lease Neither Permits nor Prohibits Live Music as a Part of the Use of the Premises Defined in Section 1.09 of the Lease

Section 1.09 of the Lease states:

“Permitted Use/Exclusive Use. Tenant shall use the Premises for a restaurant, as defined in the City of Capitola use permit existing at the time of execution of this Lease, and for no other purpose. Notwithstanding, in no event shall the use include a Mexican food type restaurant.”

(Dec. of M. Strong ¶ 9, Ex. C).

The Restaurant at issue herein is defined by the Capitola Mixed Use Zoning District Chapter 17.20 as:

“‘Restaurants and cafes’ means a business establishment serving food and beverages to customers where the food and beverages may be consumed on the premises or carried out and where more than one hundred sixty square feet of public area is open to customers. Includes full-service restaurants, fast-food restaurants, coffee shops, cafes, and other similar eating and drinking establishments.”

(Capitola Mixed Use Zon. Dist. Ch. 17.20)

An analysis of the Lease’s plain language coupled with the cited definition of “restaurant,” as defined by the City of Capitola, reveal that there is no clear and unambiguous language in either the Lease or the Code that would cause a reasonable person to assume that live music is prohibited from a restaurant-use. Indeed, live music is played at restaurants world-wide, including restaurants in the “Capitola Village” zoning district where the subject premises are located. As there is no language anywhere that excludes live music as a part of the restaurant use, the term “restaurant” as used in the Lease is at least ambiguous as to whether live music is a part of that use. A strict construction of the term restaurant to exclude live music without specifically doing so is improper because there is no common sense or reasonable understanding of a restaurant use that excludes live music.

If a contract’s language is ambiguous, as it is in this case, the arbitrator must look further to determine what the parties mutually agreed. California law provides two principal means of

2 determining the intention reflected in ambiguous contractual language. First, ambiguity “is resolved
 3 by interpreting the ambiguous provisions in the sense the promisor ... believed the promisee
 4 understood them at the time of formation.” (Cal. Civ. Code § 1649). Second, “[i]f application of [the
 5 foregoing] rule does not eliminate the ambiguity, ambiguous language is construed against the party
 6 who caused the uncertainty to exist.” (*Bank of the West v. Superior Court* (1992) 2 Cal. 4th 1258). The
 7 latter rule is incorporated in Cal. Civ. Code § 1654, which provides that “[i]n cases of uncertainty not
 8 removed by the preceding rules, the language of a contract should be interpreted most strongly
 9 against the party who caused the uncertainty to exist.” (Cal. Civ. Code § 1654).

10 There is absolute clarity in the evidentiary record that Claimants objectively intended for the
 11 “restaurant” use to include live music. Landlord and Landlord’s property manager received multiple
 12 written communications from Claimants and the Broker involved in the transaction that this was
 13 Claimants’ intent and at no point prior to the signing of the Sublease and Lease Assignment did
 14 Landlord or any of its agents contradict that Claimants’ understanding that live music would be a part
 15 of the use. (Dec. of M. Strong ¶ 8, Ex. A.)

17 When faced with ambiguity in the language of a contract, an arbitrator will permit evidence
 18 about the parties’ intentions and understandings as to the meaning of the ambiguous term. That
 19 meaning and understanding is unequivocal. Live music is a part of the use and Landlord extensive
 20 and intentional conduct to thwart that use is blatant breach of contract. Landlord’s current position
 21 that it will not permit live music is a unilateral change to a contract term without consideration, and
 22 Claimants’ demonstrable damages due to the loss of live music may be counted on a weekly basis by
 23 thousands of dollars in lost revenue.

24
 25 **a. Landlord Failed to Expressly Exclude Live Music in the Lease Agreement but Did Exclude Other Uses**

26 Section 1.09 of the Lease states in relevant part that “[n]otwithstanding, in no event shall the
 27 use include a Mexican food type restaurant.” (Dec. of M. Strong ¶ 9, Ex. C). The neighboring
 28

2 “Mexican food type restaurant” Margaritaville, was previously owned by Steven Yates potentially
 3 during the time Master Tenant entered the subject Lease. (Dec. of M. Strong ¶ 6). Here, Landlord
 4 intentionally prohibited Mexican restaurants from the permitted use to protect the business interests
 5 of Landlord’s principals. The Landlord, who drafted the Lease, had ample opportunity to formalize
 6 excluded uses from the Lease. If the Landlord intended to limit the type of music, or to prohibit
 7 music altogether at the premises, it had the opportunity to do so. The “Permitted Use” would have
 8 been drafted to include such a restriction as it did when it explicitly excluded “[m]exican food type
 9 restaurant[s].”

10 In fact, the Landlord and Master Tenant actively welcomed Claimants’ plan at that time
 11 without voicing objections or including terms in the rental agreements preventing live music or
 12 requiring further consent to such. Construing the ambiguous language against the Landlord drafter,
 13 live music is not excluded in the Lease because Landlord did not intend for live music to be
 14 excluded.

15
 16 **b. Live Music is Commonly a Part of a Restaurant Business**

17 Social entertainment plays an indispensable role in modern commercial enterprise.
 18 Entertainment is routinely used to attract, keep and reward customers. Music and forms of
 19 entertainment are but incidental to restaurants. It is a matter of common knowledge that restaurants
 20 world-wide have some form of entertainment features. Here, there is no clear language in the Lease
 21 or Capitola Code that would cause a reasonable person to assume that live music is prohibited from a
 22 restaurant-use—especially considering Landlord’s approval of Claimants corresponding
 23 entertainment permit. Live music is played at restaurants world-wide, including restaurants in the
 24 “Village” zoning district where the subject premises are located. Absent explicit language that
 25 excludes live music as a part of the term “restaurant” it is at least ambiguous as to whether live music
 26 is a part of that use.
 27
 28

2 The factual record further reveals a neighboring café, Mr. Toots, in the same mixed-use
3 building regularly showcases live music. (Dec. of M. Strong ¶ 6). Landlord has refused to negotiate or
4 accept any outcome resulting in Claimants engaging in lawful musical performance, despite allowing
5 their other commercial tenants to do so.

6 **c. The Capitola Code is Silent as to whether “Restaurant” Includes Live**
7 **Music but a Ministerial Process Exists to Obtain a Live Music Permit**
8 **for Restaurants**

9 The Capitola Mixed Use Zoning District Chapter 17.20 states:

10 “Restaurants and cafes means a business establishment serving food and beverages to
11 customers where the food and beverages may be consumed on the premises or carried out
12 and where more than one hundred sixty square feet of public area is open to customers.
13 Includes full-service restaurants, fast-food restaurants, coffee shops, cafes, and other similar
14 eating and drinking establishments.”

15 (Capitola Mixed Use Zon. Dist. Ch. 17.20)

16 Capitola ordinances further authorize any business establishment, including restaurants, to
17 offer live entertainment or recorded music for patrons of their businesses.

18 “No owner, manager or operator of any business or establishment (except theaters, as
19 defined in Section 5.24.025) may arrange for or allow entertainment to be conducted on the
20 premises of any such business or establishment without obtaining an entertainment permit as
21 provided in this chapter. No person shall arrange for or promote entertainment on any
22 publicly owned park, street or facility without first obtaining an entertainment permit as
23 provided in this chapter. However, entertainment which is entirely enclosed within a structure
24 and which cannot, at any time, be audible outside of that structure, need not have any
25 entertainment permit.”

26 (Capitola Municipal Code 5.24.020)

27 CBG remains in good standing with the City of Capitola in the category of a “restaurant full
28 bar.” (Dec. of M. Strong ¶ 57). Capitola’s ordinances authorize any business establishment, including
29 restaurants, to offer live entertainment or recorded music for patrons of their businesses pursuant to
30 the Capitola Code so long as the business owner obtains an entertainment permit. (Capitola
31 Municipal Code 5.24.020; 17.160.020(E)(l)(b).) The city council issues entertainment permits upon a
32 finding that "no significant number of non-patrons will be disturbed by the entertainment subject to

the permit application or “by the goings and comings of the people patronizing the entertainment events, which are the subject of the permit application” and that “the establishment at which the entertainment is to be provided or the entity which is applying for the entertainment permit is currently in compliance with all applicable state and local building, zoning, fire, and other regulations pertaining to public health and safety as well as any other statutes, ordinances, regulations, or permits that pertain to the establishment or the property on which the establishment is situated.” (Capitola Municipal Code 5.24.040.) Capitola also holds the authority to limit any potential disturbances to non-patrons by enacting specific conditions such as days and hours of operation and noise level limitations for the entertainment.

Here, CBG applied for an entertainment permit, specifically requesting a live music permit for a "family friendly" restaurant and setting forth the plan of operations during hours when music will play; this permit was issued on November 16, 2021, and renewed on or about January 27, 2022. Knowing that CBG's restaurant sits within a mixed-used commercial building with residential tenants, City of Capitola still approved the permit and renewed it establishing that CBG's application met the threshold requirements for non-disturbance of non-patrons as outlined above in the Capitola Municipal Code. CBG's Entertainment Permit application expressly states that the application is for a **restaurant offering live music.**

3. The Intention of the Parties at the Time of Executing the Agreements was that Live Music be a Part of the Restaurant “Use”

As detailed in the facts, Claimants began discussing the acquisition of the assets of the previous occupant, running the at-issue restaurant, and taking over operations in the space by buying the assets of the previous business including the ABC license. During due diligence review prior to this transaction, Claimants learned that most dining establishments in the “Village” area offers live music to patrons. (Dec. of M. Strong ¶ 6). Claimants concluded that live entertainment would be necessary to run a profitable business at the Premises. (Dec. of M. Strong ¶ 6). Claimants intended to

do so and expressed this intention to Landlord. (Dec. of M. Strong ¶¶ 6-8, Ex. A) Landlord and its agents acknowledged the intended use of live entertainment at the Premises. (Dec. of M. Strong ¶¶ 10-13, Ex. D). Landlord’s conduct materially affected Claimants’ decision to enter the Sublease. (Dec. of M. Strong ¶ 6-8). Landlord actively welcomed Claimants’ plan at that time without voicing objections or including any terms in the Sublease or Lease Assignment preventing live music or requiring its further consent to such. (Dec. of M. Strong ¶ 9, Ex. C). Claimants also reasonably relied on the fact that the neighboring restaurants in and out of the Subject Premises offer amplified music to its dining patrons and offered live music at the time that the Master Landlord owned and operated that business. (Dec. of M. Strong ¶ 6). Following these representations and reasonable conclusions, on July 21, 2021, the parties executed the 2021 Sublease & Assignment. (Dec. of M. Strong ¶ 8-9, Ex. C).

The factual record substantially evidences that Landlord received numerous written communications about Claimants’ intention to host live music at the restaurant. Likewise, Landlord failed to exclude live music prior to signing the Sublease and Lease Assignment. in Respondent’s mediation brief, Respondent states that “[t]he Landlord does not intend to consent to future entertainment permit applications, if any, submitted by Capitola Strong or the Strongs if their tenancy of 231 is extended.” (Landlord’s Mediation Statement). Landlord obfuscated this fact at the time of forming the applicable agreements.

a. The Emails between Broker and Landlord prior to the execution of the Sublease communicate Claimants' intentions to host live entertainment at the Premises

Communications with Landlord expressing Claimants interest in hosting live music and his approval to do so materially affected Claimants decision to purchase the business and agree to the Sublease. (Dec. of M. Strong ¶ 6-8.)

2 On July 15, 2021, real estate broker Bob Brooks forwarded a summary of Claimants business
3 plan to Mr. Yates which stated in part, "...it is important for us to offer live music..." (Dec. of M.
4 Strong ¶ 8, Ex. A).

5 In July 2021, Claimants entered into the Sublease & Assignment Agreement. (Dec. of M.
6 Strong ¶ 9, Ex. C). On August 20, 2021, Mr. Brooks sent an email to Mr. Yates that stated in part:
7 "Michelle and Sal are working with a sign company that will help them with any necessary approvals.
8 **They're planning on getting an entertainment permit so they can have a two or three person**
9 **band** to provide dinner music and will need your sign off on that." (Dec. of M. Strong ¶ 10, Ex. D).

10 On August 20, 2021, Mr. Yates responded, "The property manager does all the leasing-lease
11 work. I informed him of the new tenant a month ago and a lease was prepared. Jill should be aware
12 of all this to assist the new tenant in the transition. Thanks for the info." (Dec. of M. Strong ¶ 11, Ex.
13 D).

14 Any allegation that the Landlord did not give his implied consent to allow live music cannot
15 pass scrutiny, as evidenced by Landlord's correspondence to Claimants and their broker.

16
17 **b. The Emails between Property Manager and Claimants subsequent to the**
18 **execution of the Sublease indicate the parties continuing intention that**
19 **Claimants' host live entertainment at the premises**

20 On September 22, 2021 Claimant Michelle Strong sent an email to the property manager
21 Russell Gross, stating in part, "**We needed to get an inspection done for entertainment permit.**
22 Here are the items that need to be addressed. The items inside our unit have been taken care of,
23 however there are some that pertain to the common area." (Dec. of M. Strong ¶ 13, Ex. E Emphasis
24 added).

25 On that same day, Mr. Gross replied that he approved SSS Fire Protection to complete the 5-
26 year fire inspection. (Dec. of M. Strong ¶ 14, Ex. E). The fire inspection was solely for entertainment
27 permit purposes. (Dec. of M. Strong ¶ 14).

28

4. Landlord has Completely Frustrated Claimants’ Use of the Property for Live Music

2 Significant evidence supports Claimants position that live music is a part of the use of the
3 premises defined in the Lease, and Landlord is in breach of contract and liable to Claimants for any
4 damages caused by Landlord’s intentional conduct to frustrate Claimants’ use of the Premises for
5 that purpose.

6
7 **a. Steven Yates’s Conduct to Prevent Reissue of Live Entertainment Permit**

8 In October 2022 Claimants met with Chief of Police Andrew Dally to discuss the renewal of
9 the entertainment permit. (Dec. of M. Strong ¶ 43). They offered to file the same annual renewal
10 form for 2023 that was filed for 2021 and 2022. However, Steven Yates refused to sign landlord
11 consent on the renewal form resulting in denial of the permit application. Even though Landlord had
12 not given landlord consent in writing in 2021 or 2022, the permits were still issued. (Dec. of M.
13 Strong ¶ 43).

14 Since entertainment such as live music remains lawful subject to the restrictions of the
15 Capitola Code, there is no question of illegality here. The problem is one of commercial frustration
16 of the purpose and value of a lease where landlord has suddenly restricted a business from engaging
17 in certain lawful activity on the leased premises. The Lease here authorizes “use the Premises for a
18 restaurant, as defined in the City of Capitola”. Accordingly, Capitola’s ordinances authorize any
19 business establishment, including restaurants, to offer live entertainment or recorded music for
20 patrons of their businesses pursuant to the Capitola Code so long as the business owner obtains an
21 entertainment permit. (Capitola Municipal Code 5.24.020; 17.160.020(E)(l)(b).)

22
23 Claimants have proved that hosting live music was a reasonably foreseeable use of the
24 premises and that the value of the lease absent such has been greatly diminished. Claimants
25 purchased the assets of this beach-front business post-COVID restrictions with a specific vision
26 that was shared extensively with the landlord and detailed in their business plan—a family
27 friendly restaurant on the beach offering live music during dinner. (Dec. of M. Strong ¶ 8, Ex. A).

2 This is not an establishment that plays loud music throughout the night and early morning. The
3 lawful conduct of Claimants business was an implied condition of the lease now rendered
4 impossible by Landlords unlawful regulations.

5 On January 31, 2023 Claimants received a letter from the City Manager officially denying
6 their Entertainment Permit application for 2023, solely because of the stated lack of “landlord
7 approval,” which resulted from Steven Yate’s vocally and intentionally removing landlord consent
8 to the entertainment permit. There was no other reason listed for denial of the permit. (Dec. of M.
9 Strong ¶ 44, Ex. O). Steven Yates had communicated in December of 2022 with Capitola Police
10 communicating his withdrawal of landlord consent for live music. (Dec. of M. Strong ¶ 69, Ex. V).
11 Without the entertainment permit, Claimants were forced to stop **all** music and cancel several
12 contracts causing extensive monetary damages and unknowable harm to their business goodwill.

13 At best, the Lease permits Landlord to require Claimants to perform live music in accordance
14 with applicable law. Landlord overstepped its authority and breached the Lease when its agents took
15 specific acts to halt all musical entertainment.
16

17 **b. Claimants Never Committed Actionable Nuisance or Otherwise Violated**
18 **the Lease and Sublease Agreements**

19 During the parties’ dispute, Landlord has inappropriately maintained that Tenants’ use of the
20 property is in violation of the Lease Agreement. The Landlord’s complaints of nuisance are largely
21 unsupported, and the factual record in this matter only contains uninformative and prohibited
22 hearsay communications by unknown and unnamed third parties or unsubstantiated allegations of
23 fact by Steven Yates.

24 Capitola Municipal Ordinance 9.12.030 defines nuisance with respect to noise as “a violation
25 of any provision of this chapter...” Chapter 5.24 of Capitola’s Municipal Code sets forth the
26 conditions for live music entertainment that protect the peace and quiet of non-patrons.
27
28

Beginning in April 2022, Ryan Yates, an upstairs residential tenant who is also the son of Steven Yates, began engaging intimidating and inappropriate behavior to CBG employee including inappropriate conduct toward a 16-year-old hostess. (Dec. of M. Strong ¶ 18). Michelle Strong immediately reported Ryan Yates' behavior to Steven Yates. (Dec. of M. Strong ¶ 18).

Nonetheless, Ryan continued to speak in threatening tones to CBG employees, unreasonably using his relationship to the Landlord as authority. (Dec. of M. Strong ¶ 19).

Ryan Yates raised allegations of excessive noise and alleged municipal code violations relating to CBG's live music to Capitola Police. Capitola Police investigated the allegations and issued no reports, made no citations, and in the case of the May 5, 2022 claim of a code violation, characterized the complaint as **unfounded**. (Dec. of M. Strong ¶¶ 22, 23).

Until Claimants reported Ryan Yates' behavior, Claimants hosted live music performances smoothly, with no complaints or requests to lower music volume from patrons, neighbors, or upstairs residential tenants. (Dec. of M. Strong ¶ 24). Nor did Capitola Police issue any reports or citations at any time before or after Ryan Yates' allegations. (Dec. of M. Strong ¶ 24). In fact, a neighboring hotel recommended Claimants' restaurant as a preferred venue for meals and citing the presence of live music. (Dec. of M. Strong ¶ 23).

Accordingly, Landlord has offered no evidence to CBG, the Master Tenant, or the City of Capitola evidencing a violation of the Entertainment Permit or of any local ordinance. CBG stands committed to proving its compliance with its obligations under the same. CBG previously offered video and decibel readings supporting this compliance and remains willing to provide those. (Dec. of M. Strong ¶ 27).

B. Claimants will suffer and are currently suffering immediate interim harm in the absence of emergency injunctive relief, while Landlord would suffer no appreciable hardship from the issuance of emergency injunctive relief.

Once a claimant or plaintiff establishes a likelihood of success on the merits, the only remaining issue is whether the "interim harm that the plaintiff is likely to sustain if the injunction

were denied" outweighs "the harm that the defendant is likely to suffer if the preliminary injunction were issued." (*Abba Rubber v. Seaquist*, 235 Cal. App. 3d 1, 17 (1991).)

Firstly, Claimants' entire theory of case, which is supported by their direct and admissible evidence, is that they have lawfully operated their business and that Landlord's principals and their son have a personal issue with Claimants. If this is proven true, then there is no ability to reasonably argue that Claimants' operation of their business according to law can cause any harm to Respondent. As a matter of law, a party is never harmed by lawful acts and Respondent cannot be harmed by Claimants' lawful operation of their business. There is no evidence whatsoever that allowing Claimants to continue to lawfully operate their business as they did for almost 18 months prior to Respondent's wrongful termination of the entertainment permit would result in any conceivable harm to anyone. Even if Respondent does claim to have an imminent concern, nothing in the record would support such. Respondents rely on self-serving noise complaints both raised by one tenant, Ryan Yates, son of Steven Yates. (Dec. of M. Strong ¶ 22-25). The police unit that investigated the alleged noise complaints did not issue any reports or citations at any time before or after Claimants entertainment permit was denied. (Dec. of M. Strong ¶ 23).

Secondly, Respondent cannot allege any harm to itself as a limited liability company that owns the premises. There are no pending civil lawsuits, no criminal cases, no active code violations, nor any other administrative proceeding involving the building of Claimants. Landlord's claims that other tenants are being harmed are theoretical and self-serving. Even if such tenants were being harmed, Landlord's actions are not justified. Respondents will suffer no harm if Claimants continue to lawfully operate their business as they did for almost 18 months prior to the wrongful termination of their entertainment permit. Respondent will still receive rent, Claimants will continue to pay CAM charges and other shared expenses, the subject premises will not be damaged or devalued in any way.

Conversely, Claimants currently suffer extensive weekly monetary damages of thousands of dollars of lost revenue and cancellation fees. Their real harm centers on the unknown and

1 unknowable harm to their business goodwill, community reputation, and brand value. Indeed, there
2 is an existential risk that Claimants' very business will become insolvent because of the abrupt change
3 to what was otherwise a lucrative business model. The existential threat creates the risk of irreparable
4 harm.

5 1. Claimants lose \$5,000 of revenue weekly from loss of the entertainment permit.

6 Claimants incurred and will incur damages associated with cancelling several contracts with
7 entertainers and staff for said events, along with its projected lost revenue that may be counted on a
8 weekly basis by thousands of dollars in lost revenue. (Dec. of M. Strong ¶ 58). Here, there is no
9 question that irreparable harm exists. Claimants are losing an estimate \$5,000 each week and the
10 failure to grant such injunction would cause catastrophic and irreparable injury to Capitola Bar &
11 Grill, including its potential demise. (Dec. of M. Strong ¶ 55).

12 2. The brand and business goodwill of Claimants' business is seriously impacted.

13 In California, the "goodwill" of a business "consists of the benefits that accrue to a business
14 as a result of its location, reputation for dependability, skill or quality, and any other circumstances
15 resulting in probable retention of old or acquisition of new patronage." Cal. Code Civ. Proc. §
16 1263.510(b). Put another way: "Goodwill is the amount by which a business's overall value exceeds
17 the value of its constituent assets, often due to a recognizable brand name, a sterling reputation, or an
18 ideal location. Regardless of the cause, however, goodwill almost always translates into a business's
19 profitability." *People ex rel. Dept. of Transp. v. Dry Canyon Enterprises, LLC* (2012) 211 Cal.App.4th 486,
20 493–94 (internal citation omitted).

21 Claimants' have developed a reputation in the Esplanade to have family-friendly dining with
22 live music and a spectacular view of the ocean. (Dec. of M. Strong ¶ 56). Claimants' restaurant has
23 become a place to go for tourists and locals alike. (Dec. of M. Strong ¶ 56). Local businesses refer
24 their guests to Claimants' restaurant. (Dec. of M. Strong ¶ 56). All of this is risked by Landlord's
25 conduct. People will stop thinking of Claimants' restaurant as a scenic venue with live music. When
26
27
28

restaurant-goers think about where they will go on a Friday or Saturday they will increasingly think less of Claimants' restaurant and go to other venues that do have live music. Presently, current patrons inquire why there is no more live music and Claimants must embarrassingly explain. (Dec. of M. Strong ¶ 56).

Claimants are confident that they did not violate any lawful provisions of the Capitola Municipal Code or lease provisions. Yet, in absence of emergency injunctive relief they cannot book any live entertainment, play any music at any capacity, and must cancel all previously booked entertainment. Entertainment directly affects Claimants' income. Moreover, customers of live entertainment are fickle and prohibiting live music for even a short period of time can cause permanent and irreparable harm if the public perceives that the venue is no longer the place to go for live entertainment.

C. Claimants Seek a Prohibitory Injunction and Relief that is within the Power of the Arbitrator to Grant

Due to communications from Respondent's attorney, Claimants anticipate that Respondent will argue that Claimants are asking Landlord to do something that it has no power or authority to do and for prospective relief for acts which have not occurred and may never occur. Respondent may argue that Claimants are asking the Landlord to sign an entertainment application which can only be issued by the City of Capitola and before there is a determination as to whether the landlord has any contractual obligation to sign such an application. This constitutes a serious material misunderstanding of the relief requested. Rather, Claimants seek a prohibitory injunction maintaining the status quo prior to Landlord act of breach.

Whether an injunction is mandatory or prohibitory depends upon whether the overall effect of the injunction is to prohibit or compel action. (United Railroads of San Francisco v. Superior Court (1916) 172 Cal. 80, 82-87.) An injunction may be prohibitory even if it requires the restrained party to undertake some affirmative act that is necessary to effectuate the principal purpose of the

injunction. (Youngblood v. Wilcox (1989) 207 Cal.App.3d 1368, 1372, fn. 1 [Fourth Dist., Div. Two]; Jaynes v. Weickman (1921) 51 Cal.App. 696, 700.) The usual distinction is that a prohibitory injunction requires no action and merely preserves the status quo, whereas a mandatory injunction requires the defendant to take affirmative action. Although the request of Claimants requires action by Landlord, it is not accurate to describe it as a mandatory injunction since it seeks only to have Respondent “undertake some affirmative act” to restore the status quo and then **prohibit** Landlord from acting on the basis that there is no landlord consent for the entertainment permit. Restoring the *status quo ante*, even if it may require some act by Landlord to undo its prior actions, does not make the injunction mandatory in nature. Despite Respondent’s self-serving position, the *status quo* in this case for 18 months was Claimants lawful operation of their business with live music. Landlord took overt intentional action to communicate to the City of Capitola that its consent for the music permit had been withdrawn. (Dec. of M. Strong ¶ 69, Ex. V). Those acts constitute the breach of contract and they disrupted and altered the status quo. Claimants seek an order restoring the *status quo ante* such that Landlord consent be reinstated at which point Claimants will obtain their entertainment permit. Despite Landlord’s desperate attempts in this matter to make it seem like the Capitola Police have “investigated” Claimants and have numerous issues with Claimants, there are no such issues. The only reason that the permit application was denied was the absence of landlord consent. (Dec. of M. Strong ¶ 44, Ex. O). If the arbitrator finds that Claimants are likely to prevail on the merits of the dispute, then it is proper to restore the *status quo* to what it was prior to the abrupt change of circumstances caused by the denial of the entertainment permit.

V. EMERGENCY RELIEF REQUESTED

For all the reasons given herein, Claimants requests:

Emergency injunctive relief pursuant to which Respondent is ordered to:

- 1) Immediately take all actions necessary and appropriate to comply with its duties under the lease to permit Claimants’ use of the premises including**

engaging with the City of Capitola and other agencies, as required, to communicate landlord consent for live entertainment.

- 2) Refrain from taking any action withdrawing its consent for Claimants' live entertainment permit or otherwise communicating with the City of Capitola or the Capitola Police Department for the purpose of withdrawing its consent for the live entertainment permit.

VI. CONCLUSION

For the foregoing reasons, and those that may be presented at a hearing on this matter, Claimants thus respectfully requests appointment of an Emergency Arbitrator and the provisional remedy of preliminary injunctive relief to protect its business during the pendency of this arbitration.

Respectfully submitted,

Date: March 24, 2023

ANTHONY LAW GROUP, PC



Drew M. Sanchez,
Attorneys for Claimants,
Michelle Strong and Lasalle Strong

PROOF OF SERVICE

2 I, Jamila Colbert declare: I am over the age of 18 years, and am not a party to this action. On
3 March 24, 2023, I served the following document:

4 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF**
5 **CLAIMANTS' REQUEST FOR ISSUANCE OF PROVISIONAL INJUNCTIVE**
6 **RELIEF**

7 **VIA U.S. MAIL** – CCP § 1013(a) I caused the above documents to be placed in an
8 envelope with postage thereon fully prepared to be placed in the United States Postal Service with
9 postage fully prepaid and addressed to Plaintiff's counsel: and

10 **VIA ELECTRONIC MAIL** The documents were transmitted in PDF format to each of
11 the email addresses as indicated on the service list.

12 JRG Attorneys at Law
13 **C/O Stephan A. Barber**
14 318 Cayuga Street
15 Salinas, CA 93901
16 steve@jrgattorneys.com

17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct.

19 Executed on March 24, 2023 at Oakland, California.

20 
21 _____
22 Jamila Colbert

1 JAMES M. ANTHONY (203150)
 2 James@anthonylaw.group
 3 DREW M. SANCHEZ (277163)
 4 Drew.Sanchez@anthonylaw.group
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 9 (f): 510-283-0186

10 Attorneys for Claimants
 11 MICHELLE STRONG and LASALLE STRONG

12 JAMS ARBITRATION

13 MICHELLE STRONG, an individual; and
 14 LASALLE STRONG, an individual;

15 Claimants,
 16 vs.

17 LA SERENA PROPERTIES, LLC, a
 18 California limited liability company

19 Respondent.

20 **JAMS Ref. No. 5130000363**

21 **DECLARATION OF MICHELLE
 22 STRONG IN SUPPORT OF
 23 CLAIMANTS' REQUEST FOR
 24 APPOINTMENT OF AN EMERGENCY
 25 ARBITRATOR AND FOR ISSUANCE
 26 OF PROVISIONAL INJUNCTIVE
 27 RELIEF**

Date: TBD
Time: TBD
Location: Virtual

Arbitrator: Hon. Glenda Sanders

28 I, Michelle Strong declare as follows:

29 1. I am over 18 years of age and I am a Claimant in JAMS Arbitration Ref. No.
 30 5130000363. I make this declaration in support of Claimants' Request for Appointment of
 31 Emergency Arbitrator and Provisional Injunctive Relief. I have personal knowledge of the

1 matters set forth in this declaration, and if called upon to testify to such matters, I could and
2 would do so competently.

3 2. My husband, Lasalle Strong and I, are the owners of Capitola Bar and Grill
4 (“CBG”) located at 231 Esplanade in Capitola, California 95010.

5 **A. Acquisition of Commercial Lease, Assets, Liquor License, and**
6 **Commencement of Operation of Capitola Bar & Grill**

7 3. In June 2021, we responded to a commercial real estate listing by Broker Bob
8 Brooks offering for sell the assets of a restaurant business, and lease to the premises in
9 downtown Capitola at 231 Esplanade in Capitola, California 95010. Mr. Brooks became
10 broker for seller Jill Ealy, managing member of JJJ Group Inc., and us. The landlord was La
11 Serena Properties LLC (Steven Yates, managing member).

12 4. Eventually my husband and I signed a Sublease and Assignment with JJJ Group
13 Inc. as Master Lessor, with the authorization of La Serena Properties LLC as Landlord.

14 5. The restaurant is in the scenic seaside village of Capitola, a longtime resort
15 destination on Monterey Bay surrounded by restaurants, bars, and hotels. A well-known
16 restaurant called Margaritaville, which used to be owned wholly or in part by Steven Yates, is
17 in the same building.
18

19 6. During the due diligence period, prior to execution of the Sublease and
20 Assignment, I learned that most dining establishments in the area offer live music, including
21 Mr. Toots, the coffee shop located in the same mixed-use building. I also learned that the
22 restaurant Margaritaville, previously owned by Steven Yates and located in the same building
23 as my restaurant, also offered live music and live DJ’s during the time that Mr. Yates operated
24 that business. Additionally, the building next to us houses Paradise Grille which currently has
25 music. That building is located less than 10ft from our building. I concluded that live music
26 would be necessary to run a profitable business in that area.
27

1 7. Extensive communications with Mr. Yates expressing my interest in hosting live
2 music and his approval to do so materially affected my decision to purchase the business and
3 agree to the Sublease.

4 8. On July 15, 2021, Mr. Brooks forwarded a summary of our business plan to
5 Steven Yates which stated in part: “In creating a casual, family friendly vibe, **it is important**
6 **for us to offer live music**, with small groups of acoustic musicians.” (**Exhibit A**). This
7 business plan formed part of our tenant application, which was submitted to Landlord,
8 reviewed by Landlord, and ultimately approved by Landlord. Landlord’s acceptance of these
9 materials and subsequent execution of the lease agreement led me to believe he understood
10 and consented to our use of live music in our business model.

11 9. Subsequently, we purchased the assets of JJJ Group Inc. for \$240,000.00,
12 including the lease (**Exhibit B**), and entered into the Sublease and Assignment Agreement
13 with JJJ Group and the Landlord on July 21, 2021. (**Exhibit C**).

14 10. On August 20, 2021, Mr. Brooks sent an email to Mr. Yates that stated in part:
15
16 “Michelle and Sal are working with a sign company that will help them with any
17 necessary approvals. **They're planning on getting an entertainment permit so they**
18 **can have a two or three person band to provide dinner music and will need your**
19 **sign off on that.**” (**Exhibit D**).

20 11. On August 20, 2021, Mr. Yates responded,
21
22 “The property manager does all the leasing-lease work. I informed him of the new tenant
23 a month ago and a lease was prepared. Jill should be aware of all this to assist the new
24 tenant in the transition. Thanks for the info.” (**Exhibit D**).

25 12. An annual fire inspection was required to be performed prior to submitting an
26 application to the City of Capitola for an entertainment permit.

27 13. On September 22, 2021 I sent an email to the property manager Russell Gross,
stating in part:

1 “We needed to get an inspection done for entertainment permit. Here are the items
2 that need to be addressed. The items inside our unit have been taken care of, however
there are some that pertain to the common area.” (Exhibit E).

3 14. On that same day, Mr. Gross replied that **he approved SSS Fire Protection to**
4 **complete the “5-year fire inspection”**. The fire inspection was solely for entertainment
5 permit purposes. (Exhibit E).

6 15. We expended not less than \$10,000 in improvements as required for the
7 entertainment permit including but not limited to—soundproofing, wood paneling, ceiling
8 treatment, curtains, self-closing doors, and cameras.

9 16. In November 2021, the entertainment permit was issued from the City of
10 Capitola for the remainder of that year. On January 27, 2022 the entertainment permit was
11 renewed for 2022 without issue. (Exhibit F).

12 17. During that time, we implemented our business plan involving live music.

13 18. On April 2, 2022, and May 5, 2022, Ryan Yates, an upstairs residential tenant
14 who is also the son of Steven Yates, complained about noise violations and involved Capitola
15 Police, who took no action on the complaints. After Capitola Police declined further action,
16 Ryan Yates began engaging intimidating and inappropriate behavior to employees of our
17 establishment—including inappropriate conduct toward a young 16-year-old hostess. I
18 immediately reported Ryan Yates’ behavior to Steven Yates.

19 19. Ryan continued to speak in threatening tones to our employees, unreasonably
20 using his relationship to the landlord as authority.

21 20. Additionally, I had various communications with Landlord Steven Yates and
22 property manager Russell Gross regarding issues with the condition of the Premises. Notably,
23 the ADA chair lift to the restaurant never worked (Exhibit G) and the roof of the residential
24 unit that I am also in possession of, constantly leaked during the rainy seasons.
25
26
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1 21. Progress on repairs were very slow. Some minor work was done, but not
2 professionally. The chair lift has since been removed and half-replaced, remaining undone.

3 **B. Landlord Escalation of Dispute**

4 22. Ryan Yates on or about April 2, 2022 and May 5, 2022, raised allegations of noise
5 and alleged municipal code violations relating to our live music to Capitola Police.

6 23. Capitola Police investigated the noise violation allegations and made no finding
7 of any alleged violations, issued no citations, arrested no persons, issued no warrants, and
8 performed no follow up. Specifically, in the case of the May 5, 2022 complaint, Police came to
9 Capitola Bar & Grill. When Police arrived, it was obvious to them that no such violation
10 occurred and characterized the complaint as **unfounded. (Exhibit H).**

11 24. Until we reported Ryan Yates' behavior, we hosted live music performances
12 smoothly, with no complaints or requests to lower music volume from patrons, neighbors or
13 upstairs residential tenants. Nor did Capitola Police issue any reports or citations at any time
14 before or after Ryan Yates' allegations. In fact, a neighboring hotel recommended our
15 restaurant as a preferred venue for meals and citing the presence of live music.

16 25. Nonetheless, on May 17, 2022, property manager Russell Gross sent me an email
17 which stated in part:

18 "Michelle, I am receiving a number of complaints regarding the music at the premises."
19 The email further provided for adjustments the owner [Steven Yates] required we make
20 to, "stay in compliance" with the "entertainment permit and lease agreement."
21 **(Exhibit I)**

22 26. On May 17, 2022, I replied to Russell's email detailing our compliance with the
23 lease and explaining that we received confirmation from Officer Brantley, who responds to noise
24 ordinance complaints on behalf of the City of Capitola, confirming that we were in compliance
25 with local law and our permit. I also requested more details on the alleged "number of
26 complaints" so that we could provide our security camera footage, as we had not received notice
27

1 of any complaints aside from the two complaints made by Steven’s son on April 2, 2022, and
2 May 5, 2022. **(Exhibit J)**.

3 27. Despite not being required to do so, we installed curtains and sound boards and
4 kept doors closed after 8pm. On weekends we stopped all music by 10pm, even though our
5 permit allowed us to play music until 12:30am. **(Exhibit F) (Exhibit J)**. We stand committed to
6 proving our compliance with our obligations under our permit and any local ordinance. We
7 previously offered Landlord video and decibel readings supporting this compliance and remain
8 willing to provide those.

9
10 28. I did not receive a response to my May 17, 2022 email, we continued to operate
11 our business and provide music to our customers. On May 22, 2022, Ryan Yates posted a
12 notice on our door that appeared to be on behalf of the landlord. I sent an email on that same
13 date, a true and correct copy of which is attached hereto as **Exhibit S**. In the email I explained
14 the circumstances and requested landlord intervention before the dispute escalated. On June 1,
15 2022, the property manager sent an email stating that, “[t]he Tenants at the complex would
16 like to know if you have a plan to continue "as is" with the music. They are stating that DBA
17 levels over 100. steady level between 90 and 100. Hearing loss can occur at 15 minutes of 90
18 dba.” On June 1, 2023, I responded with an email saying that the reported levels were not
19 possible as 140 dBa would cause deafness in a human being and insisting on a meeting with
20 landlord intervention. **(Exhibit S)**.

21
22 29. On June 1, 2022, Steven Yates emailed me stating that the Landlord had opened
23 a harassment investigation due to my complaint regarding Ryan Yates’ conduct. The subject
24 line of the email was “Noise and harassment claim.” It stated in part, “Commercial tenant
25 [CBG] has alleged that it has been harassed by either a tenant in the landlords [sic] property or
26 by landlord...” On June 9, 2022, the property manager forwarded a letter from Steven Yates
27

1 from June 8, 2022, that perplexingly concluded that I was harassing Ryan Yates and then used
2 the harassment investigation to reiterate the disputed noise complaints. (**Exhibit K**).

3 30. Perplexingly however, the letter concluded by claiming that we were harassing
4 Ryan Yates and put forth yet again unfounded claims of noise ordinance violations. (**Exhibit**
5 **K**).

6 31. Without evidence, Ryan Yates implied our involvement in “slashing” his bicycle
7 tires. He made no police report about that purported damage. Yet Steven Yates characterized
8 Ryan Yates’ vandalism claim as “harassment” by us. The letter further commanded, “reverse
9 course and be a responsible tenant in the building and in the village.” (**Exhibit K**).

10 32. Steven Yates also claimed that he used a cell phone application to measure our live
11 music at 105-110 decibels outside of the building. (**Exhibit K**). The nature of these readings and
12 the precise locations where they were taken were not stated, nor did the letter advise whether
13 other restaurants in the area were open and contributing to the sound.

14 33. On June 9, 2022 I responded to Steven Yate’s June 8, 2022 letter explaining that
15 his June 8, 2022 letter completely mischaracterized Ryan Yates’s behavior. I further explained
16 that his decibel readings were grossly inaccurate, and we kept videos and a-weighted decibel
17 readings evidencing that our music remained within compliant levels, that the music did not
18 reach the bar seating area or our residential located adjacent to the restaurant, and that Capitola
19 Police never issued a citation in response to Ryan Yates’ complaints. (**Exhibit L**).

20 34. I made multiple requests to have Steven Yates perform an on-site inspection to
21 confirm compliance with our entertainment permit, our lease and with the Capitola Municipal
22 Code. Mr. Yates refused to do so. (**Exhibit L**).

23 35. On June 16, 2022, I sent another email to Steven and Russell requesting to install
24 sound insulation to non-working vents to minimize vibration at my expense. I also informed
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26
27

1 them that I reached out to several hotels in the area and tenants in the building, all who were
2 supportive of our business even promoting our live music to their guest. (**Exhibit M**).

3 36. On June 21, 2022, Steven Yates replied to my June 16, 2022 email that he saw “no
4 further point in attempting to rationalize”... “the impact your live music-bands-kereoke is
5 having on the building tenants.” Despite having no actual complaint from any residential or
6 commercial tenant aside from his son, Ryan Yates. Mr. Yates further stated, “you [CBG] are in
7 default under the lease...” (**Exhibit M**).

8 37. We never received proper direct notice of the alleged breach and Mr. Yates refused
9 to communicate with us in any capacity regarding our efforts to comply with the improper
10 notice.

11 38. Subsequently, we met with Police Chief Andrew Dally to discuss any compliance
12 issues due to the confusing “notices” from the landlord. The Chief said there were no significant
13 issues or complaints and that he was not concerned with our use of music—however, we were
14 informed that Steven Yates had asked Capitola Police to cancel our entertainment permit.

15 39. During the week of August 22, 2022, Master Tenant, Jill Ealy sent written notice
16 of exercise of the option to extend the Lease by registered mail. On August 29, 2022, Jill reached
17 out to Steve to confirm his receipt of the notice. (**Exhibit N**).

18 40. On August 30, 2022, Steven Yates responded to Jill Ealy that we were in “default
19 of the lease” and made “zero attempt” to cure the alleged music breach, and “may not exercise
20 the option while in default and that period to correct the default has passed.” (**Exhibit N**)

21 41. In fact, we installed curtains and sound boards, closed our doors early, reduced
22 music days, times and volume, installed cameras, kept decibel readings, requested permission to
23 add insulation and requested multiple meetings with Steven. (**Exhibit J**).

1 42. On September 1, 2022, Jill Ealy responded to Steven’s August 30, 2022 email to
2 address the supposed non-compliance and exercise of the option to extend the lease agreement.
3 **(Exhibit N)**.

4 43. We hired a law firm to assist with the conflict. In October 2022 we met with Chief
5 of Police Andrew Dally to discuss the renewal of the entertainment permit. We offered to file
6 the same annual renewal form for 2023 that was filed for 2021 and 2022. However, suddenly it
7 became an issue that Steven Yates refused to sign the renewal form even though he had not
8 signed the forms in 2021 or 2022 and the permits were still issued.

9
10 44. On January 31, 2023, we received a letter from the City Manager officially denying
11 our entertainment permit application for 2023, wholly because Steven Yates did not give his
12 consent by signing the form. There was no other reason listed for denial of the permit. **(Exhibit**
13 **O)**.

14 45. On February 1, 2023 Steven Yates emailed our broker to ask if he had any record
15 of communications between us regarding “implied consent” to use the space for Bands. Broker
16 Bob Brooks responded “I checked my email and found the attached business plan Michelle
17 Strong sent me and that I forwarded to you on July 15, 2021. It does mention live music”.
18 **(Exhibit P)**

19
20 46. We have several communications informing Mr. Yates that we intend to have live
21 music/bands. (See **Exhibit A, Exhibit D, Exhibit E**). We do not have any communications
22 from Mr. Yates opposing live music prior to our complaints against his son.

23 47. On February 21, 2023, we filed an appeal of the entertainment permit denial.
24 **(Exhibit Q)**.

1 48. On March 1, 2023 Steven Yates and I through our respective counsel participated
2 in mediation pursuant to the lease agreement to address the alleged default of lease and other
3 outstanding issues, including an exercise of the option to extend the lease agreement.

4 49. Steven Yates mediation statement consisted of multiple unfounded and untrue
5 statements. For example, Mr. Yates claimed, “The Landlord has been informed that due to past
6 violations of its permit, the CPD [Capitola Police Department] intends to issue a cease-and-
7 desist order to Capitola Strong prohibiting it from making loud music noises”. **(Exhibit R)**

8 50. To the contrary, CPD has never issued a cease-and-desist order of any kind, nor
9 have they issued a citation or violation of any kind through the filing of this declaration.
10

11 51. Mr. Yates mediation statement further stated, “The Subtenant has not been a
12 desirable tenant from the Landlord’s viewpoint and noise disturbances to others in the vicinity
13 are unacceptable.”

14 52. The vicinity consists of restaurants, bars and hotels. The **only** reports of alleged
15 noise disturbances from our restaurant came from the Landlord’s son Ryan Yates *after* we
16 complained about his harassing behavior.
17

18 53. Despite our efforts to compromise, Steven Yates refused to negotiate or agree to
19 allow us to offer musical performances at any level.

20 54. As of the date of this declaration we have been forced to stop **all** music. Landlord’s
21 other commercial tenants in the same building still engage in live music.

22 55. Live music assisted in sales especially through slow months, and it has been a
23 struggle keeping the doors open since Steven refused to sign off on our entertainment permit.
24 We are losing an estimate \$5,000 each week since our entertainment permit has been cancelled.

25 56. We have developed a reputation in the Esplanade to have family-friendly dining
26 with live music and a spectacular view of the ocean. Our restaurant has become a place to go
27

1 for tourists and locals alike. Local businesses refer their guests to our restaurant. Presently,
2 current patrons inquire why there is no more live music and we must embarrassingly explain.

3 57. Our restaurant is still paying rent and landlord is accepting it. We remain in good
4 standing with the City of Capitola in the category of a “restaurant full bar”.

5 58. We incurred damages associated with cancelling entertainment contracts and lost
6 revenue for the planned performances by complying with Mr. Yates demands.

7
8 **C. Landlord’s Bad Faith Refusal to Honor Lease Option and Improper Notice of Termination**

9 59. The lease agreement contains an option to renew and certain notice provisions.
10 The option to renew clause in the Lease agreement states in pertinent part:

11 “Option to Renew. Provided that this Lease is in full force and effect and the Tenant is
12 not in default of the Lease at the time of Tenant's election to exercise an option to renew,
13 Tenant shall have one (1) option to renew this Lease, for a five (5) year term. The renewal
14 term commences upon termination of the initial term. The option shall be exercised by
15 written notice of Tenant's election to exercise the option. Tenant's written notice shall be
16 delivered no sooner than 180 days and no less than 90 days prior to the end of the initial
17 term. **Tenant's notice shall be delivered to Landlord only by certified mail, return receipt.** If Tenant neglects to timely exercise the option, the right to exercise such option
18 automatically expires without notice from Landlord of Tenant's failure to exercise such
19 option. All terms and conditions of this Lease apply during the renewal term, except
20 monthly rent as indicated below.” (Exhibit C)

18 60. Pursuant to the language of the lease, the first date after which notice to exercise
19 the option to extend the Lease was August 4, 2022. The last day for notice was November 2,
20 2022

21 61. The general notice provisions in the Lease states:

22
23 **“All notices required or permitted under this Lease shall be in writing and shall be personally delivered, sent via reputable overnight courier, or sent by certified mail, return receipt requested, postage prepaid.** Notice to
24 Tenant shall be delivered to the address specified in Section 1 above, except that
25 upon Tenant’s taking possession of the Premises, the Premises shall be Tenant’s
26 address from notice purposes. Notices to Landlord shall be delivered to the
27 address specified in Section 1 above. All notices shall be effective upon delivery.
Either party may change its notice address upon written notice to the other party.”
(Exhibit C)

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62. The only reference to any mailing address to which notices may be sent is contained in section 1.02 of the Lease, which states: “LA SERENA PROPERTIES, LLC, C/O STEVEN A. YATES 283 CANYON OAKS SANTA CRUZ, CALIFORNIA 95065.” (**Exhibit C**). Notably, the address is an uninhabited residential home located in Santa Cruz, California, and is unmonitored. Steven Yates resides in Hawaii.

63. Master Tenant sent written notice of exercise of the option to extend the Lease sometime during the week of August 22, 2022, by registered mail.

64. On Monday, August 29, 2022, Jill Ealy, on behalf of Master Tenant sent an email communication to Steven Yates regarding the registered mailing of the notice to exercise the option, which stated in pertinent part: “Hello Steve, I sent the letter exercising the options registered mail. I just wanted to confirm receipt. I haven't heard anything further about CBG's music. I'm hoping that as a good thing and everything has been worked out.” (**Exhibit N**)

65. On August 30, 2022, Steven Yates replied:
“Jill, I have not received any letter from you as of yet. I will let you know when I do. You, through your subtenant, are in default of the lease. You have been notified of this default prior and had 30 days to correct the default. The subtenant has made zero attempt to resolve the noise issue or correct the default. The upstairs apartment remains half rented as no one could withstand the noise level. Your sub tenant remains a major problem.

Bottom line is per the lease you may not exercise the option to renew the lease while in default and that period to correct the default has passed.” (**Exhibit N**).

66. On September 1, 2022, Ms. Ealy responded:
“Hi Steve,

I actually just received the letter back and it stated there was no receptacle. Is there a better address that I should resend the letter? I know Michelle and Lasalle have reduced their music days, times, and volume all in attempt to appease you and the tenant. It is my understanding they have continually reached out to you for a meeting to no avail. I have informed the tenant that until we are paid in full or the two of you come to some solution, the music needs to stop. We never wanted to be in the middle of this situation nor do we want to spend the time and money hiring an attorney etc.

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What do you want or expect us to do at this point? They have an entertainment permit per the city and are well within its guidelines.


~Jill” (Exhibit N).

67. On October 24, 2022, I delivered, via Federal Express ("FedEx") overnight courier, a "Notice of Exercise of Option" to La Serena at the address provided for in the Master Lease. The Notice arrived on October 25, 2022. (Exhibit T)

68. On November 1, 2022, I delivered executed copies of the previously served Notice of Exercise of Option via FedEx. (Exhibit U).

69. On December 10, 2022, Steven Yates emailed to Capitola Police withdrawing consent for the live entertainment permit. (Exhibit V).

I declare under penalty of perjury under the laws of the State of California that the foregoing declaration is true and correct. This declaration is executed on this 24th day of March 2023, in Capitola, California.



Michelle Strong

EXHIBIT A

From: Firehouse Brew & Grill
Sent: Thursday, July 15, 2021 1:41:08 PM
To: Bob Brooks <[REDACTED]>
Subject: Menu

Hi Bob,

Here is a quick summary and menu draft.

Thank you,

Michelle Strong

Firehouse Brew & Grill

611 Escobar St.

Martinez, CA 94553

Firehousemartinez.com

2 Attachments • Scanned by Gmail ⓘ



Thanks! Got it. Got it, thanks!

We are very exciting to begin our next venture in Capitola, CA. Our plan is to open as soon as possible, with a bit of touchup paint and clean up. As frequent visitors to the Capitola Village, we are learning to understand the struggle of balance between catering to the tourist as well as the locals. Our menu consists of family friendly Americana Blend Cuisine. The décor will remain fresh and crisp focusing on the beautiful beach front views.

Our dishes will range from \$14 to \$42, with most items in the lower \$20 range. The full bar will include specialty cocktails, frozen drinks and a beer & wine list that focuses on the local vendors. Coming from a small East Bay community with great local support, it has worked as a fruit full marketing tool to feature the local wineries and breweries.

To keep the steady flow of sales through out the week, we have found to offer an all-day happy hour or a special menu item for Tuesday's and Wednesday's. It is a great time to hit the ground running, while the Village is restarting the outdoor music, and festival events. In creating a casual, family friendly vibe, it is important for us to offer live music, with small groups of acoustic musicians.

Lasalle and I are very grateful for the opportunity create and share our vision with the Capitola Village.

Thank you,

Michelle Strong

EXHIBIT B

DATE: September 28, 2021

ESCROW NO.: 30109-CV

BILL OF SALE

FOR VALUE RECEIVED, the undersigned Vendor, hereby sells, assigns and transfer to:

Capitola Strong, Inc.As Vendee, all right, title and interest of the Vendor in and to the following property situated in the county of **Santa Cruz, California**,To wit: **ALL FURNITURE, FIXTURES, EQUIPMENT, TRADENAME, GOODWILL, LEASE, LEASEHOLD IMPROVEMENTS, ABC LICENSE & ALL OTHER ASSETS**of that certain business known as: **Sotola Bar & Grill**located at: **231 Esplanade, Capitola, CA 95010**

Fixtures and equipment are more specifically detailed in the list attached hereto.

Vendor warrants that at the time of execution of this Bill of Sale, Vendor is lawfully possessed in his own right of a good title to the above described property and that he has good, right and lawful authority to sell and deliver the same, that same is free and clear of all encumbrances of whatsoever kind or nature. The singular as used herein includes the plural.

WITNESSETH the hand and seal of the Vendor this 29 day of September, 2021

Capitola JJ Group Inc.


By: Jill Ann Ealy, President

Equipment List

List of Fixtures & Equipment Included in Purchase Price

Entryway

- 1 Wait bench (opens for storage)
- 1 Front desk/hostess stand
- 1 Front desk light
- 1 Phone system
- 1 Employee storage closet
- 1 Succulent plant wall in bathroom hallway
- 1 Potted plant
- 1 Framed article on Sotola name
- 1 Mini iPad
- 1 Sidewalk sign
- 1 Circle mirror
- 1 Nest security camera

Dining Room

- 12 Custom cyprus wood tables
- 8 Four top tables
- 4 Two top tables
- 38 Padded metal chairs
- 1 Custom preserved moss trim wrap
- 1 Neon open sign
- 1 Custom built succulent box
- 1 Concrete box planter with fig plant
- 1 White ceramic pot with plant
- 1 Jack O'Neill surf board - on ceiling - **Not Included**
- 1 Wood root structure

Server station

- 1 Toast POS system and printer
- Wooden cabinets
- 1 Custom concrete counter top w/built in sink - 9'
- 1 Curtis CGC1 Gold Cup coffee brewer w/hot water
- 1 Fire extinguisher
- 1 Custom Sotola moss sign - 7'
- 1 Cabinet/book shlf storage unit
- 1 Immersion blender
- 1 Robot Coupe 3 quart food processor
- 1 Advantco double induction range/cooker 120 V
- 1 Advantco 2 door refrigerator w/backsplash
- 1 Advantco 2 drawer refrigerated chef base
- 1 Turbo Air TWF 60SD 2 door worktop freezer
- 1 Deli meat slicer
- 4 Storage bins w/lids - 21 gallon
- 1 Globe GPS 10 digital portion control scale
- 1 Prep sink

Bar Area

- 2 Metal stools
- 1 Mini ipad for music
- 4 Custom cyprus wood high tables
- 2 Two top tables
- 2 Four top tables
- 17 Black metal padded bar chairs
- 1 Granite top bar - 14'
- 1 Three compartment sink
- 1 Hand sink
- 1 True two door cooler
- 1 Wall mounted 42" TV
- 2 Framed beer signs
- 1 "BAR" light up sign
- 1 Mini refrigerator
- 1 Toast POS monitor
- 1 Toast cash drawer
- 1 Toast printer
- 1 Ticket printer
- 1 Stand alone ice well/prep station
- 1 Carbonics 5 tap beer tower
- 1 Zap N Trap wall sconce insect trap
- 1 Nest security camera
- 1 True 3 door cooler
- 1 Ceiling mounted wooden glass rack

Large Patio

- 9 Aluminum tables
- 23 Wicker chairs
- 2 Fixed patio gas heaters
- Hanging lights

Bar Patio

- 10 Black metal bar stools
- 1 Wall mounted 42" TV
- Outdoor plants
- Outdoor string lights

Kitchen

- 1 Nest security camera
- 1 Imperial range w/2 ovens & 8 burners
- 1 Hood & ansul system - 12'
- 1 Imperial griddle
- 1 Stratus grill
- 1 Stainless steel shelving unit - 7'
- 1 Imperial deep fryer
- 1 Imperial deep fryer

Handwritten signature and date: 11.22.21

Kitchen (continued)

- 1 Hand sink
- 1 Sink with floor petals
- 2 True refrigerated 4 drawer prep tables - 6'
- 1 Stainless steel shelving unit - 4.5'
- 1 Manitowok ice maker
- 1 Stainless steel shelving unit w/4 shelves
- 1 Auto Chlor dishwasher - **Leased**
- 1 Magnetic knife strip
- 1 True refrigerator
- 1 Fire extinguisher
- 1 Step ladder
- 1 Wire shelving unit - 40"
- 1 Pan rack on wheels - 20 pans
- 1 Carbonics ice machine - **Leased**

Office/Storage Area

- 1 Traulson freezer
- 1 True refrigerator
- 2 Traulsen refrigerators
- 1 Liquor cage
- 5 Metro shelving units
- 2 Desks
- 1 Hollon safe
- 1 Four drawer filing cabinet
- 1 Two drawer filing cabinet
- 2 Office chairs
- 2 Nest security cameras

gallagher 7.26.21

Equipment List

List of Fixtures & Equipment
Included in Purchase Price

Entryway

- 1 Wait bench (opens for storage)
- 1 Front desk/hostess stand
- 1 Front desk light
- 1 Phone system
- 1 Employee storage closet
- 1 Succulent plant wall in bathroom hallway
- 1 Potted plant
- 1 Framed article on Sotola name
- 1 Mini iPad
- 1 Sidewalk sign
- 1 Circle mirror
- 1 Nest security camera

Dining Room

- 12 Custom cyprus wood tables
- 8 Four top tables
- 4 Two top tables
- 38 Padded metal chairs
- 1 Custom preserved moss trim wrap
- 1 Neon open sign
- 1 Custom built succulent box
- 1 Concrete box planter with fig plant
- 1 White ceramic pot with plant
- 1 Jack O'Neill surf board - on ceiling - **Not Included**
- 1 Wood root structure

Server station

- 1 Toast POS system and printer
- Wooden cabinets
- 1 Custom concrete counter top w/built in sink - 9'
- 1 Curtis CGC1 Gold Cup coffee brewer w/hot water
- 1 Fire extinguisher
- 1 Custom Sotola moss sign - 7'
- 1 Cabinet/book shlf storage unit
- 1 Immersion blender
- 1 Robot Coupe 3 quart food processor
- 1 Advantco double induction range/cooker 120 V
- 1 Advantco 2 door refrigerator w/backsplash
- 1 Advantco 2 drawer refrigerated chef base
- 1 Turbo Air TWF 60SD 2 door worktop freezer
- 1 Deli meat slicer
- 4 Storage bins w/lids - 21 gallon
- 1 Globe GPS 10 digital portion control scale
- 1 Prep sink
- 1 Santa Cruz Roasting coffee machine - **Leased**

Bar Area

- 2 Metal stools
- 1 Mini ipad for music
- 4 Custom cyprus wood high tables
- 2 Two top tables
- 2 Four top tables
- 17 Black metal padded bar chairs
- 1 Granite top bar - 14'
- 1 Three compartment sink
- 1 Hand sink
- 1 True two door cooler
- 1 Wall mounted 42" TV
- 2 Framed beer signs
- 1 "BAR" light up sign
- 1 Mini refrigerator
- 1 Toast POS monitor
- 1 Toast cash drawer
- 1 Toast printer
- 1 Ticket printer
- 1 Stand alone ice well/prep station
- 1 Carbonics 5 tap beer tower
- 1 Zap N Trap wall sconce insect trap
- 1 Nest security camera
- 1 True 3 door cooler
- 1 Ceiling mounted wooden glass rack

Large Patio

- 9 Aluminum tables
- 23 Wicker chairs
- 2 Fixed patio gas heaters
- Hanging lights

Bar Patio

- 10 Black metal bar stools
- 1 Wall mounted 42" TV
- Outdoor plants
- Outdoor string lights

Kitchen

- 1 Nest security camera
- 1 Imperial range w/2 ovens & 8 burners
- 1 Hood & ansul system - 12'
- 1 Imperial griddle
- 1 Stratus grill
- 1 Stainless steel shelving unit - 7'
- 1 Imperial deep fryer

Kitchen (continued)

- 1 Hand sink
- 1 Sink with floor petals
- 2 True refrigerated 4 drawer prep tables - 6'
- 1 Stainless steel shelving unit - 4.5'
- 1 Manitowok ice maker
- 1 Stainless steel shelving unit w/4 shelves
- 1 Auto Chlor dishwasher - **Leased**
- 1 Magnetic knife strip
- 1 True refrigerator
- 1 Fire extinguisher
- 1 Step ladder
- 1 Wire shelving unit - 40"
- 1 Pan rack on wheels - 20 pans
- 1 Carbonics ice machine - **Leased**

Office/Storage Area

- 1 Traulson freezer
- 1 True refrigerator
- 2 Traulsen refrigerators
- 1 Liquor cage
- 5 Metro shelving units
- 2 Desks
- 1 Hollon safe
- 1 Four drawer filing cabinet
- 1 Two drawer filing cabinet
- 2 Office chairs
- 2 Nest security cameras



EXHIBIT C

COMMERCIAL LEASE AGREEMENT

ARTICLE ONE: BASIC TERMS

Section 1.01. **Date of Lease.** February 1, 2018

Section 1.02. **Landlord.** LA SERENA PROPERTIES, LLC
C/O STEVEN A. YATES
[REDACTED]
SANTA CRUZ, CALIFORNIA 95065

Section 1.03. **Tenant, Guarantor.** SOTOLA BAR AND GRILL COMPANY
By: ASHLEY DAYLE BERNARDI, DIRECTOR
[REDACTED]
SANTA CRUZ, CALIFORNIA 95062

ASHLEY DAYLE BERNARDI
Guarantor
ADAM BERNARDI
Guarantor

Section 1.04. **Premises.** The lease premises are located in the City of Capitola, Santa Cruz County, State of California, consisting of approximately 2200 square feet of space, including all reasonably necessary access and emergency exit routes, within the building located at 231 Esplanade, Capitola, California 95010 (the "Premises"), situated on Assessor's Parcel Number 035-211-01 ("Landlord's Property").

Section 1.05. **Lease Term.** The lease term is approximately 5 years commencing on February 1, 2018, 2018, and ending on January 31, 2023. The Lease Term is the period stated above. The "Commencement Date" shall be the date specified above for the beginning of the Lease Term, unless advanced or delayed under any provision of this Lease.

Section 1.06. **Option to Renew.** Provided that this Lease is in full force and effect and the Tenant is not in default of the Lease at the time of Tenant's election to exercise an option to renew, Tenant shall have one (1) option to renew this Lease, for a five (5) year term. The renewal term commences upon termination of the initial term. The option shall be exercised by

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written notice of Tenant's election to exercise the option. Tenant's written notice shall be delivered no sooner than 180 days and no less than 90 days prior to the end of the initial term. Tenant's notice shall be delivered to Landlord only by certified mail, return receipt. If Tenant neglects to timely exercise the option, the right to exercise such option automatically expires without notice from Landlord of Tenant's failure to exercise such option. All terms and conditions of this Lease apply during the renewal term, except monthly rent as indicated below.

Section 1.07. **Holding Over.** If Tenant does not vacate the Premises upon the expiration or earlier termination of this Lease, and Landlord thereafter accepts rent from Tenant, Tenant's occupancy of the Premises shall be a "month-to-month" tenancy, subject to all of the terms of this Lease applicable to a "month-to-month" tenancy, except that the Base Rent then in effect shall be increased by twenty-five percent (25%).

Section 1.08 **Initial Security Deposit.** Landlord has required no Security Deposit, but reserves the right to require such Security Deposit at a future date at Landlord's sole discretion.

Section 1.09. **Permitted Use/Exclusive Use.** Tenant shall use the Premises for a restaurant, as defined in the City of Capitola use permit existing at the time of execution of this Lease, and for no other purpose. Notwithstanding, in no event shall the use include a Mexican food type restaurant.

ARTICLE TWO: RENT

Section 2.01. Rent and Other Charges Payable by Tenant.

(a) **Base Rent.** During the months of January, February, March, October, November and December Tenant shall pay to Landlord the sum of \$7,000 per month as base rent for the initial term of the Lease. During the months of April through September Tenant shall pay to Landlord the sum of \$9,000 per month as base rent for the initial term of the Lease.

The base rent, as described above, shall increase for year 2 and year 3 as stated below. Base rent shall increase 2% each year thereafter:

Year 1 - \$7,000 / \$9,000
 Year 2 - \$7,500 / \$9,500
 Year 3 - \$8,000 / \$10,000
 Year 4 - \$8,160 / \$10,200
 Year 5 - \$8,323.20 / \$10,404

If the Tenant timely elects to exercise an option to renew the Lease, the base rent, as described above, shall be increased by 2% per year for each year of the option term.

(b) **Other Payments.** Other payments due shall be deemed additional rent, and include: Utilities; Taxes (See Section 3.01 and 3.02); Insurance (See Section 3.03); and Maintenance, Repairs, and Alterations (See Article Five).

Section 2.02. **Reimbursable Expenses.** Tenant shall reimburse Landlord for Tenant's specified share (as defined herein) of property taxes, insurance, and shared trash service, as more specifically provided in Section 3 hereof.

Section 2.03. **Time and Manner of Payment.** On the first day of each month of the Lease term, and each month thereafter, Tenant shall pay Landlord all rent, in advance, without offset, deduction or prior demand. Rent shall be payable at Landlord's address or at any other place Landlord may designate in writing.

Section 2.04. **Late Charges.** If Landlord does not receive a rent payment within five (5) days after it becomes due, Tenant shall pay Landlord a late charge equal to five percent (5%) of the overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment.

Section 2.05. **Interest on Past Due Obligations.** Any amount owed by Tenant to Landlord that is not paid when due shall bear interest at the rate of ten percent (10%) per annum

before a late charge would accrue if the rent is paid before a late charge is incurred. Interest shall not be payable on late charges to be paid by Tenant under this Lease. The payment of interest on past due amounts shall not excuse or cure any default by Tenant under this Lease.

ARTICLE THREE: PROPERTY EXPENSES

Section 3.01. Property Taxes.

(a) **Real Property Taxes.** Tenant shall pay a portion of the real estate property taxes on the Premises during the Lease Term. Tenant shall pay 20% of the property taxes attributable to Landlord's Property, subject to the provisions hereof. Tenant's share of property taxes shall be prorated for any partial lease year during the term. Landlord shall furnish Tenant with a copy of the tax bill, along with a letter outlining Tenant's share of such bill. Tenant shall submit payment to Landlord within twenty-one (21) days after receipt of the foregoing correspondence from Landlord.

If the Landlord sell Landlord's Property during the term of this Lease, or any extension thereof, then the Tenant's share of property taxes shall be equal to the amount paid by Tenant for the 2017 assessment plus 2.5% for each year thereafter. In the interest of clarity, the intent of the parties is to limit the increase in Tenant's share of property taxes resulting from the sale of the subject property, but only if Landlord actually completes the sale of Landlord's Property.

Tenant shall have the right, at its own cost and expense, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of taxes assessed to or levied upon the premises and required to be paid against Landlord's estate and, if required by law, Tenant may take this action in the name of Landlord, who shall cooperate with Tenant to the extent Tenant may reasonably require; however, Tenant shall fully defend, indemnify and save Landlord harmless from all loss, cost,

damage and expense incurred by or to be incurred by Landlord as a result thereof, and Tenant shall, at Landlord's request, escrow or post a bond for the full amount of the tax claimed pending the abatement proceedings.

(b) **Personal Property Taxes.** Tenant shall pay all personal property taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant.

Section 3.02. **Utilities.**

(a) **Separately Metered Utilities.** Tenant shall pay directly to the appropriate supplier the cost of all utilities, including but not limited to natural gas, heat, light, power, telephone, water, and other utilities and services supplied to the Premises.

(b) **Garbage.** The trash area and refuse removal are shared by all occupants of Landlord's Property; Tenant shall be responsible for paying for 30% of such refuse removal service attributable to the period during the Lease Term.

(c) **Sewer.** (i) Sewer charges are billed by the County of Santa Cruz on a semi-annual basis, generally on or about December 1 and April 1 of each year, and appear on Landlord's property tax bill. Tenant shall timely pay those charges as part of Tenant's obligation to reimburse Landlord for a portion of the property taxes. (ii) Tenant is responsible for maintenance and upkeep of all sewer apparatus exclusively serving the Premises, including from the public sewer line branch and any portion of the sewer line running from the public line into Landlord's Property. Landlord shall have no responsibility to maintain or repair sewer apparatus serving the Premises. (iii) Tenant is responsible for maintenance and upkeep of all shared sewer apparatus serving Landlord's Property, which apparatus serves the Premises along with any other portions of Landlord's Property, including from the public sewer line branch and any portion of

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the sewer line running from the public line into Landlord's Property. Landlord shall have no responsibility to maintain or repair shared sewer apparatus. The costs of any reasonably necessary repairs or maintenance of the shared sewer apparatus shared among the commercial tenants of Landlord's Property shall be apportioned among the commercial tenants on a percentage basis, with each commercial tenant's percentage being equal to the percentage paid by that tenant for garbage service pursuant to this Lease. Tenant and the adjoining restaurant, presently known as Margaritaville (231 Esplanade) shall be responsible for keeping the shared grease trap cleaned and in good working order, and each shall be responsible for one half of the total cost of grease trap cleaning and maintenance. Landlord shall have no responsibility to maintain, clean, or repair the grease trap or to coordinate such activities between Tenant and the adjoining tenant.

Section 3.03. **Insurance Policies.**

(a) **Liability Insurance.** During the Lease Term Tenant shall maintain a commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property), and personal injury arising out of the operation, use or occupancy of the Premises. Landlord shall be named as an additional insured under the policy. The limit of the insurance shall be at least Two Million Dollars (\$2,000,000) per occurrence. The amount and coverage of the insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.

(b) **Property and Rental Loss Insurance.** During the Lease Term, Landlord shall maintain a policy of fire and extended coverage insurance covering loss of or damage to the improvements on Landlord's Property in an amount determined solely by Landlord to be

sufficient. The policy shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, sprinkler leakage and any other like perils. Said policy shall also include rental loss coverage, insuring Landlord for up to one year of lost rent due to an insured casualty. If such insurance coverage has a deductible, Landlord shall be responsible for such deductible amount in the event of an insured loss. The proceeds of such insurance coverage shall be the sole property of Landlord to use as Landlord determines. In the event of an insured loss, Landlord shall not be responsible for any shortage in such proceedings, whether resulting from any lack or insufficiency of coverage, deductibles, or otherwise. Commencing with the start of the lease, Tenant shall reimburse Landlord for 20% of the cost of this insurance during the Lease Term, prorated for any partial lease year.

(c) **Tenant's Fixtures Insurance.** Tenant shall obtain insurance for Tenant's fixtures and equipment or building improvements installed by Tenant on the Premises. If such insurance coverage has a deductible, Tenant shall be responsible for such deductible amount in the event of an insured loss. In the event of an insured loss, Tenant shall be responsible for any shortage in such proceeds, whether resulting from any lack or insufficiency of coverage, deductibles, or otherwise.

(d) **General Insurance Provisions.**

(i) Any insurance that Tenant is required to maintain under this Lease shall include a provision requiring the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of coverage.

(ii) If Tenant fails to deliver any policy, certificate or renewal required under this Lease to Landlord within the prescribed time period, or if any such policy is canceled or modified during the Lease Term without Landlord's consent, after at least fifteen (15) days' prior



written notice to Tenant, Landlord may obtain the required insurance, in which case Tenant shall reimburse Landlord for the cost of that insurance within fifteen (15) days after receipt of a statement indicating the amount due.

(iii) All insurance required under this Lease shall be written with companies holding a "General Policy Rating" of A-VII or better, as set forth in the most current issue of "Best Key Rating Guide".

(iv) Unless prohibited under any applicable insurance policies maintained, Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or property of others under its control, if the loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of the loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of subrogation.

ARTICLE FOUR: USE OF PREMISES

Section 4.01. **Permitted Use.** Tenant may use the Premises only for the Permitted Uses set forth in Section 1.09 above.

Section 4.02. **Manner of Use.** Tenant shall not cause or permit the Premises to be used in any way that constitutes a violation of any law, ordinance, or governmental regulation or order, or that unreasonably annoys or interferes with the rights of other tenants of Landlord's Property, or that constitutes a nuisance or waste. Tenant shall obtain and pay for all permits required for Tenant's occupancy of the Premises and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements

regulating the use by Tenant of the Premises, including but not limited to the Occupational Safety and Health Act.

Section 4.03. **Hazardous Materials.** As used in this Lease, the term "Hazardous Materials" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any products and materials subsequently found to have adverse effects on the environment or the health and safety of persons. Tenant shall not cause or permit any Hazardous Materials to be generated, produced, brought upon, used, stored, treated or disposed of in or about the Premises in violation of law by Tenant, its agents, employees, contractors, sublessees, guests or invitees without the prior written consent of Landlord. Landlord shall be entitled to take into account any factors or facts that Landlord may reasonably determine to be relevant in determining whether to grant or withhold consent to Tenant's proposed activity with respect to Hazardous Materials. In no event, however, shall Landlord be required to consent to the installation or use of any storage tanks on the Premises.

Section 4.04. **Signs.** Tenant shall not be permitted to place any sign, signage or advertising in the window of or on the Premises that is visible from public or neighboring property, except as may be approved in writing by Landlord and allowed by the sign ordinances of Capitola, California. Landlord will not unreasonably withhold consent for Tenant's request to

change signage. Landlord shall cooperate, at no cost to Landlord, in Tenant's efforts to obtain approval from applicable governmental authorities with regard to any signage desired by Tenant.

Section 4.05. **Indemnity.** Tenant shall indemnify Landlord against and hold Landlord harmless from any and all damages, costs, claims or liability arising from: (i) Tenant's use of the Premises; (ii) the conduct of Tenant's business or anything else done or permitted by Tenant to be done in or about the Premises, including any contamination of the Premises resulting from the presence or use of Hazardous Materials caused or permitted by Tenant; (iii) any breach or default in the performance of Tenant's obligations under this Lease; (iv) any misrepresentation or breach of warranty by Tenant under this Lease; or (v) other acts or omissions of Tenant. Tenant shall defend Landlord against any such cost, claim or liability at Tenant's expense with counsel reasonably acceptable to and approved by Landlord. As used in this Section, the term "Tenant" shall include Tenant's employees, agents, contractors, guests and invitees. Landlord shall indemnify Tenant against and hold Tenant harmless only from any and all costs, claims or liability arising from: (i) Landlord's interference with Tenant's lawful use of the Premises; (ii) any breach or default in the performance of Landlord's obligations under this Lease; (iii) any misrepresentation or breach of warranty by Landlord under this Lease. Landlord shall defend Tenant against any such cost, claim or liability at Landlord's expense. As used in this Section, the term "Landlord" shall include employees, agents, contractors and invitees, if applicable.

Section 4.06. **Landlord's Access.** Upon providing Tenant with twenty-four (24) hours prior notice, Landlord or its agents may enter the Premises at reasonable times to show the Premises to potential buyers, investors, tenants or other parties; to inspect and conduct tests or do any other act in order to monitor Tenant's compliance with this Lease and all applicable environmental laws and all laws governing the presence and use of Hazardous Materials; or for

any other purpose Landlord deems reasonably necessary. Landlord will use best efforts to schedule any such entry and inspection when Tenant is closed to the public. In any situation the Landlord determines to be an emergency Landlord shall have the right of entry without advance notice. Tenant acknowledges the presence of a cell phone antenna apparatus on the roof of Landlord's Property, and that from time to time access may be required for repairs and maintenance of said apparatus. Within the last ninety (90) days of the Lease Term, Landlord may place customary "For Sale" or "For Lease" signs on the Premises.

ARTICLE FIVE: CONDITIONS OF PREMISES; MAINTENANCE REPAIRS AND ALTERATIONS

Section 5.01. **Existing Conditions.** Tenant accepts the condition of the Premises in its "AS IS" condition and Tenant's possession is subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Premises or the suitability of the Premises for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Premises and is not relying on any representations of Landlord.

Section 5.02. **Maintenance Obligations.**

(a) **Tenant's Obligations.** Tenant, at its own expense, shall keep in good order, condition, and repair, all aspects of the Premises except for those items that are specifically enumerated as Landlord's responsibility herein. Tenant's maintenance and repair obligations shall include, without limitation, repair and maintenance of HVAC, plumbing within the Premises, sewer system (pursuant to section 3.02 herein), utility outlets within the Premises, smoke detectors, interior walls, ceilings, floors, windows, doors, plate glass, skylights within the Premises and signs installed by Tenant. Tenant shall, at Tenant's expense, repair any damage to

the Premises caused by the actions or omissions of Tenant or Tenant's employees, agents, guests or invitees. Tenant shall be responsible for 1/3 (33%) of the cost of maintenance and repair of the ADA lift that serves the Premises.

(b) **Landlord's Obligations.** Landlord shall maintain and repair in good condition structural components of the Premises and building (including, but not limited to, the foundation, bearing walls and roof structure), the exterior walls, floor slab or sub-flooring, roof membrane, gutters, downspouts and canopies of the building, wiring facilities within the walls of the Building or under the flooring (except for outlets thereof serving the Premises) and any common areas not otherwise enumerated as Tenant's responsibility. Except as provided herein, Tenant shall be responsible for any costs associated with complying with laws, statutes, ordinances, or codes where compliance is triggered as a result of Tenant's particular use of the Premises, or change of use, or work performed or to be performed by Tenant in the Premises.

(c) **Costs.** Each party shall fulfill all of its obligations under this Section 5.02 at such party's sole expense. If either party fails to maintain, repair or replace the Premises or building as required by this Section, the other party may, upon ten (10) days' prior notice to the Responsible party (except that no notice shall be required in the case of an emergency), enter the Premises or the building and perform needed maintenance or repair (including replacement, as needed) on behalf of other party. In this event, the responsible party shall reimburse the party performing the work for all costs incurred in performing the maintenance or repair within fifteen (15) days after receipt of all invoice for said work.

Section 5.03. **Alterations, Additions, and Improvements.**

(a) **Tenant's Right to Make Alterations.** Tenant shall not have the right to make any alterations, additions or improvements to the Premises or redevelopment of the Premises

(including the removal, reconstruction and redevelopment of any building on the Premises) without the Landlord's express written consent, which consent shall not be unreasonably withheld. Any alteration, improvement or addition constructed by the Tenant (with the Landlord's consent) shall be done in strict compliance with all applicable laws and regulations and in a good and workmanlike manner.

(b) **Landlord's Non-Responsibility.** Tenant shall pay when due all claims for labor and materials furnished to the Premises. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Premises for work contracted by Tenant. Tenant shall not allow any lien to be recorded against Landlord's Property. Landlord may elect to record and post notices of non-responsibility on the Premises.

Section 5.04. **Condition Upon Termination.** Upon termination of the Lease, Tenant shall surrender the Premises to Landlord, clean and well maintained, reasonable wear and tear excepted. All fixtures, alterations, additions, and redevelopment improvements constructed by Tenant on the Premises shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of the Lease, except that Tenant may remove any of Tenant's machinery or equipment that can be removed without material damage to the Premises. Notwithstanding, Tenant shall at Tenant's expense remove any fixtures, alterations, additions, and redevelopment improvements constructed by Tenant on the Premises upon written demand of Landlord. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the removal of any such fixtures, machinery or equipment.

ARTICLE SIX: DAMAGE OR DESTRUCTION

Section 6.01. If the Premises is damaged or destroyed by fire, earthquake or other casualty, Tenant will immediately promptly give written notice to Landlord of the casualty.

Landlord will have the right to terminate this Lease following a casualty if any of the following occur: (a) insurance proceeds actually paid to Landlord and available for use are not sufficient to pay the entire cost to fully repair the damage; (b) Landlord determines that the Premises or the Building cannot be fully repaired within 90 days from the date restoration commences; (c) the Premises are damaged or destroyed within the last 12 months of the Term; (d) Tenant is in default of this Lease at the time of the casualty; (e) Landlord would be required under this Lease to abate or reduce Tenant's rent for a period in excess of 6 months if the repairs were undertaken; or (f) the Property, or the Building in which the Premises is located, is damaged such that the cost of repair of the same would exceed 10% of the replacement cost of the same. If Landlord elects to terminate this Lease, Landlord will be entitled to retain all applicable Tenant insurance proceeds and Tenant shall assign or endorse over to Landlord (or to any party designated by Landlord) all property insurance proceeds payable to Tenant under Tenant's insurance, excepting those attributable to Tenant's furniture, fixtures, equipment, and any other personal property.

ARTICLE SEVEN: CONDEMNATION

Section 7.01. **Condemnation.** If all or any part of the Premises is appropriated or condemned by any public or quasi-public authority in the exercise of its right of condemnation or eminent domain, then condemnation awards or payments shall be the sole property of Landlord, whether such award is made as compensation for diminution of value of the leasehold, the value of the part taken or severance damages. Tenant hereby waives all rights it may otherwise have pursuant to section 1265.130 of the California Code of Civil Procedure, or any similar laws.

ARTICLE EIGHT: ASSIGNMENT AND SUBLETTING

Section 8.01. **Landlord's Consent Required.** This Lease may not be assigned, transferred or subleased without the Landlord's express written consent, which consent shall not

be unreasonably withheld, conditioned or delayed. However, no transfer shall release Tenant from or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any right Landlord may have against Tenant.

ARTICLE NINE: DEFAULTS; REMEDIES

Section 9.01. **Covenants and Conditions.** Tenant's right to continue in possession of the Premises is conditioned upon its performance of each obligation, covenant and condition of this Lease. Time is of the essence in the performance of all covenants and conditions.

Section 9.02. **Defaults.** Tenant shall be in material default under this Lease if Tenant: (i) abandons the Premises; (ii) fails to pay rent or any other charge when due and that failure persists for a period of three (3) days after written notice from Landlord; or (iii) pays rent late three or more times in any 12 month period; or (iv) fails to perform any of Tenant's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord, provided that if more than thirty (30) days are required to complete the performance, Tenant shall not be in default if Tenant commences performance within the thirty (30) day period and thereafter diligently pursues its completion.

Section 9.03. **Remedies.** On the occurrence of any material default by Tenant, Landlord may elect any of the following courses of action.

(a) **Termination of Right of Possession.** Landlord may terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including (i) the worth at the time of the award of the unpaid base rent, additional rent and other

charges that Landlord had earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid base rent, additional rent and other charges that Landlord would have earned after termination until the time of the award exceeds the amount of rental loss that Tenant proves Landlord could have reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid base rent, additional rent and other charges that Tenant would have paid for the balance of the Lease Term after the time of award exceeds the amount of rental loss that Tenant proves Landlord could have reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment that is proximately caused by Tenant's failure to perform its obligations under the Lease or that in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses Landlord incurs in maintaining in preserving the Premises after the default or in recovering possession of the Premises. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting the described amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) **Maintenance of Right to Possession.** Landlord may maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. Landlord shall be entitled to all of Landlord's right and remedies under this Lease, including the right to recover the rent as it becomes due.

(c) **Other Remedies.** Landlord may pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of California.

(d) **Cumulative Remedies.** Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

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ARTICLE TEN: LENDER PROVISIONS

Section 10.01. **Subordination.** This lease shall be subordinate to any deed of trust or mortgage encumbering the Premises, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded, provided that Landlord furnishes Tenant with a subordination, nondisturbance and attornment agreement ("SNDA") meeting the requirements of this section. Landlord shall furnish to Tenant, and Tenant agrees to execute in recordable form, an SNDA on a form reasonably acceptable to Tenant and any mortgage lender of Landlord, within ten (10) days after written request from Landlord for the purpose of subordinating this Lease to the lien of any deed of trust, provided that such SNDA shall include commercially reasonable nondisturbance language that generally provides that so long as Tenant is not in default in the payment of any rent or the performance of any other material covenant or condition of this Lease, (i) its rights as Tenant under this Lease shall not be affected or terminated, (ii) Tenant's possession of the Premises shall not be disturbed, (iii) unless otherwise required by applicable laws, no action or proceedings shall be commenced against Tenant and (iv) the Lease shall continue in full force and effect, all notwithstanding the foreclosure or termination of any estate of Landlord.

Section 10.02. **Attornment.** If Landlord's interest in the Premises is acquired by foreclosure, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Premises and recognize the transferee or successor as Landlord under this Lease in accordance with the terms of the SNDA. Tenant waives the protection of any statute or rule of law that gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord's interest.

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Section 10.03. **Signing of Documents.** Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any attornment or agreement to attorn. If Tenants fails to do so within ten (10) days after written request, Tenant hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of Tenant to execute and deliver any such instrument or document.

Section 10.04. **Estoppel Certificates.** Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying: (i) that none of the Terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated; (iii) the latest date of payment of the base rent and other charges and the time period covered by that payment; (iv) that Landlord is not in default under this Lease or, if Landlord is claimed to be in default, stating the reason for that claim. Tenant shall deliver this statement to Landlord within ten (10) days after Landlord's written request therefor. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Premises, and the purchaser or encumbrancer may rely conclusively upon that statement as true and correct.

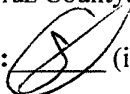
If Tenant does not deliver the described statement to Landlord within the ten (10) day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon, and Tenant shall be estopped from denying the truth of, the following: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been canceled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's base rent or other charges have been paid in advance; and (iv) that Landlord is not in default under the Lease.


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ARTICLE ELEVEN: LEGAL PROCEEDINGS AND COSTS

Section 11.01. **Legal Proceedings.** If Tenant or Landlord breaches or is in default under this Lease, that party (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any costs or expenses that the Nondefaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced, including but not limited to the costs of preparing and serving any notices. The court or arbitrator in any action or proceeding commenced due to the breach or default shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys' fees and costs, and the losing party shall pay those attorneys' fees and costs. Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (i) instituted by Tenant against any third party, or by a third party against Tenant, or by or against any person holding any interest under or using the Premises by license of or agreement with Tenant, where Landlord is named solely by virtue of Landlord's ownership of Landlord's Property; (ii) for foreclosure of any lien for labor or material furnished to or for Tenant or any person holding any interest under or using the Premises by license of or agreement with Tenant; (iii) otherwise arising out of or resulting from any act, omission or transaction of Tenant or any person holding any interest under or using the Premises by license of or agreement with Tenant, where Landlord is not a party to such license or agreement; or (iv) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under Title 11 of the United States Code, as amended, of which Tenant is the subject. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord.

Section 11.02. **Mediation of Disputes.** Except with respect to nonpayment of rent, if any dispute arises out of or relates to this Lease or a breach thereof, the parties agree, by initialing in the spaces below, to first try in good faith to settle the dispute by non-binding mediation before resorting to a court action or binding arbitration. Any party may deliver to the other a written demand to mediate a dispute, in which case the parties shall select a mutually agreeable neutral mediator (who has at least five years of experience in real property mediation matters). If the parties are not able to agree upon a neutral mediator, such a mediator shall be appointed by the Superior Court in Santa Cruz County. The mediation shall be scheduled within 60 days of the selection of a mediator, subject to availability of the mediator. The mediation shall occur in Santa Cruz County. The cost of the mediator shall be split evenly by the parties.

LANDLORD:  (initial)

TENANT:  (initial)

Section 11.03. **Arbitration of Disputes. EXCEPT WITH RESPECT TO AN UNLAWFUL DETAINER BASED ON NONPAYMENT OF RENT, IF ANY DISPUTE BETWEEN THE PARTIES ARISING OUT OF THIS LEASE IS NOT RESOLVED THROUGH MEDIATION, SUCH DISPUTE SHALL BE RESOLVED BY ARBITRATION GOVERNED BY CALIFORNIA LAW AND, TO THE EXTENT NOT INCONSISTENT WITH THAT STATUTE, CONDUCTED IN ACCORDANCE WITH THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. ("JAMS"). THE ARBITRATION SHALL BE CONDUCTED IN SANTA CRUZ COUNTY, CALIFORNIA AND ADMINISTERED BY JAMS, WHICH WILL APPOINT A SINGLE ARBITRATOR. IN THE ARBITRATION PROCEEDING, THE PARTIES SHALL HAVE THE RIGHT TO DISCOVERY IN ACCORDANCE**

WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1283.05. ALL ARBITRATION HEARINGS WILL BE COMMENCED WITHIN SIXTY (60) DAYS OF THE DEMAND FOR ARBITRATION UNLESS THE ARBITRATOR, FOR SHOWING OF GOOD CAUSE, EXTENDS THE COMMENCEMENT OF SUCH HEARING. THE DECISION OF THE ARBITRATOR WILL BE BINDING ON THE PARTIES, AND JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION AND THE DETERMINATION AND AWARD, IF ANY, MAY THEN BE ENFORCED AMONG THE PARTIES, WITHOUT FURTHER EVIDENTIARY PROCEEDINGS, AS IF ENTERED BY A COURT AT THE CONCLUSION OF A JUDICIAL PROCEEDING IN WHICH NO APPEAL WAS TAKEN. THE PARTIES ACKNOWLEDGE THAT, BY AGREEING TO ARBITRATE DISPUTES, EACH OF THEM IS WAIVING CERTAIN RIGHTS, INCLUDING ITS RIGHT TO SEEK REMEDIES IN COURT (INCLUDING A RIGHT TO A TRIAL BY JURY), AND TO DISCOVERY PROCESSES THAT WOULD BE ATTENDANT TO A COURT PROCEEDING. THIS ARBITRATION PROVISION SHALL NOT APPLY TO AN UNLAWFUL DETAINER BASED ON NONPAYMENT OF RENT.


NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED ABOVE AND, AS APPLICABLE, BY CALIFORNIA LAW, AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY



AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE FEDERAL ARBITRATION ACT AND/OR THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION TO NEUTRAL ARBITRATION.


LANDLORD:  (initial)

TENANT:  (initial)

ARTICLE TWELVE: MISCELLANEOUS PROVISIONS

Section 12.01 **Certified Access Specialist.** The Premises have not undergone inspection by a Certified Access Specialist.

Section 12.02 **CASp.** A Certified Access Specialist (CASp) can inspect the subject Premises and determine whether the subject Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject Premises, the commercial property owner or Landlord may not prohibit the Lessee or tenant from obtaining a CASp inspection of the subject Premises for the occupancy or potential occupancy of the Lessee or tenant, if requested by the Lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

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Section 12.03 **CASP.** If Lessee requests or obtains a CASp inspection, Lessee shall be solely responsible for the costs and/or fees for obtaining the CASp inspection, as well as the costs of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

Section 12.04. **Severability.** A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of the provisions or of this Lease, which shall remain in full force and effect.

Section 12.05. **Interpretation.** The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural or the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant or Landlord, the terms "Tenant" or "Landlord", as the case may be, shall include their respective agents, employees, contractors, invitees, successors or others acting with their express or implied permission.

Section 12.06. **Incorporation of Prior Agreements; Modifications.** This Lease is the only agreement between the parties pertaining to the lease of the Premises and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 12.07. **Notices.** All notices required or permitted under this Lease shall be in writing and shall be personally delivered, sent via reputable overnight courier, or sent by certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered to

the address specified in Section 1 above, except that upon Tenant's taking possession of the Premises, the Premises shall be Tenant's address for notice purposes. Notices to Landlord shall be delivered to the address specified in Section 1 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 12.08. **Waivers.** All waivers must be in writing and signed by the waiving party. Either party's failure to enforce any provisions of this Lease, or the payment or acceptance of rent, shall not be a waiver and shall not prevent either party from enforcing any provision of this Lease in the future.

Section 12.09. **No Recordation.** Tenant shall not record this Lease without prior written consent from Landlord. However, either Landlord or Tenant may require that a "Short Form" memorandum of this Lease executed by both parties be recorded. The party requiring the recording shall pay all transfer taxes and recording fees.

Section 12.10. **Binding Effect; Choice of Law.** This Lease is made and performed in Santa Cruz County, California. The laws of the State of California shall govern this Lease. This Lease binds any party who legally acquires any rights or interest in this Lease.

Section 12.11. **Authority.** Each person signing this Lease represents and warrants to the other party that he or she has full authority to do so and that this Lease binds the corporation, partnership or entity on whose behalf he or she executes this Lease.

Section 12.012. **Force Majeure.** If either Landlord or Tenant cannot perform any of its obligations due to events beyond the control of Landlord or Tenant, the time provided for performing those obligations shall be extended by a period of time equal to the duration of those events. Events beyond Landlord's or Tenant's control include, but are not limited to, acts of



God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions.

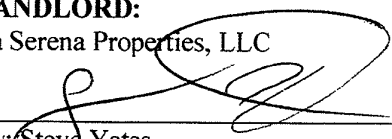
Section 12.13. **Execution of Lease.** This Lease may be executed in counterparts, and when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

Section 12.14. **Joint and Severable Liability.** All parties signing this Lease as Tenant and Guarantors shall be jointly and severally liable for all obligations of Tenant.

Section 12.15. **Personal Guarantee.** The undersigned (Guarantor) in consideration of the execution of this Lease and hereby unconditionally guarantees and promises to pay or perform on demand any and all debts, obligations, and liabilities of Tenant under or arising out of this Lease agreement, including during any renewal, extension, modification or amendment of this Lease. Guarantor hereby waives any notice of default, renewal, extension, modification or amendment of this Lease and agrees that Landlord may proceed against Guarantor directly and independently of any other party, and in the event an action is brought to enforce this provision of this Lease, the prevailing party shall recover reasonable attorney's fees and court costs.

THEREFORE, TO WITNESS AND DOCUMENT THEIR AGREEMENT to the terms and conditions of this Lease, Landlord and Tenant have signed this Lease at the place and on the dates specified adjacent to their signatures below.

LANDLORD:
La Serena Properties, LLC


By: Steve Yates
Its: President

Date 2-8-2018

TENANT:
SOTOLA BAR AND GRILL COMPANY
A California corporation

Date 2/8/18

Ashley Bernardi
By: Ashley Dayle Bernardi, Director

GUARANTOR:

Date 2/8/18

ASB
Adam Bernardi

ADDRESS AND PHONE # SC, CA 95062

GUARANTOR:

Date 2/8/18

Ashley Bernardi
Ashley Dayle Bernardi

ADDRESS AND PHONE # SC, CA 95062

**SUBLEASE & ASSIGNMENT OF
COMMERCIAL LEASE AGREEMENT**

Date of Lease February 1, 2018

Premises 231 Esplanade, Capitola, California 95010

Landlord La Serena Properties, LLC
c/o Steven A. Yates
[REDACTED]

Sublessor/Assignor JJJ Group, Inc., a California Corporation
c/o Jill Ealy
203 Esplanade, Capitola, California 95010

Sublessee/Assignee Michelle & Lasalle Strong
[REDACTED]

Preamble

Whereas, Sublessor currently occupies the Premises under the terms of that certain Lease dated February 1, 2018 and amended January ___, 2019; and

Whereas, the Sublessor has the consent of the Landlord and wishes to sublease the above-mentioned Premises to the Sublessee upon the terms and conditions contained in the Lease; and

Whereas, the Sublessee wishes to sublease the above-mentioned Premises from Sublessor upon the terms and conditions contained herein;

Now, therefore, in consideration of all the mutual promises and covenants set forth herein, the Landlord, Sublessor and Sublessee agree as follows:

Sublessee assumes all Sublessor’s rights in the Lease, as amended, and Sublessee hereby agrees to occupy the Premises and to comply with all the terms and obligations of the Lease, as amended.

Landlord, Sublessor and Sublessee agree that the Sublessee will take early possession of the Premises on July ___, 2021 and will operate the business with a temporary ABC license until escrow closes.

Sublessee shall pay the rent payments directly to the Landlord and Landlord will notify Sublessor if any payment is more than five days late.

Landlord, Sublessor and Sublessee further agree that after 18 months from the change of possession if Sublessee is not in default of any terms and conditions of the lease and has paid in full the seller note owed to Sublessor, the lease will be assigned to Sublessee who will then become the Lessee under the lease and Sublessor will be relieved of all obligations under the lease.

This agreement may only be changed or supplemented by a written amendment, signed by authorized representatives of each party.

DS
MS

DS
LS

DS
JE

DS
SH
95

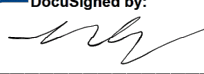
THIS SUBLEASE AGREEMENT, AND SUBSEQUENT ASSIGNMENT OF THE LEASE, IS CONDITIONED ON THE CLOSE OF ESCROW ON THE SALE OF SOTOLA BAR & GRILL FROM SUBLESSOR TO SUBLESSEE AND IF ESCROW DOES NOT CLOSE, THIS SUBLEASE AND SUBSEQUENT ASSIGNMENT WILL BE NULL AND VOID

By signing below, the Sublessees hereby confirm the acceptance of the Sublease and subsequent assignment of the lease, as amended and agree to be bound by its terms.

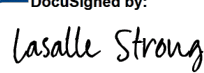
SUBLESSEE/ASSIGNEE

Michelle Strong & Lasalle Strong

Date 7/21/2021

DocuSigned by:

0A7275243CF844F...
Michelle Strong

Date 7/21/2021

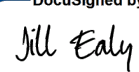
DocuSigned by:

0A7275243CF844F...
Lasalle Strong

By signing below, the Sublessor hereby confirms its agreement with this Sublease and subsequent assignment.

SUBLESSOR/ASSIGNOR

JJJ GROUP, INC., a California Corporation

Date 7/22/2021

DocuSigned by:

7D97A46941F04ED...
by Jill Ealy, its President

Landlord hereby consents to the Sublease and to the subsequent assignment of the lease, as amended, but makes no express or implied approval of future assignments.

LANDLORD

La Serena Properties, LLC

Date 7/22/2021

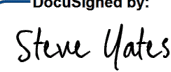
DocuSigned by:

BA034A062F2C415...
by Steven Yates, its President

EXHIBIT D



www.bayareabizbrokers.com

From: Steve Yates <[REDACTED]>
Date: Sat, Aug 21, 2021 at 9:47 AM
Subject: Re: Sotola Bar & Grill
To: Bob Brooks <[REDACTED]>

The property manager does all the leasing-lease work. I informed him of the new tenant a month ago and a lease was prepared. Jill should be aware of all this to assist the new tenant in the transition. Thanks for the info.

On Friday, August 20, 2021, 02:25:53 PM PDT, Bob Brooks <[REDACTED]> wrote:

Steve,

Michelle and Sal are working with a sign company that will help them with any necessary approvals.

They're planning on getting an entertainment permit so they can have a two or three person band to provide dinner music and will need your sign off on that.

They also will be painting the apartment and putting in a new floor. How are you coming with that lease?

The posting went up Wednesday.

Bob

The posting went up on Wednesday.

Bob Brooks, CBB, Lifetime CBI
51 East Campbell Avenue #101 B
Campbell, California 95008
408-246-3846 - office
[REDACTED] cell
DRE #00805283



www.bayareabizbrokers.com

EXHIBIT E

From: Bob Brooks
Sent: Wednesday, September 22, 2021 1:23 PM
To: RUSSELL GROSS
Subject: Re: fire inspection summary

Russell,

The fire marshall has already come and completed the inspection. He will be contacting you with the report.

Can we get a signed copy of the apartment lease?

Thanks,

Bob

Bob Brooks, CBB, Lifetime CBI
51 East Campbell Avenue #101 B
Campbell, California 95008
408-246-3846 - office
[REDACTED] ell
DRE #00805283



www.bayareabizbrokers.com

On Wed, Sep 22, 2021 at 1:10 PM RUSSELL GROSS <[REDACTED]> wrote:

We have approved SSS Fire Protection to complete the 5 year fire inspection.

They will be contacting you for access.

Russell

On Wed, Sep 22, 2021 at 12:14 PM Firehouse Brew & Grill <[REDACTED]> wrote:

We needed to get an inspection done for entertainment permit. Here are the items that need to be addressed. The items inside our unit have been taken care of, however there are some that pertain to the common area.

Also if we can get a signed copy of apartment lease for parking permits.

Thank you,
Michelle Strong
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From: Gaby Manzo <gaby.manzo@centralfiresc.org>

Sent: Wednesday, August 25, 2021 12:05:03 PM

To: Firehouse Brew & Grill <[REDACTED]>

Subject: fire inspection summary

Good Afternoon,

Attached is the fire inspection report for your records.

Please let me know if you have any questions or if I can assist with anything else.

Thanks,



Central Fire District
of Santa Cruz County

GABY MANZO

FIRE INSPECTOR

Central Fire District of Santa Cruz County

6934 Soquel Dr., Aptos, CA. 95003

(831) 685-6698 • (831) 685-6699 FAX

(831) 316-3550 DIRECT • (831) 400-6095 CELL

www.centralfpd.com

--

Russell E. Gross Real Estate, Inc.

3140 Porter Street

Soquel, CA 95073

DRE# 00887251

EXHIBIT F

CITY OF CAPITOLA ENTERTAINMENT PERMIT



Type of Permit: Single Minor Regular

Business Name: Capitola Bar & Grill	Applicant: Lasalle Strong
Address: 231 Esplanade #102, Capitola	Telephone: (831) 854-2888

Type of Entertainment: Live Music

Days and Hours Approved: All days of the week, not to exceed 10:00 p.m.

Permit Conditions:
 Permittee must comply with all local, state and federal laws, rules and regulations including all use permit conditions relating to the premises (see ATTACHMENT 1). This entertainment permit can be revoked at any time by the City Manager or Chief of Police. This permit may be issued by the Chief of Police on a case by case basis upon applicant's request and payment of fees.

Expiration Date: 12/31/2021

**Permit to be Posted in a
 Conspicuous Place on the
 Premises**

Issued by: , Chief of Police
 Andrew Dally

Approved on: 11/16/2021

CITY OF CAPITOLA ENTERTAINMENT PERMIT



Type of Permit: Single Minor Regular

Business Name: Capitola Bar & Grill

Applicant: Lasalle Strong

Address: 231 Esplanade #102, Capitola, CA 95010

Telephone: (831) 854-2888

Type of Entertainment: Live Music

Days and Hours Approved: 0800 Hours to 2300 Hours Sunday through Thursday
0800 Hours to 2400 Hours Friday and Saturday; October - April
0800 Hours to 0030 Hours Friday and Saturday; May - September
0800 Hours to 0030 Hours on December 31, 2022

Permit Conditions:

Permittee must comply with all local, state and federal laws, rules and regulations including all use permit conditions relating to the premises (see ATTACHMENT 1). This entertainment permit can be revoked at any time by the City Manager or Chief of Police. This permit may be issued by the Chief of Police on a case by case basis upon applicant's request and payment of fees.

Expiration Date: 12/31/2022

Issued By: , Chief of Police
Andrew J. Dally

Approved On: 1/27/2022

**Permit to be Posted in a
Conspicuous Place on the
Premises**

EXHIBIT G



www.bayareabizbrokers.com

----- Forwarded message -----

From: **Firehouse Brew & Grill** <[REDACTED]>
Date: Mon, Aug 29, 2022 at 10:27 AM
Subject: Re: 231 Esplanade - Elevator
To: Steve Yates <[REDACTED]>, Russell Gross <[REDACTED]>, Sal <[REDACTED]>, Bob Brooks <[REDACTED]>

Please give an update on the elevator. We have a customer coming in and they are handicapped.

Thanks,
Michelle Strong

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From: Steve Yates <[REDACTED]>
Sent: Thursday, August 18, 2022 10:23:22 AM
To: Russell Gross <[REDACTED]>; Firehouse Brew & Grill <[REDACTED]>
Subject: Re: 231 Esplanade - Elevator

Elevator is set for repair with the deposit paid.
Materials for repair just arrived last week and we are scheduled for next week.

On Wednesday, August 17, 2022, 08:44:22 PM PDT, Firehouse Brew & Grill <[REDACTED]> wrote:

Hi Russell,

Do we have any updates on the elevator? We noticed the lock has been removed. However, there has been several occasions that our customers tried to use it.

Since it doesn't work, they asked staff to help carry them up the stairs.

Please advise,
Michelle Strong

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Marcie Wollesen

To You

10:21 AM



Thanks! We're going for [a 12:45](#) reservation.
I'm handicapped, have a placard, but my
friends could drop me off and go for a spot
behind the police station.



Reply



Mail



Search



Calendar

From: Firehouse Brew & Grill <[REDACTED]>
Date: Tue, Aug 30, 2022 at 11:04 AM
Subject: Re: 231 Esplanade - Elevator
To: Steve Yates <[REDACTED]>, Russell Gross <[REDACTED]>, Sal <[REDACTED]>, Bob Brooks <[REDACTED]>

This matter is very concerning for safety and liability. The door can be opened at street level, with a 5-6 foot drop. There have been elevator monitoring fees included in our monthly invoices, these fees are not valid as the elevator has not been working since we took possession in September 2021.

Please provide the elevator service company, so we can verify the repairs.

Michelle Strong

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From: Firehouse Brew & Grill <[REDACTED]>
Sent: Monday, August 29, 2022 10:26:58 AM
To: Steve Yates <[REDACTED]>; Russell Gross <[REDACTED]>; Sal <[REDACTED]>; Bob Brooks <[REDACTED]>
Subject: Re: 231 Esplanade - Elevator

Please give an update on the elevator. We have a customer coming in and they are handicapped.

Thanks,
Michelle Strong

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From: Steve Yates <[REDACTED]>
Sent: Thursday, August 18, 2022 10:23:22 AM
To: Russell Gross <[REDACTED]>; Firehouse Brew & Grill <[REDACTED]>
Subject: Re: 231 Esplanade - Elevator

Elevator is set for repair with the deposit paid.
Materials for repair just arrived last week and we are scheduled for next week.

On Wednesday, August 17, 2022, 08:44:22 PM PDT, Firehouse Brew & Grill

[REDACTED] wrote:

Hi Russell,

Do we have any updates on the elevator? We noticed the lock has been removed. However, there has been several occasions that our customers tried to use it.

Since it doesn't work, they asked staff to help carry them up the stairs.

Please advise,
Michelle Strong

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EXHIBIT H

EXHIBIT I

From: RUSSELL GROSS <[REDACTED]>
Sent: Tuesday, May 17, 2022 11:11:17 AM
To: Firehouse Brew & Grill <[REDACTED]>
Cc: Jill Ealy <[REDACTED]>; Erin Heath <[REDACTED]>
Subject: [231 Esplanade](#)

Michelle,

I am receiving a number of complaints regarding the music at the premises.

The owner informed me, "Per your application:

Must maintain a video recording system at both doors.

Live music to be completed by 11:00 pm

Minimum number of LICENSED security guards (through the State of California) is at least one but two are required if over 50 patrons.

Prohibited from playing any amplified sound above 60 DBA within 30 ft. of premises (they hit 120 dba with the karaoke)

Lease:

They are in violation of the lease section 4.02 "Manner of Use." "

Just wanted to share the owner's concern as well as other tenant's complaints at the building. You will need to make the above adjustments as to stay in compliance with your entertainment permit and your lease agreement.

Thank you

Russell Gross

Property Manager

--

Russell E. Gross Real Estate, Inc.

[REDACTED]
[3140 Porter Street](#)

DRE# 00887251

Item 3 A.

EXHIBIT J

From: Firehouse Brew & Grill
Sent: Tuesday, May 17, 2022 11:43 AM
To: RUSSELL GROSS
Cc: Jill Ealy; Erin Heath; Sal
Subject: Re: 231 Esplanade

Hi Russell,

We have met with the Chief of Police. We have a major permit license. The Chief understands that it's the same few people complaining and has shared with them that we are in compliance. We have installed curtains, sound boards inside the venue and keep the doors closed after 8pm. There are staff designated at the front door.

Although our major entertainment is allowed to go to 12am on weekends, we end our events 9:30 to 10:00pm.

Our staff has a dba reader as well and crosses the street to check levels.

Can you give more details on where the complaints are coming from, with dates and times, so we can provide footage from our cameras?

Thank you,
Michelle Strong

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From: RUSSELL GROSS <[REDACTED]>
Sent: Tuesday, May 17, 2022 11:11:17 AM
To: Firehouse Brew & Grill <[REDACTED]>
Cc: Jill Ealy <[REDACTED]>; Erin Heath <[REDACTED]>
Subject: 231 Esplanade

Michelle,

I am receiving a number of complaints regarding the music at the premises.

The owner informed me, "Per your application:

Must maintain a video recording system at both doors.

Live music to be completed by 11:00 pm

Minimum number of LICENSED security guards (through the State of California) is at least one but two are required if over 50 patrons.

Prohibited from playing any amplified sound above 60 DBA within 30 ft. of premises (they hit 120 dba with the karaoke)

Lease:

They are in violation of the lease section 4.02 "Manner of Use." "

Just wanted to share the owner's concern as well as other tenant's complaints at the building. You will need to make the above adjustments as to stay in compliance with your entertainment permit and your lease agreement.

Thank you

Russell Gross
Property Manager

--

Russell E. Gross Real Estate, Inc.
[REDACTED]

3140 Porter Street
Soquel, CA 95073
DRE# 00887251

EXHIBIT K

Fwd: Noise and harassment claim

From: Firehouse Brew & Grill <[REDACTED]>
Sent: Thursday, June 2, 2022 5:40:30 PM
To: Steve Yates <[REDACTED]>; RUSSELL GROSS <[REDACTED]>; Jill Ealy <[REDACTED]>; Josh Parmelee <[REDACTED]>
Subject: Re: Noise and harassment claim

Hi Steve,

We appreciate your assistance in this matter. I will get written statements from our staff, call logs and additional footage from our security cameras. As we already sent photos of Ryan putting notices on our doors.

The Capitola Police Department has call logs as well, however they will not release info unless we request a Civil Harassment Restraining Order. They did advise that we have been in compliance, whenever calls have been received.

Thank you,
Lasalle & Michelle Strong

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From: Steve Yates <[REDACTED]>
Sent: Wednesday, June 1, 2022 9:18:47 PM
To: Firehouse Brew & Grill <[REDACTED]>; RUSSELL GROSS <[REDACTED]>; Jill Ealy <[REDACTED]>; Josh Parmelee <[REDACTED]>
Subject: Noise and harassment claim

I have opened an investigation into the harassment claim made by the current tenant Capitola Bar and Grill. The landlord takes these claims very seriously. Could I please get from any party their view regarding the alleged harassment. (Including employees of CBG) We're there threats or intimidation involved? What was the nature of the harassment? Sexual, Civil? What staff were harassed. How many incidents are involved? Despite any relationship I have with the tenant, harassment against anyone will not be tolerated. Please get me this info ASAP. I will move as quickly on this as you all do.
Thank you
Steve Yates for LA Serena Properties


[Sent from Yahoo Mail on Android](#)

From: RUSSELL GROSS [REDACTED]
Sent: Thursday, June 9, 2022 11:47:25 AM
To: Firehouse Brew & Grill [REDACTED]; [REDACTED]
<[REDACTED]>; Jill Falv <[REDACTED]>
Cc: Steve Yates <[REDACTED]>
Subject: [231 Esplanade](#)

Michelle and LaSalle,
The Landlord has requested that I forward you the attached letter regarding a Harassment Claim dated June 8, 2022 for your review.
In addition, I need to remind you that there is no smoking outside of the building between Mr. Toots and the apartment entrances. Please make sure that you, your employees and customers refrain from smoking in this area.
Thank you,
Russell Gross
Property Manager

--
Russell E. Gross Real Estate, Inc.

[3140 Porter Street](#)
[Soquel, CA 95073](#)
DRE# 00887251

 **202206091140.pdf**
155K

June 8th 2022

To; Capitola Bar and Grill Et. Al.

From; La Serena Properties landlord for CBG

Re; Harassment Claim

HARASSMENT (civil) Def:

"UNLAWFULL VIOLENCE, LIKE ASSAULT OR BATTERY OR STALKING, (OR) A CREDIBLE THREAT OF VIOLENCE, AND. THE VIOLENCE OR THREATS SCARE, ANNOY, OR HARASS SOMEONE AND THERE IS NO VALID REASON FOR IT."

Commercial tenant (CBG) has alleged that it has been harassed by either a tenant in the landlords property or by landlord. It is not completely clear. Landlord has requested statements from the tenants, Capitola Police, any and all employees and owners of CBG.

Landlord has received a statement from one residential tenant, e-mails from one other residential tenant, copies of YELP reviews from other commercial tenants. Landlord did not receive any statement from CBG or from any of their employees or owners.

Landlord engaged in conversation, a third party HR expert to get an opinion as to whether the facts presented support the claim there had been any "harassment ."

Facts as presented:

1. Residential apartment tenant contacted in person a gentleman that identified himself as the manager of CBG. Tenant requested a reduction of the noise level. The response was that he (the manager) would look into it. This was described as a simple and civil conversation. No level in reduction of noise occurred.
2. Residential apartment tenant again contacted in person the same individual about a week later regarding the noise level. Tenant was offered free drinks. Tenant declined the free drinks. Again this conversation was described as "civil." There was no reduction in the noise level according to the apartment tenant although.

3. Tenant received a call from "Lasalle" who said he was the owner of CBG. This occurred 10 minutes after the previous conversation with the "manager" of CBG. Tenant was chastised for "moving in above a bar" by the owner of CBG. Again the tone was civil but "completely unproductive" as described by tenant.

4. Tenant contacted Captain Sarah Ryan of the Capitola police to discuss the problem. According to tenant she claimed "they (CBG) are a problem and we will look into it."

5. I personally went to the property and recorded a 105 to 110 DB outside the property from across the street and DB levels that rose to 100 DB within the apartment of tenant. The noise level complaint by apartment tenant is credible as witnessed by me. I recorded the decibel level on an i phone ap. That ap is reported to be within 2% accurate. The recording (s) is available to anyone who want them.

6. Residential tenant claims to have had the tires of his bike slashed twice since contacting the police.

7. Landlord placed a "Cease and Desist" notice on both doors of CBG informing commercial tenant of both the breach of lease and the violation of City ordinance regarding noise.

8. One of the tenants in the building is related to the building owner.

9. This concludes all contact(s) by any apartment tenant with employees or owners of CBG. (reported)

CONCLUSION;

The HR person contacted by landlord has declined to write a report as the claim for harassment appears "absurd" on its face. "Does a tenant renting a space in a building abdicate their right to quiet enjoyment as provided within their lease by a simple complaint and request to "turn it down?"

Further there has been no report of violence or threat of violence made to any employee or owner of CBG by the owners of CBG. No report of violence or threat of violence has been reported to Capitola Police by CBG. Of concern (IS) the repeated slashing of apartment tenants tires although there is no police report of that incident or witnesses of the incident (s).

I will be forwarding this report to the building insurance carrier as required by them after all parties have had a chance to review and respond. Harassment is a serious allegation and the landlord will always take this or any other claim or breach under the lease seriously.

Ongoing is the noise complaint(s) made by residential tenants of the building. The landlord has for 40 years attempted to insure that a legitimate restaurant only venue occupy the premises. This is outlined in the lease Section 1.09:

PERMITTED USE/ EXCLUSIVE USE

"TENANT SHALL USE THE PREMISES FOR A RESTAURANT, AS DEFINED IN THE CITY OF CAPITOLA USE PERMIT EXISTING AT THE TIME OF EXECUTION OF THE LEASE, AND FOR NO OTHER PURPOSE."

"Restaurants" have successfully operated in this location over this 40 year period without bands, karaoke, open mic and all those elements associated with a "night club". I feel that most honest opinions would say that a bandstand- live music venue is not a good fit in a commercial -RESIDENCIAL building. It is further not at the discretion of the restaurant tenant to say; " Hey, we got a music permit, this supersedes any other provision in the lease."

It is the hope of the landlord that Capitola Bar and Grill will reverse course and be a responsible tenant in the building and in the village. The other tenants have all expressed a willingness to accommodate "reasonable" disturbances. They all understand where they live.

Respectfully,

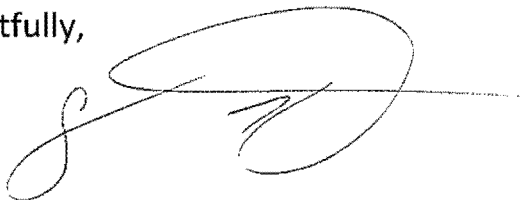
A handwritten signature in black ink, appearing to be a stylized name, possibly 'J. R.', written over a horizontal line.

EXHIBIT L

Sent from [Mail](#) for Windows

From: [Firehouse Brew & Grill](#)
Sent: Thursday, June 9, 2022 1:41 PM
To: [RUSSELL GROSS](#); [REDACTED] [Jill Ealy](#)
Cc: [Steve Yates](#)
Subject: Re: 231 Esplanade

We are requesting to have an onsite meeting. I have explained the behavior of Ryan Yates, to be demanding, unreasonable and intimidating, especially to a 16-year-old hostess. Ryan's demeanor is falsely represented in your letter.

The restaurant is not operating as a "night club", we offer music and entertainment to our dining guest before 10:00pm. (Attached "Manner of Use") There have been no violations to any laws or regulations. Our kitchen has a full menu available during our open hours. There are many difficulties for a new restaurant to gain momentum, the live music draws in customers that have stayed away from the crowded Village scene.

There are false claims of live music occurring seven days a week, and the dba readings are grossly incorrect. To have a reading of 100 and above across the street, would need to be over 200 inside the restaurant. If that were true, the Police would lawfully issue us a ticket. We have videos as well, that show our bar seating, cannot hear the music. In unit #200, the music cannot be heard. The Capitola Police have no incidents of requesting our music to be lowered and have not issued any citations of noise violations.

We have requested an onsite meeting for the third time, as well as the lease offering arbitration for any disputes. (Attached)

Sarah from Margaritaville and I communicate to keep the walkway clear. When people go "outside" they assume they can smoke. It's impossible to monitor this area 24/7. We suggest the landlord post "no smoking" signs and add cameras, to deter this behavior.

Lasalle and I own two restaurants with 50+ employees, we will not entertain any suggestive or defamatory comments regarding vandalism of Ryan Yate's personal property. It's disgusting and insulting to attach any illegal activity towards us or our business.

Our restaurants are our livelihood, and any interference to our safety or right to conduct business, will be handled within lawful means.

It's our goal to come to a compromise that is fair to both sides.

Thank you,

Michelle Strong

EXHIBIT M

From: Steve Yates
Sent: Tuesday, June 21, 2022 11:14 AM
To: Firehouse Brew & Grill
Subject: Re: 231 Esplanade

Dear Ms. Strong,

AND SUBLESSEE CAPITOLA BAR AND GRILL

I see no further point in attempting to rationalize to you the impact your live music-bands-kereoke is having on the building tenants. The lease is clear as to ALL tenants rights to quiet enjoyment of their premises. I will not "compromise" their rights.

I am hereby noticing you that you are in default under the lease as described in ARTICLE FOUR SECTION 4.01 & 4.02 under the lease dated February 1st 2008.

Further, I will be noticing the LESSEE, JJJ GROUP INC. of the breach. As I can assume per your recent correspondence that you have retained legal counsel, it would be preferable to have that counsel contact me directly. I will put them in touch with counsel for La Serena.

Respectfully,

Steve Yates for La Serena Properties

On Thursday, June 16, 2022, 12:39:45 PM PDT, Firehouse Brew & Grill
[REDACTED] wrote:

Steve and Russell,

We reached out to several of the hotels in the area and tenants in the building. The hotels have been supportive and promote our restraint to their guest, especially since we are now serving breakfast.

Is there any information on the air ducting? We were told that the heating unit does not work and there are no plans to fix it. In our effort to buffer noise, we are asking permission to add insulation to the interior of the ducting that opens to our dining room, as this may be a source of noise traveling to the unit above. Also we are adding ceiling fans to the dining room and the bar, to help with air flow.

In addition we have required our Management to monitor dba from outside the front door, and they are keeping a record of the readings.

Thank you,

Michelle Strong

EXHIBIT N

Fwd: Exercise of Option

From: Jill Ealy [REDACTED]
Sent: Wednesday, December 21, 2022 5:05:57 PM
To: Firehouse Brew & Grill [REDACTED]
Subject: Fw: Exercise of Option

----- Forwarded Message -----

From: Jill Ealy [REDACTED]
To: [REDACTED]
Sent: Thursday, September 1, 2022, 06:21:10 PM PDT
Subject: Re: Exercise of Option

Hi Steve,

I actually just received the letter back and it stated there was no receptacle. Is there a better address that I should resend the letter? I know Michelle and Lasalle have reduced their music days, times, and volume all in attempt to appease you and the tenant. It is my understanding they have continually reached out to you for a meeting to no avail. I have informed the tenant that until we are paid in full or the two of you come to some solution, the music needs to stop. We never wanted to be in the middle of this situation nor do we want to spend the time and money hiring an attorney etc.

What do you want or expect us to do at this point? They have an entertainment permit per the city and are well within its guidelines.

~Jill

-----Original Message-----

From: Steve Yates [REDACTED]
To: Jill Ealy [REDACTED]
Sent: Tue, Aug 30, 2022 10:00 am
Subject: Re: Exercise of Option

Jill,
I have not received any letter from you as of yet. I will let you know when I do. You, through your subtenant, are in default of the lease. You have been notified of this default prior and had 30 days to correct the default. The subtenant has made zero attempt to resolve the noise issue or correct the default. The upstairs apartment remains half rented as no one could withstand the noise level. Your sub tenant remains a major problem.
Bottom line is per the lease you may not exercise the option to renew the lease while in default and that period to correct the default has passed.

On Monday, August 29, 2022, 12:09:12 PM PDT, Jill Ealy [REDACTED] wrote:

Hello Steve,

I sent the letter exercising the options registered mail. I just wanted to confirm receipt.

I haven't heard anything further about CBG's music. Im hoping that as a good thing and everything has been worked out.

~Jill

EXHIBIT O



FINAL NOTICE OF DECISION

January 31, 2023

Capitola Bar and Grill
231 Esplanade #102
Capitola, CA 95010

RE: Notice of Decision on Application for 2023 Regular Entertainment Permit at 231 Esplanade #102

On behalf of Capitola Bar and Grill you applied for a 2023 Entertainment Permit as required by Capitola Municipal Code 5.24 – Entertainment Permits. Our understanding is that you lease the space at 231 Esplanade #102, and manage and operate Capitola Bar and Grill in that space.

We have reviewed your application and have determined the application does not include the property owner's consent to the application, as required on page 3 of the application (IX. Property Owner Statement).

The requirement for the property owner's consent is a standard inclusion on the City's application form. The form was developed pursuant to Capitola Municipal Code section 5.24.080, which allows the City Manager to develop the application.

Because your application does not include all of the required information, your application is denied.

If you would like to appeal this determination to the City Council, you must file your appeal within 14 working days of the date of this letter. The Council will hear the appeal at the City Council meeting following receipt of your appeal or, upon a request from staff, may hear the appeal at a later date. The deadline for you to file an appeal is five p.m. on February 22, 2023.

All appeals must be in writing and delivered to the office of the City Clerk with payment of the Administrative Decision Appeal Fee, which is \$562. The request for appeal must set forth the appellant's name, the phone number for the appellant, an address to which notices may be sent to the appellant and the grounds upon which the appeal is made. Further detail regarding the appeal procedure can be found in Chapter 2.52 of the Capitola Municipal Code.

Please note that because you do not currently have a valid Entertainment Permit, you are not permitted to engage in entertainment activities, as described in 5.24.010 of the Capitola Municipal Code.

Sincerely,

Jamie Goldstein, City Manager
City of Capitola

EXHIBIT P



FW: Capitola Bar and Grill

From: [Bob Brooks](#)
Sent: Thursday, February 2, 2023 5:41 PM
To: [Steve Yates](#)
Subject: Re: Capitola Bar and Grill

Steve,

I don't know about any conversations you had or didn't have with them, but I did send you that business plan on July 15, 2021.

Bob

Bob Brooks, CBB, Lifetime CBI
51 East Campbell Avenue #101 B
Campbell, California 95008
408-246-3846 - office
[REDACTED] - cell
DRE #00805283



www.bayareabizbrokers.com

Ya, it's just their story. They're even saying they had the conversation with me. I've never met or talked to either of them.

Sent from Yahoo Mail on Android

On Thu, Feb 2, 2023 at 2:56 PM, Bob Brooks

<[REDACTED]> wrote:

Steve,

Yes, I did hear that there were some issues about music on the premises. I don't remember any talk of bands. I checked my email and found the attached business plan Michelle Strong sent me and that I forwarded to you on July 15, 2021. It does mention live music.

I'll go through the rest of my emails and phone notes from the time they were buying the business to see if there was anything else said about music.

Bob

Bob Brooks, CBB, Lifetime CBI

51 East Campbell Avenue #101 B

Campbell, California 95008

408-246-3846 - office

[REDACTED] - cell

DRE #00805283



www.bayareabizbrokers.com

On Wed, Feb 1, 2023 at 12:38 PM Steve Yates <[REDACTED]> wrote:

Hey Bob,

You may have caught wind that there is a problem with the tenant here.

They are claiming that an "implied consent" was given by someone to have the space be OK for bands. I didn't, Jill says she certainly didn't so I gave to ask you if there was any communication between you and them regarding this issue. Bands obviously don't work for the residential tenants and I can put this issue to bed with a statement from you. Can you check and get back to me one way or the other.

Thanks, Steve

EXHIBIT Q

CITY OF CAPITOLA
CITY CLERK
FEB 21 2023

February 21, 2023

To: Hon. Mayor and City Council Members

From: Michelle and Lasalle (Sal) Strong, Capitola Bar & Grill proprietors

Phone: [REDACTED]

Mailing Address: 231 Esplanade, Suite 102, Capitola, CA 95010

Email: info@capitolabarandgrill.com PLEASE ALSO EMAIL ANY COMMUNICATIONS. Thank you.

RE: Appeal to City Council of City Manager’s Decision to Cancel Capitola Bar & Grill’s Permit for Music and Dancing (Entertainment Permit) by letter of 1/31/23. (Attached.)

Introduction

We appeal to you for fair and even-handed treatment in continuing to offer music and dancing to the community for afternoon and early evening enjoyment. We have had no significant complaints. We first got the permit in summer of 2021. The Chief of Police renewed it for 2022. And then suddenly at the beginning of this year, the City Manager decided to cancel it despite the last couple years of bringing life back to the Village. Why? There were no significant complaints. The only explanation is that our landlord, who is trying to force us out of the space before the end of our lease, somehow influenced him. That’s not fair. The City should stay out of private disputes and not take sides either way. All we are asking is that you continue the status quo of the past couple years and allow us to continue to peacefully share entertainment at our restaurant in the Village. Thank you for the wise exercise of your power as Capitola’s lawmakers in hearing our appeal.

What Happened (the Facts)

August 2021-

We took over from the old Sotola B&G, including a lease assignment with the landlord, Steve Yates, who (at first) wanted us in the space and approved of us getting an Entertainment Permit. He knew we were offering music and dancing and approved our lease with that knowledge. Entertainment is a big part of our business.

September 2021-

Chief of Police Andrew Dally issued us an Entertainment Permit, including conditions for sound proofing, hours of use, sound limits, etc., all of which we complied with. We spent almost \$10,000 on various improvements, because we had the Permit, for soundproofing, wood paneling, ceiling treatment, curtains, self-closing doors, cameras, and more.

January 2022-

Chief of Police Andrew Dally renewed our Entertainment Permit as a matter of course.

September 2021 through March 2022-

We had various communications with the landlord Steve Yates and his property manager. We were concerned about the elevator to the restaurant that never worked since we got there (and which has since been removed and half-replaced, remaining undone). We were also concerned that the roof of the residential unit we rented leaked during the rains. We noticed that progress was very slow and that the little work done was unprofessional. At first though, at least the tone of these communications was cordial on both sides.

April 2022-

Lasalle (Sal) Strong bumped into the landlord Steve Yates who was on site trying to fix the elevator himself. (He lives in Hawaii.) This was the first time they saw each other in person. The relationship deteriorated from there. For whatever reason, Mr. Yates' emails became argumentative and angry in tone. His tone remained cordial with our master tenant, the previous restaurant owners. He referred to our patrons as the wrong "element."

He was very concerned about the cost of repairs to his building and asked us to pay for the elevator. And he began complaining about the music. We began getting confusing legalistic notices about posted on our doors. Since then, he has consistently taken a scolding tone with us and refused to negotiate or identify any actual operational issues, including entertainment. We are mystified as to why; we have done nothing wrong.

June 2022-

We met with Police Chief Andrew Dally to discuss any compliance issues because of the confusing notices posted on our doors by the landlord. The Chief said there were no significant issues or complaints and that he was not concerned with our providing music and dancing. Police Captain Sarah Ryan informed us that landlord Steve Yates had asked them to cancel our Entertainment Permit.

August 2022-

We hired a law firm to help us with our landlord conflict which continued, and continues, to escalate. He wants us out and is pressuring us every way he can, including by getting our Entertainment Permit cancelled by the City.

October 2022-

We met with Chief of Police Andrew Dally. We offered to file the same annual renewal form for 2023 that we had filed for 2021 and 2022. However, suddenly it became an issue that the landlord Steve Yates refused to sign the form. But he had not signed the first two forms either, and the City gave us the Entertainment permit in 2021 and renewed it in 2022. We used the Permit and provided a community gathering place for live music and dancing in the afternoon and early evening. We had very few if any complaints (if you don't count the complaints of the landlord Steve Yates which were and are part of his campaign to remove us).

December 2022-

We filled out and submitted the annual renewal form for Entertainment Permit.

January 2023-

We received the 1/31/23 letter from the City Manager cancelling our Entertainment Permit because Steve Yates did not give his consent by signing the form. Whether intentional or not, the cancellation letter contains the wrong deadline date for filing this appeal. If we had followed the City Manager's instructions in the letter we would have been a day late and this appeal would have been dead on arrival.

February 2023-

We filed this appeal on time and paid the fee.

Here are Some Factual Questions that We Would Like to Ask (or Have You Ask) the City Manager and Other City Staff:

- 1) Did the City Manager delegate his authority to issue Entertainment Permits to the Chief of Police?
 - 2) Did the police exercise discretion to issue permits with or without explicit landlord consent on the form?
 - 3) How many entertainment permits issued in last five years? How many with explicit landlord consent on the form? How many without?
 - 4) Why the change in that policy?
 - 5) Did City Manager, Police Department, or any other staff communicate with Steve Yates about this matter?
 - 6) When, how, and what did he say?
- Did Mr. Yates say that he never consented to entertainment, or that he changed his mind?
- 7) Did he say or imply he would sue the City if the permit was not cancelled or not renewed?

What You Should Do and Your Legal Power to Do It (Our lawyer helped with this part)

Your role is to serve as the judges in this appeal, our disagreement with the City Manager over the Entertainment Permit. As the judges, you are independent of both sides. To be fair to both us and the City Manager, you are required by law to have your own independent lawyer, separate from the City Attorney who has been advising the City Manager. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 91-94.) To the extent that the City Attorney has been advising the City Manager who cancelled our permit, she is biased having already formed an opinion of the matter and taken a side. They cannot give you objective legal advice. At the very least, they should confirm that you have the power to decide the questions of fact and law in this matter, should have independent counsel, and need not follow their legal opinion in the matter (already formed to support the City Manager).

As the judges in this hearing, the Capitola Municipal Code (CMC) gives you the power to make your own decisions regarding the facts and the law. (CMC 2.52.050 saying that this hearing is "de novo" meaning, a complete do over of facts and law.) You are not bound by the City Manager's decision. You have the power to make a different decision.

The City Manager's letter says that he cancelled the Permit (or denied the application for renewal, it comes to the same thing) because it did not include the landlord Steve Yates' consent on the application form that the City Manager himself made up. But under the Municipal Code section that he cites, his power to develop the form is limited. *One legal question for you to decide is if that requirement is properly on the form or not.* If you decide that the form shouldn't have that requirement on it, then the City Manager's decision is baseless, and you must overturn it and renew the Permit.

CMC 5.24.080 gives the City Manager limited power to develop the application form. Specifically, it limits the form to "any nonprivileged information reasonably related to the concerns expressed in Section 5.24.005." That's it. Nothing else. So now the question is does Section 5.24.005 give the City Manager the power to require the landlord's signature on the form.

Section 5.24.005 addresses the purposes and concerns of the Entertainment Permits program. (We have copied the entire section at the end of this appeal.) They include only issues related to entertainment: noise; attracting business; traffic; peace and quiet and nightly sleep; hours of operation; concentration of similar businesses (an entertainment district); proximity to residences; the need for a permit system; and the need for fees to cover the cost of the system.

That's it. That is what the form is supposed to focus on: controlling noise, traffic, hours of operation, and the like—all issues directly related to the conduct of the business. Nothing in that section relates to landlord-tenant issues. Which makes sense because it is not the City's job to regulate the private contracts (including leases) between commercial businesses and the landlords.

The City Manager could have left landlord consent off the form entirely and it would have been proper and legal under the municipal code. This is also shown by CMC 5.24.020 which lists who can obtain an Entertainment Permit: "owner, manager or operator." Nowhere in the municipal code does it say that only the owner can apply—or that their consent is required. But it does say explicitly that an operator can obtain a Permit. Nor is this a land use right that might involve the property owner. It's in the Municipal Code under Business Regulations, not under Zoning.

The landlord consent requirement is improperly on the form, irrelevant, and not authorized by the ordinance. This is clear from the track record of the City having twice issued the permit without requiring such extraneous information.

If a landlord wants to control the use of his property by his tenants, that is properly done in his contractual agreements with them. Here, the landlord is legally bound by his agreements to allow Entertainment. (If there were actual bona fide nuisance complaints they could be addressed with the City under the municipal code—but there is no mention of such complaints in the City Manager's 1/31/23 letter.)

The City has authorized entertainment at our restaurant for two years running. The City twice issued an annual permit that we relied on in building our business and offering music and dancing to Village. In all fairness, the City should not cancel that permit unless there is a good reason such as excessive noise complaints. Here, the only complaint is from the landlord who is trying to break our lease—and our business.


For those reasons we ask that you find that the landlord’s consent is not related to the purposes of the Entertainment Permit program under Section 5.24.005 and is not a required part of the form. Based on that legal finding we ask that you reinstate our Entertainment Permit for 2023 so that we can continue providing entertainment in the Village as we have for the past two years.

Alternatively, if you decide that the landlord’s consent is required, you can still reinstate the Permit by finding that the issue of whether the landlord can revoke his previously given consent, under the lease and other agreements with, us is a matter for the courts to decide—or for us to negotiate with him. You can find that the issue of landlord consent does not require the City Manager’s form as a kind of “magic paper.” The requirement can be met by the landlord’s binding legal agreements that authorize us to have entertainment at the restaurant. Even if landlord consent is required, he has already given it in the lease and other contracts and he cannot revoke it now; the form is unnecessary because he has consented as a matter of law.

As the City’s policymakers you can decide, based on the policy of keeping the City out of private commercial disputes, and based on the landlord’s binding consent, that the City will maintain the status quo of music and dancing at the restaurant and reinstate the permit.

In Conclusion

For all the reasons given above, we ask that you exercise your legal powers to make this decision based on the facts and law as presented above and reinstate the Permit. Thank for supporting our continuing to share music and dancing in afternoons and early evenings in the Village.



LaSalle Strong



Michelle Strong

Capitola Municipal Code

5.24.005 Findings.

The city council finds as follows:

- A. Entertainment often produces noise which is obtrusive to persons not patronizing the business or activity which produces the noise.
- B. The availability of entertainment is often a significant factor in attracting patrons who infringe upon the peace and quiet and nightly sleep of nonpatrons, and is exacerbated by any of the following:
1. The entertainment is offered in conjunction with the distribution of alcohol.
 2. The entertainment is offered by businesses which are open after nine p.m. and do not, like theaters, have fixed beginning and ending times at which most of the patrons enter and exit.
 3. The entertainment is offered in an area where there is a concentration of similar businesses, thereby resulting in the area becoming an after-hours draw and the patrons of those businesses frequently entering and exiting the other establishments.
 4. The entertainment is offered in locations where many of the patrons, when leaving, pass through or near areas where people reside.
- C. To protect the peace and quiet of nonpatrons and their nightly ability to sleep it is necessary to have a licensing system and to thereby limit and condition the establishments offering such entertainment.
- D. Policing and monitoring entertainment licenses entails considerable expense to the city, such that it is appropriate to collect a portion of such expenses from the entities providing the entertainment. (Ord. 1020 § 1 (part), 2018; Ord. 699 (part), 1990)



FINAL NOTICE OF DECISION

January 31, 2023

Capitola Bar and Grill
231 Esplanade #102
Capitola, CA 95010

RE: Notice of Decision on Application for 2023 Regular Entertainment Permit at 231 Esplanade #102

On behalf of Capitola Bar and Grill you applied for a 2023 Entertainment Permit as required by Capitola Municipal Code 5.24 – Entertainment Permits. Our understanding is that you lease the space at 231 Esplanade #102, and manage and operate Capitola Bar and Grill in that space.

We have reviewed your application and have determined the application does not include the property owner’s consent to the application, as required on page 3 of the application (IX. Property Owner Statement).

The requirement for the property owner’s consent is a standard inclusion on the City’s application form. The form was developed pursuant to Capitola Municipal Code section 5.24.080, which allows the City Manager to develop the application.

Because your application does not include all of the required information, your application is denied.

If you would like to appeal this determination to the City Council, you must file your appeal within 14 working days of the date of this letter. The Council will hear the appeal at the City Council meeting following receipt of your appeal or, upon a request from staff, may hear the appeal at a later date. The deadline for you to file an appeal is five p.m. on February 22, 2023.

All appeals must be in writing and delivered to the office of the City Clerk with payment of the Administrative Decision Appeal Fee, which is \$562. The request for appeal must set forth the appellant’s name, the phone number for the appellant, an address to which notices may be sent to the appellant and the grounds upon which the appeal is made. Further detail regarding the appeal procedure can be found in Chapter 2.52 of the Capitola Municipal Code.

Please note that because you do not currently have a valid Entertainment Permit, you are not permitted to engage in entertainment activities, as described in 5.24.010 of the Capitola Municipal Code.

Sincerely,

Jamie Goldstein, City Manager
City of Capitola

EXHIBIT R

Fwd: Capitola Strong Inc. and La Serena Properties, LLC - Mediation on March 1, 2023 at 9:30 am

----- Forwarded message -----

From: **Steve Barber** <steve@jrgattorneys.com>

Date: Thu, Feb 23, 2023 at 2:49 PM

Subject: Capitola Strong Inc. and La Serena Properties, LLC - Mediation on March 1, 2023 at 9:30 am

To: leslie@HULawyers.com <leslie@hulawyers.com>

Cc: Drew Sanchez <drew.sanchez@anthonylaw.group>

Dear Ms. Holmes:

I represent the Landlord for both rental spaces at issue in this matter, La Serena Properties, LLC, whose Managing Member is Steven Yates.

This is a commercial landlord-tenant dispute involving a restaurant space located at [231 Esplanade, Capitola](#) ("231") and an apartment space used for restaurant storage purposes located at 200 Esplanade ("200"). Both spaces are on the second floor of a building on the water in Capitola. Technically, the Subtenant of 231 and Tenant of the apartment is Michelle and Lasalle Strong. However, their corporation, Capitola Strong, pays the rent on 231 and 200. There are other tenants in the building, including a long-standing residential tenant who is on the third floor. As far as the Landlord is concerned, both leases have been validly terminated and the Subtenant is occupying 231 unlawfully. The Tenants have not been evicted because the lease agreements require mediation and then arbitration of these disputes. The leases and termination notices are attached.

The only reasons we are mediating this dispute are: (1) The Tenants refuse to accept the reality that the Restaurant Lease either expired on January 31, 2023 and/or was terminated due to lease violations by the Tenant effective January 31, 2023; (2) The Tenants refuse to acknowledge that the month-to-month Apartment Lease will terminate effective April 30, 2023; and (3) the Tenants believe the Landlord is required by the Restaurant Lease to allow live music at the restaurant and that its failure to agree to live music is a breach of the Lease which has caused them some unspecified and unprovable damages.

The Landlord's position is simple: (1) the Restaurant Lease terminated on January 31, 2023; (2) the Apartment Lease will terminate on April 30, 2023; (3) the Restaurant Lease does not expressly or impliedly require the Landlord to authorize live music; and (4) the Capitola Police Department must issue an entertainment permit allowing live music, which is speculative given the past complaints about the loud noise emanating from the CBG.

The Tenants are currently paying rent to Landlord, who is accepting it without waiver of any of the parties' rights or defenses because the Tenants continue to occupy and use 231 and 200.

Restaurant Lease

The original tenant was Sotola Bar and Grill Company. The Lease was assigned to the Strongs on February 1, 2018 and they became the Subtenant and opened the Capitola Bar and Grill ("CBG"). The Sublease & Assignment Agreement among Sotol, the Strongs, and La Serena incorporates all terms of the Lease including the 5-year option provision. During the subtenancy, the CBG played live band music which sometimes violated the terms of their entertainment permit issued by the Capitola Police Department ("CPD"). The residential tenant and others complained about the noise and the police often "visited" the premises to investigate (including three consecutive nights on January 29-31, 2023). The Subtenant apparently believes that they have the inherent right under the Lease to have an entertainment permit and live music. This could not be farther from the truth. The words "entertainment," "entertainment permit," "band," and "music" do not appear in the Lease. However, Section 109 states that the only permitted use is for a restaurant, as defined in the City of Capitola's use permit which existed at the time the Lease was executed in February 2018.

Section 1.06 provides for a 5-year option which must be exercised in writing between 180 and 90 days before the end of the initial lease term on January 31, 2023. Section 1.06 strictly prescribes the required notice which must be given to exercise the option: "Tenant's notice shall be delivered to Landlord only by certified mail, return receipt. If Tenant neglects to timely exercise the option, the right to exercise such option automatically expires without notice from Landlord of Tenant's failure to exercise such option." The general notice provisions in Section 12.07 apply to other circumstances where notice must be given. We all know that specific terms of a contract control general terms and that if the language of the contract is clear and unambiguous, the contract will be interpreted according to its clear meaning. Section 1.06 cannot be clearer and more unambiguous as to how the Tenant must notify the Landlord of the exercise of the option and is not trumped by Section 12.07.

Through their prior counsel, Hoge-Fenton, the Strongs sent a letter to Mr. Yates on October 24, 2022 which enclosed an unsigned Notice of Exercise of Option. The letter and enclosure were delivered by FedEx. This communication purported to exercise the option. This "exercise" was ineffective as a matter of law and contract and was not compliant with Section 1.06 because the "Notice of Exercise of Option" was unsigned and was not sent by certified mail, return receipt. On November 1, 2022, counsel sent a signed Notice of Exercise of Option to Mr. Yates via FedEx.

On December 28, 2022, Hoge-Fenton sent a letter with enclosures claiming they supposedly complied with the general notice provision of Section 12.07. This letter only solidifies that the Option was not validly exercised by the Subtenant as Section 1.06 of the Lease unequivocally states that the notice exercising the option shall be sent to the Landlord only by certified mail, return receipt no later than the 90th day before the expiration of the Lease on January 31, 2022. The Strongs' admission that their counsel sent a signed copy of the purported notice of exercise by FedEx on November 1, 2022 to the Landlord establishes the failure to comply with the delivery requirement of Section 1.06. This "notice" does not comply or substantially comply with Section 1.06 and is therefore void and of no legal effect. In sum, the Option was not properly exercised in accordance with the express terms of the Lease and the Lease expired on January 31, 2023, regardless of whether the Subtenant was in default or not.

The Lease was also terminated effective January 31, 2023 via the attached Notice of Termination as a result of the Subtenant's violation of Section 4.02 of the Lease in late January 2023, as well as before. This Notice terminates the Lease regardless of whether the Option was validly exercised or not.

Apartment Lease

This Lease became effective on September 1, 2021 and terminated on August 31, 2022. By its terms, it is a month-to-month tenancy after August 31, 2022. The current Tenant does not use it as a residence but rather as a storage area. On February 8, 2023, the Landlord served the 60-day notice of termination. By the terms of the Notice, the tenancy ends on April 30, 2023. The Landlord is not aware of any valid defense the Tenant has to the termination even if the Strongs arguably have the right to use 200 as a residence. In California, a residential tenancy of more than one year can be terminated by giving a 60-day notice, which has been done here.

Entertainment Permit

A business which wants an Entertainment Permit must apply to the Capitola Police Department and pay an application fee. An exemplar copy of the Application is attached. IF the CPD issues the permit, it is good for one year. The property owner must consent to the live entertainment described in the Application. The CPD is not required to issue a permit or can require a new permit if the business activity or the circumstances change, The CPD can revoke the permit for failure to comply or for having supplied false information.

Capitola Strong did have entertainment permits in prior years. It does not have one for 2023. The Landlord has been informed that due to past violations of its permit, the CPD intends to issue a cease-and-desist order to Capitola Strong prohibiting it from making loud music noises.

The Landlord does not intend to consent to future entertainment permit applications, if any, submitted by Capitola Strong or the Strongs if their tenancy of 231 is extended.

Concluding Comments

The Restaurant Lease has expired under its express terms because the Subtenant (and original Tenant) did not exercise the Option in the manner required by Section 1.06. This is clear. The Apartment Lease terminates on April 30, 2023 and the Tenant has no possible defense. The Subtenant has no contractual right to an Entertainment Permit or to have live music at the CBG. The Subtenant has not been a desirable tenant from the Landlord's viewpoint and noise disturbances to others in the vicinity are unacceptable. The Landlord want to rent the restaurant space and apartment to others and needs the Strongs and their corporation to vacate.

Thank you for your attention.

Stephan A. Barber

Partner

JRG Attorneys at Law

[318 Cayuga Street](#)

[Salinas, CA 93901](#)

(831)744-2444 x607

steve@jrgattorneys.com

EXHIBIT S

Get [Outlook for iOS](#)

From: Firehouse Brew & Grill
Sent: Sunday, May 22, 2022 1:18:07 PM
To: Russell Gross <>; Jill Ealy <>
Subject: Request for a Meeting

We received a notice on our doors today. We are requesting to meet with Russell Gross and Steve Yates. Lasalle and I are available this coming week on Monday, Wednesday or Thursday.

Its come to our attention that the tenant above our commercial business, Ryan Yates has been disturbed by our "noise" levels. Ryan has taken some steps on behalf of representing the landlord and put a notice on our doors today.

As we understand there are residential units in the building, the residents of the building should have consideration that they choose to reside in a commercial building as well.

In regards to live music, I have attached our live music permit. Although our permit allows music to 11pm Sunday to Thursday, 12:30 am Friday and Saturday, in consideration of the surrounding residents and hotels, we stop our music at 10pm. As required for the permit, we have installed curtains, and sound boards to assist in noise levels.

Lasalle and I have met with the Chief of Police, Andy Dally, to ensure we are doing everything required to stay in compliance. Per our discussion with him, we are allowed to have our windows and doors open, due to the normal sound levels of the traffic and surrounding buildings are louder than our music during the day. The compromise is for us to make a daily decision to close doors and windows, as the outside noise lessens, which is usually by 9:00pm.

There is a false claim that we are in violation of our lease and permit. Ryan putting these notices on our doors, is harrasing and violates our rights to run our business. It put unnecessary fear and distress on our staff. The city noise ordinance for residential is 10:00pm, and we are doing business in our rights of leasing the commercial property, along with following the guidelines of the city music permit. Ryan is making false claims that the decibal level reaches 120 in his unit, however 120 is deafening levels and standing directly in front of the band, our readings are 80-90, at the front steps with the door closed our readings are 65, which is in compliance. In unit #200, with the patio door closed, the music is not heard. We place the live music towards the far right corner as you enter the front door. Ryan's apartment is over our bar and kitchen areas, which have normal sounds of business, from radios and tv's, along with the ceiling mounted speakers, which were installed prior to our occupancy.

The lease states that any disputes be handled in mediation, (Section 11.02 Mediation of Disputes). We have not been given the opportunity to speak with Russell or Steve regarding Ryan's complaints. We are going to continue business as we have been, which includes live music, as we believe we have already compromised by made by ending at 10pm, along with closing the doors and windows at 9:00pm.

Please set a time so we can discuss.

Michelle & Lasalle Strong

Sent from Mail for Windows

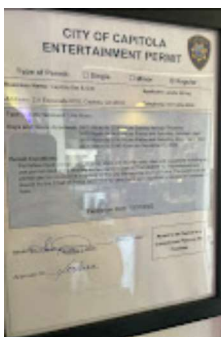
5 attachments



IMG_7823.jpg
321K



IMG_7824.jpg
326K

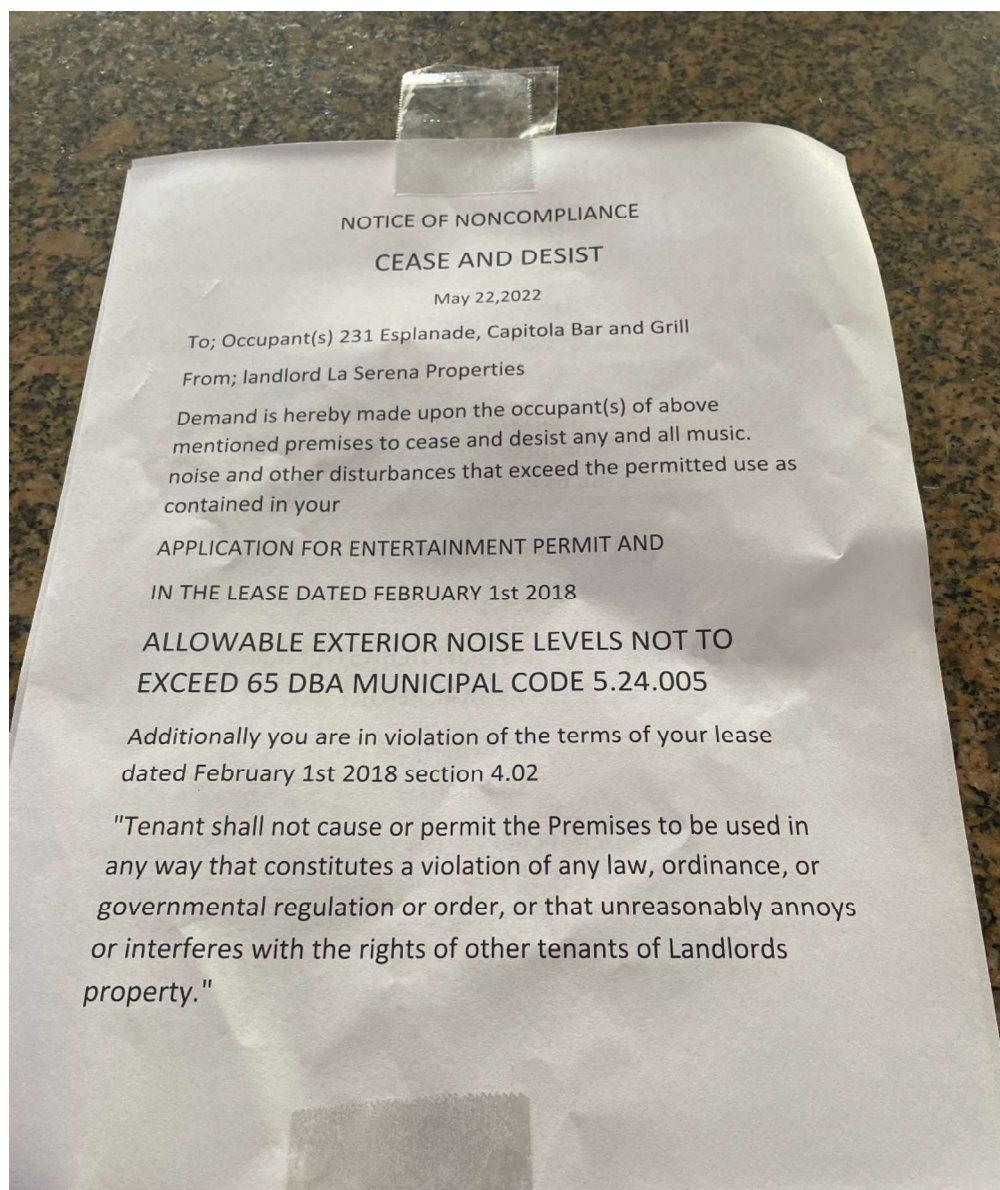


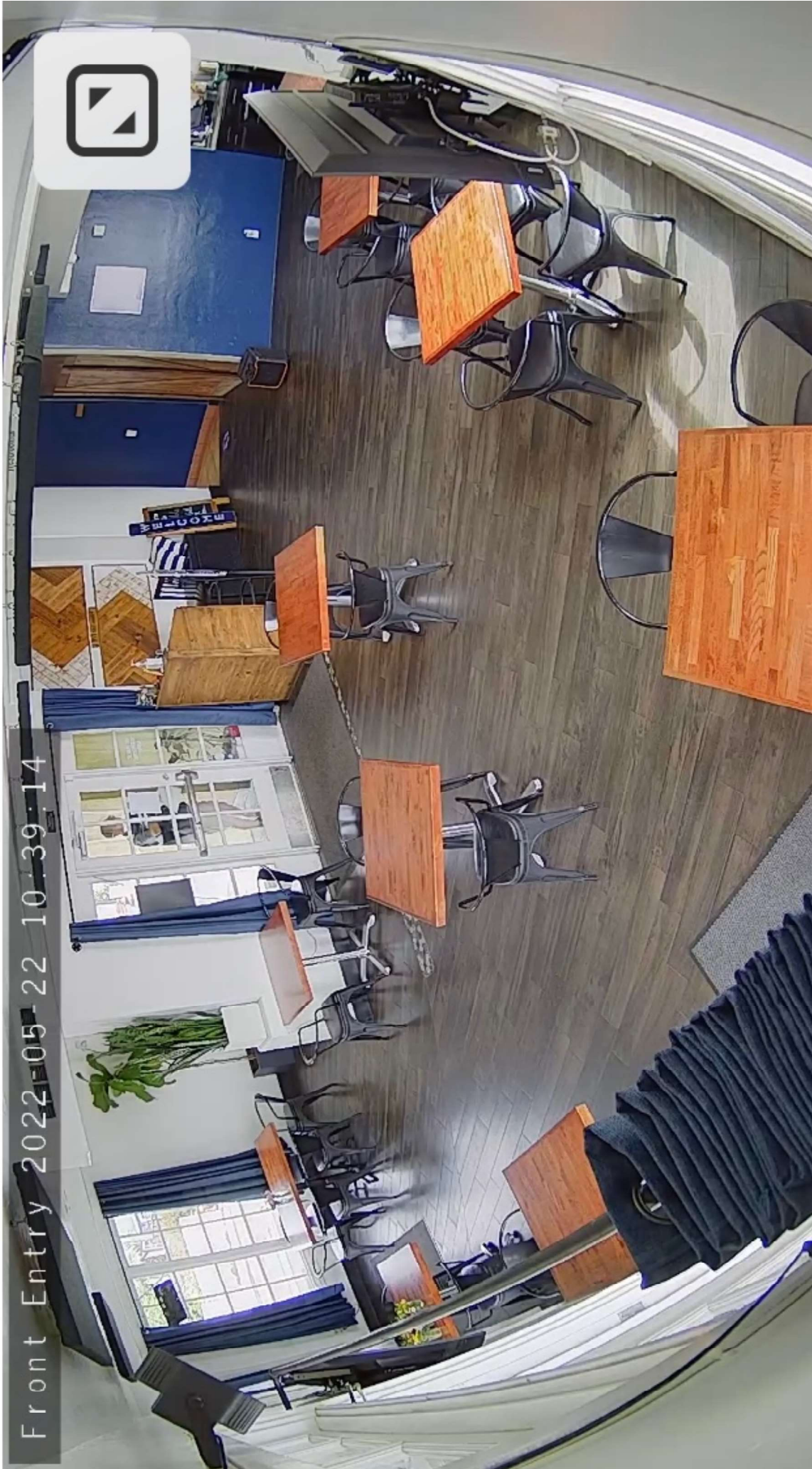
Music Permit.jpeg
1509K



Notice On Door.jpg
1364K

 business_entertainment_permit_regular_night_club_entertainment.pdf
1185K





Item 3 A.

From: Firehouse Brew & Grill
Sent: Wednesday, June 1, 2022 11:50:57 AM
To: RUSSELL GROSS
Cc: Jill Ealy ; Erin Heath Sal
Subject: Re: 231 Esplanade Music

Hi Russell,

It's impossible for them to read 90-100 in their units, as it would have to be 140-150 on the dance floor. That would mean, everyone in our unit would be deaf? What device is Ryan Yates using, as the Capitola Police Department has never documented that our levels are louder than allowed with our permit.

In our bar area, the music is rarely over 80, and has its own music as they can't hear the live music in the bar. In our apartment unit #200, we cannot hear the music at all. We have requested to meet and have not heard back. This matter needs more attention than requiring us to give you a yes or no answer. Noise ordinance in its standard everyday allowance is 10pm, we have already compromised to end at 10pm, however there is still expected noise levels in our restaurant till closing.

Ryan Yates has harassed my staff and I want to have a meeting before this continues to escalate.

Thank you,

Michelle Strong

Get [Outlook for iOS](#)

From: RUSSELL GROSS
Sent: Wednesday, June 1, 2022 11:36:09 AM
To: Firehouse Brew & Grill
Cc: Jill Ealy ; Erin Heath <
Subject: 231 Esplanade Music

Michelle and LaSalle,
The Tenants at the complex would like to know if you have a plan to continue "as is" with the music. They are stating that DBA levels over 100. steady level between 90 and 100. Hearing loss can occur at 15 minutes of 90 dba. Just reply yes, it is going to continue or no, if you are canceling the bands booked for all summer. Please kindly respond so I can inform the tenants.
Thank you
Russell

--

Russell E. Gross Real Estate, Inc.

EXHIBIT T

NOTICE OF EXERCISE OF OPTION

TO: La Serena Properties, LLC c/o Steven A. Yates

FROM: Michelle Strong & LaSalle Strong, dba Capitola Bar & Grill

RE: Exercise of Option

On July 21, 2021, pursuant to a Sublease & Assignment of Lease by and among lessor La Serena Properties, LLC c/o Steven A. Yates (the “Master Lessor” or “You”), JJJ Group, Inc. (the “Master Tenant”) and Michelle Strong & Lasalle Strong (“Capitola Bar & Grill”), Master Tenant subleased, assigned and transferred to Capitola Bar & Grill all of Master Tenant’s rights and obligations under the master lease for use of the premises located at 231 Esplanade #102, Capitola, CA 95010, as originally executed on February 1, 2018 (the “Master Lease”), as amended by:

- 1) the Amendment to Commercial Lease Agreement in January 2019 (the “2019 Amendment”);
- 2) the 2019 assignment of the Master Lease (the “2019 Assignment”) to JJJ Group, Inc. (the “Master Tenant”); and
- 3) the July 22, 2021 Sublease & Assignment of Commercial Lease Agreement (the “2021 Sublease & Assignment”) to Capitola Bar & Grill.

The Master Lease contains a tenants’ option to renew under Section 1.06(A) (the “First Option”), as amended by the 2019 Amendment and 2021 Sublease & Assignment.

The 2021 Sublease & Assignment states, “Sublessee assumes all Sublessor’s rights in the Lease, as amended, and Sublessee hereby agrees to occupy the Premises and to comply with all the terms and obligations of the Lease, as amended.” “A subtenant who expressly assumes the obligations of the prime lease, with the consent of the landlord, comes into privity of contract with the landlord” and accordingly, the 2021 Sublease & Assignment here empowers Capitola Bar & Grill to tender its demand directly upon you. (*Vallely Investments, L.P. v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 823.)

You are hereby notified that Capitola Bar & Grill exercises its rights under the First Option, and thereby renews the Master Lease for the stated term. Capitola Bar & Grill will timely deliver the increased rent in consideration therefor as stated in Section 2.01(a) of the Master Lease as set forth in the 2019 Amendment.

Capitola Bar & Grill reserves all rights.

[Signature page follows]

Dated: October 24, 2022

Michelle Strong, Sublessee/Assignee

Signature: _____

Dated: October 24, 2022

Lasalle Strong, Sublessee/Assignee

Signature: _____

Item 3 A.

ORIGIN ID: LVKA (925) 224-7780
MAUREEN ALEXANDER SLETTEVOLD
HOGE FENTON JONES & APPEL
6801 KOLL CENTER PARKWAY, #210

PLEASANTON, CA 94566
UNITED STATES US

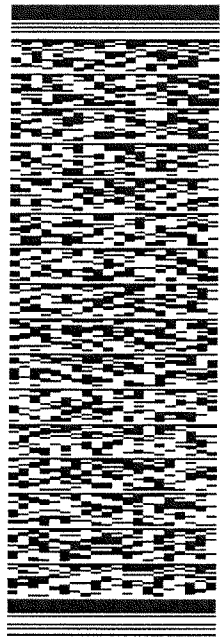
SHIP DATE: 24OCT22
ACTWGT: 1.00 LB
CAD: 100082087/INLT4530

BILL SENDER

TO **C/O STEVEN A. YATES**
LA SERENA PROPERTIES, LLC
283 CANYON OAKS

SANTA CRUZ CA 95065
(000) 000-0000
REF: 206212

PO. CEPT



J224222101801uv

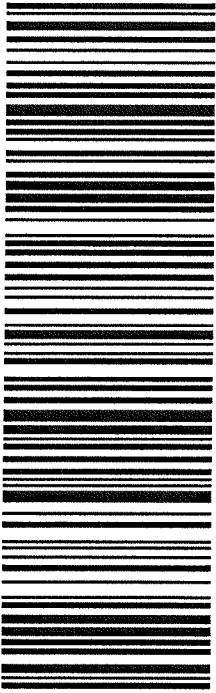
581J1/AC5F/FE2D

TUE - 25 OCT 4:30P

STANDARD OVERNIGHT

TRK# 7702 9272 0367
0201

WA SRUZJ
CA-US **95065 SJC**



After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

Giuliana R. Ferrante

From: TrackingUpdates@fedex.com
Sent: Tuesday, October 25, 2022 2:08 PM
To: Maureen Alexander-Slettevold
Subject: FedEx Shipment 770292720367: Your package has been delivered
Attachments: DeliveryPicture.jpeg



Hi. Your package was
delivered Tue, 10/25/2022 at
1:53pm.



Delivered to 283 CANYON OAKS, SANTA CRUZ, CA 95065

[OBTAIN PROOF OF DELIVERY](#)



Delivery picture not showing? [View](#) in browser.

TRACKING NUMBER	770292720367
FROM	Hoge Fenton Jones & Appel 6801 Koll Center Parkway, #210 PLEASANTON, CA, US, 94566
TO	La Serena Properties, LLC c/o Steven A. Yates 283 Canyon Oaks SANTA CRUZ, CA, US, 95065
REFERENCE	206212
SHIPPER REFERENCE	206212
SHIP DATE	Mon 10/24/2022 03:54 PM
DELIVERED TO	Residence
PACKAGING TYPE	FedEx Envelope
ORIGIN	PLEASANTON, CA, US, 94566
DESTINATION	SANTA CRUZ, CA, US, 95065
SPECIAL HANDLING	Deliver Weekday Residential Delivery
NUMBER OF PIECES	1
TOTAL SHIPMENT WEIGHT	0.50 LB
SERVICE TYPE	FedEx Standard Overnight

EXHIBIT U

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FROM: Michelle Strong & LaSalle Strong, dba Capitola Bar & Grill
RE: Exercise of Option

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Capitola Bar & Grill reserves all rights.

[Signature page follows]

Dated: November 1, 2022

Michelle Strong, Sublessee/Assignee


Signature: _____

DocuSigned by:

0A7275243CF844E...

Dated: November 1, 2022

Lasalle Strong, Sublessee/Assignee

Signature: _____

DocuSigned by:

47DFCE8E22D84FF...



December 22, 2022

Item 3 A.

Dear Customer,

The following is the proof-of-delivery for tracking number: 770369685322

Delivery Information:

Status:	Delivered	Delivered To:	Residence
Signed for by:	Signature not required	Delivery Location:	
Service type:	FedEx First Overnight		
Special Handling:	Deliver Weekday; Residential Delivery		SANTA CRUZ, CA,
		Delivery date:	Nov 2, 2022 07:28

Shipping Information:

Tracking number:	770369685322	Ship Date:	Nov 1, 2022
		Weight:	0.5 LB/0.23 KG
Recipient:		Shipper:	
SANTA CRUZ, CA, US,		PLEASANTON, CA, US,	

Reference 206212

Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

(<https://www.fedex.com/en-us/home.html>)

FedEx® Tracking



DELIVERED

Wednesday

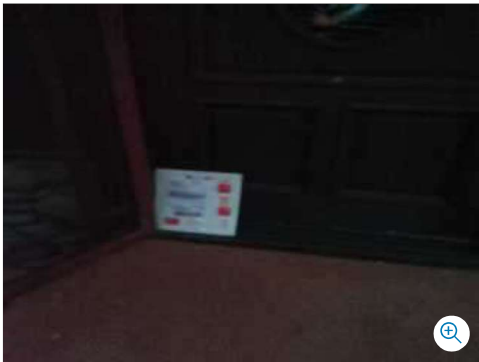
11/2/2022 at 7:28 am

Signature not required
Package delivered to recipient address

[↓](#) Obtain Proof of delivery

DELIVERY STATUS

Delivered



TRACKING ID

770369685322

FROM
PLEASANTON, CA US
Label Created
11/1/2022 1:17 PM

PACKAGE RECEIVED BY FEDEX
PLEASANTON, CA
11/1/2022 4:33 PM

IN TRANSIT
SOQUEL, CA
11/2/2022 7:12 AM

OUT FOR DELIVERY
SOQUEL, CA
11/2/2022 7:12 AM

DELIVERED
SANTA CRUZ, CA US
DELIVERED

EXHIBIT V

The city manager and I met with the owners of Capitola Bar and Grill. As you know they have submitted an application for entertainment and the paperwork requires your signature to complete the application. They have submitted the paperwork and I have rejected it because it does not have your consent signature for entertainment. During today's conversation the owners offered several concessions including reducing the hours of operation, the days for entertainment, and/or the type of music. Are you open to any adjusted conditions or the possibility of conflict resolution?

I appreciate you taking the time to evaluate this issue and look forward to your response.

Chief Dally

From: Dally, Andrew (adally@ci.capitola.ca.us)

Sent: Monday, December 12, 2022 9:12 AM

To: Steve Yates

Subject: RE: Capitola Bar & Grill

Good morning Mr. Yates,

I really appreciate you contacting me and letting me know your concerns. At this point, their Entertainment Permit application is with Captain Ryan. Captain Ryan does the initial review and then forwards it to me for approval. The conditions for the application are from the City Manager and we do require a landlords signoff for these permits.

Not having your signature will make their application incomplete. I do not intend, nor do I feel it is appropriate, to override your signature.

I do appreciate you providing me with the below information. I will include it in their application file.

Chief Dally

From: Steve Yates

Sent: Saturday, December 10, 2022 11:34 AM

To: Dally, Andrew (adally@ci.capitola.ca.us) <adally@ci.capitola.ca.us>

Subject: Capitola Bar & Grill

Hi Chief Dally,

This is Steve Yates landlord for CBG.

I agreed with the tenant to reach out to you to discuss their music permit application.

The current license expires this month and they want a new one for the following year. I have received 53 recorded complaints from my tenants of noise violations- nuisance regarding the bands playing there weekly.

I spoke with Capt. Ryan in, I think June regarding the complaints internal to the building. She asked that I handle it internally. I decided to cut the rent to the tenants in half for the remainder of the year as compensation for the disturbance. I still lost a tenant.

This IS an internal building matter. Bands on a weekly basis don't work in this local. It's in the lease. Should be simple, right?

Anyway I'm open to any thoughts you may have and completely understand a "not our problem" position by CPD.

As it stands I will not take a position of CBG over the rights of other tenants, so I will not sign for approval of a new license that CBG violates every band night. (DBL levels in the apartments reach as high as 105, 90 is normal from them. 65 is the limit per regulation. (They admit to 85 + Dbl 3 ft. away from the apartment)

Anyway I'm open to any thoughts you may have re music in River City!

Steve Yates

PROOF OF SERVICE

2 I, Jamila Colbert declare: I am over the age of 18 years, and am not a party to this action. On
3 March 24, 2023, I served the following document:

4 **DECLARATION OF MICHELLE STRONG IN SUPPORT OF REQUEST FOR**
5 **ISSUANCE OF PROVISIONAL INJUNCTIVE RELIEF**


6 **VIA U.S. MAIL** – CCP § 1013(a) I caused the above documents to be placed in an
7 envelope with postage thereon fully prepared to be placed in the United States Postal Service with
8 postage fully prepaid and addressed to Plaintiff's counsel: and

9 **VIA ELECTRONIC MAIL** The documents were transmitted in PDF format to each of
10 the email addresses as indicated on the service list.

11 JRG Attorneys at Law
12 **C/O Stephan A. Barber**
13 318 Cayuga Street
14 Salinas, CA 93901
15 steve@jrgattorneys.com

16 I declare under penalty of perjury under the laws of the State of California that the foregoing
17 is true and correct.

18 Executed on March 24, 2023 at Oakland, California.

19 
20 Jamila Colbert

Moss, Julia

From: Ryan Yates <rynyates@outlook.com>
Sent: Monday, June 19, 2023 10:40 AM
To: Moss, Julia; Brown, Kristen; Keiser, Marguax; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander
Cc: Dally, Andrew (adally@ci.capitola.ca.us)
Subject: Restraining Order: A Ploy to Silence Valid Concerns

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Capitola City Council,

Michelle Strong, the owner of Capitola Bar and Grill located beneath my residential unit, has sought a restraining order against me, which appears to be a ploy to prevent me from voicing my concerns at the upcoming city council meeting on June 22nd, 2023.

“Stop contacting local agencies and trying to harm my livelihood. Stop calling the police to make false reports.” – Michelle Strong

I, a resident of 231 Esplanade, Unit 301, have raised legitimate concerns about the establishment's disruptive activities breaching local and state regulations. It seems this restraining order is an attempt to silence my voice, thereby abusing its intended purpose and undermining our community's democratic values. Falsely using a restraining order is felony perjury in the State of California.

I urge the council to recognize the timing and motivation of this restraining order and safeguard the principles of open dialogue and justice. I will not be attending due to actions by the Strongs.

I trust the council has my previous statements.

Thank you for your attention.

Best regards,

Ryan Yates
rynyates@outlook.com
831-247-7604

Moss, Julia

From: Marc Garcia <marc4jax@gmail.com>
Sent: Monday, June 19, 2023 12:00 PM
To: City Council; Keiser, Marguax; [REDACTED]; Brooks, Yvette;
[REDACTED]; admin@capitolastrong.com; Clarke, Joe
Cc: Marc Garcia
Subject: I support Capitola Bar & Grill

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & City council,

I am a resident here in Capitola for 4 years now and I have recently taken a position bartending at CBG. I'm asking for your support to the music program at CBG. The music in the village is part of the culture in Capitola. It's one of the primary attractions for locals and for visitors. CBG is located right on the corner and right on the beach. Music, dancing, good food, and delicious drinks all go together with the the esplanade and other businesses. This location has always had music under different ownership. I don't understand why it's different now not to allow music. Even more now since the wharf house is closed as they were a popular place for the music. Besides music bringing fun and culture to Capitola at large, it brings revenue for the city. Music at CBG affects the livelihood of all the employees that work there. Supporting the music program at CBG will support the people that work there, the city's revenue, and most of all, the culture of the beach city, CAPITOLA. It's the RIGHT thing to do.

Thank you, Marc Garcia

Sent from my iPhone

Moss, Julia

From: Tamra Loomis <eastbaydressday@gmail.com>
Sent: Monday, June 19, 2023 12:54 PM
To: City Council; Keiser, Marguax; [REDACTED]; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; admin@capitolastrong.com
Subject: I support Capitola Bar & Grill

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

Moss, Julia

From: La Serena <laserenaproperties@yahoo.com>
Sent: Monday, June 19, 2023 10:50 PM
To: Brown, Kristen; Keiser, Marguax; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; Moss, Julia
Cc: margaritavillegolf@yahoo.com; Ryan, Sarah (sryan@ci.capitola.ca.us); Dally, Andrew (adally@ci.capitola.ca.us)
Subject: [PDF] Opposition to the issuance of a live entertainment permit to Capitola Bar and Grill without landlord permission
Attachments: La Serena Letter to Capitola City Council.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Good day, Madam Mayor, City Council and Staff,

Please find attached letter of opposition to the city council issuing a live entertainment permit to Capitola Bar and Gill.

Thank you,

La Serena Properties
231 Esplanade, Capitola, Ca 95010

Steve Yates
La Serena Properties
231 Esplanade
Capitola, California 95010

Capitola City Council
420 Capitola Ave
Capitola, CA 95010

Re: Opposition to the issuance of a live entertainment permit to Capitola Bar and Grill without landlord permission

Dear Members of the Capitola City Council,

I hope this letter finds you in good health and high spirits. I am writing to express my strong opposition to the request made by Capitola Bar and Grill to obtain a live entertainment permit from the City without seeking permission from their landlord. Based on the recent decision of the Honorable Glenda Sanders, the Emergency Arbitrator for the JAMS, I believe it is crucial that the City Council considers the implications of this request and acts in accordance with the decision reached.

On April 17th, 2023, the Honorable Glenda Sanders rendered a decision that denied the interim relief sought by Capitola Bar and Grill. The decision clearly stated that the claimants failed to demonstrate immediate loss or damage that would necessitate emergency relief. Furthermore, the arbitrator found that the claimants did not establish a likelihood of success on the merits at that stage of the proceedings.

Considering the decision of the Emergency Arbitrator, it is evident that the request for emergency relief, whether characterized as a provisional mandatory injunction, a provisional injunction, or an interim declarator, was unequivocally denied. This decision reinforces the importance of adhering to established legal procedures and respecting the rights and obligations of all parties involved.

Allowing, Capitola Bar and Grill to proceed with obtaining a live entertainment permit without the consent of their landlord would not only disregard the decision made by the Honorable Glenda Sanders but also set a dangerous precedent that undermines the legal framework and compromises the rights of property owners. It is crucial for the City Council to uphold the principles of fairness and legal integrity by respecting the rights and responsibilities of both tenants and landlords.

I kindly request that the City Council carefully consider the ramifications of granting a live entertainment permit to Capitola Bar and Grill without the necessary permission from their landlord. Doing so would not only contravene the decision made by the Honorable Glenda Sanders but also disregard the established legal processes and protections in place. It is essential to maintain a fair and just environment for all parties involved and uphold the integrity of our legal system.

Thank you for your time and consideration. I trust that you will make a decision that reflects the best interests of the community and ensures a harmonious balance between the rights of tenants and landlords. Please feel free to contact me if you require any further information or if there are any opportunities for public input regarding this matter.

Sincerely,

Steve Yates, La Serena Properties

231 Esplanade, Capitola, Ca 95010

Moss, Julia

From: Nancy Cibotti <ncibotti@gmail.com>
Sent: Tuesday, June 20, 2023 7:35 AM
To: City Council; Keiser, Marguax; [REDACTED] Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; admin@capitolastrong.com
Subject: I support Capitola Bar & Grill

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

Thank you,
Nancy Cibotti
Aptos

Moss, Julia

From: Kathy Keenan <kdoylekeenan@gmail.com>
Sent: Tuesday, June 20, 2023 3:23 PM
To: City Council
Subject: Capitola Bar & Grill

I am writing to the City Council to support Capitola Bar & Grill in obtaining its entertainment license. As I understand it, their lease does not exclude live music, and the restaurant follows all regulations regarding live music, including ending by 10 pm. There is no reason to deny them an entertainment license, and the folks around here love live music. Restaurants were badly hit by the pandemic, and we need to support these businesses in their comeback. Thank you.

Regards,
Kathy Keenan
kdoylekeenan@gmail.com
408-358-7358

Moss, Julia

From: Michelle Strong <info@capitolabarandgrill.com>
Sent: Tuesday, June 20, 2023 4:02 PM
To: Moss, Julia; City Council
Subject: [PDF] In support of Capitola Bar & Grill
Attachments: support-live-music-at-capitola-bar-amp-grill_062023.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Please add the updated petition signatures for the June 22nd meeting.

Thank you,
Michelle Strong

Get [Outlook for iOS](#)



Support Live Music at Capitola Bar & Grill

<https://www.thepetitionsite.com/464/903/626/support-live-music-at-capitola-bar-amp-grill/>

Author: LaSalle & Michelle Strong

Recipient: Capitola City Council

Petition:

Please support live music at Capitola Bar & Grill. We plan to meet at CBG at 5:00pm and walk over to Capitola City Hall. If you cannot join us in person, there is a link to attend via zoom. All are requested to email a letter of support to the City Council of Capitola. More information at capitolastrong.com

Please CC admin@capitolastrong.com on emails to the City Council, we will also print and bring to the meeting.

	Name	From	Comments
1.	Kelly G	Santa Cruz, CA	
2.	Xavier G	Santa Cruz, CA	
3.	Jennifer	Martinez, CA	
4.	Lori L	Antioch, CA	
5.	Marlene M	Fresno, CA	Please continue to allow Live Music at Capitola Bar & Grill. .
6.	Trisha A	Watsonville, CA	Please allow music at capitola bar and grill it also helps bring in tourist to visit other capitola village bussinesses
7.	Elizabeth P	Campbell, CA	Why are they being treated differently than other business\'s that have live music.
8.	Marji K	La Selva Beach, CA	
9.	Dawn C	Capitola , CA	
10.	scott m	scotts valley, CA	
11.	Chick G	Soquel, CA	Enjoyed music in Capitola for over 40 years. Capitola Bar and Grill has supplied some of the best of recent years AND it is early for those of us that don't stay up late. It brings us and our wallets into the village instead of staying home and we spend money on food and other things once we're in the village.
12.	Steven H	Santa Cruz, CA	Keep the village alive with live music at Capitola bar and grill
13.	Andrea I	Fresno, CA	
14.	Laurie L	La Selva Beach, CA	
15.	josie F	Capitola, CA	Live music and Dancing in the village is so important to us. This venue is so lovely and always bring us out to spend money and have a great time. As someone who lives and works in town it\'s great to have a place I like and can also refer tourists to also. They make a fun experience for locals and out of towners alike. Especially in this time when most of the other live music venues are closed, lets support joy in our village
16.	Kim M	Santa Cruz, CA	
17.	Belinda G	Martinez, CA	
18.	Anonymous	SANTA CRUZ, CA	
19.	Ted W	Santa Cruz, CA	
20.	Paul W	Capitola, CA	
21.	Karen M	Capitola , CA	
22.	CARALEENA M	Lemoore , CA	
23.	Julie L	Aptos, CA	
24.	Rick A	Capitola, CA	

	Name	From	Comments
25.	Jasmine A	Salinas , CA	Fingers crossed band night comes back, we miss our magical nights with our cbg family !
26.	Sheamir I	Salinas , CA	☺☺☺Music soothes the soul ☺☺
27.	Glenn B	Santa Cruz , CA	
28.	Andre M	Long Beach, CA	
29.	Shameeka M	Long Beach, CA	
30.	Belita M	Santa Cruz, CA	
31.	Anonymous	HOMETOWN, IL	
32.	Dawn S	CAPITOLA, CA	
33.	Nancy W	Santa Cruz, CA	
34.	Jennifer W	Soquel, CA	
35.	Shelly M	Watsonville , CA	Margaux you know how much music helps. Let them have it
36.	Pam L	Aptos, CA	We've been enjoying live music in the village for over a decade. This situation sounds personal and I suggest the city council stay out of that and continue to allow the show to go on as they have in the past.
37.	Rupert H	Ben Lomond, CA	
38.	Natalie M	Soquel, CA	Live music is essential for the Village
39.	Emanuel B	Santa Cruz, CA	Music heals everything!
40.	Janice. W	Santa Cruise, CA	
41.	Amy V	Santa Cruz , CA	As a neighboring store owner to this business who has also been very challenged staying afloat in this economy we ask you approve this permit not only to help a local business survive but so we go enjoy the music! My store is also in Capitola village right on Capitola avenue
42.	Alexa T	Capitola , CA	
43.	Joseph U	Santa Cruz , CA	Bring back the music !!!
44.	Lucas C	Capitola, CA	☺☺
45.	Ed V	Soquel, CA	
46.	Kyle C	Soquel, CA	Thank you!
47.	Karen B	Sacramento, CA	
48.	Elizabeth P	Santa Cruz, CA	
49.	Ingrid S	Capitola, CA	
50.	Tamara J	Felton , CA	
51.	Kylie O	Santa Cruz, CA	
52.	Michael W	San Jose, CA	
53.	Timothy P	Santa Cruz, CA	
54.	Scott O	Santa Cruz, CA	
55.	Jennifer F	Gilroy , CA	

	Name	From	Comments
56.	Donna D	San Martin, CA	
57.	Will L	Capitola , CA	
58.	Jack G	San diego, CA	
59.	Lynn Y	Santa Cruz, CA	
60.	Ariana K	Campbell, CA	
61.	Emma S	slo, CA	
62.	kyle y	santa cruz, CA	
63.	Michelle R	Santa Cruz, CA	
64.	Ed L	Davis, CA	
65.	Erin B	Benicia, CA	
66.	Diane G	Gilroy, CA	
67.	Stan E	San Francisco , CA	Capitola Bar and Grill has had music for years. Why would that change? Besides offering customers quality entertainment, it helps the restaurant make a profit. Don't we all want that? Things are difficult enough for business owners in Capitola, after the recent storms. Let's help the businesses that are still open. Thank you. -Stan
68.	James M	Campbell , CA	Let the music play every day and every way
69.	Anonymous	Capitola, CA	Please we support live music in Capitola at Capitola Bar and Grill!
70.	Lisa H	Campbell , CA	I'm someone who loves Capitola and the music scene! Please don't take this away from this business!
71.	Mark M	SCOTTS VALLEY, CA	
72.	Amber C	Martinez, CA	
73.	Ron G	Santa Cruz, CA	I support the Capitola Bar & Grill.
74.	Debra K	Aptos, CA	
75.	Serena W	Santa Cruz, CA	I live in Capitola Village. I support and expect the legal right to have an entertainment permit not be denied to CBG due to any landlord request. I want live entertainment where I live it's a main reason why I moved here! Thank you.
76.	Andrew E	Capitola, CA	Hearing live music as we walk into the village is a huge part of the experience that makes Capitola as charming as it is. Personally, I'm sensitive to loud sounds so karaoke and live band nights at CBG are nights I avoid eating there, but I still enjoy the atmosphere that they create! It's very disappointing to see the news that they are now being told that they can't do this. Please provide them with whatever permits are required so they can continue entertaining our residents and visitors
77.	Kevin M	Capitola, CA	We need to support our local businesses, Music and art! Show your support for Capitola Bar & Grill to get permitted and continue to serve our Community

	Name	From	Comments
78.	John Z	Modesto, CA	Supporting live music
79.	Carol D	Imperial Beach , CA	Keep the music! Thank you.
80.	Kara D	Soquel, CA	
81.	Rigo A	Soquel, CA	Bring back live music!
82.	Dennis F	Santa Cruz, CA	Down with the haters! Bring back live music!
83.	Roberta M	Aptos, CA	
84.	James L	Martinez, CA	
85.	Tim H	Santa Cruz, CA	
86.	Joezette M	Madera , CA	Best of luck on this journey to win for Capitola Village!!
87.	David D	Santa Cruz, CA	
88.	Sandra R	Santa Cruz, CA	
89.	Amber G	Hollister , CA	
90.	Lorette K	Santa Cruz, CA	
91.	Molly W	Aptos, CA	
92.	Jefferson H	APTOS, CA	
93.	Amy T	Santa Clara, CA	If you are allowing other businesses to have music you need to allow ALL Businesses. Do better City of Capitola!
94.	Raina C	Aptos, CA	
95.	Madeline A	Santa Cruz, CA	What is the reasoning and who is behind the effort to prohibit live music that: 1. support musicians & 2. Support local business and 3. bring immense joy to a wide range of a large swath of members of this community?
96.	Danielle S	Capitola, CA	
97.	Dan S	Capitola, CA	
98.	Robert J	Capitola, CA	
99.	Debbie d	Aptos, CA	Capitola Bar and Grill(LaSalle and Michelle) is one of my favorite restaurants in Capitola Village which makes me keep going back for a variety of reasons...good food , nice people and great atmosphere. What is missing is the live music (supports local musicians)that I once enjoyed. Capitola Bar and Grill created a safe and tasteful place to dance and listen to good music. Let\'s hope it begins again, soon!
100.	Annie E	Capitola, CA	
101.	Travis W	Santa Cruz, CA	We need more music in Capitola!!!
102.	Ryan W	Santa Cruz, CA	
103.	Stephen A	Hollister , CA	
104.	Annie F	Gilroy, CA	We love the music at Capitola Bar & Grill!! They have brought life back to the village and support all the other businesses too!

	Name	From	Comments
105.	Danniel L	Antelope , CA	
106.	Jeff B	Capitola, CA	
107.	Maureen T	Capitola , CA	
108.	Margaret P	Redding , CA	My family owns one of the 6 sisters. We support Capitola Bar and Grille and their right to have live music in the village!! It's a necessary cultural and social component of Village life!
109.	Tara H	Aptos, CA	
110.	Megan H	Aptos, CA	
111.	Ralph I	Watsonville , CA	This place is so clean food views and customer service is Amazing
112.	Tom P	Santa cruz, CA	This discourse taking place is blasphemy. The one person who should be hoping and rooting for their tenants success is rather trying to sabotage them.. Steve Yates as a building owner should be guiding, supporting, and rooting for the success of the CBG establishment. I'm amazed how this is even up for discussion and it's appalling how blatant the toxicity is. It goes to show how one doesn't become mature, thoughtful, or full of wisdom with simple aspect of age. Steve Yates is the building owner sure.. who lives out of state in Hawaii apparently, but what is the name of his man child son who CHOOSES to live right at the very location where tourists around the world travel to? I can only imagine what past tenants has to say regarding their experience with these folks. Where this backfires is making the mistake of stripping the essence of music from not only the establishment, but the community. You just made a huge mistake with music simply bring a cultural universal. The Santa Cruz county is filled with musicians and those who enjoy live music!! Looking forward to the huge live music parties and jam sessions to follow at CBG Mardi Gras style to celebrate the victory of this outcome of this battle for now as I'm prepared to support CBG in the more battles to come. You've got your irrational miserable complaint up against the community, tax-generating revenue for the city, and the culture of the Village. This maybe unfathomable and difficult for you to do, but rotate the axis of your index finger to where you're pointing it towards you. You literally brought this on yourself. This is happening is the direct result of a man failing to raise his son and becoming a delusional, self-centered, self-righteous, stubborn, difficult, unwilling-to-compromise, kind of human being. This matter is no different than a child brat throwing a fit and having its parent supporting their tantrum. Here we are being an inconvenience and ruining everybody's joy and bringing the city, community, and your very own tenants down to your miserable level of being. Congratulations to the Yates family
113.	Amanda A	Fresno, CA	

	Name	From	Comments
114.	Tim M	Capitola, CA	
115.	Eve W	Salinas , CA	
116.	Erika H	Santa Cruz, CA	
117.	Bill S	Santa Cruz, CA	Support Capitola Bar & Grille music and FIX THE WHARF NOW!!!
118.	Dorothy W	Marina, CA	I drive from Marina to do Karaoke there. They have a great KJ and the sound and atmosphere is awesome.
119.	Terri T	Watsonville , CA	
120.	Julie S	Burlingame, CA	
121.	Graham G	Aptos, CA	Please let usic play
122.	Jane S	Santa Cruz, CA	We need businesses such as Capitola Bar & Grill that bring more diverse cultural offerings to Capitola. Please be fair and renew their entertainment permit so they can continue being a successful business.
123.	Phillip Z	Sparks, NV	Love this place, save the music!
124.	Karen P	San Jose, CA	
125.	Barbara S	San Jose CASan Jose, CA	
126.	Joanne C	Laguna hills, CA	Please support live music permit
127.	Dan B	Aptos, CA	
128.	Rebecca D	Santa Cruz, CA	Capitola has a long legacy of live music and there are very few options right now. This is an established business with a great reputation. They have an early venue and fit perfectly with the Capitola culture.
129.	levonne m	Capitola, CA	
130.	Rae S	Aptos, CA	
131.	Jessica P	Santa Cruz , CA	Jojo is wonderful
132.	Shelondon B	Stockton , CA	I really enjoy the live music after a long week of work it\'s nothing more beautiful to hear beautiful music played by wonderful musicians.
133.	Jasmine W	Sacramento, CA	
134.	Sharnae F	Sacramento, CA	
135.	Tajia W	Rancho Cordova, CA	
136.	Treana W	Sacramento, CA	
137.	Tara S	Gold River, CA	
138.	katcha b	aptos, CA	PLEASE allow Capitola Bar and Grill have live music. LIVE and support people having fun please. It is a huge draw.
139.	Elizabeth H	Elk Grove , CA	
140.	Tammy G	Capitola, CA	
141.	Marc G	Capitola, CA	

	Name	From	Comments
142.	Gaye Z	Sparks , NV	
143.	Shauna S	Capitola, CA	I support live entertainment there! :)
144.	Tanisha C	Fairfield , CA	I support Capitola Bar and Grill with keeping live music.
145.	Erica L	Hollister, CA	
146.	JoeAnna M	Fresno , CA	
147.	Alessandra C	Capitola , CA	I support the music
148.	Alysia W	Watsonville, CA	Support live music and love!
149.	Kevin C	Watsonville , CA	Please keep live music going at the Capitola Bar & Grill. Treat them equally with other establishments offering the same music with no permit restrictions for them. They are a great establishment that serves the village patrons in many great ways, music being one of them. May they be victorious in being treated equally according to the laws of America that protect the interests of all Americans regardless of their race. I love Capitola Bar and Grill. God bless the Stongs in this very important fight to keep live music going at their wonderful establishment.
150.	Armand R	Royal Oaks, CA	The Capitola Bar and Grill, and their live music offerings, are an important part of the character and quality of Capitola Village. It is a matter of basic fairness that Capitola Bar and Grill be allowed the same rights as other local establishments - in the same block on the Capitola Esplanade - to provide the live music that is so valued by their patrons, such as myself. It is fundamentally unfair to deny their permit based on the personal issues of one disgruntled neighbor. Capitola Bar and Grill has proven to be a responsible operator, and a valuable asset for both patrons and the City of Capitola.
151.	David C	Sale, gb	As a tourist the live music i experienced in Capitola was essential to my enjoyment of the place, many of the musicians are now long friends and I hate to see them without a gig to play
152.	Donneka R	Sacramento, CA	The main concern for customer appreciation is the service. I truly believe having a business that pleases their customers whether it's service or music is amazing.
153.	Howard W	Manchester , gb	
154.	Alfonso P	Vacaville, CA	
155.	Dee M	Daly City, CA	
156.	Pam H	Capitola , CA	
157.	Gary S	San jose, CA	
158.	Anna S	Capitola , CA	Our favorite place to go.
159.	Ernie B	Moss Landing , CA	

	Name	From	Comments
160.	Kathleen D	Lincoln, CA	Anyone who truly cares about Capitola Village would want to see Capitola Bar and Grill succeed . We have been coming here for 25 years and over the years music on the Esplanade has been a huge draw. With Covid and the storms to deal with it's incomprehensible what this landlord is putting this business through.
161.	Tamara K	Sacramento , CA	
162.	Nora C	Santa Cruz, CA	I have been a part of the music community for 35 years. As a professional vocalist, relying on the enormous support of all the venues is essential to all musicians and club owners success. The Capitola Bar & Grille is an essential establishment that supports a thriving musical cultural necessity that draws in financial revenue and cultural diversity. We need to support our local businesses and help them thrive!
163.	Ruby R	Watsonville, CA	Live music is best!
164.	Lauren R	San Francisco, CA	
165.	Loralyn S	SANTA CRUZ, dz	We loved the live music at Capitola Bar a Grill. Please bring it back.
166.	Anonymous	San Jose, CA	Please allow the music. Most the other places have it. This place is a great place and brings us back because its so fun.
167.	Anne Marie W	Santa Cruz , CA	
168.	Cheryl E	Capitola, CA	
169.	Davisha B	Grants Pass, OR	
170.	Sean O	Santa Cruz, CA	
171.	Savanna L	Soquel, CA	MUSIC
172.	Aaron L	Santa Clara, CA	
173.	Christian L	Capitola, CA	Please bring back live music
174.	Lois L	Houston, TX	
175.	Deb B	Santa Cruz, CA	Capitola Bar & Grill should be allowed to have live music. Please bring it back
176.	Eli A	san mateo, CA	
177.	Mike F	Alris, CA	
178.	Keith W	Aptos, CA	Please support live music at Capitola Bar & Grill.
179.	Shawn M	Santa Cruz, CA	
180.	Marilyn F	Santa Cruz, CA	It doesn't make sense to restrict businesses from providing popular music in the village. If the businesses cannot provide music, then why can the city Council permit music on the Esplanade stage? Capitola is for all people to enjoy, not one particular group. diversity in people and activities should be allowed within reasonable guidelines.
181.	Amy K	Santa Cruz, CA	

	Name	From	Comments
182.	Elizabeth R	Scotts Valley, CA	
183.	Kathleen F	capitola, CA	
184.	Janeen N	Capitola , CA	We love music
185.	Julie I	Morgan hill, CA	The Capitola bar and Grill music always brings me back to capitola, where I spend a lot of money. And not just the restaurant. It was very disappointing to come all the way over the hill and you have no music. Bring back music. I have so many friends that will stop coming.
186.	Sandy P	Aptos , CA	
187.	Doug M	Capitola, CA	
188.	Yolanda L	San Jose, CA	
189.	Nancy C	Aptos, CA	In support of continuing music at Capitola Bar & Grill
190.	Hillary M	Watsonville, CA	
191.	Alison D	Soquel, CA	
192.	Monica G	La selva beach , CA	

Moss, Julia

From: Celine Grenier <celine.grenier@gmail.com>
Sent: Tuesday, June 20, 2023 4:15 PM
To: City Council
Subject: Denial of Entertainment Permit at the Capitola Bar and Grill

Follow Up Flag: Follow up
Flag Status: Flagged

Dear City Council,

The Capitola Bar and Grill's music was a positive addition to the atmosphere on the Esplanade. If the music was too loud for some people, perhaps volume restrictions could be set or the music could be allowed at least on Fridays, Saturdays and Sundays. Please look for a compromise.

Thank you for your consideration,

Celine Grenier and Jon Fatula

Capitola

Moss, Julia

From: jane.sooby.007@gmail.com on behalf of NAACP Santa Cruz County
<santacruznaacp@gmail.com>
Sent: Wednesday, June 21, 2023 9:02 AM
To: City Council
Cc: admin@capitolastrong.com
Subject: [PDF] NAACP Santa Cruz County supports Capitola Bar & Grill's appeal of denied entertainment permit
Attachments: Capitola Bar n Grill support 6.20.23.letterhead.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Members of the Capitola City Council,

Regarding the item on the agenda for tomorrow, we submit the attached letter of support for the Capitola Bar and Grill's appeal of denial of their entertainment permit and strongly urge the council to be fair in its decision and grant them the permit.

Sincerely,
Jane Sooby
Secretary

--



NAACP Santa Cruz County Branch #1071
(831) 429-2266
P.O. Box 1433
Santa Cruz CA, 95061
santacruznaacp@gmail.com
<https://www.naacpsantacruz.com/>



Santa Cruz County Branch #1071

2023-24 Officers

Elaine Johnson, *President*
 Donald Williams, *Vice President*
 Duane Garner, *2nd Vice President*
 Jane Sooby, *Secretary*
 Brenda Whitley, *Asst. Secretary*,
 Amanda Harris Altice, *Treasurer*

June 20, 2023

Capitola City Council
 420 Capitola Ave
 Capitola, CA 95010

Executive Committee Members

Ariba Alston
 Carrie Whitley
 Deborah Berkson
 Brenda J. Griffin
 Deborah Hill-Alston
 Belita Magee
 Johnny Simmons
 Lizann Keyes
 Meilin Obinata
 Nancy Williams
 Simba Kenyatta

Dear Council Members,

This letter is to support LaSalle and Michelle Strong's application for an entertainment permit for the Capitola Bar & Grill at 231 Esplanade, Capitola, CA 95010. We urge the Council Members to approve the entertainment permit for 2023. The Strongs were granted permits in 2021 & 2022 without the landlord's signature. This has been common practice by the city. We expect the City of Capitola to treat all businesses fairly and equally.

We are weighing in because the NAACP Santa Cruz County Branch #1071 has received a complaint of racial discrimination at the 231 Esplanade property.

We thank you in advance for your attention to this situation.

Sincerely,

NAACP Santa Cruz County Branch
 Executive Committee

Moss, Julia

From: Ryan Yates <rynyates@outlook.com>
Sent: Tuesday, June 20, 2023 10:52 PM
To: Moss, Julia; Keiser, Marguax; Gonzalez, Francisco@ABC; Brown, Kristen; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander
Subject: [PDF] Urgent: Final Submission Regarding Capitola Bar and Grill's Music Permit
Attachments: La Serena Letter to Capitola City Council.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Julia, Madam Mayor and Council Members,

Please include my final input on the music permit application for Capitola Bar and Grill in the record and note that I strongly object to its issuance.

I find myself at the center of Capitola Bar and Grill's unethical behavior, and while it's difficult, I'm glad it's me, not someone less equipped to handle it.

Their conduct over the past two years has involved intimidation, personal attacks, and even baseless legal claims to hurt me personally. Only to have the owners to turn around and accuse me of what they themselves are guilty of. And now it appears, their attacks do not just include me but also my children. These actions are more than just unethical - they show a total disregard for not only my family's well-being, but a flat disregard for societal norms and basic humanity.

As you may already know, the latest in the string of actions, over a music permit, is a fraudulent restraining order and an unprecedented amount of perjury on legal documents with ZERO evidence. I would like note: Capitola Bar and Grill has cameras everywhere on the building, and still have zero evidence to support any claims. Unfortunately, for the perpetrator who filed this against me, this misuse of the law could lead to serious consequences, including heavy fines and imprisonment. Since there is no proof for the claims, the actions seem to be a thinly veiled SLAPP suit, intended to infringe on my First Amendment rights to protest the bad behavior of the business.

I have only conducted myself in a professional manner of petition, protest and free speech, as protected by the United States Constitution, as well as worked closely and ethically with Chief Dally and the Capitola Police Department. This blatant attempt to suppress my freedom of speech is deeply troubling.

The continuous attacks only strengthen my resolve. They serve as a reminder of why standing up for my rights and our community's integrity is so crucial. I am not perfect, as no one is. However, no matter the deceitful, baseless and cowardly tactics used, I'm not backing down.

I believe that granting a music permit to Capitola Bar and Grill would send the wrong message - that their behavior is somehow acceptable. This could potentially harm the peace and integrity of our community further. Their actions will not stop with me. Permitting this behavior would only embolden it. It will be directed at whichever citizen holds them accountable next. As they have now proven themselves willing to break the law and lie under oath to get what they want, this is certain to happen again.

All of this aside I would further like to remind the city council of the basic facts:

- Capitola Bar and Grill's license to sell alcohol, by the State of California, strictly prohibits entertainment to be audible beyond the area under their control.
- Capitola Bar and Grill's lease within the building prohibits disrupting other tenants quiet enjoyment, NO MATTER THE TIME OF DAY.
- The State of California, County of Santa Cruz, and City of Capitola prohibit disrupting others quiet enjoyment, no matter the time of day, especially at elevated levels that constitute harassment, and contribute to physical harm and psychological distress.
- Capitola Bar and Grill was in CONSTANT violation of the guidelines of the music permit Capitola issues. Even when Capitola Bar and Grill mistakenly received a music permit, they violated it with complete disregard. 6 nights a week. In a manner that was blatant and intentional.
- Capitola Bar and Grill does not have permission from the owner of the property. Nor was it EVER consented to.

Capitola Bar and Grill has undoubtedly questionable motivation behind them. Their unethical and unreasonable tactics, coupled with their illogical insistence, in such an unbearable and nonsensical way, undoubtedly raise concerns about the integrity of their business practices.

I trust that you'll weigh these issues carefully when making a decision, keeping our city and its people's welfare at the forefront.

Thank you for your time and consideration.

Best,

Ryan Yates
231 Esplanade, UNIT 301, Capitola, CA 95010

Steve Yates
La Serena Properties
231 Esplanade
Capitola, California 95010

Capitola City Council
420 Capitola Ave
Capitola, CA 95010

Re: Opposition to the issuance of a live entertainment permit to Capitola Bar and Grill without landlord permission

Dear Members of the Capitola City Council,

I hope this letter finds you in good health and high spirits. I am writing to express my strong opposition to the request made by Capitola Bar and Grill to obtain a live entertainment permit from the City without seeking permission from their landlord. Based on the recent decision of the Honorable Glenda Sanders, the Emergency Arbitrator for the JAMS, I believe it is crucial that the City Council considers the implications of this request and acts in accordance with the decision reached.

On April 17th, 2023, the Honorable Glenda Sanders rendered a decision that denied the interim relief sought by Capitola Bar and Grill. The decision clearly stated that the claimants failed to demonstrate immediate loss or damage that would necessitate emergency relief. Furthermore, the arbitrator found that the claimants did not establish a likelihood of success on the merits at that stage of the proceedings.

Considering the decision of the Emergency Arbitrator, it is evident that the request for emergency relief, whether characterized as a provisional mandatory injunction, a provisional injunction, or an interim declarator, was unequivocally denied. This decision reinforces the importance of adhering to established legal procedures and respecting the rights and obligations of all parties involved.

Allowing, Capitola Bar and Grill to proceed with obtaining a live entertainment permit without the consent of their landlord would not only disregard the decision made by the Honorable Glenda Sanders but also set a dangerous precedent that undermines the legal framework and compromises the rights of property owners. It is crucial for the City Council to uphold the principles of fairness and legal integrity by respecting the rights and responsibilities of both tenants and landlords.

I kindly request that the City Council carefully consider the ramifications of granting a live entertainment permit to Capitola Bar and Grill without the necessary permission from their landlord. Doing so would not only contravene the decision made by the Honorable Glenda Sanders but also disregard the established legal processes and protections in place. It is essential to maintain a fair and just environment for all parties involved and uphold the integrity of our legal system.

Thank you for your time and consideration. I trust that you will make a decision that reflects the best interests of the community and ensures a harmonious balance between the rights of tenants and landlords. Please feel free to contact me if you require any further information or if there are any opportunities for public input regarding this matter.

Sincerely,

Steve Yates, La Serena Properties

231 Esplanade, Capitola, Ca 95010

Moss, Julia

From: Jill Ealy <jealy7@aol.com>
Sent: Thursday, June 22, 2023 11:10 AM
To: City Council
Subject: Capitola Bar & Grill

Follow Up Flag: Follow up
Flag Status: Flagged

To Members of the Capitola City Council,

My name is Jill Ealy, and I own Zeldas and previously owned Sotola Bar & Grill, now Capitola Bar & Grill. When we sold Sotola to the Strongs we held a note that was to be paid in full at 18 months. Due to this loan, the landlord Steve Yates insisted we stay on the lease until said note was paid. This last January, the Strongs stopped paying the monthly payment and then defaulted on the balloon payment that was due the following month. At this point, the Strongs owe us approximately \$80,000. As such, I have had to spend the the last year in between these two parties. At first I tried to help them find a common understanding or agreement. It quickly became clear that neither of them were interested in a compromise and were willing to go to great lengths to get what they want. I have now had to hire an attorney to navigate where we fit and how we can get paid and off this lease while having little to no control.

With that said, while the Strongs are in default of the sublease, it is my belief they should have no legal standing to raise the issue of music and an entertainment permit. If they wish to pursue this issue with the City and/or Steve Yates, they need to correct this default. Once corrected, they would be the tenant in good standing and could move forward.

Thank you for your time and consideration,
Jill Ealy

Moss, Julia

From: Katharine Parker <katharinep3@gmail.com>
Sent: Wednesday, June 21, 2023 7:42 AM
To: City Council
Subject: Depot Path Council Discussion June 22

Follow Up Flag: Follow up
Flag Status: Flagged

Dear City Council,

We cannot attend the June 22 meeting about the Depot Hill path, but we hope that the City will create an organized and thorough plan to support the continued existence of the Depot Hill path. The path is worth your attention and funding. The path is our neighborhood's life blood...it's where we exercise, visit our neighbors, meet people from other neighborhoods, meet tourists from all over the world. It's where toddlers learn to walk and children learn to ride their bikes. And it's not just for our neighborhood...people who work closeby come for their lunch breaks; people from all over walk by, or jog, or relax. Old and young, healthy and ailing, this path has been open for all. In the past 5 minutes I've watched over 25 people walk by (weeknight evening). The path is as much a park as a path. It's even listed on the City's website, on the visitor map.

So...the goal is to preserve a safe public path along Grand Avenue. How can we do this? It would be helpful if the City can plan for the entire path instead of approaching it piecemeal.

What can the City do to protect the path?

#1 Retrieve the easements planted on by residents. This would include our own easement. The encroached areas were not part of the road itself so preparing that part to be part of a path could be an opportunity to redirect and improve the present drainage. Maybe you could just move the fence now & give us all notice that you will be retrieving the easements within a certain period of time.

#2 Discourage erosion from the cliff top by altering the present drainage that now actively promotes erosion by channeling water from the adjacent blocks, runs it down Grand with no slowdown, and directly over the cliff onto the cliff face. The Grand Avenue homeowners paid for an engineered drainage study that was presented to the City years ago. Perhaps the City could employ some of this information?

#3 Look for other means of discouraging erosion from the cliff top?

I believe that the City applied for FEMA funds to rebuild the Jewel Box path. The City applied for funding and a tax to rebuild the Wharf. Thus far the City has only acted to the detriment of the Depot Hill path. The reinforced jetty traps sand that would have travelled downcurrent to the bluff base, and the drainage system acts to erode the cliff face. This may not be an easy fix but it's worth the City's time and funding to address it. Residents and visitors alike will thank you and applaud your vision.

Thank you,

Moss, Julia

From: Helen Bryce <helen.s.bryce@gmail.com>
Sent: Thursday, June 22, 2023 12:33 AM
To: City Council
Subject: Grand Avenue Pathway

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Capitola City Council Members,

I am writing today regarding the proposed improvements to the Grand Avenue Pathway. I agree that the Pathway is an important feature of our community. As I read over the report prepared by the Public Works Department, it appears that the best plan for the long term use of the Pathway is Option #2 "Remove encroachments in the Grand Avenue right-of-way". While I understand that this option would require additional cost and additional staff time, it would enable better use of the Pathway now, and help prevent the need for duplicating work in the future. As a Capitola resident and property owner, I urge you to implement Option #2. Thank you very much.

Helen Bryce

Moss, Julia

From: John Shenk <jshenk@mac.com>
Sent: Thursday, June 22, 2023 9:09 AM
To: City Council
Subject: June 22nd Council Meeting - Item 7 (B) - Grand Avenue Pathway

Follow Up Flag: Follow up
Flag Status: Flagged

Mayor Keiser, Vice Mayor Brown, and Council Members Brooks, Clarke, and Pedersen,

We ask that the public access trail be preserved as much as can safely been done. Please approve Option 2 in the Staff Report. This is not a community asset to be lost - we must do the good work to maximize its utility and safety to benefit the entire community.

We have been residents of the Depot Hill neighborhood for 15+ years and the access to Grand Avenue is a significant public asset worthy of the Staff time and “moderate cost” shown in Table 1 to preserve it with the lowest risk.

On Grand Avenue, each day many enjoy moments of tranquility and peace viewing the Bay, meet neighbors and residents of Capitola as well as from far away places, see children ride bikes, and dogs out for a stroll. Preserving the access and walking path is our duty. One day it may all be gone, but for now, for the foreseeable future, please take decisive action to approve Option 2. When compared to the cost to create such a public asset the work and capital investment to maximize the utility of the existing public land and preserve this walking path is minimal.

Respectfully, the Shenks at 117 Saxon Avenue

Capitola City Council Agenda Report

Meeting: June 22, 2023

From: City Manager Department

Subject: Consider and Approve 6/8/2023 City Council Meeting Minutes



Recommended Action: Approve minutes from the regular meeting on June 8, 2023.

Background: Attached for Council review and approval are the draft minutes from the regular City Council meeting on June 8, 2023.

Attachments:

1. 6/8/2023 Regular Minutes

Report Prepared By: Julia Moss, City Clerk

Approved By: Jamie Goldstein, City Manager

City of Capitola

City Council Meeting Minutes

Thursday, June 08, 2023 – 6:00 PM



City Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Mayor: Margaux Keiser
Vice Mayor: Kristen Brown
Council Members: Yvette Brooks, Joe Clarke, Alexander Pedersen

Closed Session – 5 PM

- A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Initiation of litigation pursuant to Government Code §54956.9(d)(2)
One Case

Regular Meeting of the Capitola City Council – 6 PM

1. **Roll Call and Pledge of Allegiance** – *The meeting was called to order at 6:00 PM. In attendance: Council Members Brooks, Clarke, Pedersen, Brown, and Mayor Keiser.*
2. **Report on Closed Session** – *The City Council met and discussed one item on the Closed Session Agenda. No reportable action was taken.*
3. **Additions and Deletions to the Agenda** – *Change order of Items 9B and 9C.*
4. **Presentations**
 - A. City Clerk Moss introduced Austin Westly, Deputy City Clerk, and Rosie Wyatt, Customer Service and Office Coordinator
 - B. The Mayor presented a Proclamation honoring Parks and Recreation Month in July to the Recreation Division
5. **Additional Materials**
 - A. Correspondence Received - Item 8D – 80 emails
 - B. Additional Materials - Item 9A
 - C. Correspondence Received - Item 9D – 2 emails
6. **Oral Communications by Members of the Public**
 - *Gorin Klepich, resident, spoke about Jade Street Park.*
7. **Staff / City Council Comments**
 - *Council Member Clarke reminded residents of the Classic Car Show in Capitola.*
 - *Council Member Brooks thanked volunteers for their efforts.*
8. **Consent Items**
 - A. Approval of City Council Minutes
Recommended Action: Approve 5/25/2023 City Council Meeting Minutes
 - B. Public Works Equipment Budget Amendment

Recommended Action: Adopt a resolution to amend the FY 2022-23 budget to allow for the purchase of \$35,000 of essential equipment from the Equipment Internal Service Fund.

C. FY 2023-24 Appropriation Limit

Recommended Action: Adopt a resolution setting the Fiscal Year 2023-24 appropriation limit.

D. Ordinance Adding Capitola Municipal Code Chapter 2.18

Recommended Action: Adopt an ordinance of the City of Capitola adding Capitola Municipal Code Chapter 2.18 establishing mobile home park rent stabilization.

E. Wharf to Wharf Race Donation Agreement

Recommended Action: Authorize the City Manager to sign an agreement with Wharf-to-Wharf Race for the handling of donations for the Capitola Wharf Enhancement Project (CWEP).

Motion to approve Items 8A, 8B, 8C, 8E: Vice Mayor Brown

Seconded: Council Member Clarke

Voting Yea: Council Members Brooks, Clarke, Pedersen, Vice Mayor Brown, and Mayor Keiser

Motion to approve Item 8D: Vice Mayor Brown

Seconded: Council Member Brooks

Voting Yea: Council Members Brooks, Clarke, Pedersen, and Vice Mayor Brown
Abstaining: Mayor Keiser

9. General Government / Public Hearings

A. Jade Street Community Center Renovation Project

Recommended Action: Provide direction to staff regarding the conceptual design for the Jade Street Community Center Renovation Project.

Public Works Director Kahn presented the staff report.

The City Council provided direction to staff to seek external funding sources for this project and return in September with an update.

B. Jade Street Park Universally Accessible Playground Project Conceptual Design Alternatives

Recommended Action: Direct staff to work with Verde Design and prepare a final concept plan, for consideration by the Council on July 27, 2023, for the Jade Street Park Universally Accessible Playground Project that meets projected available funding and include opportunities to enhance the design should additional funding become available.

Public Works Director Kahn presented the staff report.

Janet, resident, spoke in support of this project.

Council Member comments included recognition of the value of the communication board element, a recommendation for staff to seek outside funding sources, and request to maintain square footage of the project.

The City Council directed staff to prepare a final concept plan that meets projected available funding, includes opportunities to enhance design if additional funding is obtained, and return to the City Council in July.

C. Jade Street Park Universally Accessible Playground Fundraising Partnership

Recommended Action: 1) Approve the playground naming procedure; and 2) Direct staff to draft a Sponsorship Policy.

Chloe Woodmansee, Assistant to the City Manager, presented the staff report.

Brenda, resident, spoke in support of this project.

The City Council provided direction to staff on the naming and sponsorship of the project.

D. Housing Element Public Review Draft

Recommended Action: Receive staff presentation on Housing Element public review draft and provide feedback.

Community Development Director Herlihy presented the staff report.

Public Comments:

- **Albert Lufrey, Union Worker, spoke in support of worker housing.**
- **Rene Biaz, NorCal Carpenters Union, spoke in support of worker housing.**
- **John Mulry, resident, spoke in support of worker housing.**

Council Member comments included thanks for staff and the consultant’s presentation, a wish to incorporate local labor and fair wages into the Housing Element, and clarification on the mall’s housing usage.

E. Modification to Parking Meter Rates

Recommended Action: Introduce, by title only, waiving further reading of the text, an ordinance of the City of Capitola amending Municipal Code Sections 10.36.055A and 10.38.010.

Community Development Director Herlihy presented the staff report.

Motion to introduce the ordinance: Vice Mayor Brown

Seconded: Council Member Pedersen

Voting Yea: Council Members Brooks, Clarke, Pedersen, Brown, and Mayor Keiser

F. 2023 – 2024 Salary Schedule

Recommended Action: Adopt a resolution approving the Fiscal Year 2023 – 2024 annual salary adjustment, consistent with the following employment agreements: Association of Capitola Employees, Police Officers Association, Confidential Employees, Police Captains, and Management.

Chloe Woodmansee, Assistant to the City Manager, presented the staff report.

Motion to adopt the resolution: Council Member Pedersen

Seconded: Vice Mayor Brown

Voting Yea: Council Members Brooks, Clarke, Pedersen, Brown, and Mayor Keiser

10. Adjournment – Adjourned at 8:01 to the next regularly scheduled meeting at 4:00 PM on June 22, 2023.

Capitola City Council

Agenda Report

Meeting: June 22, 2023

From: Finance Department

Subject: Approval of City Check Registers Dated May 26, 2023, and June 9, 2023



Recommended Action: Approve check registers.

Account: City Main				
Date	Starting Check #	Ending Check #	Payment Count	Amount
5/26/2023	103372	103488	126	\$ 519,725.18
6/9/2023	103489	103626	144	\$ 1,070,705.81

The main account check register dated May 12, 2023, ended with check #103371.

Account: Payroll				
Date	Starting Check/EFT #	Ending Check/EFT #	Payment Count	Amount
5/26/2023	5821	5822	121	\$ 258,002.42
6/9/2023	22184	22308	125	\$ 188,826.47

The payroll account check register dated May 12, 2023, ended with EFT #22064.

Following is a list of payments issued for more than \$10,000 and descriptions of the expenditures:

Check/EFT	Issued to	Dept	Description	Amount
103385	Betz Works Inc	PW	Replace failed sewer lateral at City Hall	\$ 28,800.00
103391	CALE America Inc	PD	Paystation repairs and service charges Aug – May	\$ 25,344.29
103427	Pacific Gas & Electric	PW	May utilities	\$ 12,816.88
103451	Visit Santa Cruz County	Fin	Jan – Mar TMD	\$ 54,119.20
103454	Watsonville Ford	PW	2022 Ford F250	\$ 46,399.45
103455	Wells Fargo Bank	Fin	April credit card charges	\$ 10,079.63
1524	CalPERS Health Insurance	CM	June health insurance	\$ 64,303.43
1525	CalPERS Member Services Division	CM	PERS contributions PPE 5/13/23	\$ 56,286.62
1526	Employment Development Department	CM	State taxes PPE 5/13/23	\$ 20,818.55
1527	Internal Revenue Service	CM	Federal taxes & Medicare PPE 5/13/23	\$ 64,934.14
1529	VOYA Financial	CM	Employee 457 contribution PPE 5/13/23	\$18,235.47

22078	Employee	CM	Payroll PPE 5/13/23 – includes mandatory vacation cash out	\$ 14,160.85
22117	Employee	CM	Payroll PPE 5/13/23 – includes mandatory vacation cash out	\$ 12,202.60
22137	Employee	CM	Payroll PPE 5/13/23 – includes mandatory vacation cash out	\$ 11,066.52
22143	Employee	CM	Payroll PPE 5/13/23 – includes mandatory vacation cash out	\$ 10,150.18
22146	Employee	CM	Payroll PPE 5/13/23 – includes mandatory vacation cash out	\$ 10,474.52
103508	Burke Williams & Sorensen	CM	April legal services	\$ 26,396.51
103511	California Grey Bears Inc	CDD	CDBG health food program grant	\$ 56,174.09
103524	Diamond D Company	PW	Kennedy sidewalk project	\$ 139,170.25
103546	iWorQ Systems Inc	CM	CDD & PW software July 2023 – June 2024	\$ 10,375.00
103563	Moffatt & Nichol	PW	Wharf & beach project services	\$ 60,982.14
103585	SC County Dept of Public Works	PW	Road rehab cost share	\$ 428,699.00
103586	SC County Human Services Dept	CM	Homeless action partnership cost share	\$ 39,950.00
103592	SC Swimming CAFL	Rec	Spring swim lessons	\$ 10,000.00
1534	CalPERS Member Services Division	CM	PERS contributions PPE 5/27/23	\$ 56,583.32
1536	Internal Revenue Service	CM	Federal taxes & Medicare PPE 5/27/23	\$ 33,350.56

Attachments:

1. 5-26-23 Check Register
2. 6-9-23 Check Register

Report Prepared By: Leda Laidlaw-Hunter, Accountant I

Reviewed By: Julia Moss, City Clerk and Jim Malberg, Finance Director

Approved By: Jamie Goldstein, City Manager

City main account checks dated May 26, 2023, numbered 103372 to 103488 totaling \$293,222.81, 8 EFTs totaling \$226,367.37, 2 payroll checks totaling \$1,505.73, and 119 payroll EFTs totaling \$256,496.69, for a grand total of \$777,592.60, have been reviewed and authorized for distribution by the City Manager.

As of May 26, 2023, the unaudited cash balance is \$6,841,478.63.

**CASH POSITION - CITY OF CAPITOLA
May 26, 2023**

	5/26/2023
General Fund	\$ (1,967,854.26)
Payroll Payables	\$ 10,794.61
Contingency Reserve Fund	\$ 2,126,845.66
Facilities Reserve Fund	\$ 432,714.09
Capital Improvement Fund	\$ 4,686,362.40
Stores Fund	\$ 64,898.45
Information Technology Fund	\$ 285,374.30
Equipment Replacement	\$ 849,718.74
Self-Insurance Liability Fund	\$ 122,437.54
Workers' Comp. Ins. Fund	\$ 9,301.04
Compensated Absences Fund	\$ 220,886.06
TOTAL UNASSIGNED GENERAL FUNDS	\$ 7,226,554.67

The Emergency Reserve Fund balance is \$1,387,855.54 (not included above).

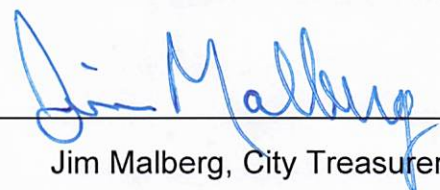
The PERS Contingency Fund balance is \$1,154,274.68 (not included above).



 Jamie Goldstein, City Manager

5/26/23

 Date



 Jim Malberg, City Treasurer

5/26/23

 Date

City Checks Issued May 26, 2023

Item 6 B.

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103372	05/18/2023			Phi Nguyen	\$96.00
	Invoice	Date	Description	Amount	
	500125091	02/09/2022	Citation refund	\$96.00	
103373	05/18/2023			Shirley Flores-Munoz	\$500.00
	Invoice	Date	Description	Amount	
	20-0009	05/05/2020	Tree deposit refund #20-0009	\$500.00	
103374	05/26/2023			A TOOL SHED	\$226.00
	Invoice	Date	Description	Amount	
	1633279-5	05/11/2023	Dry concrete blade, electric brick s	\$226.00	
103375	05/26/2023			ADAMS ASHBY GROUP INC.	\$3,700.00
	Invoice	Date	Description	Amount	
	4883	05/10/2023	March HOME long term monitoring 1370 - HOME Reuse	\$3,700.00	
103376	05/26/2023			AFLAC	\$1,646.36
	Invoice	Date	Description	Amount	
	883986	05/23/2023	May supplemental insurance 1001 - Payroll Payables	\$1,646.36	
103377	05/26/2023			ALLSAFE LOCK COMPANY	\$38.00
	Invoice	Date	Description	Amount	
	54354	05/19/2023	Keys	\$38.00	
103378	05/26/2023			AMAZON CAPITAL SERVICES	\$1,459.69
	Invoice	Date	Description	Amount	
	1NHQ-KYMQ-D	05/09/2023	Picture Frames	\$126.43	
	1VGF-HWQH-9	05/08/2023	Headphone cable, air filter, sugge:	\$181.96	
	16L7-QVWF-1Q	05/10/2023	Return conference table	(\$929.42)	
	136V-MGDK-9J	05/12/2023	Laminator, laminating pouches	\$64.65	
	1N44-JPPC-3VP	05/15/2023	First aid kit	\$99.44	
	1LHP-PJG3-HC	05/14/2023	Lightning cables	\$41.16	
	1LKW-9J7X-DW	05/10/2023	Junior guards general supplies	\$488.82	
	19DQ-16K9-NG	05/07/2023	Instant cold pack	\$39.19	
	1DYJ-HYCL-3Q	05/10/2023	Fire extinguisher	\$87.21	
	16PW-1PMF-49	05/02/2023	Safety triangles	\$30.51	
	19DQ-16K9-JKN	05/04/2023	Koala Kare child protection seats	\$219.86	
	191W-1P3H-HNI	04/27/2023	Bag dispensers, power sprayer tip	\$760.44	
	197W-T7VG-6R	05/23/2023	Chair mats, sheet protectors, outle	\$206.30	
	102796	03/06/2023	Unapplied payment	(\$300.17)	
	101718	10/18/2022	Unapplied payment	(\$165.67)	
	1DWH-VXWC-D	05/18/2023	Canopy tents	\$508.98	
103379	05/26/2023			APTOS LANDSCAPE SUPPLY INC.	\$322.80
	Invoice	Date	Description	Amount	
	603760	05/08/2023	Baserock	\$69.76	
	603862	05/09/2023	Plaster sand	\$252.84	
103380	05/26/2023			AT&T/CALNET 3	\$242.48
	Invoice	Date	Description	Amount	
	000019956384	05/13/2023	May telephone service 1000 - General Fund \$185.02 2211 - ISF - Information Technolo; \$57.46	\$242.48	

City Checks Issued May 26, 2023

Item 6 B.

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103381	05/26/2023			AT&T/CALNET 3	\$2,343.06
	Invoice	Date	Description	Amount	
	000019957052	05/13/2023	May T-1 access	\$2,343.06	
			1000 - General Fund	\$1,189.58	
			1300 - SLESF - Supl Law Enfc	\$1,153.48	
103382	05/26/2023			AUTO CARE LIFESAVER TOWING	\$641.25
	Invoice	Date	Description	Amount	
	23-55048	05/16/2023	Tow for 23C-00562	\$641.25	
103383	05/26/2023			B & B SMALL ENGINE REPAIR	\$2,424.44
	Invoice	Date	Description	Amount	
	520440	05/03/2023	Batteries, blade attachment, blade	\$1,074.12	
	521703	05/17/2023	Mower repair	\$1,350.32	
103384	05/26/2023			BENEFIT COORDINATORS CORP.	\$5,279.60
	Invoice	Date	Description	Amount	
	B08THH	05/01/2023	May dental & vision insurance	\$5,279.60	
			1001 - Payroll Payables		
103385	05/26/2023			BETZ WORKS INC	\$28,800.00
	Invoice	Date	Description	Amount	
	23081	05/11/2023	Replace failed sewer lateral at Cit	\$26,800.00	
	23081-1	05/11/2023	Replace failed sewer lateral at Cit	\$2,000.00	
			1200 - Capital Improvement Fund		
103386	05/26/2023			BIG CREEK LUMBER	\$509.77
	Invoice	Date	Description	Amount	
	1916926	05/17/2023	Lumber	\$153.39	
	196743	05/17/2023	Lumber refund	(\$113.58)	
	1916057	05/16/2023	Lumber, screws, safety lens glass	\$469.96	
103387	05/26/2023			BRIAN FROELICH	\$485.00
	Invoice	Date	Description	Amount	
	BF042723	05/17/2023	AICP annual membership reimbur	\$485.00	
103388	05/26/2023			BROPRINTS INC.	\$412.97
	Invoice	Date	Description	Amount	
	19909	05/08/2023	Hats	\$412.97	
103389	05/26/2023			CA DEPARTMENT OF CONSERVATION	\$439.21
	Invoice	Date	Description	Amount	
	CDC033123	05/15/2023	Jan - Mar strong motion & seismic	\$256.61	
	CDC123122	05/15/2023	Oct - Dec strong motion & seismic	\$182.60	
103390	05/26/2023			CA DEPARTMENT OF JUSTICE	\$256.00
	Invoice	Date	Description	Amount	
	653987	05/03/2023	April Fingerprinting for Recreation	\$256.00	

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103391	05/26/2023			CALE AMERICA INC.	\$25,344.29
	Invoice	Date	Description		Amount
	169159	05/01/2023	Bill Validator Cable		\$39.59
	169595	05/01/2023	Coin Selector for CWT Compact		\$878.99
	169623	05/01/2023	Pay Here Decals		\$171.64
	169638	05/01/2023	Pay Station Paper		\$3,304.68
	169673	05/01/2023	ID Tech Card Reader		\$185.24
	169815	05/01/2023	June 2022 Active Meters		\$1,829.00
	170062	05/01/2023	Lock Assembly		\$176.03
	170539	08/02/2022	Bill Validator and Cable		\$524.37
	170545	08/02/2022	Main Board w/ Back Plate		\$1,752.42
	170990	09/14/2022	Lower Service Door Assembly		\$424.21
	171335	09/21/2022	Rekey Locks Service		\$89.85
	171398	10/17/2022	Coin System w/ Coin Selector and		\$1,712.06
	171492	10/25/2022	October 2022 Active Meters		\$1,883.87
	171872	11/23/2022	November 2022 Active Meters		\$1,883.87
	172176	11/30/2022	Rekey Locks Service		\$77.33
	172313	12/13/2022	ID Tech Card Reader		\$124.24
	172407	12/27/2022	December 2022 Active Meters		\$1,883.87
	173148	01/26/2023	January 2023 Active Meters		\$1,883.87
	173377	01/31/2023	Rekey Locks Service		\$29.11
	173416	02/08/2023	Bill Validator		\$991.06
	173544	02/27/2023	February 2023 Active Meters		\$1,883.87
	173883	03/08/2023	Lightbar Cable		\$50.92
	173890	03/08/2023	Printer		\$1,374.12
	173912	03/24/2023	Credit Card Cable		\$88.87
	174065	03/29/2023	March 2023 Active Meters		\$1,978.11
	174282	03/31/2023	Battery Cable		\$123.10
103392	05/26/2023			CALIFORNIA BUILDING STANDARDS C-	\$177.30
	Invoice	Date	Description		Amount
	CBSC033123	05/17/2023	Jan - Mar building standards admi		\$94.50
	CBSC123122	05/17/2023	Oct - Dec building standards admi		\$82.80
103393	05/26/2023			CAPITOLA PEACE OFFICERS ASSOCIA	\$1,173.00
	Invoice	Date	Description		Amount
	POA051923	05/19/2023	POA & Gym Dues PPE 05/13/23 1001 - Payroll Payables		\$1,173.00
103394	05/26/2023			CAPITOLA POLICE DEPARTMENT	\$82.00
	Invoice	Date	Description		Amount
	2023-00000016	05/18/2023	May 13 Sip & Stroll event permit & 1321 - BIA - Capitola Village-Wharf BIA		\$82.00
103395	05/26/2023			CAROLYN FLYNN	\$1,885.00
	Invoice	Date	Description		Amount
	CBF-05-2023	05/10/2023	March & April affordable housing f 5552 - Cap Hsg Succ- Program Income		\$1,885.00
103396	05/26/2023			CITY OF SANTA CRUZ	\$1,496.57
	Invoice	Date	Description		Amount
	045032	05/08/2023	Stream habitat and steelhead mor		\$1,496.57
103397	05/26/2023			COMMUNITY ACTION BOARD	\$512.54
	Invoice	Date	Description		Amount
	CAB032323	03/23/2023	February emergency housing assi 5552 - Cap Hsg Succ- Program Income		\$512.54

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103398	05/26/2023			CSG Consultants Inc.	\$6,420.43
	Invoice	Date	Description	Amount	
	B230574	05/01/2023	April building plan review services	\$6,420.43	
103399	05/26/2023			DAVID SCOTT COBABE	\$791.70
	Invoice	Date	Description	Amount	
	DC052123	05/21/2023	Instructor payment	\$791.70	
103400	05/26/2023			ENVIRONMENTAL INNOVATIONS INC.	\$990.00
	Invoice	Date	Description	Amount	
	2071	04/30/2023	April CalRecycle outreach	\$990.00	
103401	05/26/2023			EQUITABLE	\$2,826.80
	Invoice	Date	Description	Amount	
	1415009	05/19/2023	May LTD, STD, AD&D, Life Insura	\$2,826.80	
			1001 - Payroll Payables		
103402	05/26/2023			EWING IRRIGATION	\$113.34
	Invoice	Date	Description	Amount	
	19408051	05/15/2023	PVC tubes, nozzles, coupling	\$118.87	
	19205950	04/25/2023	Primer, glue, spears, PVC, can op	\$240.74	
	18425197	12/15/2022	Duplicate payment credit invoice #	(\$81.81)	
	17851728	09/21/2022	Duplicate payment credit invoice #	(\$59.79)	
	17851726	09/21/2022	Duplicate payment credit invoice #	(\$104.67)	
103403	05/26/2023			FIRST ALARM	\$241.05
	Invoice	Date	Description	Amount	
	750925	05/15/2023	Community Center quarterly intrus	\$241.05	
103404	05/26/2023			FLYERS ENERGY LLC	\$4,348.04
	Invoice	Date	Description	Amount	
	23-821815	05/10/2023	300 gallons gasoline	\$1,325.50	
	23-828103	05/18/2023	105 gallons diesel	\$475.04	
	23-828104	05/18/2023	570 gallons gasoline	\$2,547.50	
103405	05/26/2023			FRED C. BEYERS	\$495.00
	Invoice	Date	Description	Amount	
	FB051123	05/11/2023	Softball official 4/11 - 5/4/2023	\$495.00	
103406	05/26/2023			GIGGLES N WIGGLES	\$216.00
	Invoice	Date	Description	Amount	
	87713	03/17/2023	Camp Capitola Field trip group	\$216.00	
103407	05/26/2023			GRANITE ROCK COMPANY	\$784.74
	Invoice	Date	Description	Amount	
	2091211	05/13/2023	Building materials	\$186.62	
	2089905	05/06/2023	Soil, metal stakes, rock, sand	\$598.12	
103408	05/26/2023			GREENWASTE RECOVERY INC	\$3,890.63
	Invoice	Date	Description	Amount	
	0006791140	05/01/2023	Flood Relief	\$3,890.63	
103409	05/26/2023			HOLIDAY SMOG	\$41.75
	Invoice	Date	Description	Amount	
	47277	05/04/2023	2006 Ford F550 smog inspection	\$41.75	

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103410	05/26/2023			HOME DEPOT CREDIT SERVICES	\$2,902.22
	Invoice	Date	Description	Amount	
	3620699	05/19/2023	45 gal tote, tarp	\$184.19	
	1511127	05/11/2023	Brush, safety glass, paint	\$68.48	
	3524238	05/09/2023	Map cylinder, heat shrink tubing, r	\$109.60	
	0626762	05/12/2023	Chalk kit, mason line reel, work glc	\$87.89	
	3030740	05/09/2023	basalite sand, sakrete sand, flap d	\$162.28	
	8012376	05/04/2023	Lumber, nails, frame anchor, joist,	\$262.41	
	1280854	04/11/2023	Dust collector, Wall plate, LED ligi	\$145.81	
	107.08	05/09/2023	Pipe, lumber, utility knife	\$107.08	
	4012848	05/08/2023	Framing anchor, lumber	\$53.36	
	8521608	04/24/2023	Deco chips, epoxy	\$69.28	
	9012230	05/03/2023	lumber, joist hanger nail	\$42.27	
	0625250	05/02/2023	Ladder hook, tool holder, wall mou	\$162.79	
	5624457	04/27/2023	Lumber, screws, joist hangers, fra	\$88.18	
	7521757	04/25/2023	Extension pole, bottle opener, pair	\$127.21	
	1619627	05/01/2023	Outlet box, key ring, joist hanger, ε	\$180.80	
	1010526	04/21/2023	Lumber, bit set	\$112.79	
	2013441	03/31/2023	Bit set	\$9.78	
	4516979	04/28/2023	Earphones	\$41.40	
	4522329	04/28/2023	Lumber	\$41.89	
	5616990	04/17/2023	Paint for lifeguard towers	\$72.33	
	6521961	04/26/2023	Paint rollers, acetone, painter's tox	\$70.15	
	6624363	04/26/2023	Lumber, screwdriver, anchors, har	\$354.93	
	9132631	04/13/2023	Surveyor vests	\$347.32	
103411	05/26/2023			HOUSING AUTHORITY OF SANTA CRU:	\$5,242.00
	Invoice	Date	Description	Amount	
	23-08 CSD	03/16/2023	February security deposit program	\$5,242.00	
			5552 - Cap Hsg Succ- Program Income		
103412	05/26/2023			HUMBOLDT PETROLEUM LLC	\$42.50
	Invoice	Date	Description	Amount	
	INV-078308	04/30/2023	Carwash Closing Date 5/15/2023	\$42.50	
103413	05/26/2023			HYDROSCIENCE ENGINEERS INC.	\$459.00
	Invoice	Date	Description	Amount	
	331019006	05/01/2023	April stormwater review services 4	\$459.00	
103414	05/26/2023			INTERSTATE TRAFFIC CONTROL PROI	\$1,347.81
	Invoice	Date	Description	Amount	
	256438	05/11/2023	Walk bike and welcome signs	\$1,347.81	
103415	05/26/2023			J R HOE INC	\$5,595.45
	Invoice	Date	Description	Amount	
	ORD040140	05/01/2023	Boilards and mount kits	\$5,595.45	
103416	05/26/2023			KUSTOM CULTURE DESIGN	\$1,529.27
	Invoice	Date	Description	Amount	
	5438	05/16/2023	Lifeguard staff uniforms	\$1,529.27	
103417	05/26/2023			LABORMAX STAFFING	\$5,518.64
	Invoice	Date	Description	Amount	
	26-301217	05/12/2023	Public works seasonal labor 5/8 - 1	\$2,759.32	
	26-302879	05/19/2023	Public works seasonal labor 5/15 -	\$2,759.32	

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103418	05/26/2023			LINDE GAS & EQUIPMENT INC.	\$420.14
	Invoice	Date	Description	Amount	
	35943567	05/17/2023	Cutters, visor, tig rod	\$420.14	
103419	05/26/2023			LP POLICE	\$500.00
	Invoice	Date	Description	Amount	
	423LP31150	04/30/2023	LP Police Plan Fee	\$500.00	
103420	05/26/2023			MARY MCLENN CAHALEN	\$1,500.00
	Invoice	Date	Description	Amount	
	MMC051523	05/15/2023	May 5 Sip & Stroll event 1321 - BIA - Capitola Village-Wharf BIA	\$1,500.00	
103421	05/26/2023			MID COUNTY AUTO SUPPLY	\$468.28
	Invoice	Date	Description	Amount	
	M-2158831	05/16/2023	Starter	\$160.73	
	M-2149316	05/08/2023	Coolant temp sensor	\$30.04	
	M-2150335	05/08/2023	Return coolant temp sensor	(\$30.04)	
	M-2158839	05/16/2023	Wiper blades	\$57.79	
	M-2159643	05/16/2023	Return starter	(\$68.67)	
	M-2162487	05/18/2023	Oxygen sensors	\$276.67	
	M-2149253	05/08/2023	Air filter	\$21.22	
	M-2149817	05/08/2023	Temp sender guage	\$20.54	
103422	05/26/2023			MISSION LINEN SUPPLY	\$600.21
	Invoice	Date	Description	Amount	
	518874909	03/08/2023	Corp. Yard linen service	\$130.99	
	519298514	05/17/2023	Fleet towels, uniform cleaning	\$34.50	
	519254905	05/10/2023	Fleet towels, uniform cleaning	\$34.50	
	519298515	05/17/2023	Corp. Yard linen service	\$133.99	
	519254906	05/10/2023	Corp. Yard linen service	\$103.99	
	519196387	05/01/2023	Community Center mop and mat s	\$81.12	
	519283909	05/15/2023	Community Center mop and mat s	\$81.12	
103423	05/26/2023			NATURAL MOTION LLC	\$2,680.18
	Invoice	Date	Description	Amount	
	1895	05/11/2023	Hats	\$1,372.49	
	1900	05/15/2023	Lifeguard hats	\$490.18	
	1907	05/18/2023	Custom embroidered patch shield	\$817.51	
103424	05/26/2023			O'REILLY AUTO PARTS	\$182.53
	Invoice	Date	Description	Amount	
	2763-356821	05/18/2023	Sensor, fuel hose	\$53.34	
	2763-356147	05/15/2023	Micro-v belt	\$31.10	
	2763-354772	05/08/2023	Canister coil, air filter	\$54.38	
	2763-353685	05/03/2023	Mech pump	\$43.71	
103425	05/26/2023			OFFICE OF STATE CONTROLLER BETT	\$692.80
	Invoice	Date	Description	Amount	
	1311015	05/18/2023	Escheated checks to state control	\$692.80	

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103426	05/26/2023			OUTDOOR SUPPLY HARDWARE	\$916.46
	Invoice	Date	Description	Amount	
	H40011	05/08/2023	Storage shed	\$217.99	
	H37484	05/03/2023	Bulk fasteners	\$35.43	
	H45318	05/17/2023	PVC elbows, pvc couplings, pex t	\$37.22	
	H44568	05/16/2023	Drill bits, succulent, power plunger	\$53.21	
	H40545	05/09/2023	Ear plugs, earmuffs, gloves, misc	\$79.50	
	H43989	05/15/2023	Painters tool, paint	\$77.30	
	H32996	04/26/2023	Paint tray, roller, paint	\$54.87	
	H36614	05/02/2023	Paint for graffiti	\$34.84	
	H37794	05/04/2023	Paint for graffiti	\$186.70	
	H37878	05/04/2023	Sharpener, edger blade, pruning s	\$113.25	
	H44739	05/16/2023	Trimmer line	\$26.15	
103427	05/26/2023			PACIFIC GAS & ELECTRIC	\$12,816.88
	Invoice	Date	Description	Amount	
	PGE051423-acc	05/14/2023	May Pacific Cove parking lot utiliti	\$945.70	
	PGE051423-acc	05/14/2023	May utilities	\$11,871.18	
		1000 - General Fund	\$5,609.45		
		1300 - SLESF - Supl Law Enfc	\$113.57		
		1310 - Gas Tax	\$6,836.19		
		1311 - Wharf	\$257.67		
103428	05/26/2023			PALACE BUSINESS SOLUTIONS	\$152.23
	Invoice	Date	Description	Amount	
	682398-0	05/09/2023	Printing Paper	\$77.38	
	682866-1	05/15/2023	Wrist Rest Pillow	\$42.58	
	682866-0	05/12/2023	Large Command Hooks	\$14.93	
	682982-0	05/15/2023	Pens	\$17.34	
103429	05/26/2023			PARS	\$180.00
	Invoice	Date	Description	Amount	
	53099	05/08/2023	Annual statement fees	\$180.00	
103430	05/26/2023			RRM DESIGN GROUP	\$1,495.00
	Invoice	Date	Description	Amount	
	1783-06-0423	05/04/2023	New Leaf Market facade remodel	\$1,495.00	
103431	05/26/2023			SAN LORENZO LUMBER	\$165.04
	Invoice	Date	Description	Amount	
	55-0795350-2	03/30/2023	Tax due	\$2.75	
	55-0806130	05/17/2023	Bolts, screws, bucket, flip knife, m-	\$111.46	
	55-0805551	05/15/2023	Lumber	\$50.83	
103432	05/26/2023			SANTA CRUZ AUTO PARTS INC.	\$670.01
	Invoice	Date	Description	Amount	
	14508-469072	05/09/2023	Oil filters, brake clean	\$78.54	
	14508-469612	05/16/2023	Epoxy, black trim, razor blades, c	\$591.47	
103433	05/26/2023			SANTA CRUZ BACKFLOW TESTING & F	\$1,996.00
	Invoice	Date	Description	Amount	
	5723A	05/07/2023	Annual backflow test & repairs	\$1,996.00	
103434	05/26/2023			SANTA CRUZ COUNTY AUDITOR-CON1	\$6,506.50
	Invoice	Date	Description	Amount	
	SCCO043023	04/30/2023	April citation processing	\$6,506.50	
103435	05/26/2023			SANTA CRUZ COUNTY DEPT OF PUBLI	\$201.60
	Invoice	Date	Description	Amount	
	ZONEV-2022045	05/11/2023	Zone V pass through payment	\$201.60	

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103436	05/26/2023			SANTA CRUZ COUNTY INFORMATION :	\$663.51
	Invoice	Date	Description	Amount	
	SCISD051123	05/11/2023	April 2023 Open Query Charges	\$663.51	
103437	05/26/2023	Incorrect Customer	05/26/2023	SENTINEL PRINTERS INC.	\$354.80
	Invoice	Date	Description	Amount	
	0001374062	04/30/2023	April legal notices	\$354.80	
103438	05/26/2023			SIRCHIE	\$734.27
	Invoice	Date	Description	Amount	
	590865-IN	05/08/2023	Evidence and Property Supplies	\$734.27	
103439	05/26/2023			SOQUEL CREEK WATER DISTRICT	\$2,002.12
	Invoice	Date	Description	Amount	
	06-14476-00580.	05/15/2023	06-14476-00 430 Kennedy Drive \	\$146.43	
	08-15299-00515.	05/15/2023	08-15299-00 Monterey Ave. water	\$165.80	
	08-15562-00515.	05/15/2023	08-15562-00 Cliff and Fairview we	\$52.34	
	09-15964-00515.	05/15/2023	09-15964-00 Monterey Ave. Esple	\$1,637.55	
103440	05/26/2023			STACI BUTCHER	\$389.29
	Invoice	Date	Description	Amount	
	SB042023-2	05/17/2023	ACA Conference	\$389.29	
103441	05/26/2023			STAPLES ADVANTAGE	\$279.94
	Invoice	Date	Description	Amount	
	3537806006	05/10/2023	USB Thumb Drives and Post-Its	\$48.27	
	3537864453	05/11/2023	USB Thumb Drives	\$20.69	
	3537929520	05/12/2023	Custom Self Ink Stamps	\$59.86	
	3538205178	05/16/2023	Napkins and Utensils	\$151.12	
103442	05/26/2023			SWANK MOTION PICTURES INC.	\$1,020.00
	Invoice	Date	Description	Amount	
	RG2050472	05/12/2023	Movie licensing - Super Mario Bro	\$1,020.00	
103443	05/26/2023			T MOBILE	\$142.58
	Invoice	Date	Description	Amount	
	TM052123	05/21/2023	May cell phone usage - acct # 947	\$142.58	
103444	05/26/2023			THE CLEANING MACHINE INC.	\$2,950.00
	Invoice	Date	Description	Amount	
	6618	04/24/2023	Village sidewalk cleaning	\$2,950.00	
103445	05/26/2023			THE HOME DEPOT PRO	\$2,311.76
	Invoice	Date	Description	Amount	
	745774885	05/17/2023	Paper towels, toilet paper, soap, c	\$2,311.76	
103446	05/26/2023			UNITED WAY OF SANTA CRUZ COUNT	\$20.00
	Invoice	Date	Description	Amount	
	UW051923	05/19/2023	May United Way Contribution	\$20.00	
			1001 - Payroll Payables		
103447	05/26/2023			UPEC LIUNA LOCAL 792	\$841.50
	Invoice	Date	Description	Amount	
	UPEC053123	05/04/2023	May UPEC Dues	\$841.50	
			1001 - Payroll Payables		
103448	05/26/2023			UPS	\$45.21
	Invoice	Date	Description	Amount	
	0000954791193	05/13/2023	Shipping Costs	\$45.21	

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103449	05/26/2023			US BANK PARS Acct 6746022400	\$1,022.97
	Invoice	Date	Description	Amount	
	PARS051923	05/19/2023	PARS Contributions PPE 05/13/2: 1001 - Payroll Payables	\$1,022.97	
103450	05/26/2023			VERIZON WIRELESS	\$2,965.75
	Invoice	Date	Description	Amount	
	9934585710	05/10/2023	May telephone charges	\$2,965.75	
103451	05/26/2023			VISIT SANTA CRUZ COUNTY	\$54,119.20
	Invoice	Date	Description	Amount	
	VSCC033123	05/18/2023	January - March TMD	\$54,119.20	
103452	05/26/2023			VITAL RECORDS HOLDING LLC	\$288.82
	Invoice	Date	Description	Amount	
	3525221	04/30/2023	April record storage	\$288.82	
103453	05/26/2023			WATSON FINE ART CONSERVATION	\$148.25
	Invoice	Date	Description	Amount	
	186767	05/12/2023	First fire truck framing	\$148.25	
103454	05/26/2023			WATSONVILLE FORD	\$46,399.45
	Invoice	Date	Description	Amount	
	100	05/21/2023	2022 Ford F250 2212 - ISF - Equipment Replacement	\$46,399.45	
103455	05/26/2023		05/25/2023	WELLS FARGO BANK	\$10,079.63
	Invoice	Date	Description	Amount	
	WF050323	05/03/2023	April Credit Card Charges	\$10,079.63	
			1000 - General Fund	\$9,648.33	
			1315 - Public Art Fee Fund	\$131.30	
			2211 - ISF - Information Technology	\$300.00	
103456	05/26/2023			WESTERN EXTERMINATOR COMPANY	\$156.40
	Invoice	Date	Description	Amount	
	44914198	05/08/2023	May City Hall rodent control	\$78.20	
	44914199	05/08/2023	May Turnouts rodent control	\$78.20	
103457	05/26/2023			WITMER TYSON IMPORTS INC.	\$1,500.00
	Invoice	Date	Description	Amount	
	T14961	05/10/2023	June 2023 K-9 Maintenance Train	\$750.00	
	T14960	05/10/2023	May 2023 K-9 Maintenance Train	\$750.00	
103458	05/26/2023			37th Parallel	\$250.00
	Invoice	Date	Description	Amount	
	37P051623	05/16/2023	Sip & Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103459	05/26/2023			Alfaro	\$250.00
	Invoice	Date	Description	Amount	
	A051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103460	05/26/2023			Bargetto	\$250.00
	Invoice	Date	Description	Amount	
	B051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	

City of Capitola
City Checks Issued May 26, 2023

Item 6 B.

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103461	05/26/2023			Bottle Jack	\$250.00
	Invoice	Date	Description	Amount	
	BJ051623	05/16/2023	Sip and Stroll participation fee	\$250.00	
			1321 - BIA - Capitola Village-Wharf BIA		
103462	05/26/2023			Burreil School	\$250.00
	Invoice	Date	Description	Amount	
	BS051623	05/16/2023	Sip and Stroll participation fee	\$250.00	
			1321 - BIA - Capitola Village-Wharf BIA		
103463	05/26/2023			Campos de Solana	\$250.00
	Invoice	Date	Description	Amount	
	CDS051623	05/16/2023	Sip and Stroll participation fee	\$250.00	
			1321 - BIA - Capitola Village-Wharf BIA		
103464	05/26/2023			Clo La Chauce	\$250.00
	Invoice	Date	Description	Amount	
	CLC051623	05/16/2023	Sip and Stroll participation fee	\$250.00	
			1321 - BIA - Capitola Village-Wharf BIA		
103465	05/26/2023			Common Thread	\$250.00
	Invoice	Date	Description	Amount	
	CT051623	05/16/2023	Sip and Stroll participation fee	\$250.00	
			1321 - BIA - Capitola Village-Wharf BIA		
103466	05/26/2023			Devon Salter	\$250.00
	Invoice	Date	Description	Amount	
	DS051623	05/16/2023	Sip and Stroll participation fee	\$250.00	
			1321 - BIA - Capitola Village-Wharf BIA		
103467	05/26/2023			Dina Schillings	\$500.00
	Invoice	Date	Description	Amount	
	DS051723	05/17/2023	Tree deposit refund	\$500.00	
103468	05/26/2023			Doon To the Earth	\$250.00
	Invoice	Date	Description	Amount	
	DTTE051623	05/16/2023	Sip and Stroll participation fee	\$250.00	
			1321 - BIA - Capitola Village-Wharf BIA		
103469	05/26/2023			English Ale	\$250.00
	Invoice	Date	Description	Amount	
	EA051623	05/16/2023	Sip and Stroll participation fee	\$250.00	
			1321 - BIA - Capitola Village-Wharf BIA		
103470	05/26/2023			Hallcrest	\$500.00
	Invoice	Date	Description	Amount	
	H051623	05/16/2023	Sip and Stroll participation fee	\$500.00	
			1321 - BIA - Capitola Village-Wharf BIA		
103471	05/26/2023			Jody Resor	\$102.00
	Invoice	Date	Description	Amount	
	JR050923	05/09/2023	Community Center security depos	\$102.00	
103472	05/26/2023			La Curiosa	\$250.00
	Invoice	Date	Description	Amount	
	LC051623	05/16/2023	Sip and Stroll participation fee	\$250.00	
			1321 - BIA - Capitola Village-Wharf BIA		

City of Capitola
City Checks Issued May 26, 2023

Item 6 B.

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103473	05/26/2023			Left Bend	\$250.00
	Invoice	Date	Description	Amount	
	LB051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103474	05/26/2023			McGrail Vineyards & Winery	\$250.00
	Invoice	Date	Description	Amount	
	MGVW051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103475	05/26/2023			Mia Bea Wines	\$250.00
	Invoice	Date	Description	Amount	
	MBW051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103476	05/26/2023			Moose Mountain Vinyards	\$250.00
	Invoice	Date	Description	Amount	
	MMV051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103477	05/26/2023			Pelican Ranch	\$250.00
	Invoice	Date	Description	Amount	
	PR051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103478	05/26/2023			Raffaelli	\$250.00
	Invoice	Date	Description	Amount	
	R051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103479	05/26/2023			Robert Barry	\$500.00
	Invoice	Date	Description	Amount	
	RB051723	05/17/2023	Tree deposit refund	\$500.00	
103480	05/26/2023			Roudon Smith	\$250.00
	Invoice	Date	Description	Amount	
	RS051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103481	05/26/2023			Silver Mountain Vineyards	\$250.00
	Invoice	Date	Description	Amount	
	SMV051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103482	05/26/2023			Sones	\$250.00
	Invoice	Date	Description	Amount	
	S051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103483	05/26/2023			Sterrs	\$250.00
	Invoice	Date	Description	Amount	
	S051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103484	05/26/2023			Tara Zorovich	\$252.00
	Invoice	Date	Description	Amount	
	TZ031623	03/16/2023	Refund PCR deposit #21-0561	\$252.00	

City Checks Issued May 26, 2023

Item 6 B.

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103485	05/26/2023			Valley Vista	\$250.00
	Invoice	Date	Description	Amount	
	VV051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103486	05/26/2023			Wargin	\$250.00
	Invoice	Date	Description	Amount	
	W051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103487	05/26/2023			Windy Oaks Winery	\$250.00
	Invoice	Date	Description	Amount	
	WOW051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
103488	05/26/2023			Wright Station	\$250.00
	Invoice	Date	Description	Amount	
	WS051623	05/16/2023	Sip and Stroll participation fee 1321 - BIA - Capitola Village-Wharf BIA	\$250.00	
Type Check Totals:					\$293,222.81
EFT					
1524	05/22/2023			CalPERS Health Insurance	\$64,303.43
	Invoice	Date	Description	Amount	
	1002370143	05/19/2023	June Health Insurance	\$64,303.43	
			1000 - General Fund	\$4,039.51	
			1001 - Payroll Payables	\$60,263.92	
1525	05/22/2023			CalPERS Member Services Division	\$56,286.62
	Invoice	Date	Description	Amount	
	1002370085-8	05/19/2023	PERS Contributions PPE 05/13/2:	\$56,286.62	
			1000 - General Fund	(\$0.30)	
			1001 - Payroll Payables	\$56,286.92	
1526	05/22/2023			EMPLOYMENT DEVELOPMENT DEPAR	\$20,818.55
	Invoice	Date	Description	Amount	
	1-922-125-280	05/19/2023	State Taxes PPE 5/13/23	\$20,818.55	
			1001 - Payroll Payables		
1527	05/22/2023			INTERNAL REVENUE SERVICE	\$64,934.14
	Invoice	Date	Description	Amount	
	55252779	05/19/2023	Federal taxes & Medicare PPE 5/	\$64,934.14	
			1001 - Payroll Payables		
1528	05/22/2023			STATE DISBURSEMENT UNIT	\$1,616.75
	Invoice	Date	Description	Amount	
	44104045	05/19/2023	Employee garnishment PPE 5/13/	\$1,616.75	
			1001 - Payroll Payables		
1529	05/22/2023			VOYA FINANCIAL	\$18,235.47
	Invoice	Date	Description	Amount	
	VOYA051923	05/19/2023	Employee 457 Contribution PPE 5	\$18,235.47	
			1001 - Payroll Payables		
1530	05/22/2023			INTERNAL REVENUE SERVICE	\$142.04
	Invoice	Date	Description	Amount	
	52839638	05/19/2023	Federal taxes & Medicare Sedanc	\$142.04	
			1001 - Payroll Payables		

City Checks Issued May 26, 2023

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
1531	05/22/2023			EMPLOYMENT DEVELOPMENT DEPAR	\$30.37
	Invoice	Date	Description	Amount	
	0-352-275-936	05/19/2023	State Taxes Sedano-Diaz Final Pr	\$30.37	
			1001 - Payroll Payables		

Type EFT Totals: \$226,367.37

Main City Totals	Count	Total
Checks	117	\$293,222.81
EFTs	8	\$226,367.37
All	125	\$519,590.18

Payroll Totals	Count	Total
Checks	2	\$1,505.73
EFTs	119	\$256,496.69
All	121	\$258,002.42

Grand Totals:	Count	Total
Checks	119	\$294,728.54
EFTs	127	\$482,864.06
All	246	\$777,592.60


City main account checks dated June 9, 2023, numbered 103489 to 103626 totaling \$962,279.14, 6 EFTs totaling \$108,426.67, and 125 payroll EFTs totaling \$188,826.47, for a grand total of \$1,259,532.28, have been reviewed and authorized for distribution by the City Manager.

As of June 9, 2023, the unaudited cash balance is \$6,975,760.56.

CASH POSITION - CITY OF CAPITOLA
June 9, 2023

	6/9/2023
General Fund	\$ (1,649,587.96)
Payroll Payables	\$ 46,740.71
Contingency Reserve Fund	\$ 2,126,845.66
Facilities Reserve Fund	\$ 432,714.09
Capital Improvement Fund	\$ 4,486,210.01
Stores Fund	\$ 64,409.04
Information Technology Fund	\$ 266,085.63
Equipment Replacement	\$ 849,718.74
Self-Insurance Liability Fund	\$ 122,437.54
Workers' Comp. Ins. Fund	\$ 9,301.04
Compensated Absences Fund	\$ 220,886.06
TOTAL UNASSIGNED GENERAL FUNDS	\$ 6,975,760.56


The Emergency Reserve Fund balance is \$1,387,855.54 (not included above).
The PERS Contingency Fund balance is \$1,154,274.68 (not included above).



 Jamie Goldstein, City Manager

6/17/23

 Date



 Jim Malberg, City Treasurer

6/12/23

 Date

City Checks Issued June 9, 2023

Item 6 B.

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103489	06/07/2023			LORRAINE KINNAMON	\$263.25
	Invoice	Date	Description		Amount
	LK093019	09/30/2019	Instructor payment		\$263.25
103490	06/09/2023			ADRIENNE HARRELL	\$340.79
	Invoice	Date	Description		Amount
	AH060423	06/04/2023	Instructor payment		\$340.79
103491	06/09/2023			ADVOCACY INC.	\$5,000.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$5,000.00
103492	06/09/2023			AGILE OCCUPATIONAL MEDICINE, PC	\$1,070.00
	Invoice	Date	Description		Amount
	EM003672	06/01/2023	New employee testing & exams		\$1,070.00
103493	06/09/2023			AIMEE FITZGERALD	\$204.75
	Invoice	Date	Description		Amount
	AF060423	06/04/2023	Instructor payment		\$204.75
103494	06/09/2023			ALLIED UNIVERSAL	\$1,490.30
	Invoice	Date	Description		Amount
	14272622	06/01/2023	McGregor skate park foot patrol		\$490.08
	14272623	06/01/2023	Esplanade Park foot patrol		\$525.94
	14272610	06/01/2023	June 2023 Jade Street Park Patrol		\$474.28
103495	06/09/2023			ALLSAFE LOCK COMPANY	\$43.22
	Invoice	Date	Description		Amount
	54296	05/05/2023	Keys		\$20.00
	54356	05/25/2023	Keys		\$20.40
	54299	05/10/2023	Key, tag		\$2.82
103496	06/09/2023			ALVAREZ TECHNOLOGY GROUP INC	\$197.50
	Invoice	Date	Description		Amount
	67562	04/17/2023	May antivirus 2211 - ISF - Info Technology		\$197.50

City Checks Issued June 9, 2023

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103497	06/09/2023			AMAZON CAPITAL SERVICES	\$1,923.54
	Invoice	Date	Description		Amount
	1RHC-7YVY-1HLP	05/29/2023	Thermoflasks		\$299.04
	1H6K-YM3W-TJ37	05/29/2023	OHP OBD Adapter		\$19.62
	1693-NCFC-9FHG	05/23/2023	Batteries		\$44.76
	1FPY-1RY7-MMD4	05/19/2023	Dual soap dispenser		\$738.22
	1HPR-DRV1-3XHM	06/02/2023	Scotch tape, glue		\$14.99
	1JM6-1G9V-97X6	06/03/2023	Folding chair, first aid bandages, gauze, gloves		\$367.00
	1XPP-WF4V-414M	06/02/2023	After-School general supplies		\$439.91
103498	06/09/2023			ANTHONY MAY	\$3,000.00
	Invoice	Date	Description		Amount
	CCPROP	05/31/2023	Tree stump art proposal invoice - Stipend		\$250.00
	AM052523	05/25/2023	Tree stump art - 1st installment 1315 - Public Art Fee Fund		\$2,750.00
103499	06/09/2023			ARTS COUNCIL OF SANTA CRUZ COUNTY	\$1,250.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$1,250.00
103500	06/09/2023			AXCIENT	\$145.00
	Invoice	Date	Description		Amount
	FY23INEF1133992-	03/31/2023	March AppAssure storage remaining balance due		\$10.00
	FY23INEF1136577	04/30/2023	April AppAssure storage 2211 - ISF - Info Technology		\$135.00
103501	06/09/2023			B & B SMALL ENGINE REPAIR	\$67.46
	Invoice	Date	Description		Amount
	522867	05/31/2023	Fabric, grass bag		\$67.46
103502	06/09/2023			BEAR ELECTRICAL SOLUTIONS INC.	\$646.80
	Invoice	Date	Description		Amount
	18856	04/28/2023	April traffic signal maintenance services - routine 1310 - Gas Tax		\$646.80
103503	06/09/2023			BIG BROTHERS BIG SISTERS OF SC COUNTY	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant 1305 - Restricted TOT		\$3,750.00
103504	06/09/2023			BIG CREEK LUMBER	\$1,301.52
	Invoice	Date	Description		Amount
	1908380	05/05/2023	Lumber		\$1,301.52

City Checks Issued June 9, 2023

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103505	06/09/2023			BIOBAG AMERICAS INC.	\$2,740.00
	Invoice	Date	Description		Amount
	INV498892	05/31/2023	Dog waste bags		\$2,740.00
103506	06/09/2023			BOYS AND GIRLS CLUBS OF SANTA CRUZ COUNTY	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant 1305 - Restricted TOT		\$3,750.00
103507	06/09/2023			BROWNELLS INC.	\$2,893.28
	Invoice	Date	Description		Amount
	2023410360180	05/20/2023	Red Dot Sights		\$2,893.28
103508	06/09/2023			BURKE WILLIAMS AND SORENSEN LLP	\$26,396.51
	Invoice	Date	Description		Amount
	301873	05/26/2023	April labor and employment legal services		\$253.00
	301874	05/26/2023	April city attorney services		\$11,159.26
	301875	05/26/2023	April Capitola Mall project legal services		\$1,512.00
	301876	05/26/2023	April code enforcement		\$147.50
	301877	05/26/2023	April litigation		\$1,719.00
	301878	05/26/2023	April planning legal services		\$3,645.00
	301879	05/26/2023	April police legal services		\$681.75
	301880	05/26/2023	April public works legal services		\$3,861.00
	301881	05/26/2023	April labor negotiations		\$1,475.00
	301882	05/26/2023	April Fee issues legal services		\$944.00
	301883	05/26/2023	April public records act requests		\$999.00
103509	06/09/2023			CABRILLO COLLEGE STROKE CENTER	\$5,000.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$5,000.00
103510	06/09/2023			CALIFORNIA COAST UNIFORM COMPANY	\$259.59
	Invoice	Date	Description		Amount
	10328	05/15/2023	528 Tailoring Charges		\$40.00
	10327	05/15/2023	530 Tailoring Charges		\$30.00
	10326	05/15/2023	565 Tailoring Charges		\$15.00
	10325	05/15/2023	500 Uniform Shirt and Embroidery Charges		\$154.59
	10324	05/15/2023	527 Tailoring Charges		\$20.00
103511	06/09/2023			CALIFORNIA GREY BEARS INC.	\$15,468.75
	Invoice	Date	Description		Amount
	GBCDBG-NH-2000	06/01/2023	CDBG health food program grant 1350 - CDBG Grants		\$15,468.75

City Checks Issued June 9, 2023

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103512	06/09/2023			CALIFORNIA POLICE CHIEFS ASSOCIATION	\$462.00
	Invoice	Date	Description		Amount
	1287	05/01/2023	2023-2024 CPCA Dues		\$462.00
103513	06/09/2023			CAPITOLA PEACE OFFICERS ASSOCIATION	\$1,068.00
	Invoice	Date	Description		Amount
	POA060223	06/02/2023	POA & Gym Dues PPE 05/27/23 1001 - Payroll Payables		\$1,068.00
103514	06/09/2023			CAPITOLA POLICE DEPARTMENT	\$18.00
	Invoice	Date	Description		Amount
	2023-00000015	05/09/2023	BIA village parking 1321 - BIA Capitoal Village-Wharf BIA		\$18.00
103515	06/09/2023			CASA OF SANTA CRUZ COUNTY	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant 1305 - Restricted TOT		\$3,750.00
103516	06/09/2023			CLEAN BUILDING MAINTENANCE CO.	\$5,862.92
	Invoice	Date	Description		Amount
	32342	05/31/2023	May janitorial services 1000 - General Fund 1311 - Wharf	\$5,015.48 \$ 847.44	\$5,862.92
103517	06/09/2023			COAST LOCK & SAFE INC.	\$68.28
	Invoice	Date	Description		Amount
	027205	05/11/2023	Boot Keys		\$68.28
103518	06/09/2023			COLIN GAILEY	\$1,250.00
	Invoice	Date	Description		Amount
	CG061423	06/14/2023	Twilight concert 6/14		\$1,250.00
103519	06/09/2023			COMMUNITY ACTION BOARD	\$5,000.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$5,000.00
103520	06/09/2023			COMMUNITY TELEVISION OF SANTA CRUZ COUNTY	\$904.00
	Invoice	Date	Description		Amount
	3263	05/30/2023	April televised meetings		\$904.00
103521	06/09/2023			COMPLETE MAILING SERVICE INC.	\$2,973.09
	Invoice	Date	Description		Amount
	7815	05/30/2023	Twilight Concert mailing		\$2,973.09

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103522	06/09/2023			CRYSTAL SPRINGS WATER CO.	\$399.25
	Invoice	Date	Description		Amount
	CSW053123	05/31/2023	May drinking water		\$399.25
103523	06/09/2023			D & G SANITATION	\$2,062.55
	Invoice	Date	Description		Amount
	298765	05/31/2023	Wharf portable toilets		\$1,115.34
	298764	05/31/2023	Lower parking lot portable toilet rental		\$445.43
	298763	05/31/2023	Skate park hand wash station, portable toilets		\$501.78
			1000 - General Fund	\$ 947.21	
			1311 - Wharf	\$1,115.34	
103524	06/09/2023			DIAMOND D COMPANY	\$139,170.25
	Invoice	Date	Description		Amount
	5268	05/10/2023	Kennedy sidewalk project		\$107,379.71
	5272	05/31/2023	Kennedy sidewalk project		\$31,790.54
			1200 - Capital Improvement Fund		
103525	06/09/2023			ELEVATOR SERVICE COMPANY INC.	\$400.00
	Invoice	Date	Description		Amount
	40817	03/01/2023	Quarterly lube and inspection		\$200.00
	42046	06/01/2023	Quarterly lube and inspection		\$200.00
103526	06/09/2023			EQUITABLE	\$1,151.88
	Invoice	Date	Description		Amount
	1406164-#2	04/21/2023	April LTD, STD, AD&D, life insurance balance due		\$1,151.88
			1001 - Payroll Payables		
103527	06/09/2023			Eric Martin	\$125.00
	Invoice	Date	Description		Amount
	EM060623	06/06/2023	Chapter 11B ADA Class reimbursement		\$125.00
103528	06/09/2023			EWING IRRIGATION	\$206.07
	Invoice	Date	Description		Amount
	19493086	05/23/2023	Rakes		\$206.07
103529	06/09/2023			EXCEEDIO	\$8,914.95
	Invoice	Date	Description		Amount
	13980	06/01/2023	June IT services		\$8,914.95
			2211 - ISF - Info Technology		
103530	06/09/2023			FAIR WAGE USA	\$2,500.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$2,500.00

City Checks Issued June 9, 2023

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103531	06/09/2023			FAMILY SERVICE AGENCY OF THE CENTRAL COAST	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$3,750.00
103532	06/09/2023			FLYERS ENERGY LLC	\$4,395.56
	Invoice	Date	Description		Amount
	23-834282	05/26/2023	422 gallons diesel		\$1,860.93
	23-834423	05/26/2023	378 gallons gasoline		\$1,714.59
	23-834424	05/26/2023	186 gallons diesel		\$820.04
103533	06/09/2023			GARDAWORLD	\$384.28
	Invoice	Date	Description		Amount
	10741247	06/01/2023	June 2023 Armored Transportation Service		\$384.28
103534	06/09/2023			GERALD JENSEN	\$1,508.10
	Invoice	Date	Description		Amount
	GJ033123	03/31/2023	Reimbursement for League of Ca Cities Planning Comm Acader		\$1,508.10
103535	06/09/2023			GINA ENRIQUEZ	\$3,206.00
	Invoice	Date	Description		Amount
	GE05823	05/28/2023	Instructor payment		\$3,206.00
103536	06/09/2023			GOSECURE	\$6,428.16
	Invoice	Date	Description		Amount
	37136	05/23/2023	Email security suite renewal 2211 - ISF - Info Technology		\$6,428.16
103537	06/09/2023			GRAINGER	\$610.05
	Invoice	Date	Description		Amount
	9712051599	05/18/2023	Handrail		\$397.90
	9712379594	05/18/2023	Urinal strainer, trap insert		\$174.87
	9712437442	05/18/2023	O-ring, Zum		\$37.28
103538	06/09/2023			HINDERLITER DELLAMAS AND ASSOCIATES	\$4,127.92
	Invoice	Date	Description		Amount
	SIN028132	04/30/2023	April TOT and STR admin fees		\$1,350.16
	SIN028536	06/09/2023	Apr - Jun 2023 district sales tax auditing service 44053		\$2,777.76

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103539	06/09/2023			HOME DEPOT CREDIT SERVICES	\$1,330.52
	Invoice	Date	Description		Amount
	2622430	05/30/2023	84in Stand vertical rail, pure and natural salt, Morton 40lb		\$115.86
	0621190	05/22/2023	Heavy duty spray bottle, sponge, sander, drawer slide		\$93.82
	9613935	05/23/2023	Poly sheet, nozzle		\$153.65
	2524445	05/10/2023	Semi-gloss, stencils		\$30.95
	6513505	05/26/2023	Roughneck vented black		\$217.74
	8614146	05/24/2023	Plywood		\$41.89
	0521308	05/22/2023	Wrench, roller frame, wire, metal cutter		\$171.91
	5620312	05/17/2023	Alarm, plastic tub		\$224.17
	5222420	05/17/2023	Carbon monoxide alarm return		(\$184.21)
	4520660	05/18/2023	Fast set concrete		\$54.19
	9523196	05/03/2023	Sleeve anchor, carb bit		\$46.95
	8621485	05/24/2023	Shovel		\$32.66
	1630704	05/11/2023	Plier, echo trimmer line		\$46.26
	1063037	05/31/2023	Drain gun, drain opener, gloves, steel wipes, disinfect spray		\$195.63
	973874	06/01/2023	Light stick, bucket, outlet box, cable tie		\$89.05
103540	06/09/2023			HOSE SHOP	\$1,195.34
	Invoice	Date	Description		Amount
	451807	06/02/2023	Blow gun, t-bolt clamps		\$1,195.34
103541	06/09/2023			HOSPICE of SANTA CRUZ COUNTY	\$1,500.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$1,500.00
103542	06/09/2023			HUMBOLDT PETROLEUM LLC	\$178.50
	Invoice	Date	Description		Amount
	INV-080122	05/15/2023	Carwash Closing Date 5/15/2023		\$42.50
	INV-082118	05/31/2023	Carwash Closing Date 5/31/2023		\$136.00
103543	06/09/2023			INTERNATIONAL BRONZE PLAQUE COMPANY	\$975.00
	Invoice	Date	Description		Amount
	72344	05/26/2023	Memorial Plaque		\$975.00
103544	06/09/2023			INTERSTATE BATTERY SYSTEM OF SAN JOSE INC	\$274.21
	Invoice	Date	Description		Amount
	120128285	05/30/2023	Batteries		\$274.21
103545	06/09/2023			INTERSTATE TRAFFIC CONTROL PRODUCTS	\$778.28
	Invoice	Date	Description		Amount
	256578	05/17/2023	No parking signs		\$672.28
	256778	05/26/2023	No dumping flows to Ocean Sign		\$106.00

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103546	06/09/2023			iWorQ Systems Inc.	\$10,375.00
	Invoice	Date	Description		Amount
	200691	06/01/2023	CDD & PW software July 2023 - June 2024 1317 - Technology Fee Fund		\$10,375.00
103547	06/09/2023			JEANI MITCHELL	\$564.20
	Invoice	Date	Description		Amount
	JM060423	06/04/2023	Instructor payment		\$564.20
103548	06/09/2023			JIMMY PALAFOX	\$500.00
	Invoice	Date	Description		Amount
	JP061623	06/03/2023	Santa Cruz Latin Collective performance - Food Truck Friday 6/		\$500.00
103549	06/09/2023			JOSEPH CLARKE	\$516.78
	Invoice	Date	Description		Amount
	JC020323	05/26/2023	League of Ca Cities new councilmember conference		\$516.78
103550	06/09/2023			KATHLEEN BROWN	\$312.00
	Invoice	Date	Description		Amount
	KB060423	06/04/2023	Instructor payment		\$312.00
103551	06/09/2023			KATHLEEN SIMPSON	\$378.30
	Invoice	Date	Description		Amount
	KS052823	05/28/2023	Instructor payment		\$378.30
103552	06/09/2023			KBA Document Solutions LLC	\$1,104.96
	Invoice	Date	Description		Amount
	55Y1355081	03/22/2023	City Hall copier usage charges, toner		\$75.45
	55Y1357910	04/03/2023	City Hall Copier usage charges		\$12.46
	55Y1362194	04/18/2023	City Hall copier usage charges, toner		\$520.65
	55Y1365328	05/01/2023	City Hall copier usage charges		\$7.23
	55Y1369966	05/18/2023	City Hall copier usage charges, toner		\$464.70
	55Y1372855	06/01/2023	City Hall Copier usage charges 2211 - ISF - Info Technology		\$24.47
103553	06/09/2023			KING'S PAINT AND PAPER INC.	\$140.36
	Invoice	Date	Description		Amount
	S94FA	05/19/2023	Paint		\$84.54
	3TKZ6-0505CK-S	05/05/2023	Paint		\$55.82
103554	06/09/2023			LABORMAX STAFFING	\$8,336.87
	Invoice	Date	Description		Amount
	26-304555	05/26/2023	Public works seasonal labor 5/21 - 5/26		\$4,004.38
	26-306202	06/02/2023	Public works seasonal labor 5/27 - 6/2		\$4,332.49

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103555	06/09/2023			LAURA ALIOTO	\$961.50
	Invoice	Date	Description		Amount
	LA052823	05/28/2023	Instructor payment		\$624.00
	LA052823#2	05/28/2023	Instructor payment		\$315.00
	LA060423	06/04/2023	Instructor payment		\$22.50
103556	06/09/2023			LINDE GAS & EQUIPMENT INC.	\$252.98
	Invoice	Date	Description		Amount
	36051811	05/23/2023	Acetylene rental		\$252.98
103557	06/09/2023			LIUNA PENSION FUND	\$1,075.20
	Invoice	Date	Description		Amount
	FM9318	05/31/2023	May LIUNA pension dues 1001 - Payroll Payables		\$1,075.20
103558	06/09/2023			MARIANNE'S ICE CREAM	\$1,383.75
	Invoice	Date	Description		Amount
	89274	06/08/2023	Junior scoops		\$1,383.75
103559	06/09/2023			MASTER CLEANERS	\$1,552.73
	Invoice	Date	Description		Amount
	MC051623	05/16/2023	April 2023 Uniform Cleaning		\$1,042.02
	MC060523	06/05/2023	May 2023 Uniform Cleaning		\$510.71
103560	06/09/2023			MID COUNTY AUTO SUPPLY	\$936.99
	Invoice	Date	Description		Amount
	M-2174375	05/30/2023	Fuel pump kit		\$155.89
	M-2174289	05/30/2023	Fuel pump kit		\$106.28
	K-2171886	05/25/2023	Fuel Hose		\$32.01
	K-2171977	05/26/2023	Merchandiser credit		(\$396.98)
	K-2126949	05/25/2023	Heater hoses, merchandiser, fuel hose, windshield washer, vacu		\$1,039.79
103561	06/09/2023			MID COUNTY SENIOR CENTER	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$3,750.00
103562	06/09/2023			MISSION LINEN SUPPLY	\$391.10
	Invoice	Date	Description		Amount
	519290347	05/31/2023	Fleet towels, uniform cleaning		\$34.50
	519341683	05/24/2023	Fleet towels, uniform cleaning		\$34.50
	519390348	05/31/2023	Corp. Yard linen service		\$133.99
	519341684	05/24/2023	Corp. Yard linen service		\$106.99
	519372108	05/29/2023	Community Center mop and mat service		\$81.12

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103563	06/09/2023			MOFFATT AND NICHOL	\$60,982.14
	Invoice	Date	Description		Amount
	00778762	05/16/2023	Capitola Wharf & Beach Project Services		\$45,265.89
	00779204	05/31/2023	Capitola Wharf & Beach Project Services 1200 - Capital Improvement Fund		\$15,716.25
103564	06/09/2023			MONARCH SERVICES	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$3,750.00
103565	06/09/2023			MONTEREY BAY NATIONAL MARINE SANCTUARY	\$6,250.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$6,250.00
			1000 - General Fund	\$2,500.00	
			1305 - Restricted TOT	\$3,750.00	
103566	06/09/2023			NAMI SANTA CRUZ COUNTY	\$6,000.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$6,000.00
103567	06/09/2023			NORTH BAY FORD	\$366.28
	Invoice	Date	Description		Amount
	289209	05/25/2023	Slyde King 2K Flashlight		\$132.28
	367815	03/31/2023	Key replacement, inspection		\$234.00
103568	06/09/2023			O'NEILL SEA ODYSSEY	\$5,000.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$5,000.00
			1305 - Restricted TOT		
103569	06/09/2023			O'REILLY AUTO PARTS	\$219.61
	Invoice	Date	Description		Amount
	2763-357284	05/20/2023	Brake shoes, semi-met pad		\$79.23
	2763-357965	05/23/2023	Fuel hose, core charge, batteries		\$106.03
	2763-356995	05/19/2023	Sensor assy		\$34.35
103570	06/09/2023			OUTDOOR SUPPLY HARDWARE	\$37.48
	Invoice	Date	Description		Amount
	H48773	05/23/2023	Bulk Fasteners		\$20.05
	H56759	06/05/2023	Batteries		\$17.43

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103571	06/09/2023			PALACE BUSINESS SOLUTIONS	\$937.23
	Invoice	Date	Description		Amount
	684510-0	05/30/2023	File Folders		\$135.57
	683416-0	05/18/2023	Printing Paper and Paperclip Dispensers		\$166.20
	681900-0	05/04/2023	Box storage		\$34.01
	682539-0	05/09/2023	Wipes, disinfectant, air freshener		\$45.50
	682539-1	05/10/2023	Air freshener		\$8.18
	683476-0	05/18/2023	Paper		\$62.12
	684577-0	05/30/2023	Note pad, legal ruled		\$36.33
	684577-1	05/31/2023	Battery, notebook		\$31.78
	684659-0	05/31/2023	White board		\$367.93
	684686-0	05/31/2023	Paper, note pad		\$49.61
103572	06/09/2023			PARENTS CENTER OF SANTA CRUZ	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$3,750.00
103573	06/09/2023			PATRICIA PARAMOURE ARCHAEOLOGICAL CONSULT	\$675.00
	Invoice	Date	Description		Amount
	PPAC052623	05/26/2023	Archaeological assessment #23-0199-1410 Prospect (final)		\$675.00
103574	06/09/2023			PAVEMENT ENGINEERING INC.	\$250.00
	Invoice	Date	Description		Amount
	2304-046	05/05/2023	FY22/23 Capitola Rd improvement project services 3/1 - 4/30/23 1309 - RTC Streets		\$250.00
103575	06/09/2023			PETERSON CATERPILLAR	\$118.79
	Invoice	Date	Description		Amount
	PC0801099290	05/12/2023	Kit breather		\$118.79
103576	06/09/2023			PHOENIX GROUP INFORMATION SYSTEMS	\$4,131.03
	Invoice	Date	Description		Amount
	042023070	05/19/2023	April 2023 Citation Processing		\$4,131.03
103577	06/09/2023			REBECCA ROUDMAN	\$1,250.00
	Invoice	Date	Description		Amount
	RR062123	06/21/2023	Twilight concert 6/21		\$1,250.00
103578	06/09/2023			REXEL ENERGY SOLUTIONS	\$2,084.08
	Invoice	Date	Description		Amount
	S2876393	06/02/2023	EV Charger		\$2,084.08

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103579	06/09/2023			ROYAL WHOLESALE ELECTRIC	\$46.07
	Invoice	Date	Description		Amount
	7719-1029154	05/23/2023	Safety glasses, 4 conductor piece box		\$46.07
103580	06/09/2023			SAN LORENZO LUMBER	\$705.91
	Invoice	Date	Description		Amount
	55-0809441	06/01/2023	Lumber		\$58.82
	55-0807424	05/23/2023	Lumber, welded wire		\$158.31
	55-0806436	05/18/2023	Lumber		\$33.00
	55-0807156	05/22/2023	Bucket, drive screws, towel		\$89.85
	55-0807439	05/23/2023	Hvac tape, gloves, swivel rubber, cabinet, screws, bucket		\$346.18
	55-0802673	05/02/2023	Carpenter pencil, gauges brass, soapstone, markers		\$19.75
103581	06/09/2023			SANTA CRUZ AUTO PARTS INC.	\$485.98
	Invoice	Date	Description		Amount
	14508-470355	05/25/2023	Gloves, break lines		\$41.93
	14508-470404	05/26/2023	Oil filter, fuel, wiper blade, air filter		\$129.76
	14508-468532	05/01/2023	Fuel, dry acrylic, sandpaper		\$314.29
103582	06/09/2023			SANTA CRUZ BACKFLOW TESTING & REPAIR	\$1,313.00
	Invoice	Date	Description		Amount
	52723A	05/29/2023	Annual backflow test		\$1,313.00
103583	06/09/2023			SANTA CRUZ CHILDREN'S MUSEUM OF DISCOVERY	\$6,250.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant 1305 - Restricted TOT		\$6,250.00
103584	06/09/2023			SANTA CRUZ COUNTY AUDITOR-CONTROLLER	\$7,767.50
	Invoice	Date	Description		Amount
	SCCO053123	05/31/2023	May citation processing		\$7,767.50
103585	06/09/2023			SANTA CRUZ COUNTY DEPT OF PUBLIC WORKS	\$428,699.00
	Invoice	Date	Description		Amount
	621550	05/25/2023	Road rehab cost share		\$428,699.00
			1308 - SB1 Road Maint & Re	\$214,349.50	
			1309 - RTC Streets	\$214,349.50	
103586	06/09/2023			SANTA CRUZ COUNTY HUMAN SERVICES DEPT	\$39,950.00
	Invoice	Date	Description		Amount
	JURD-22-3	11/17/2022	Homeless action partnership cost share		\$39,950.00
			1000 - General Fund	\$ 8,425.00	
			5552 - Cap Hsg Succ-Prog	\$31,525.00	

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103587	06/09/2023			SANTA CRUZ LIVE SCAN INC.	\$150.00
	Invoice	Date	Description		Amount
	2516	06/01/2023	New hire live scans		\$90.00
	2510	06/01/2023	Police Officer Candidate Live Scan		\$60.00
103588	06/09/2023			SANTA CRUZ REGIONAL 911	\$244.12
	Invoice	Date	Description		Amount
	SCR052323	05/23/2023	581 PRI RMS Course		\$244.12
103589	06/09/2023			SANTA CRUZ SENTINEL	\$354.80
	Invoice	Date	Description		Amount
	0001374062	04/30/2023	April legal notices		\$354.80
103590	06/09/2023			SANTA CRUZ SENTINEL	\$889.70
	Invoice	Date	Description		Amount
	0001377431	05/31/2023	May legal ads		\$889.70
103591	06/09/2023			SANTA CRUZ SIGNS	\$1,583.48
	Invoice	Date	Description		Amount
	302704	05/22/2023	Graphic design services, vinyl decal, custom decal, installation		\$1,583.48
103592	06/09/2023			SC Swimming CAFL	\$10,000.00
	Invoice	Date	Description		Amount
	1006	06/01/2023	Spring swim lessons 1305 - Restricted TOT		\$10,000.00
103593	06/09/2023			SENIOR NETWORK SERVICES INC.	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$3,750.00
103594	06/09/2023			SENIORS COUNCIL OF SC COUNTY	\$5,000.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$5,000.00
103595	06/09/2023			SIRCHIE	\$76.09
	Invoice	Date	Description		Amount
	0593028-IN	05/23/2023	Evidence and Property Supplies		\$76.09

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103596	06/09/2023			SOQUEL CREEK WATER DISTRICT	\$562.43
	Invoice	Date	Description		Amount
	10-16317-0052223	05/22/2023	10-16317-00 420 Capitola Ave. water		\$291.59
	10-16315-0052223	05/22/2023	10-16315-00 504 Beulah Dr. water		\$60.42
	10-16216-0052223	05/22/2023	10-16316-00 426 Capitola Ave. water		\$118.04
	13-10919-0053023	05/30/2023	13-10919-00 2000 Wharf Road water service		\$52.34
	34-18508-0053023	05/30/2023	34-18508-00 1510 McGregor Drive water service		\$40.04
103597	06/09/2023			SPECTRUM BUSINESS	\$3,720.54
	Invoice	Date	Description		Amount
	0000178060123	06/01/2023	June internet service		\$3,720.54
			1000 - General Fund	\$1,635.20	
			2211 - ISF - Info Technology	\$2,085.34	
103598	06/09/2023			STATE CONTROLLER	\$278.18
	Invoice	Date	Description		Amount
	FTB-00005702	05/17/2023	2022 Offsets Program		\$278.18
103599	06/09/2023			THE CLEANING MACHINE INC.	\$2,950.00
	Invoice	Date	Description		Amount
	6617	05/25/2023	Village sidewalk cleaning		\$2,950.00
103600	06/09/2023			THE DIVERSITY CENTER	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$3,750.00
			1305 - Restricted TOT		
103601	06/09/2023			THE HOME DEPOT PRO	\$1,660.28
	Invoice	Date	Description		Amount
	747323368	05/26/2023	Restroom & cleaning supplies		\$1,660.28
103602	06/09/2023			TODD HANSON	\$2,876.34
	Invoice	Date	Description		Amount
	00031	06/01/2023	June BIA marketing, website management, media boost		\$2,876.34
			1321 - BIA Capitoal Village-Wharf BIA		
103603	06/09/2023			TPX COMMUNICATIONS	\$1,635.34
	Invoice	Date	Description		Amount
	170744884	05/23/2023	May phone service		\$1,635.34
			1000 - General Fund	\$883.58	
			2211 - ISF - Info Technology	\$751.76	

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103604	06/09/2023			TRANSPORTATION ALLIANCE BANK INC.	\$1,279.28
	Invoice	Date	Description		Amount
	677471	05/31/2023	GB set (4), filaments 1310 - Gas Tax		\$1,279.28
103605	06/09/2023			ULINE	\$153.37
	Invoice	Date	Description		Amount
	163179668	05/03/2023	Evidence and Property Supplies		\$153.37
103606	06/09/2023			UNITED WAY OF SANTA CRUZ COUNTY	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$3,750.00
103607	06/09/2023			US BANK EQUIPMENT FINANCE	\$489.41
	Invoice	Date	Description		Amount
	502352586	05/25/2023	City Hall Copier Lease		\$174.40
	502473697	05/29/2023	City Hall Copier Lease 2210 - ISF - Stores Fund		\$315.01
103608	06/09/2023			US BANK PARS Acct 6746022400	\$865.53
	Invoice	Date	Description		Amount
	PARS060223	06/02/2023	PARS Contributions PPE 05/27/23 1001 - Payroll Payables		\$865.53
103609	06/09/2023			VISIT SANTA CRUZ COUNTY	\$650.00
	Invoice	Date	Description		Amount
	13154	05/22/2023	BIA Advertising 1321 - BIA Capitoal Village-Wharf BIA		\$650.00
103610	06/09/2023			VISTA CENTER FOR THE BLIND	\$2,500.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$2,500.00
103611	06/09/2023			VOLUNTEER CENTERS OF SC COUNTY	\$3,750.00
	Invoice	Date	Description		Amount
	CG060123	06/01/2023	Community grant		\$3,750.00
103612	06/09/2023			WATSONVILLE BLUEPRINT	\$228.50
	Invoice	Date	Description		Amount
	111305	05/25/2023	CDD Projects printing		\$228.50
103613	06/09/2023			WEBER HAYES & ASSOCIATES INC.	\$7,335.00
	Invoice	Date	Description		Amount
	15424	05/24/2023	McGregor Skate Park remediation work		\$7,335.00

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Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103614	06/09/2023			ZEP SALES & SERVICE	\$209.51
	Invoice	Date	Description		Amount
	9008587085	05/22/2023	Zep write away - graffiti cleaner		\$209.51
103615	06/09/2023			Anderson Partnership	\$500.00
	Invoice	Date	Description		Amount
	2023-00001167	05/26/2023	Tree deposit refund #23-0125 - 4300 Capitola Rd		\$500.00
103616	06/09/2023			ARJUNA PERRY RUSSELL	\$150.00
	Invoice	Date	Description		Amount
	APR050323	05/03/2023	Consultation 1321 - BIA Capitoal Village-Wharf BIA		\$150.00
103617	06/09/2023			Asturias, Gabriela	\$86.00
	Invoice	Date	Description		Amount
	GA052523	05/25/2023	Citation # 900126701		\$86.00
103618	06/09/2023			Berdnik, Irina	\$234.00
	Invoice	Date	Description		Amount
	IB051923	05/19/2023	Citation # 200138242		\$234.00
103619	06/09/2023			De La Fuente, Jennifer	\$72.00
	Invoice	Date	Description		Amount
	JD051923	05/19/2023	Citation # 200146259		\$72.00
103620	06/09/2023			Elizabeth Salter	\$257.00
	Invoice	Date	Description		Amount
	ES052523	05/25/2023	Refund Jr Guard session		\$257.00
103621	06/09/2023			Feliciano, Anna	\$96.00
	Invoice	Date	Description		Amount
	AF051923	05/19/2023	Citation # 900124149		\$96.00
103622	06/09/2023			Jaroslava, Kvpil	\$86.00
	Invoice	Date	Description		Amount
	KJ051923	05/19/2023	Refunds - PD		\$86.00
103623	06/09/2023			Kirra Matejcek	\$328.00
	Invoice	Date	Description		Amount
	KM053023	06/01/2023	Refund Jr Guard session		\$328.00
103624	06/09/2023			Pereria, Ronald	\$96.00
	Invoice	Date	Description		Amount
	RP051923	05/19/2023	Citation # 702128444		\$96.00

City Checks Issued June 9, 2023

Item 6 B.

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
103625	06/09/2023			Robert Schmidt	\$500.00
	Invoice	Date	Description		Amount
	2023-00001168	06/05/2023	Tree deposit refund - 1325 Prospect Ave		\$500.00
103626	06/09/2023			VETERANS SURF ALLIANCE	\$1,500.00
	Invoice	Date	Description		Amount
	VSA060623	06/06/2023	Bandstand deposit refund		\$1,500.00
Check Totals:					\$962,279.14
<u>EFT</u>					
1532	05/30/2023			INTERNAL REVENUE SERVICE	\$20.31
	Invoice	Date	Description		Amount
	40634790	05/26/2023	Federal taxes & Medicare employee final paycheck 1001 - Payroll Payables		\$20.31
1534	06/05/2023			CalPERS Member Services Division	\$56,583.32
	Invoice	Date	Description		Amount
	1002378763-6	06/02/2023	PERS Contributions PPE 05/27/23 1000 - General Fund (\$ 0.32) 1001 - Payroll Payables		\$56,583.32 \$56,583.64
1535	06/05/2023			EMPLOYMENT DEVELOPMENT DEPARTMENT	\$9,874.19
	Invoice	Date	Description		Amount
	0-563-506-656	06/02/2023	State Taxes PPE 5/27/23 1001 - Payroll Payables		\$9,874.19
1536	06/05/2023			INTERNAL REVENUE SERVICE	\$33,350.56
	Invoice	Date	Description		Amount
	53977357	06/02/2023	Federal taxes & Medicare PPE 5/27/23 1001 - Payroll Payables		\$33,350.56
1537	06/05/2023			STATE DISBURSEMENT UNIT	\$1,616.75
	Invoice	Date	Description		Amount
	44269598	06/02/2023	Employee garnishment PPE 5/27/23 1001 - Payroll Payables		\$1,616.75
1538	06/05/2023			VOYA FINANCIAL	\$6,981.54
	Invoice	Date	Description		Amount
	VOYA060223	06/02/2023	Employee 457 Contribution PPE 5/27/23 1001 - Payroll Payables		\$6,981.54
EFT Totals:					\$108,426.67

City Checks Issued June 9, 2023

Item 6 B.

Check Number	Invoice Number	Invoice Date	Description	Payee Name	Transaction Amount
Main City Totals				Count	Total
Checks				138	\$962,279.14
EFTs				6	\$108,426.67
All				144	\$1,070,705.81
Payroll Totals					
Checks				0	\$0.00
EFTs				125	\$188,826.47
All				125	\$188,826.47
Grand Totals:					
Checks				58	\$962,279.14
EFTs				8	\$297,253.14
All				66	\$1,259,532.28

Capitola City Council

Agenda Report



Meeting: June 22, 2023

From: Community Development

Subject: Modification to Parking Meter Rates

Recommended Action: 1) Adopt, by title only, waiving further reading of the text, an ordinance of the City of Capitola amending Municipal Code Sections 10.36.055A and 10.38.010; and 2) Adopt a resolution authorizing submittal to the California Coastal Commission for the certification of an amendment to the Local Coastal Program for Section 10.36.055A.

Background: On March 23, 2023, the City Council directed staff to prepare the necessary documentation to implement the recommendations of the Temporary Village Parking Committee (TVPC) related to parking rates, as follows:

- Increase parking rates from \$1.50 per hour to \$2.00 per hour in the Village and maintain three-hour maximum.
- Increase parking rates from \$1.00 per hour to \$2.00 per hour on Cliff Drive and maintain twelve-hour maximum.
- Increase parking rates from \$0.50 per hour to \$1.00 per hour in the Upper and Lower Beach and Village parking lots and maintain twelve-hour maximum.

On May 4, 2023, the public review draft of the ordinance was published on the city's website and notification letters were sent to regional agencies.

On June 8, 2023, the City Council introduced the ordinance.

Discussion: The proposed amendment will remove parking rates from Local Coastal Program Implementation Plan Section 10.36.055A and add a requirement for a Coastal Development Permit to establish or modify parking meter rates. The ordinance also adjusts the parking meter rates in Section 10.38, consistent with prior City Council direction.

The ordinance must be certified by the California Coastal Commission prior to taking effect. Analysis of how the ordinance amendment is in conformity with and adequate to carry out the certified land use plan is included as Attachment 3.

Fiscal Impact: Increases to the parking meters rates in the proposed ordinance would result in an estimated increase in revenues of \$400,000 annually.

Attachments:

1. Ordinance Amending the Parking Meter LCP
2. Resolution authorizing submittal of LCP amendment to Coastal Commission
3. Analysis on conformity with certified land use plan

Report Prepared By: Katie Herlihy, Community Development Director

Reviewed By: Julia Moss, City Clerk; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager

**AN ORDINANCE OF THE CITY OF CAPITOLA
AMENDING SECTION 10.36.055 OF THE CAPITOLA
MUNICIPAL CODE PERTAINING TO PARKING METER RATES AND ZONES AND AMENDING
SECTION 10.38 SPECIFICATION OF PARKING METER RATES**

WHEREAS, the City of Capitola's Local Coastal Program (LCP) was certified by the California Coastal Commission in December of 1981 and has since been amended from time to time; and

WHEREAS, Chapter 10.36 of the Capitola Municipal Code is part of the Capitola's LCP-Implementation Plan ("LCP-IP"); and

WHEREAS, Section 10.36.055 of the LCP-IP includes parking meter rates and parking meter zones which were last updated in 2009; and

WHEREAS, because the City's parking meter rates and parking meter zones are included within the City's LCP-IP, any amendments to those provisions, including routine updates to adjust parking meter rates with inflation, require an amendment to Capitola's LCP-IP and certification by California Coastal Commission; and

WHEREAS, the City of Capitola is the only California coastal city with parking meter rates included within the City's LCP-IP; and

WHEREAS, it is common practice in other cities located within the Coastal Zone to obtain a Coastal Development Permit, rather than amend their LCP-IP, to modify parking meter rates and zones to ensure consistency with the Coastal Act; and

WHEREAS, the City of Capitola is required to establish parking meter zones and rates within the Municipal Code consistent with State of California Vehicle Code Section 22508; and

WHEREAS, staff evaluated the potential impact on public coastal access, and maintaining existing levels of public access in determining appropriate parking meter rates; and

WHEREAS, the proposed amendments support opportunities for alternative access to the Coastal Zone so as to fully mitigate any potential negative impacts and maximize access opportunities; and

WHEREAS, revenue from fee-based parking programs within the Coastal Zone shall be utilized to fund public access to coastal resources, protect public safety in the Coastal Zone, and provide public services in the Coastal Zone.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS FOLLOWS:

Section 1. Capitola Municipal Code Section 10.36.055 is hereby amended to read as follows:

10.36.055 Parking meter zones/rates.

A. ~~The following parking meter zones are hereby established in the city of Capitola:~~

1. ~~Parking Meter Zone A(1). The area labeled as Zone A(1) on the map attached hereto as Exhibit "A" found on file in the office of the city clerk, shall constitute parking meter Zone A(1). The city public works director, acting in the director's capacity as superintendent of streets, is hereby authorized to install parking in all public parking spaces located in zone A(1) and to place appropriate signage in zone A(1) relative to said metered parking. Parking meters will operate in~~

zone A(1) each day of the week from the hours of eight a.m. to eight p.m. The city council, by resolution or minute order, may designate days when said parking meters will not operate.

_____ Parking meter zone A(1) includes parking spaces along both sides of the following streets located in and surrounding the Capitola Village:

- _____ a. _____ Capitola Avenue from Monterey Avenue to Beulah Drive;
- _____ b. _____ Monterey Avenue from Esplanade to the Union Pacific Railway;
- _____ c. _____ Esplanade along its entire length from Stockton Avenue to Monterey Avenue;
- _____ d. _____ San Jose Avenue from Capitola Avenue to Esplanade;
- _____ e. _____ Stockton Avenue from Capitola Avenue to Cliff Drive;
- _____ f. _____ Wharf Road from Stockton Avenue to the Capitola Municipal Wharf;

_____ 2. Parking Meter Zone A(2). The area labeled as Zone A(2) on the map attached hereto as Exhibit "A" found on file in the office of the city clerk, shall constitute parking meter zone A(2). The city public works director, acting in the director's capacity as superintendent of streets, is hereby authorized to install parking meters in all public parking spaces located in zone A(2) and to place appropriate signage in zone A(2) relative to said metered parking. Parking meters will operate in zone A(2) each day of the week from the hours of eight a.m. to eight p.m. The city council, by resolution or minute order, may designate days when said parking meters will not operate.

_____ Parking meter zone A(2) includes parking spaces along both sides of the following street:

- _____ a. _____ Cliff Drive from Stockton Avenue to the city limits;

_____ 3. Parking Meter Zone B. The city-owned parking lot adjacent to, and directly to the north and east of Capitola City Hall, portion of APN 35-141-33 located at 426 Capitola Avenue, which encompasses the area known as Pacific Cove Parking Lot, as depicted on the map attached hereto as Exhibit "B" found on file in the office of the city clerk, shall constitute parking meter zone B. The city public works director, acting in the director's capacity as superintendent of streets, is hereby authorized to install parking meters in all public parking spaces located in zone B and to place appropriate signage in zone B relative to said metered parking. Parking meters will operate in zone B each day of the week from the hours of eight a.m. to eight p.m. The city council by resolution or minute order may designate days when said parking meters will not operate.

B. _____ The following parking meter rates are hereby established in the city of Capitola:

Zone A(1) (Village Area).....	_____ \$2.00 per hour
Zone A(2) (Cliff Drive Area).....	_____ \$1.00 per hour
Zone B (Pacific Cove Parking Lot).....	_____ \$0.75per hour

Section 2. _____ This ordinance shall take effect and be in force thirty (30) days after final adoption or upon approval of Coastal Development Permit No.09-002, which ever occurs last.

A. _____ Parking meter zones and rates.

1. The City Council may establish parking meter zones and rates consistent with State of California Vehicle Code Section 22508.
2. Changes to parking meter zones and rates shall only be upon the issuance of a Coastal Development Permit.
3. When considering a Coastal Development Permit application for parking meter zones and rate modifications, the City shall evaluate the potential impact on public coastal access, and ensure existing levels of public access are maintained, including through ensuring that alternative access opportunities, including bike lanes and parking, pedestrian trails, and relocated free

vehicular parking spaces, are provided so as to fully mitigate any potential negative impact and maximize access opportunities. Any revenue from fee-based parking programs within the Coastal Zone shall only be used to fund public access to coastal resources, protect public safety in the Coastal Zone, and provide public services in the Coastal Zone.

Item 6 C.

Section 2. Capitola Municipal Code Section 10.38.010 is hereby amended to read as follows:

10.38.010 Specification of Parking Meter Zones and Rates

A. The following Parking Meter Zones are hereby established in the City of Capitola:

1. Parking Meter Zone A(1). The area labeled as Zone A(1) on the map attached to the ordinance codified in this chapter as Exhibit "A" found on file in the office of the city clerk shall constitute Parking Meter Zone A(1).

Parking Meter Zone A(1) includes parking spaces along both sides of the following streets located in and surrounding the Capitola Village:

- a. Capitola Avenue from Monterey Avenue to Beulah Drive;
- b. Monterey Avenue from Esplanade to the Union Pacific Railway;
- c. Esplanade along its entire length from Stockton Avenue to Monterey Avenue;
- d. San Jose Avenue from Capitola Avenue to Esplanade;
- e. Stockton Avenue from Capitola Avenue to Cliff Drive; and
- f. Wharf Road from Stockton Avenue to the Capitola Municipal Wharf.

2. Parking Meter Zone A(2). The area labeled as Zone A(2) on the map attached to the ordinance codified in this chapter as Exhibit "A" found on file in the office of the city clerk shall constitute Parking Meter Zone A(2). Parking Meter Zone A(2) includes parking spaces along both sides of the following street: Cliff Drive from Stockton Avenue to the city limits.

3. Parking Meter Zone B. The city-owned parking lots adjacent to, and directly to the north and east of Capitola City Hall, comprised of APN 35-141-33 located at 426 Capitola Avenue, which encompasses the area known as the Upper and Lower Pacific Cove Parking Lots, as depicted on the map attached to the ordinance codified in this chapter as Exhibit "B" found on file in the office of the city clerk, shall constitute Parking Meter Zone B.

B. The city public works director, acting in the director's capacity as superintendent of streets, is hereby authorized to install parking meters in all public parking spaces located in all meter zones and to place appropriate signage relative to said metered parking. Parking meters will operate in each day of the week from the hours of eight a.m. to eight p.m. The city council, by resolution or minute order, may designate days when said parking meters will not operate in any meter zone.

C. The following parking meter rates are hereby established in the city of Capitola:

Zone A(1) (Village Area)	\$1.50 <u>\$2.00</u> per hour
Zone A(2) (Cliff Drive Area)	\$1.00 <u>\$2.00</u> per hour

Section 3. Compliance with the California Environmental Quality Act (“CEQA”). Adoption of this Ordinance is not a project within the meaning of CEQA Guidelines Section 15378 and 15061(b)(3) as it has no potential for physical effects on the environment because it involves a modification of certain rates and/or charges imposed by the City and additional administrative activity and does not commit the City to any specific project.

Section 4. Severability. If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. Effective Date. This Ordinance shall take effect 30 days following adoption, or upon certification by the California Coastal Commission of Amendments to Chapter 10.36, whichever is later.

Section 5. Publication. The City Clerk is directed to publish this Ordinance as required by State law.

This ordinance was introduced on the 8th day of June, 2023 and was passed and adopted on the ___ day of ___, 2023 by the City Council by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____
Margaux Keiser, Mayor

ATTEST:

Julia Moss, City Clerk

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA AUTHORIZING
SUBMITTAL TO THE CALIFORNIA COASTAL COMMISSION FOR THE
CERTIFICATION OF AN AMENDMENT TO THE LOCAL COASTAL PROGRAM
AMENDING MUNICIPAL CODE SECTION 10.36.055A.**

WHEREAS, the City of Capitola's Local Coastal Program (LCP) was certified by the California Coastal Commission in December of 1981 and has since been amended from time to time; and

WHEREAS, Chapter 10.36 of the Capitola Municipal Code is part of the Capitola's LCP-Implementation Plan ("LCP-IP"); and

WHEREAS, Section 10.36.055 of the LCP-IP includes parking meter rates and parking meter zones which were last updated in 2009; and

WHEREAS, because the City's parking meter rates and parking meter zones are included within the City's LCP-IP, any amendments to those provisions, including routine updates to adjust parking meter rates with inflation, require an amendment to Capitola's LCP-IP and certification by California Coastal Commission; and

WHEREAS, the City of Capitola is the only California coastal city with parking meter rates included within the City's LCP-IP; and

WHEREAS, it is common practice in other cities located within the Coastal Zone to obtain a Coastal Development Permit, rather than amend their LCP-IP, to modify parking meter rates and zones to ensure consistency with the Coastal Act; and

WHEREAS, the City of Capitola is required to establish parking meter zones and rates within the Municipal Code consistent with State of California Vehicle Code Section 22508; and

WHEREAS, staff evaluated the potential impact on public coastal access, and maintaining existing levels of public access in determining appropriate parking meter rates; and

WHEREAS, the proposed amendments support opportunities for alternative access to the Coastal Zone so as to fully mitigate any potential negative impacts and maximize access opportunities; and

WHEREAS, revenue from fee-based parking programs within the Coastal Zone shall be utilized to fund public access to coastal resources, protect public safety in the Coastal Zone, and provide public services in the Coastal Zone.

WHEREAS, the amendments would become a component of the Implementation Plan of the City's Local Coastal Program and is intended to be implemented in a manner that is in full conformance with the California Coastal Act.

WHEREAS, following the City Council's adoption, Capitola staff submitted the amendment to section 10.36.055 to the Californian Coastal Commission staff for preliminary review in preparation for Local Coastal Plan (LCP) certification; and

WHEREAS, Capitola Municipal Code Section 10.36.055 establishes specific review criteria and a coastal development permit to implement modifications to parking rates and parking zones as part of Capitola's Local Coastal Program Implementation Plan; and

RESOLUTION NO.

Item 6 C.

WHEREAS, the City provided Public Notice, as required under Coastal Act 30514 et seq., for Certification of the LCP Implementation Plan and Corresponding Maps.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Capitola, that this Resolution declares and reflects the City's intent to amend the LCP Implementation Plan as it pertains to Section 10.36.055A, as drafted, if certified by the California Coastal Commission, in full conformity with the City of Capitola LCP and provisions of the California Coastal Act.

BE IT FURTHER RESOLVED, that the City Manager or his designee is directed to submit the said Coastal Commission LCP Amendments to the California Coastal Commission for its review and certification. If the Coastal Commission approves the amendment package, it will take effect automatically upon Coastal Commission approval **or January 1, 2024, whichever is later**. If the Coastal Commission modifies the amendment package, only the modifications will require formal action by the City of Capitola.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola on the 22nd day of June, 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Margaux Keiser, Mayor

ATTEST: _____
Julia Moss, City Clerk

Analysis to demonstrate conformity with and adequacy to carry out the certified land use plan (Reg Sections 13511, 13512, 13519, 13552.) The following underlined items are submittal requirements for certification of an LCP-IP amendment followed by staff analysis.

- i. The staff report should include a discussion of the LCP or LCPA's relationship to and effect on other sections of the LCP. (Reg Sections 13552)

Staff Analysis: Currently, metered parking rates are included in Capitola Municipal Code section 10.36.055 which is part of the City's Local Coastal Program (LCP) Implementation Plan. Each time the City updates parking meter rates in Section 10.36, the change must be certified by the Coastal Commission prior to taking effect. This process can take up to six months. Capitola is the only coastal city in California with parking rates located within the LCP-IP. The proposed amendment removes the metered parking rates and zones from the LCP-IP. The amendment establishes a requirement of a coastal development permit and specific review criteria for rate amendments to ensure coastal access. The City Council would be authorized to issues such a CDP, however the Coastal Commission would have the authority to appeal the City's decision.

- ii. For implementation plan (zoning/muni code) amendments the staff report should include an analysis of how the amendment is in conformity with and adequate to carry out the certified land use plan.

Staff Analysis: The proposed amendment requires that parking meter zones and rates require a CDP and "when considering a Coastal Development Permit application for parking meter zones and rate modifications, the City shall evaluate the potential impact on public coastal access, and ensure existing levels of public access are maintained, including through ensuring that alternative access opportunities, including bike lanes and parking, pedestrian trails, and relocated free vehicular parking spaces, are provided so as to fully mitigate any potential negative impacts and maximize access opportunities. Any revenue from fee-based parking programs within the Coastal Zone shall only be used to fund public access to coastal resources, protect public safety in the Coastal Zone, and provide public services in the Coastal Zone."

The review criteria tied to the CDP is in conformity with the land use plan as it protects public access. Specifically, it:

- requires the city to evaluate potential impacts on public coastal access
- ensure existing levels of public access are maintained, including alternative access opportunities, to fully mitigate any potential negative impacts and maximize access opportunities
- requires all revenue from fee-based parking programs within the CZ only be used to fund public access to coastal resources, protect public safety in the CZ, and provide public services in the CZ.

The amendment is conformity with and adequate to carry out the following policies within the certified land use plan:

Policy II-1 It shall be the policy of the City of Capitola to provide safe and adequate

pedestrian access to and along the shoreline as designated in the Shoreline Access Plan.

Policy II-2 It shall be the policy of the City of Capitola to maintain the existing shuttle bus system so that it serves as an alternative to automobile use and parking within the Village. Furthermore, the City shall continue to seek out and implement other parking alternatives that may become available in the future. The intensity of development within Capitola Village shall be limited to the availability of parking.

Policy II-14 Maintain a commitment to all existing access walkways and paths to Capitola Beach.

Policy III-11 Public spaces and pedestrian paths in Capitola Village should be maintained and improved where necessary. Pedestrian use of these elements should always be of primary importance. Public pathways should be landscaped where appropriate to improve the appearance of the path.

Relevant Coastal Act Policies

SEC. 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people, consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

SECTION 30213: Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred. New housing in the coastal zone shall be developed in conformity with the standards, policies, and goals of local housing elements adopted in accordance with the requirements of subdivision (c) of Section 65302 of the Government Code.

- iii. In addition, if the affected area or application of an ordinance would involve land situated between the ocean and first public through road, or overall intensity of development, the local government staff report should address any potential effects that the proposed amendment will have on public access.

Staff Analysis: Public access was evaluated above. The proposed amendment ensures that potential effects on public access are evaluated, ensures existing levels of public access are maintained, and requires all revenues to be allocated within the coastal zone toward public access, safety, and services.

Capitola City Council

Agenda Report

Meeting: June 22, 2023

From: Public Works Department

Subject: Storm Damage Repair Contracts – Small Projects



Recommended Action: Authorize staff to enter into all necessary contracts to repair storm-damaged infrastructure in an amount not to exceed a total cost of \$790,000, with a net cost to the City of less than \$50,000.

Background: During and immediately after the storm event on January 5, 2023, multiple City assets sustained damage. Staff has been working through the Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program with the California Office of Emergency Services (CalOES) and FEMA staff to address damage repairs and recently received authorization to move forward with many small projects. Several additional projects are continuing to proceed through the PA Program process and will receive authorization to proceed at a later date.

Discussion: Table 1 summarizes the small projects included for Council approval in this staff report. More detail is provided in Attachment 1. Staff has advertised construction bids for these projects and anticipates contract execution in the next two to three weeks for construction in Summer and Fall 2023, dependent on permitting conditions and the need to maintain public access. Projects may be completed by one or several contractors.

Table 1. Small Project Estimates

Project	Construction Period 2023	Cost Estimate
Escalona & Monterey Mill & Overlay	Summer	\$80,000
Cliff Drive Parking Stalls Mill & Overlay	Summer	\$50,000
Hoopers Beach Access Ramp	Fall	\$70,000
Jetty Rehabilitation	Fall	\$200,000
Prospect Ave Slip Out	Summer	\$120,000
Wharf Rd Slip Out Stabilization	Summer	\$70,000
Soquel Creek Park & Bulkhead Repair	Fall	\$140,000
Storm Drain Outfalls	Summer	\$60,000
Total Estimate		\$790,000

In the event that bids for these projects result in a total cost of more than \$790,000, staff will return to Council to consider options to fund the project costs.

Staff expects multiple projects to be completed by the same vendors, such that there will ultimately be four contracts, each for more than one project, and each for approximately \$195,000. Staff expects responses to the bid documents no later than June 30, and for contracts to be prepared the following week. Staff is bringing this item now so that it may begin work on these projects prior to the next City Council meeting.

Fiscal Impact: The FEMA PA program provides 75% of project costs and CalOES provides 75% of the remaining costs. The City is responsible for the remaining 6.25% of project costs, approximately \$50,000. Funding for the City contribution for these projects is available in the Emergency Reserve Fund and has been accounted for in the draft FY 23/24 Budget.

CEQA: The proposed projects are statutorily exempt from the provisions of California Environmental Quality Act (CEQA) as an emergency project pursuant to Section 15269(b)(c), which provides for

emergency repairs to a publicly owned serviced facility and categorically exempt as an existing public facility pursuant to Section 15301(d) of the CEQA Guidelines, which provides for restoration of a public facility damaged from an environmental hazard such as flood for continued use of the facility involving negligible or no expansion of use beyond that already existing.

Attachments:

1. Project Summary

Report Prepared By: Jessica Kahn, Public Works Director

Reviewed By: Julia Moss, City Clerk; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager

JOB #1 - ROADWAY REPAIRS

JOB # 1A

Capital Damage Estimate

Project Name		Location
Escalona & Monterey Mill & Overlay	Roadway Restoration	Intersection of Escalona Dr, Central Ave & Monterey Ave

Description: 6,300sf asphalt restoration, Mill 4", Repair 2,000sf of Base Failures and Compact Base, Overlay 4"



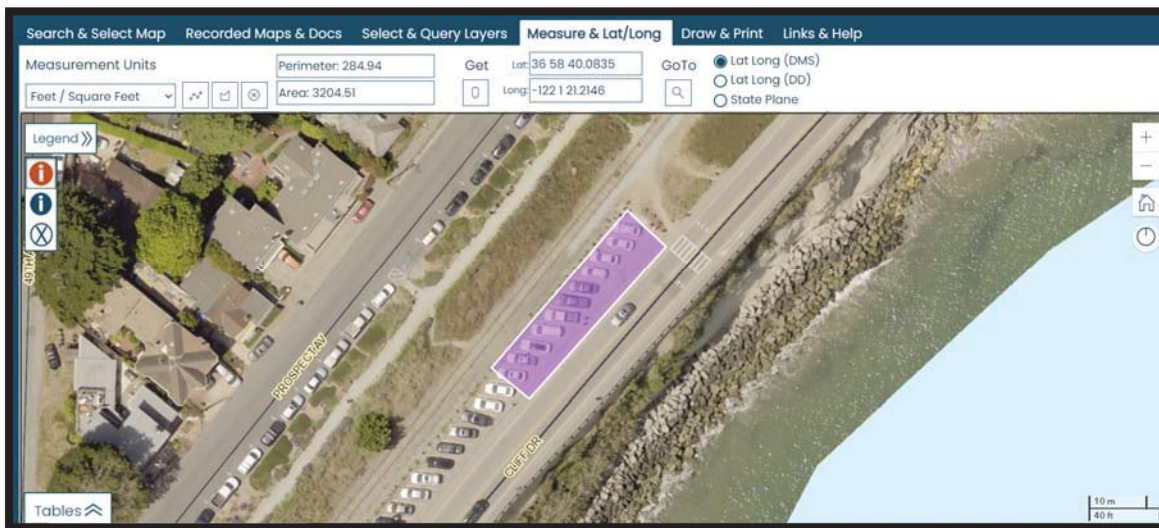
JOB #1 - ROADWAY REPAIRS

JOB # 1B

Capital Damage Estimate

Project Name		Location
Cliff Drive Parking Stalls Mill & Overlay	Roadway Restoration	Cliff Drive between 47 th and Wharf Rd

Description: 3,200sf asphalt restoration, Mill 4", Repair 1,000sf of Base Failures and Compact Base, Overlay 4"



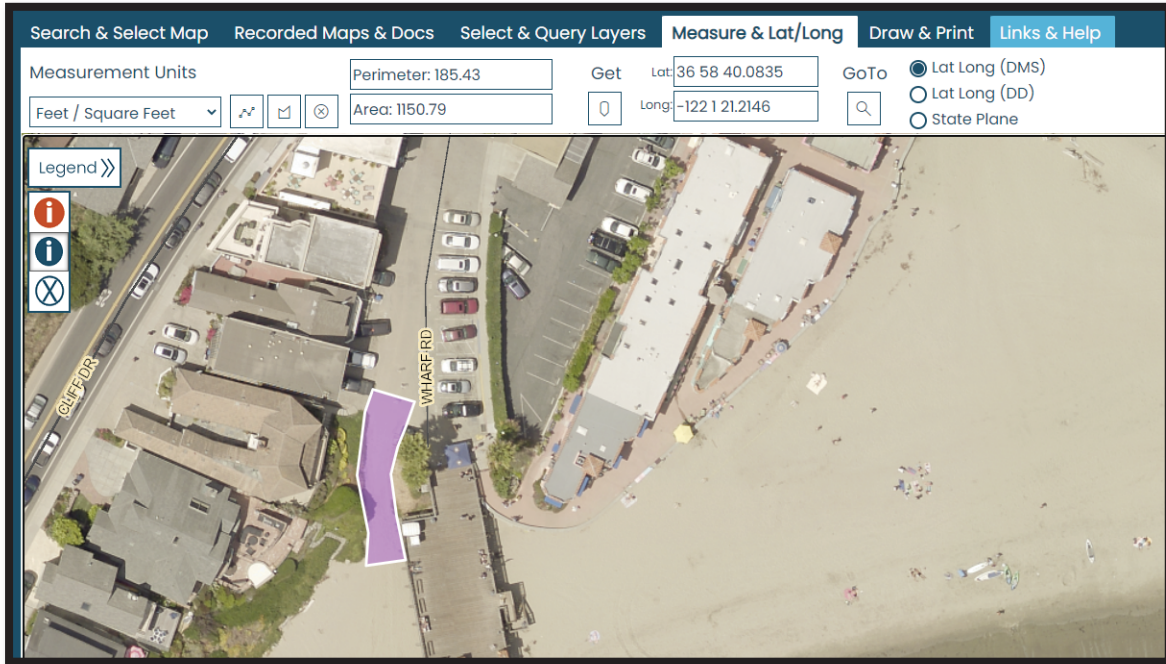
JOB #1 - ROADWAY REPAIRS

Capital Damage Estimate

JOB # 1C

Project Name		Location
Hoopers Beach Access Ramp	Coastal	Wharf Road past Cliff Drive

Description: Demo existing ramp, Grade & Prep Subgrade, 6" Aggregate Base Pad, 10' Wide CIP, Concrete Ramp w/Epoxy Rebar, 2' wide concrete drainage swale

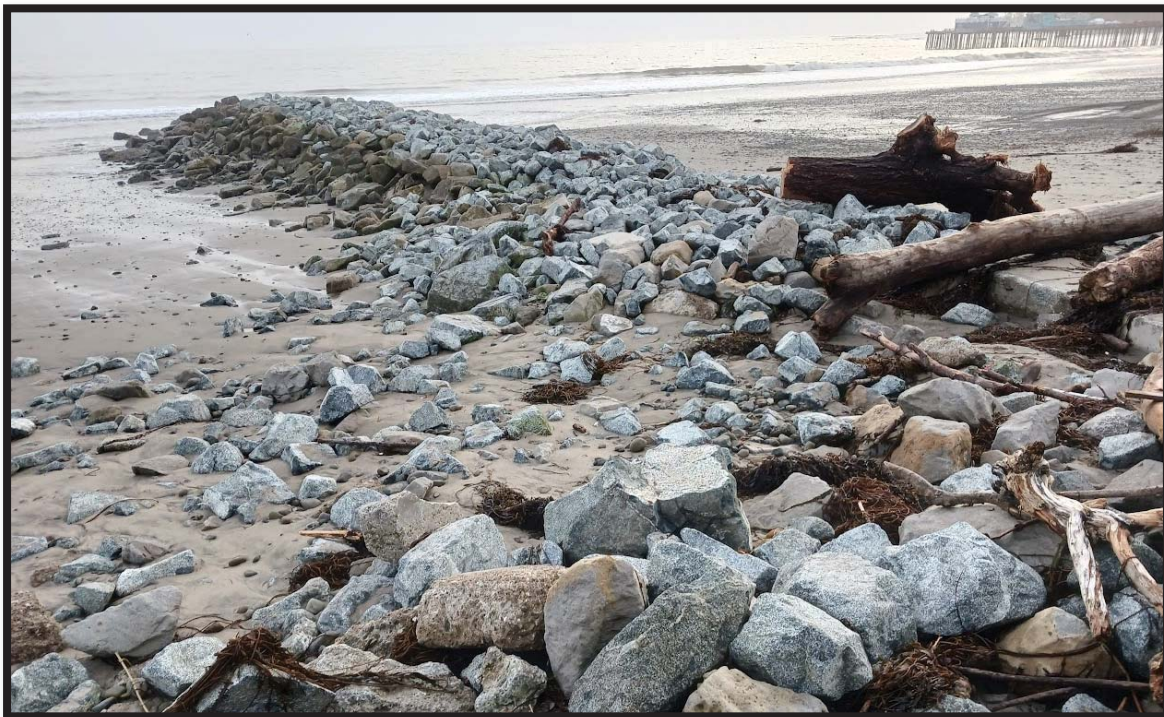
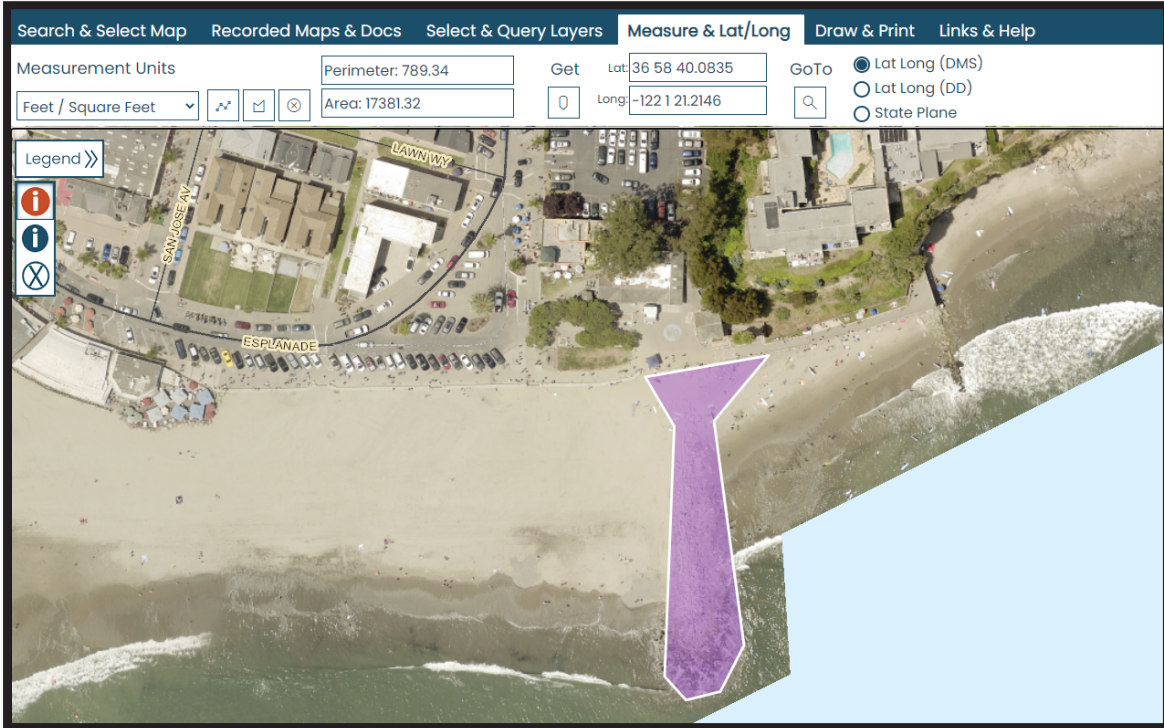


JOB #2 - JETTY REPAIRS

Capital Damage Estimate

Project Name		Location
Jetty Rehabilitation	Coastal	Capitola Beach adjacent Esplanade Park

Description: 200 tons of new 3 and 4 ton rock will require replacement and restacking



JOB #3 – SLIP OUT REPAIRS

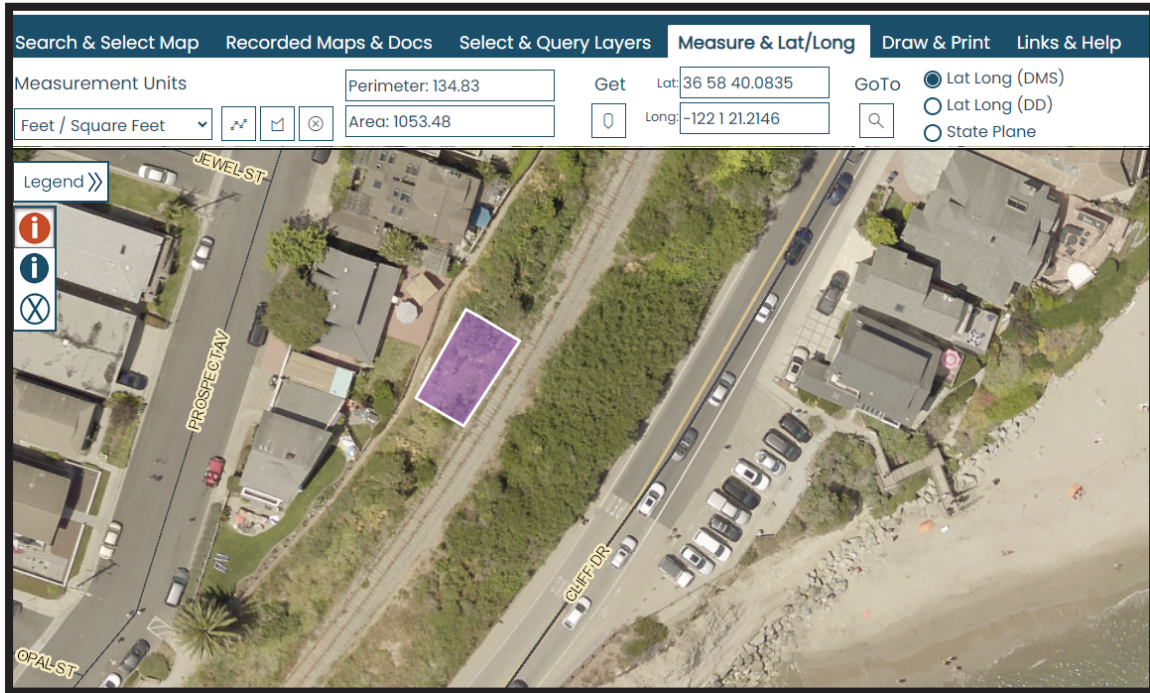
Item 6 D.

JOB # 3A

Capital Damage Estimate

Project Name	Location
Prospect Ave Slip outs	Below 1410 Prospect

Description: 35W'X30'H slide, Clear & Grub, Excavation, Filter Fabric, 200TN Rock Slope Protection, Topsoil Cover and Seed Clear & Grub



JOB #3 – SLIP OUT REPAIRS

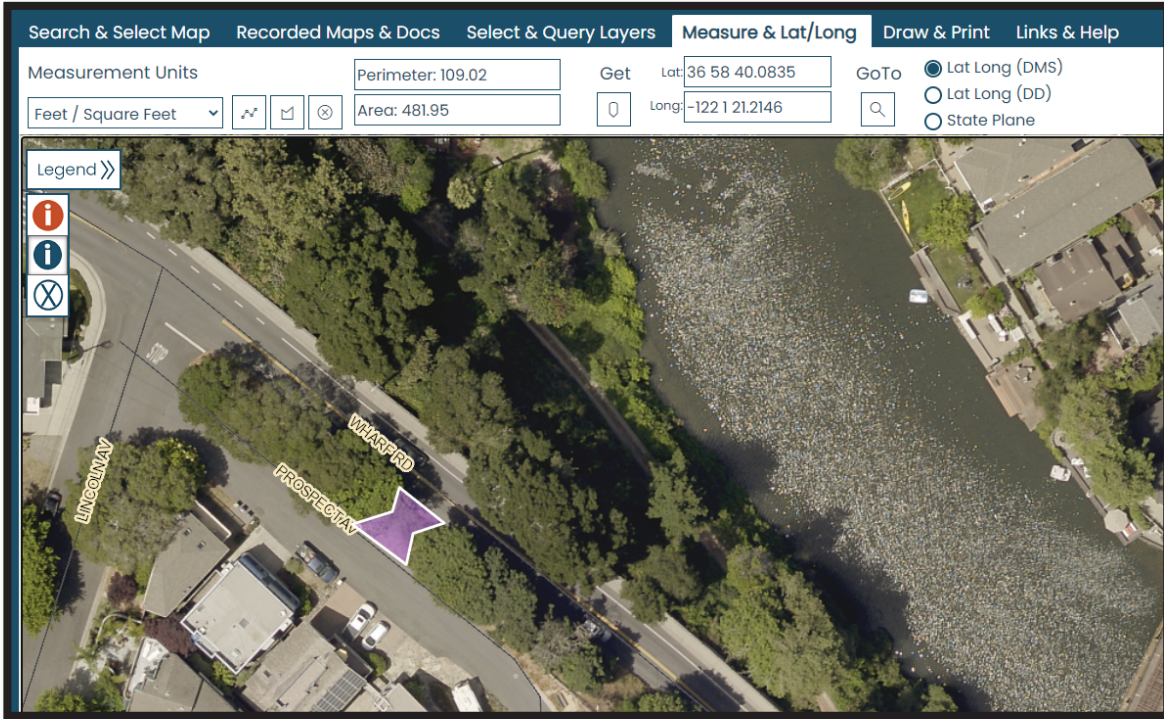
Item 6 D.

JOB # 3B

Capital Damage Estimate

Project Name		Location
Wharf Road Slip out Stabilization		Wharf Road between Lincoln Ave and Cliff Drive

Description: Slope stabilization (20'X20'H), Clear & Grub, Excavation, Filter Fabric, Rock Slope Protection (100TN), Topsoil Cover and Seed



P



JOB #4 - DRAINAGE REPAIRS

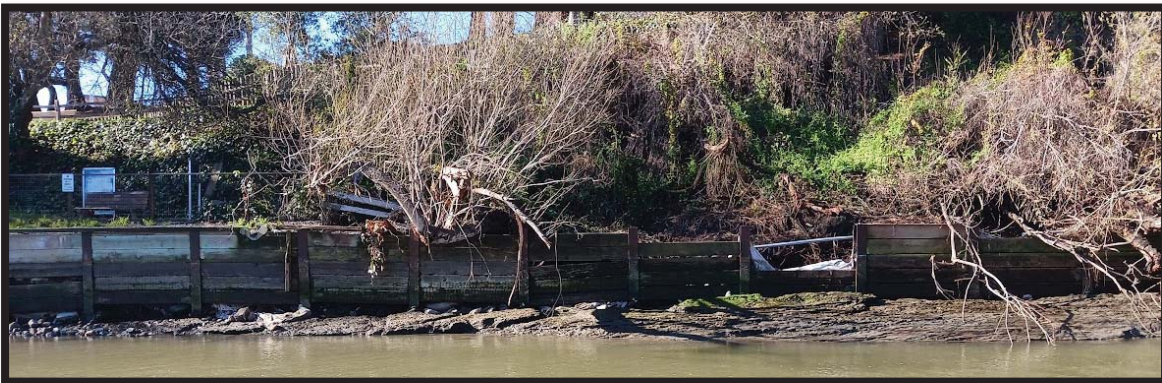
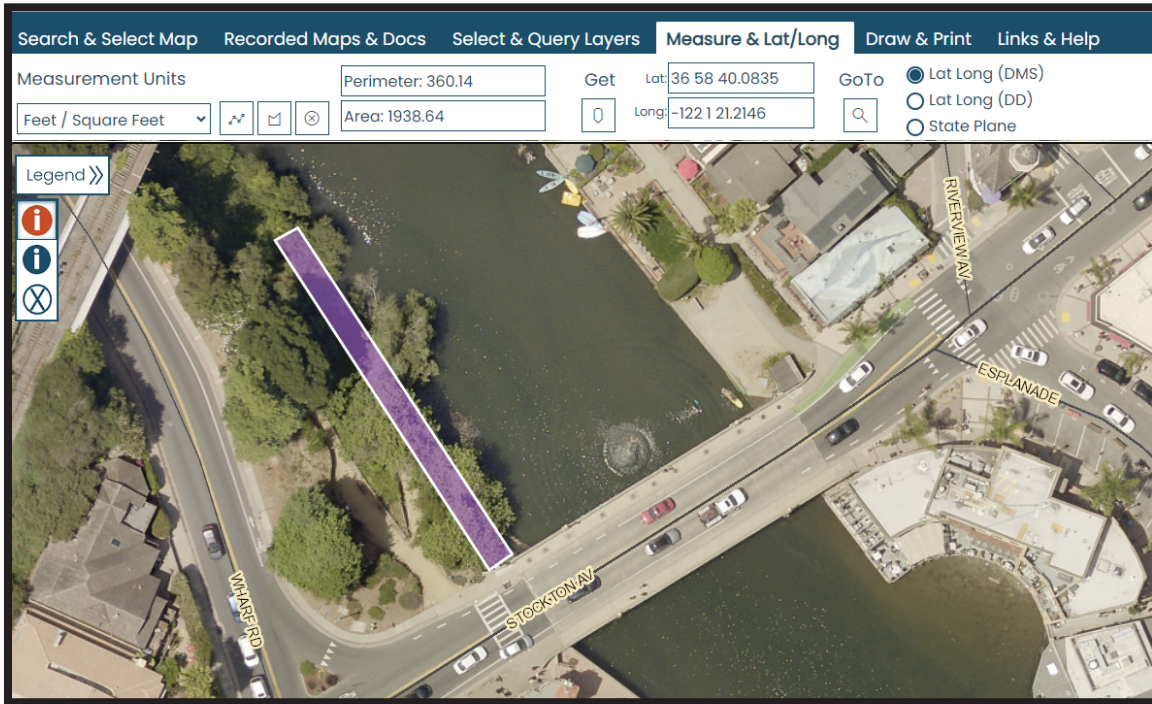
Item 6 D.

JOB # 4A

Capital Damage Estimate

Project Name	Location
Soquel Creek Park & Bulkhead Repair	Stockton Ave and Wharf Rd

Description: Repair damaged bulkhead, vegetation removal, Debris Removal and Rough Grading, 160 LF Lagging Replacement, Drain Rock Backfill, Topsoil Cover and Seed 1000sf



JOB #4 - DRAINAGE REPAIRS

Item 6 D.

JOB # 4B

Capital Damage Estimate

Project Name		Location
Soquel Creek Park & Bulkhead Repair		Esplanade & Monterey Ave

Description: Repair 3 damaged concrete outfall structures. Saw cut damaged concrete and replace. Replace steel cover plates



Capitola City Council

Agenda Report

Meeting: June 22, 2023

From: Public Works Department

Subject: 2023-24 Road Maintenance and Rehabilitation Account Expenditures



Recommended Action: Approve a resolution adopting a list of road maintenance and rehabilitation projects for Fiscal Year 2023-24, funded by Senate Bill 1: the Road Repair and Accountability Act of 2017.

Background: On June 9, 2022, the City Council held a duly noticed public hearing and approved a 5-year list of street and road projects based on projected funding for the City, including funding from the Road Maintenance and Rehabilitation Account, also known as Senate Bill 1 (SB 1). The 2023-24 project list includes heavy rehabilitation on Reposa Avenue, which has one of the City's lowest pavement condition indexes (PCI) at 21.

Discussion: In 2023-24 Capitola is programmed to receive \$243,569 from SB 1. All SB 1 funds will be spent on rehabilitating Capitola Road as listed in the 5-year list of projects.

Fiscal Impact: The revenue and expenditures of \$243,569 for SB 1 are accounted for in the Special Revenue fund for the Road Maintenance and Rehabilitation Account.

Attachments:

1. Resolution

Report Prepared By: Jessica Kahn, Public Works Director

Reviewed By: Julia Moss, City Clerk

Approved By: Jamie Goldstein, City Manager

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2023-24 FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City, will receive an estimated \$243,569 in RMRA funding in Fiscal Year 2023-24 from SB 1; and

WHEREAS, this is the seventh year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

WHEREAS, the City has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

WHEREAS, the City completed an update to the Pavement Management System in 2022 to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City complete needed pavement management improvement projects; and

WHEREAS, the 2018 California Statewide Local Streets and Roads Needs Assessment found that the City's streets and roads are in an "at-risk" condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads into a "good" condition; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will provide a dedicated source of funding for roadway projects.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND by the City Council of the City of Capitola, State of California, as follows:

1. The foregoing recitals are true and correct.
2. The following list of newly proposed projects will be funded in-part or solely with Fiscal Year 2023-24 Road Maintenance and Rehabilitation Account revenues:

Project Title: Reposa Avenue Rehabilitation
Project Description: Heavy rehabilitation, grind and overlay, on Reposa Avenue
Project Location: 38th Avenue to 41st Avenue
Estimated Project Schedule: Start (02/24)– Completion (06/24)
Estimated Project Useful Life: 15-20 years

PASSED AND ADOPTED by the City Council of the City of Capitola, State of California this 22nd day of June, 2023, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

Margaux Keiser, Mayor

ATTEST:

Julia Moss, City Clerk

Capitola City Council

Agenda Report

Meeting: June 22, 2023

From: Police Department

Subject: Capitola Bar and Grill Entertainment Permit Appeal



Recommended Action: Adopt a resolution denying an appeal of the City Manager’s decision to deny an application for a 2023 Regular Entertainment Permit for Capitola Bar and Grill.

Background: Capitola Municipal Code Chapter 5.24 governs entertainment permits. Section 5.24.020 requires any business to obtain an entertainment permit before arranging for or allowing entertainment to be conducted on their premises. Section 5.24.010 defines “entertainment” as a performance by live entertainers for entertaining patrons; or, playing recorded music, with or without video, for the specific purpose of entertaining patrons.

Section 5.24.030 divides entertainment permits into three categories, with various fees and conditions based on the type of entertainment and activities.

- “Single-event” entertainment permits are required for activities that occur within a single seven-day period.
- “Minor” entertainment permits are required for businesses that have entertainment that is incidental to the primary business, have no dance floor or elevated stage, and never require a cover charge.
- “Regular” entertainment permits are required for businesses that provide entertainment but do not qualify for a single-event or minor entertainment permit. This permit governs establishments that have live music and entertainment that attracts business.

Section 5.24.040.B authorizes the City Manager, or department head designee, to issue certain entertainment permits upon making the findings in Section 5.24.040.C. Section 5.24.040.D authorizes the City Council or City Manager to condition the permit to assure that the authorized entertainment does not cause disturbances.

To further guard against disturbance, CMC Section 5.24.040.D authorizes the City Manager to add conditions to each permit regarding the days and times of operation, addressing any public safety issues, and requiring the permittee to manage noise level limits.

Section 5.24.080 authorizes the City Manager to develop application forms for entertainment permits. Applicants may be required to submit any nonprivileged information reasonably related to the intent of the ordinance.

The current application form, which has been used by the City since 2018, requires applicants to provide information about the business, proposed entertainment, the hours of intended operation, and, if the applicant is a tenant, to obtain the signature of the property owner.

Entertainment permits for the cities of Santa Cruz, Watsonville, and Scotts Valley all require the property owner’s consent.

This year, the Capitola Police Department has issued nine entertainment permits. The Department issued six permits in 2019, ten in 2020, seven in 2021, and twelve in 2022.

Discussion: On October 21, 2021, Michelle and Lasalle Strong applied for a new Minor Entertainment Permit for Capitola Bar and Grill, located at 231 Esplanade, #102, that would be effective for the remaining few months in 2021. 231 Esplanade is a mixed-use residential/business structure. The building is comprised of residential apartments, a coffee shop, and two restaurants (Margaritaville and Capitola Bar and Grill). The application did not include the property owner’s signature.

The Strongs had recently acquired the business, and their ABC license was pending due to the transfer of ownership. The type of ABC license issued to the applicant is important in the application process because ABC can add restrictions and specific requirements based on the type of license. Capitola Bar and Grill has a Type 47 – On Sale General Eating Place. The City requires a current ABC license and fire inspection before issuing entertainment permits. The applicant received their ABC license on October 29, 2021, and completed the required fire inspection on November 10, 2021.

The City issued the permit on November 16, 2021, for the remaining six weeks of 2021 without the property owner's signature, which is inconsistent with the City's entertainment permit application and past practice.

On January 3, 2022, the Strongs applied to renew their Minor entertainment permit for 2022. The Police Department accepted the Strongs' previously submitted ABC license and recent fire inspection and began processing their application. The 2022 application did not include the property owner's signature.

Because the Strongs intended to offer more than incidental entertainment, staff recommended they apply for a "Regular" entertainment permit. The Strongs agreed and staff issued Capitola Bar and Grill a 2022 Regular Entertainment Permit on January 27, 2022.

During the summer of 2022, the property owner, Steve Yates, contacted the Police Department and expressed concerns about excessive noise levels and live music being played at Capitola Bar and Grill. Staff explained that the City had issued Capitola Bar and Grill a Regular Entertainment Permit for 2022. Mr. Yates explained that he had not signed the application form.

Staff then reviewed the application materials for Capitola Bar and Grill and determined that the application had not been signed by the property owner and the permit had been issued in error.

In December 2022, Capitola Bar and Grill applied for a 2023 General Entertainment Permit (Attachment 1). The application lists Steve Yates as the property owner with an email address but does not include Mr. Yates's signature.

As the application did not include the required signature, staff determined the application was incomplete. Staff notified the Strongs of this issue and met with the Strongs on December 23, 2022, to discuss options. At the meeting, staff explained that the application was incomplete, and that their prior permits had been issued in error. Staff offered to reach out to the property owner to recommend mediation. The Strongs indicated they were interested in mediation and, following that meeting, staff reached out to Mr. Yates to recommend a mediation process.

On January 31, 2023, staff sent the Final Notice of Decision to the Strongs, denying their application for a 2023 Entertainment Permit (Attachment 2). On February 21, 2023, the Strongs appealed the denial (Attachment 3).

Following receipt of the appeal, staff reviewed all previously issued entertainment permits on file to determine if other applications lacked a property owner's signature. Of 21 applications reviewed, 18 included the property owner's signature. The three applications that did not include the property owner's signature were the Capitola Bar and Grill applications for 2021 and 2022, and the Wharf House Restaurant application for 2022. The City of Capitola is the property owner of the Wharf House, and staff had previously determined that the issuance of the Wharf House permit by the City constitutes property owner consent.

Appellant's arguments in the appeal are below, with staff's response in bold.

Appellant states, "[t]he City Manager's letter says that he canceled the Permit (or denied the application for renewal, it comes to the same thing) because it did not include the landlord Steve Yates' consent on the application form that the City Manager himself made up. But under the Municipal Code section that he cites, his power to develop the form is limited. One legal question for you to decide is if that requirement is properly on the form or not." Appellant further notes that "CMC 5.24.080 gives the City Manager limited power to develop the application form. Specifically, it limits the form to 'any nonprivileged information reasonably related to the concerns expressed in Section 5.24.005.'"

Section 5.24.080 authorizes the City Manager to “develop application forms pertinent to this chapter.” It does not limit the questions the City Manager may include on the form. Section 5.24.040.C allows the City Manager to issue permits upon making certain findings, including that no significant number of non-patrons will be disturbed by the entertainment. Similarly, Section 5.24.040.D allows the City Manager to condition the permit to assure non-disturbance by including certain permit-specific conditions. These provisions underscore the City Manager’s authority in administering Chapter 5.24. In addition, if the requirement for the property owner’s signature did not appear on every application form, Section 5.24.040.D authorizes the City Manager to impose it as a condition on any specific permit.

The requirement for the property owner’s signature is related to the concerns expressed in Section 5.24.005, which states that, in adopting the Chapter, the Council found that “[e]ntertainment often produces noise which is obtrusive to persons not patronizing the business or activity which produces the noise.” Because property owners often have more than one tenant in a building, ensuring the property owner is supportive of the permit request helps protect the property owner’s other tenants in the same building. Finally, any complaints about noise from the business could affect the property owner in multiple ways, including impacting the property owner’s ability to lease the premises (or nearby properties) or exposing the property owner to complaints about the noise. Lastly, requiring the property owner’s signature helps ensure the City is not authorizing entertainment on the property when such uses are not permitted in the lease between the tenant and property owner.

Second, the appellant states that “the City should not cancel that permit unless there is a good reason such as excessive noise complaints.”

The City did not revoke the previously issued entertainment permits. The City denied the applicant’s 2023 entertainment permit because it lacked the property owner’s signature granting permission to use their property for entertainment purposes. There is no indication in Chapter 5.24 that the City is only permitted to revoke, or not issue a permit, for a specific reason. Instead, Section 5.24.050 states that a permit is valid for no more than one year from the date of issuance and that the issuance of a permit “does not establish a vested right to a renewal of the permit.” It also authorizes the City to cancel any permit for not complying with the requirements in the permit. In this case, the City is not canceling or revoking a permit for failure to comply with the permit requirements; it is simply not issuing a 2023 entertainment permit because the application lacks the landowner’s signature.

Third, appellant states that “the landlord is legally bound by his agreements to allow Entertainment.”

The City is not a party to the lease between the landlord and the appellant. Staff thus cannot comment on the provisions in the lease. The City is charged with administering and enforcing its own Municipal Code, which is what it is doing here.

Finally, the appellant states that, because the City has twice issued the permit in the past, without the landlord’s signature, it should reissue it now.

Staff acknowledges its error in previously issuing entertainment permits to Capitola Bar and Grill without the landlord's signature. However, the remedy for that error is not to grant another permit for 2023, especially given that other businesses in the City have been required to provide the property owner’s signature to obtain an entertainment permit. Based on staff’s review of prior entertainment permits that remain on file pursuant to the City’s record retention schedule, and staff’s experience administering the entertainment permit program, there has been no other example of a business obtaining an entertainment permit without the property owner’s consent over the last decade.

Alternative Actions: Council may grant the appeal or modify staff’s determination. In either case, staff suggests that it return at a subsequent meeting with a resolution consistent with Council direction.

Fiscal Impact: None.

Attachments:

1. 2023 Capitola Bar and Grill Entertainment Permit Application
2. Denial Letter from the City
3. Appeal Letter from the Capitola Bar and Grill
4. Resolution
5. Correspondence

Report Prepared By: Andrew Dally, Police Chief

Reviewed By: Julia Moss, City Clerk; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager



INTEROFFICE MEMORANDUM

TO: ANDREW DALLY, CHIEF OF POLICE *AD* 12/19/2022
FROM: SARAH RYAN, POLICE CAPTAIN *SR*
SUBJECT: ENTERTAINMENT PERMIT
DATE: DECEMBER 15, 2022

Capitola Bar & Grill has applied for a 2023 Minor Entertainment Permit. This establishment is located at 231 Esplanade #102, Capitola, CA 95010. This is a renewal application for 2023 and the necessary documents have been reviewed and are attached to this application.

The requested days are Wednesday-Sunday from 5:00 pm – 10:00 pm. These operational hours are acceptable under the current conditions for a Minor Entertainment Permit; however, the "Property Owner Statement" section of the application does not have the property owner's signature. Per Chapter 5.24 of the City of Capitola Municipal Code the owner of the listed property must sign the application providing "consent" to the business owner.

I researched the service calls for this address and compared them to the requirements outlined for a Regular Entertainment Permit. To summarize, there was a total of 40 calls for service (CFS) for this address and none required additional review. The owners of Capitola Bar and Grill do not have the property owner's consent and have attached an email explaining their position. In addition, the property owner, Steve Yates also responded citing 53 additional noise complaints and states he will not sign the permit due to noise concerns.

Based on my review of the Capitola Bar & Grill's incomplete Entertainment Permit Application, I respectfully request the business owners resubmit a complete application. Not having the property owner's consent makes the application incomplete.



422 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (831) 475-4242
FAX (831) 479-8881

ANDREW J. DALLY
CHIEF OF POLICE

APPLICATION FOR ENTERTAINMENT PERMIT

Application fee of \$41 must be submitted with this completed application.

I. BUSINESS INFORMATION:

Business Name: Capitola Bar & Grill
Business Address: 231 Esplanade #102 Capitola, CA 95010
Business Phone #: 831-854-2888 Website: capitolabarandgrill.com

II. APPLICANT/BUSINESS OWNER'S INFORMATION:

Applicant/Business Owner's Name: Lasalle Strong
Address: [REDACTED]
Phone #: [REDACTED] Email: info@capitolabarandgrill.com

III. BUSINESS CO-OWNER'S INFORMATION:

Business Co-Owner's Name: Michelle Strong
Address: [REDACTED]
Phone #: [REDACTED] Email: info@capitolabarandgrill.com

IV. MANAGER'S INFORMATION:

Manager/Responsible Party: Lasalle Strong
Address: SAME AS ABOVE
Phone #: _____ Email: _____

V. TYPE OF PERMIT:

- Single Event Entertainment Permit (\$41.00 + application fee)
- Minor Entertainment Permit (\$174.00 + application fee)
- Regular Entertainment Permit (\$652.00 + application fee)

VI: ENTERTAINMENT OPERATION INFORMATION:Days of Entertainment: Wed - Fri - Sat - SunHours of Entertainment: Varies on day, 5pm-10pmOccupancy Rating for Entertainment: 115Copy of Current ABC Alcohol License Attached: Yes No N/A

An annual fire inspection from Central Fire must be performed before submitting this completed application. Fire Inspection Completed: Yes No

Copy of Fire Inspection Attached: Yes No Date Completed: 12/02/2022

If a Use Permit is required and one has not been obtained, it must be approved prior to obtaining approval of a Capitola Police Department Entertainment Permit. Contact the Planning Department for information on your specific entertainment operation.

Have you obtained a Planning Department Use Permit? Yes No N/A

If Yes, Indicate Permit #: _____ Approval Date: _____

Submit a detailed, written description of the business and the proposed entertainment operation. Use a separate sheet to describe the following:

1. Type of business
2. Type of entertainment
3. Food service days and hours
4. Staffing and security plan FOR ENTERTAINMENT OPERATION, INCLUDING:
 - a. Security staffing (number and type of licensed security guards, doormen, and other security staff)
 - b. During and after hour crowd management (interior/exterior areas)
 - c. In and out privileges
 - d. Exterior night lighting (perimeter building, adjacent alleyways, garbage, and parking areas, if applicable)
5. Submit a floor plan for location of proposed entertainment including dance floor area, stage, tables, seating and exits

VII. CORPORATION INFORMATION:

Corporation Name: Capitola Strong Inc

Address: 231 Esplanade #200, CA 95010

Phone #: [REDACTED] Email: info@capitola-bar-and-grill.com

VIII. PROPERTY OWNER'S INFORMATION:

Property Owner's Name: Steve Yates

Address: _____

Phone #: _____ Email: (STEVE YATES EMAIL)
margaritaville.golf@yahoo.com
PROPERTY MANAGER - RUSSELL GROSS
[REDACTED]

IX. PROPERTY OWNER STATEMENT:

As the property owner, I do hereby consent to live entertainment of the type described in this application to be conducted upon the premises occupied by the above-named applicant in accordance with the provisions set forth by Chapter 5.24 of the City of Capitola Municipal Code.

Property Owner's Signature

Date

Print Name

X. APPLICANT / BUSINESS OWNER(S) STATEMENT:

- A. I agree to the conditions as set forth in the following paragraph in conjunction with Chapter 5.24 of the City of Capitola Municipal Code:
1. That such permit is not transferable.
 2. That such permit shall expire no later than one year from the date of issuance.
 3. The issuance of a permit for one year does not establish a vested right to a renewal of the permit.
 4. To uphold any special terms, conditions and restrictions of such permit as set forth by the Chief of Police.
 5. To allow police officers and any official city inspectors to enter free of charge for the purpose of investigation and/or inspection of my establishment.
 6. If, during any permit period, the nature of the business activity or the circumstances surrounding the event to which the permit pertains change from the way it was initially permitted, the city in its sole discretion may require any permit holder to immediately apply for a new permit as stated in section 5.24.050.
 7. That any changes in the permitted entertainment operation requires a written, detailed description of the proposed changes submitted to the Chief of Police **prior** to the changes being put into effect. Changes include though not limited to property owner(s); business owner(s); type, days, and hours of entertainment; location of entertainment; alcohol license and service; modification to the building and area(s) where entertainment is performed. Changes in the permitted entertainment operation may also require a modification of said permit.
 8. A permit may be revoked for failure to comply with permit conditions or for having supplied false information in obtaining the permit as stated in section 5.24.060.
- B. I declare under penalty of perjury that the information contained herein is true and correct.

Executed at Capitola, California on the 10 day of NOVEMBER, 2022.



Business Owner's Signature

Lasalle Strong

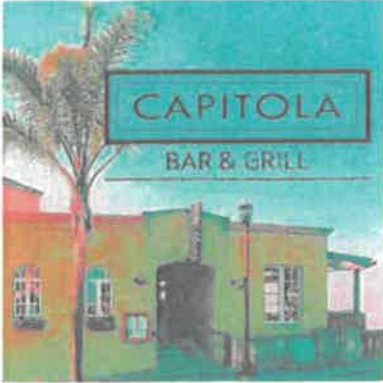
Print Name



Business Co-Owner's Signature

Michelle Strong

Print Name



Capitola Bar & Grill

231 Esplanade #102 Capitola, CA 95010

1. Family friendly sports bar
2. Live Music, Karaoke
3. American Blend Cuisine – available during open hours
 - a. Sunday to Thursday 10am-9pm
 - b. Friday/Saturday 10am-10pm
4. Staffing: Entertainment is provided to all ages, family-friendly dining environment
 - a. Manager and Security will monitor front door, crowd control
 - b. Casual dining experience, crowd is controlled by staff
 - c. Cameras and lighting are provided at all entrances and exits
5. Bands are set in right corner of dining room. Sound curtains have been installed at all windows and patios that are exposed to neighboring buildings and front entrance. Dining tables are set to view the entertainment. Wood panels have been installed to interior walls, and sound panels have been installed to ceiling.



STATE OF CALIFORNIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
ALCOHOLIC BEVERAGE LICENSE

Item 7 A.

ON-SALE GENERAL EATING PLACE

VALID FROM

Oct 01, 2022

CAPITOLA STRONG INC.

SOQUEL, CA 95073

EXPIRES

Sep 30, 2023

TYPE NUMBER DUP

47 628965

AREA CODE

4401 26

RENEWAL

BUSINESS ADDRESS (IF DIFFERENT) DBA: CAPITOLA BAR & GRILL
231 ESPLANADE
CAPITOLA, CA 95010

CONDITIONS

OWNERS: CAPITOLA STRONG INC.

7



IMPORTANT INFORMATION

EFFECTIVE PERIOD: This license is effective only for the operating period shown above. A new license will be sent 4 to 6 weeks after the expiration date on your license if payment is timely. Your license status will remain in good standing for 60 days after the expiration date if the renewal payment was received timely. To check the status of your license, visit <http://www.abc.ca.gov/datport/LQSMenu.html>.

RENEWAL NOTICES: Renewal notices are sent to premises address unless a specific mailing address is requested. If a notice is not received 30 days before expiration date shown above, contact the nearest ABC office. To assure receipt of notices, advise your local ABC office of any change in address.

RENEWAL DATES: It is the licensee's responsibility to pay the required renewal fee by the expiration date shown above.

A Penalty is charged for late renewal and the license can be automatically revoked for failure to pay.

RENEWAL PAYMENTS: Renewal payments can be made in person by visiting your local office or sent by mail to ABC Headquarters, 3927 Lennane Drive, Suite 10D, Sacramento, CA 95834. If you do not have your renewal notice, your license number and the reason for payment (ex. "renewal") must be clearly indicated on the check. You can contact your local ABC office for your renewal fee amount.

SEASONAL LICENSES: It is the licensee's responsibility to pay the required renewal fee prior to the next operating period.

POSTING: Cover this license with glass or other transparent material and post it on premises in a conspicuous place.

CONDITIONS: A copy of all applicable conditions must be kept on premises.

LICENSEE NAME: Only 10 names will be printed on each license. If there are more names associated with the license, they will be indicated by "AND XX OTHERS". All names are on file and available upon request from your local ABC office.

DBA: If you change your business name please notify your local ABC office.

If you have any questions regarding this license, contact your local ABC office. You can find the contact information for each district office at <http://www.abc.ca.gov/distmap.html>.

NOTE: CONTACT YOUR LOCAL ABC OFFICE IF YOUR LICENSED PREMISES WILL BE TEMPORARILY CLOSED FOR MORE THAN 15 DAYS OR WILL BE PERMANENTLY CLOSED.

<http://www.abc.ca.gov>



Central Fire District of Santa Cruz County



Occupancy: **CAPITOLA BAR AND GRILL**
Occupancy ID: **3521101**
Address: **231 ESPLANADE Apt/Suite #102**
CAPITOLA CA 95010

Inspection Type: **1st Reinspection**
Inspection Date: **12/1/2022** By: **McAvoy, Jaime (803843)**
Time In: **14:00** Time Out: **14:15**
Authorized Date: **12/02/2022** By: **McAvoy, Jaime (803843)**

Form: Annual

Inspection Description:

Central Fire Protection District Inspection Form

Inspection Topics:

Fire Protection and Life Safety Equipment

Service and tag kitchen extinguishing system every 6 months or after activation.
Bi-annual service is required. Kitchen cannot operate with extinguishing system discharged or out of service.

Status: PASS

Notes: ansul system last serviced 9/2021

12/1/2022 - serviced

Replace corroded, damaged or painted sprinkler heads.
Damage corrosion or paint will prevent sprinkler heads from activating at listed temperature.

Status: FAIL

Notes: sprinkler head in kitchen near stove needs servicing. should not be black

Fire Extinguishers

Provide annual service for fire extinguisher(s).
Annual maintenance will provide for property charge and serviced extinguishing devices, and assure proper operation if needed to fight a small fire.

Status: PASS

Notes: 2A:10BC extinguisher and K extinguisher last serviced 9/2021

12/1/2022 - serviced

Electrical

Discontinue use of extension cords in lieu of permanent wiring.
Temporary wire does not afford the durability, safety, and protection from shock or fire that is found in the construction of an enclosed electrical system.

Status: PASS

Notes: refrigerator needs to be plugged directly into wall. can not use extension cord.

12/1/2022 - serviced

Additional Time Spent on Inspection:

Category	Start Date / Time	End Date / Time
----------	-------------------	-----------------

Notes: No Additional time recorded

Total Additional Time: 0 minutes
Inspection Time: 15 minutes
Total Time: 15 minutes

Summary:

Overall Result: Passed with comments

Inspector Notes: please still reach out to property management about sprinkler head in kitchen

Inspector:

Name: McAvoy, Jaime
Rank: Fire Inspector
Email(s): jaime.mcavoy@centralfiresc.org

Signature

Date

Representative Signature:

Signature

Date

Incidents:40

Incident #	Beat	All Assigned Units	Incident Date/Time	Type	Mod Circ	Location	Apt	City	Dispo	Report #
CP2200001497	10	S510, 525	2/3/2022 06:37:47	ALARM	459A	231 ESPLANADE AVE		CAPITOLA	H90	
CP2200002561	10	566	2/19/2022 13:44:17	FUP		231 ESPLANADE AVE		CAPITOLA	H50	
CP2200002746	10	528	2/23/2022 07:34:55	ALARM	459A	231 ESPLANADE AVE		CAPITOLA	U90	
CP2200003436	10	529	3/5/2022 01:14:58	OUT		231 ESPLANADE AVE		CAPITOLA	S85	
CP2200004406	10		3/23/2022 10:04:03	911W	O	APPROX LOC:231 ESPLANADE AVE		CAPITOLA	CALLB	
CP2200004971	10	S513, 532, 527.	4/2/2022 22:15:07	415N	NOCO NT	231 ESPLANADE AVE		CAPITOLA	S67	
CP2200005175	10	566, 565	4/6/2022 14:43:53	ASSIST		231 ESPLANADE AVE		CAPITOLA	H50, H50	
CP2200005642	10	483, 521, 524	4/13/2022 17:00:30	OUT		231 ESPLANADE AVE		CAPITOLA	C30	22CP-00443 (CP/524)
CP2200006002	10		4/19/2022 11:58:29	911W	O	231 ESPLANADE AVE		CAPITOLA	DUP	
CP2200006125	10	532, 529	4/22/2022 00:56:31	ALARM	459A	231 ESPLANADE AVE	101	CAPITOLA	H90, H90	
CP2200006264	10	532, 529	4/24/2022 01:38:12	OUT		231 ESPLANADE AVE		CAPITOLA	H60	
CP2200006298	10	K526	4/24/2022 19:50:44	415N	NOCO NT	231 ESPLANADE AVE		CAPITOLA	H60	
CP2200006539	10	S510, M523	4/29/2022 08:40:20	ALARM	459A	231 ESPLANADE AVE		CAPITOLA	H90	
CP2200006926	10	528, 532	5/5/2022 18:57:37	415N	NOCO NT	231 ESPLANADE AVE		CAPITOLA	U70	

12/12/2022 4:18:47 PM

CP2200006928	10	532	5/5/2022 19:53:01	415N	CONT	231 ESPLANADE AVE	102	CAPITOLA	S70
CP2200006937	10	532, 529	5/6/2022 00:01:02	INTOX		231 ESPLANADE AVE		CAPITOLA	A86
CP2200007316	10	566, 528	5/13/2022 13:52:45	CRASH	NON	231 ESPLANADE AVE		CAPITOLA	S50, S50
CP2200007882	10		5/21/2022 15:55:13	SUSPIC	CONT	231 ESPLANADE AVE		CAPITOLA	RPCAN
CP2200007890	10	M523, 532	5/21/2022 19:10:31	RTL	CONT	231 ESPLANADE AVE	102	CAPITOLA	G67, G67
CP2200008415	10	S512	5/29/2022 18:50:20	CITCOM		231 ESPLANADE AVE		CAPITOLA	H00
CP2200008850	10	528, 529	6/5/2022 23:49:24	OUT		231 ESPLANADE AVE		CAPITOLA	S67
CP2200009150	10	527	6/11/2022 04:59:01	TOW		231 ESPLANADE AVE		CAPITOLA	R55
CP2200009208	10	527	6/12/2022 05:50:15	TOW		231 ESPLANADE AVE		CAPITOLA	R55
CP2200009236	10	483	6/12/2022 17:10:40	LOSTP		231 ESPLANADE AVE		CAPITOLA	S60
CP2200009653	10	528	6/19/2022 20:21:49	20002	C	231 ESPLANADE AVE		CAPITOLA	H50
CP2200010090	10	564, 525, 483, 524, 528	6/27/2022 16:42:15	415	B	231 ESPLANADE AVE		CAPITOLA	H67, H60, H67, H67
CP2200010629	10	CPM2	7/6/2022 17:09:50	C3MED		231 ESPLANADE AVE		CAPITOLA	HBD
CP2200010895	10	529	7/12/2022 22:49:41	CAMPIN		231 ESPLANADE AVE		CAPITOLA	S42, S20
CP2200010908	10	S518, 525	7/13/2022 10:37:33	ALARM	459A	231 ESPLANADE AVE	102	CAPITOLA	H90
CP2200011057	10	534, S513	7/15/2022 23:26:37	415N	CONT	231 ESPLANADE AVE		CAPITOLA	H70

12/12/2022 4:18:47 PM

CP220001152Z	10	528, 525, 524	7/24/2022 16:21:32	537		231 ESPLANADE AVE	CAPITOLA	G30, G30
CP2200011529	10	S512, 524, 528	7/24/2022 16:59:27	FIGHT		231 ESPLANADE AVE	CAPITOLA	S67, S67, S67
CP2200012652	10	CPM2	8/13/2022 14:00:33	C3MED		231 ESPLANADE AVE	CAPITOLA	BOL
CP2200013421	10	524	8/30/2022 17:48:03	OUT		231 ESPLANADE AVE	CAPITOLA	S85
CP2200014514	10		9/19/2022 19:55:33	911W	O	APPROX LOC:231 ESPLANADE AVE	CAPITOLA	HBD
CP2200014835	10	S510, 528	9/25/2022 20:40:39	INTOX	2	231 ESPLANADE AVE	CAPITOLA	CLR, S85
CP2200015269	10	CPM2	10/4/2022 14:43:14	C3MED		231 ESPLANADE AVE	CAPITOLA	HBD
CP2200015759	10	484	10/13/2022 16:08:50	FRAUD	C	231 ESPLANADE AVE	CAPITOLA	G43
CP2200017930	10	525, S515	11/21/2022 09:06:05	THEFT	C	231 ESPLANADE AVE	CAPITOLA	R30 22CP-01457
CP2200018287	10	M528, 529	11/28/2022 13:47:28	459	VEH	231 ESPLANADE AVE	CAPITOLA	U31, U31

12/12/2022 4:18:47 PM

Item 7 A.

Incidents:2

Incident #	Beat	All Assigned Units	Incident Date/Time	Type	Mod Circ	Location	Apt	City	Dispo	Report #
CE2200007690	10	M523, 532	5/21/2022 19:10:31	RTL	CONT	231 ESPLANADE AVE	102	CAPITOLA	G67, G67	
CE2200010908	10	S518, 525	7/13/2022 10:37:33	ALARM	459A	231 ESPLANADE AVE	102	CAPITOLA	H90	

12/12/2022 4:20:34 PM

PAYMENT DATE
 12/12/2022
COLLECTION STATION
 Police
RECEIVED FROM
 Strong Solutions
DESCRIPTION
 231 Esplanade #102, Capitola

City of Capitola
 420 Capitola Avenue
 Capitola, CA 95010
 Phone: 831-475-7300
 Fax: 831-479-8879
 www.cityofcapitola.org

BATCH NO.
 2023-0600 Item 7 A.
RECEIPT NO.
 2023-00001543
CASHIER
 Esmeralda Gonzalez

PAYMENT CODE	RECEIPT DESCRIPTION	TRANSACTION AMOUNT
ENTERTAINMENT	Entertainment Permit Application Fee	\$41.00
	Total Cash \$0.00 Total Check \$41.00 Total Charge \$0.00 Total Wire \$0.00 Total Other \$0.00 Total Remitted \$41.00 Change \$0.00 Total Received \$41.00	
Total Amount:		\$41.00

Customer Copy



FINAL NOTICE OF DECISION

January 31, 2023

Capitola Bar and Grill
231 Esplanade #102
Capitola, CA 95010

RE: Notice of Decision on Application for 2023 Regular Entertainment Permit at 231 Esplanade #102

On behalf of Capitola Bar and Grill you applied for a 2023 Entertainment Permit as required by Capitola Municipal Code 5.24 – Entertainment Permits. Our understanding is that you lease the space at 231 Esplanade #102, and manage and operate Capitola Bar and Grill in that space.

We have reviewed your application and have determined the application does not include the property owner's consent to the application, as required on page 3 of the application (IX. Property Owner Statement).

The requirement for the property owner's consent is a standard inclusion on the City's application form. The form was developed pursuant to Capitola Municipal Code section 5.24.080, which allows the City Manager to develop the application.

Because your application does not include all of the required information, your application is denied.

If you would like to appeal this determination to the City Council, you must file your appeal within 14 working days of the date of this letter. The Council will hear the appeal at the City Council meeting following receipt of your appeal or, upon a request from staff, may hear the appeal at a later date. The deadline for you to file an appeal is five p.m. on February 22, 2023.

All appeals must be in writing and delivered to the office of the City Clerk with payment of the Administrative Decision Appeal Fee, which is \$562. The request for appeal must set forth the appellant's name, the phone number for the appellant, an address to which notices may be sent to the appellant and the grounds upon which the appeal is made. Further detail regarding the appeal procedure can be found in Chapter 2.52 of the Capitola Municipal Code.

Please note that because you do not currently have a valid Entertainment Permit, you are not permitted to engage in entertainment activities, as described in 5.24.010 of the Capitola Municipal Code.

Sincerely,

Jamie Goldstein, City Manager
City of Capitola

February 21, 2023

CITY OF CAPITOLA
CITY CLERK
FEB 21 2023

To: Hon. Mayor and City Council Members

From: Michelle and Lasalle (Sal) Strong, Capitola Bar & Grill proprietors

Phone: 559-341-9882

Mailing Address: 231 Esplanade, Suite 102, Capitola, CA 95010

Email: info@capitolabarandgrill.com PLEASE ALSO EMAIL ANY COMMUNICATIONS. Thank you.

RE: Appeal to City Council of City Manager's Decision to Cancel Capitola Bar & Grill's Permit for Music and Dancing (Entertainment Permit) by letter of 1/31/23. (Attached.)

Introduction

We appeal to you for fair and even-handed treatment in continuing to offer music and dancing to the community for afternoon and early evening enjoyment. We have had no significant complaints. We first got the permit in summer of 2021. The Chief of Police renewed it for 2022. And then suddenly at the beginning of this year, the City Manager decided to cancel it despite the last couple years of bringing life back to the Village. Why? There were no significant complaints. The only explanation is that our landlord, who is trying to force us out of the space before the end of our lease, somehow influenced him. That's not fair. The City should stay out of private disputes and not take sides either way. All we are asking is that you continue the status quo of the past couple years and allow us to continue to peacefully share entertainment at our restaurant in the Village. Thank you for the wise exercise of your power as Capitola's lawmakers in hearing our appeal.

What Happened (the Facts)

August 2021-

We took over from the old Sotola B&G, including a lease assignment with the landlord, Steve Yates, who (at first) wanted us in the space and approved of us getting an Entertainment Permit. He knew we were offering music and dancing and approved our lease with that knowledge. Entertainment is a big part of our business.

September 2021-

Chief of Police Andrew Dally issued us an Entertainment Permit, including conditions for sound proofing, hours of use, sound limits, etc., all of which we complied with. We spent almost \$10,000 on various improvements, because we had the Permit, for soundproofing, wood paneling, ceiling treatment, curtains, self-closing doors, cameras, and more.

January 2022-

Chief of Police Andrew Dally renewed our Entertainment Permit as a matter of course.

September 2021 through March 2022-

We had various communications with the landlord Steve Yates and his property manager. We were concerned about the elevator to the restaurant that never worked since we got there (and which has since been removed and half-replaced, remaining undone). We were also concerned that the roof of the residential unit we rented leaked during the rains. We noticed that progress was very slow and that the little work done was unprofessional. At first though, at least the tone of these communications was cordial on both sides.

April 2022-

Lasalle (Sal) Strong bumped into the landlord Steve Yates who was on site trying to fix the elevator himself. (He lives in Hawaii.) This was the first time they saw each other in person. The relationship deteriorated from there. For whatever reason, Mr. Yates' emails became argumentative and angry in tone. His tone remained cordial with our master tenant, the previous restaurant owners. He referred to our patrons as the wrong "element."

He was very concerned about the cost of repairs to his building and asked us to pay for the elevator. And he began complaining about the music. We began getting confusing legalistic notices about posted on our doors. Since then, he has consistently taken a scolding tone with us and refused to negotiate or identify any actual operational issues, including entertainment. We are mystified as to why; we have done nothing wrong.

June 2022-

We met with Police Chief Andrew Dally to discuss any compliance issues because of the confusing notices posted on our doors by the landlord. The Chief said there were no significant issues or complaints and that he was not concerned with our providing music and dancing. Police Captain Sarah Ryan informed us that landlord Steve Yates had asked them to cancel our Entertainment Permit.

August 2022-

We hired a law firm to help us with our landlord conflict which continued, and continues, to escalate. He wants us out and is pressuring us every way he can, including by getting our Entertainment Permit cancelled by the City.

October 2022-

We met with Chief of Police Andrew Dally. We offered to file the same annual renewal form for 2023 that we had filed for 2021 and 2022. However, suddenly it became an issue that the landlord Steve Yates refused to sign the form. But he had not signed the first two forms either, and the City gave us the Entertainment permit in 2021 and renewed it in 2022. We used the Permit and provided a community gathering place for live music and dancing in the afternoon and early evening. We had very few if any complaints (if you don't count the complaints of the landlord Steve Yates which were and are part of his campaign to remove us).

December 2022-

We filled out and submitted the annual renewal form for Entertainment Permit.

January 2023-

We received the 1/31/23 letter from the City Manager cancelling our Entertainment Permit because Steve Yates did not give his consent by signing the form. Whether intentional or not, the cancellation letter contains the wrong deadline date for filing this appeal. If we had followed the City Manager’s instructions in the letter we would have been a day late and this appeal would have been dead on arrival.

February 2023-

We filed this appeal on time and paid the fee.

Here are Some Factual Questions that We Would Like to Ask (or Have You Ask) the City Manager and Other City Staff:

- 1) Did the City Manager delegate his authority to issue Entertainment Permits to the Chief of Police?
- 2) Did the police exercise discretion to issue permits with or without explicit landlord consent on the form?
- 3) How many entertainment permits issued in last five years? How many with explicit landlord consent on the form? How many without?
- 4) Why the change in that policy?
- 5) Did City Manager, Police Department, or any other staff communicate with Steve Yates about this matter?
- 6) When, how, and what did he say?
- Did Mr. Yates say that he never consented to entertainment, or that he changed his mind?
- 7) Did he say or imply he would sue the City if the permit was not cancelled or not renewed?

What You Should Do and Your Legal Power to Do It (Our lawyer helped with this part)

Your role is to serve as the judges in this appeal, our disagreement with the City Manager over the Entertainment Permit. As the judges, you are independent of both sides. To be fair to both us and the City Manager, you are required by law to have your own independent lawyer, separate from the City Attorney who has been advising the City Manager. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 91-94.) To the extent that the City Attorney has been advising the City Manager who cancelled our permit, she is biased having already formed an opinion of the matter and taken a side. They cannot give you objective legal advice. At the very least, they should confirm that you have the power to decide the questions of fact and law in this matter, should have independent counsel, and need not follow their legal opinion in the matter (already formed to support the City Manager).

As the judges in this hearing, the Capitola Municipal Code (CMC) gives you the power to make your own decisions regarding the facts and the law. (CMC 2.52.050 saying that this hearing is “de novo” meaning, a complete do over of facts and law.) You are not bound by the City Manager’s decision. You have the power to make a different decision.

The City Manager’s letter says that he cancelled the Permit (or denied the application for renewal, it comes to the same thing) because it did not include the landlord Steve Yates’ consent on the application form that the City Manager himself made up. But under the Municipal Code section that he cites, his power to develop the form is limited. *One legal question for you to decide is if that requirement is properly on the form or not.* If you decide that the form shouldn’t have that requirement on it, then the City Manager’s decision is baseless, and you must overturn it and renew the Permit.

CMC 5.24.080 gives the City Manager limited power to develop the application form. Specifically, it limits the form to “any nonprivileged information reasonably related to the concerns expressed in Section 5.24.005.” That’s it. Nothing else. So now the question is does Section 5.24.005 give the City Manager the power to require the landlord’s signature on the form.

Section 5.24.005 addresses the purposes and concerns of the Entertainment Permits program. (We have copied the entire section at the end of this appeal.) They include only issues related to entertainment: noise; attracting business; traffic; peace and quiet and nightly sleep; hours of operation; concentration of similar businesses (an entertainment district); proximity to residences; the need for a permit system; and the need for fees to cover the cost of the system.

That’s it. That is what the form is supposed to focus on: controlling noise, traffic, hours of operation, and the like—all issues directly related to the conduct of the business. Nothing in that section relates to landlord-tenant issues. Which makes sense because it is not the City’s job to regulate the private contracts (including leases) between commercial businesses and the landlords.

The City Manager could have left landlord consent off the form entirely and it would have been proper and legal under the municipal code. This is also shown by CMC 5.24.020 which lists who can obtain an Entertainment Permit: “owner, manager or operator.” Nowhere in the municipal code does it say that only the owner can apply—or that their consent is required. But it does say explicitly that an operator can obtain a Permit. Nor is this a land use right that might involve the property owner. It’s in the Municipal Code under Business Regulations, not under Zoning.

The landlord consent requirement is improperly on the form, irrelevant, and not authorized by the ordinance. This is clear from the track record of the City having twice issued the permit without requiring such extraneous information.

If a landlord wants to control the use of his property by his tenants, that is properly done in his contractual agreements with them. Here, the landlord is legally bound by his agreements to allow Entertainment. (If there were actual bona fide nuisance complaints they could be addressed with the City under the municipal code—but there is no mention of such complaints in the City Manager’s 1/31/23 letter.)

The City has authorized entertainment at our restaurant for two years running. The City twice issued an annual permit that we relied on in building our business and offering music and dancing to Village. In all fairness, the City should not cancel that permit unless there is a good reason such as excessive noise complaints. Here, the only complaint is from the landlord who is trying to break our lease—and our business.


For those reasons we ask that you find that the landlord’s consent is not related to the purposes of the Entertainment Permit program under Section 5.24.005 and is not a required part of the form. Based on that legal finding we ask that you reinstate our Entertainment Permit for 2023 so that we can continue providing entertainment in the Village as we have for the past two years.

Alternatively, if you decide that the landlord’s consent is required, you can still reinstate the Permit by finding that the issue of whether the landlord can revoke his previously given consent, under the lease and other agreements with, us is a matter for the courts to decide—or for us to negotiate with him. You can find that the issue of landlord consent does not require the City Manager’s form as a kind of “magic paper.” The requirement can be met by the landlord’s binding legal agreements that authorize us to have entertainment at the restaurant. Even if landlord consent is required, he has already given it in the lease and other contracts and he cannot revoke it now; the form is unnecessary because he has consented as a matter of law.

As the City’s policymakers you can decide, based on the policy of keeping the City out of private commercial disputes, and based on the landlord’s binding consent, that the City will maintain the status quo of music and dancing at the restaurant and reinstate the permit.

In Conclusion

For all the reasons given above, we ask that you exercise your legal powers to make this decision based on the facts and law as presented above and reinstate the Permit. Thank for supporting our continuing to share music and dancing in afternoons and early evenings in the Village.



LaSalle Strong



Michelle Strong

Capitola Municipal Code

5.24.005 Findings.

The city council finds as follows:

- A. Entertainment often produces noise which is obtrusive to persons not patronizing the business or activity which produces the noise.
- B. The availability of entertainment is often a significant factor in attracting patrons who infringe upon the peace and quiet and nightly sleep of nonpatrons, and is exacerbated by any of the following:
1. The entertainment is offered in conjunction with the distribution of alcohol.
 2. The entertainment is offered by businesses which are open after nine p.m. and do not, like theaters, have fixed beginning and ending times at which most of the patrons enter and exit.
 3. The entertainment is offered in an area where there is a concentration of similar businesses, thereby resulting in the area becoming an after-hours draw and the patrons of those businesses frequently entering and exiting the other establishments.
 4. The entertainment is offered in locations where many of the patrons, when leaving, pass through or near areas where people reside.
- C. To protect the peace and quiet of nonpatrons and their nightly ability to sleep it is necessary to have a licensing system and to thereby limit and condition the establishments offering such entertainment.
- D. Policing and monitoring entertainment licenses entails considerable expense to the city, such that it is appropriate to collect a portion of such expenses from the entities providing the entertainment. (Ord. 1020 § 1 (part), 2018: Ord. 699 (part), 1990)



FINAL NOTICE OF DECISION

January 31, 2023

Capitola Bar and Grill
231 Esplanade #102
Capitola, CA 95010

RE: Notice of Decision on Application for 2023 Regular Entertainment Permit at 231 Esplanade #102

On behalf of Capitola Bar and Grill you applied for a 2023 Entertainment Permit as required by Capitola Municipal Code 5.24 – Entertainment Permits. Our understanding is that you lease the space at 231 Esplanade #102, and manage and operate Capitola Bar and Grill in that space.

We have reviewed your application and have determined the application does not include the property owner's consent to the application, as required on page 3 of the application (IX. Property Owner Statement).

The requirement for the property owner's consent is a standard inclusion on the City's application form. The form was developed pursuant to Capitola Municipal Code section 5.24.080, which allows the City Manager to develop the application.

Because your application does not include all of the required information, your application is denied.

If you would like to appeal this determination to the City Council, you must file your appeal within 14 working days of the date of this letter. The Council will hear the appeal at the City Council meeting following receipt of your appeal or, upon a request from staff, may hear the appeal at a later date. The deadline for you to file an appeal is five p.m. on February 22, 2023.

All appeals must be in writing and delivered to the office of the City Clerk with payment of the Administrative Decision Appeal Fee, which is \$562. The request for appeal must set forth the appellant's name, the phone number for the appellant, an address to which notices may be sent to the appellant and the grounds upon which the appeal is made. Further detail regarding the appeal procedure can be found in Chapter 2.52 of the Capitola Municipal Code.

Please note that because you do not currently have a valid Entertainment Permit, you are not permitted to engage in entertainment activities, as described in 5.24.010 of the Capitola Municipal Code.

Sincerely,



Jamie Goldstein, City Manager
City of Capitola

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA DENYING AN APPEAL OF THE CITY MANAGER’S DECISION TO DENY AN APPLICATION FOR A 2023 REGULAR ENTERTAINMENT PERMIT FOR CAPITOLA BAR AND GRILL

WHEREAS, on December 12, 2022, applicants Michelle and Lasalle Strong applied for a 2023 General Entertainment Permit pursuant to Capitola Municipal Code Section 5.24.020; and

WHEREAS, Capitola Municipal Code Section 5.24.080 authorizes the City Manager to develop application forms for entertainment permits that are pertinent to Chapter 5.24; and

WHEREAS, Capitola Municipal Code Section 5.24.040D authorizes the City Manager to condition the permit to assure non-disturbance; and

WHEREAS, the application form for entertainment permits includes a requirement for the property owner’s signature; and

WHEREAS, Capitola Municipal Code Section 5.24.005A states that, in adopting the Chapter, the City Council found that “[e]ntertainment often produces noise which is obtrusive to persons not patronizing the business or activity which produces the noise.”; and

WHEREAS, because property owners often have more than one tenant in a building, ensuring the property owner is supportive of the permit request helps protect the property owner’s other tenants in the same building from noise or other nuisance issues; and

WHEREAS, any complaints about noise from a tenant could affect the property owner in multiple ways, including impacting the property owner’s ability to lease the premises (or nearby properties) in the future or exposing the property owner to complaints about the noise; and

WHEREAS, requiring the property owner’s signature helps ensure the City is not authorizing entertainment on the property when such uses are not authorized in the lease between the tenant and property owner; and

WHEREAS, the December 12, 2022 application submitted by appellants did not include the landlord’s signature; and

WHEREAS, because the application did not include the required signature, the City Manager denied the application; and

WHEREAS, on February 21, 2023 the Applicant submitted a timely appeal (“Appeal”) of the City Manager’s denial; and

WHEREAS, the City Council of the City of Capitola held a duly noticed public hearing on June 22, 2023, at which time it considered the Appeal, including all oral and documentary evidence presented.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Capitola as follows:

- A. The above recitals are true and correct and material to this Resolution.
- B. The City Council affirms the authority of the City Manager to develop an application form for an entertainment permit, and finds that the application form used here was appropriate and consistent with Capitola Municipal Code Chapter 5.24.
- C. The City Council upholds the decision of the City Manager to deny the application, and denies the Appeal.
- D. The City Council’s action to deny this Appeal is not subject to the California Environmental Quality Act (CEQA) because it is an administrative activity and thus not a “project” as defined by CEQA. Even if the action were considered a project under CEQA, CEQA does not apply to projects which a public agency rejects or approves (CEQA Guidelines Section 15270.)

ADOPTED by the City Council of the City of Capitola, California, at a regular meeting thereof this 13th day of April, 2023 by the following vote:

AYES:
NAYS:
ABSTAIN:
ABSENT:

MAYOR

ATTEST:

CLERK

Moss, Julia

From: james frederickson <jimfreder1@gmail.com>
Sent: Wednesday, March 22, 2023 9:06 AM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe; alexander.dean.pedersen@gmail.com; admin@capitolastrong.com
Subject: I support Capitola Bar & Grill

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

We have been coming to the Capitola Esplanade and wharf for enjoyment and entertainment for years. As near as I can tell, the area is the lifeblood of the tourist industry for the entire greater Santa Cruz area. People come from miles around, even from around the world, to stay there and enjoy what Capitola has to offer.

We endlessly support the local economy and local talent. The storms have done enough damage to both, don't you think? Other establishments on the Esplanade have rebuilt and are offering live entertainment - due, in part, by donations from us and others like us who felt the pain of losing the vibrancy of the area.

There is absolutely no logic in denying the Capitola Bar and Grill the permit for live entertainment that they and all the others have put to good use. They have all respected the privilege and have NEVER abused their right.

It is clearly un-American to deny them, and us, the rights that others are enjoying.

Please do the right thing with your vote, your voice, and restore to the Capitola Bar and Grill and us, your constituents, the access to the positive enjoyment of Capitola.

Vote YES to the entertainment permit.

James Frederickson
Sharon D'alessio

Moss, Julia

From: Tamra Loomis <aladytee@gmail.com>
Sent: Wednesday, March 22, 2023 9:57 AM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe; alexander.dean.pedersen@gmail.com; admin@capitolastrong.com
Subject: I support Capitola Bar & Grill

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

This is a great restaurant and the music makes it even better. Greta owners, great staff, great food and amazing music. Pulls it all together for a great experience. Makes me keep coming back to Capitola.

Thank you
Tamra Loomis

Moss, Julia

From: madeline thechiavettas.com <madeline@thechiavettas.com>
Sent: Friday, March 24, 2023 7:45 AM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe; alexander.dean.pedersen@gmail.com; admin@capitolastrong.com
Subject: I support Capitola Bar & Grill

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

Madeline Chiavetta

The Chiavettas

Let our Family Help Yours

Luxury Property Specialist

International President's Premier

Top 1% Society of Excellence

#10 Small Team in the USA

Madeline@thechiavettas.com

408-506-5393

Moss, Julia

From: Steven Henderson <freelyfreak1@gmail.com>
Sent: Saturday, March 25, 2023 12:08 PM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe; alexander.dean.pedersen@gmail.com; admin@capitolastrong.com
Subject: Support for live music at Capitola Bar and Grill

Dear City Council Member,

My name is Steve Henderson and lived on Prospect Avenue Capitola for 14 years, I now live just outside of Capitola city limits on Thompson Ave.

This email is in support of Capitola Bar and Grills appeal, that they should be granted a live music permit.

I regularly attend live music events in Capitola, at the Wharhouse, Sand Bar, Paradise Grill, Cork and Fork, and Capitola Bar & Grill.

Wharhouse is closed for the foreseeable future, as is Sandbar and other village businesses. Paradise no longer hosts live bands.

To reduce the number of venues by even more will negatively impact the number of visitors to the village who specifically come for the entertainment.

The financial impact to the village economy, will not only effect Capitola Bar and Grill, but all other businesses as they have a synergistic relationship, each benefiting the others by cross traffic.

Capitola Bar and Grill should have their entertainment permit renewed for the overall benefit of the village community. If noise is the problem, put reasonable restrictions in place, such as limiting days, time of day, or decibel limitations. Most people don't like their music too loud anyway, resorting to wearing earplugs at venues where the volume it too high.

Thanks for your attention.

Steve Henderson

Moss, Julia

From: Mike Craig <mike.c.63@gmail.com>
Sent: Sunday, March 26, 2023 12:27 PM
To: City Council
Subject: Music permit for Capitola Bar & Grill

I am writing in support of the petition for live music at Capitola Bar & Grill.

As you know, many businesses have tried to be successful at their location, and they have not been able to sustain their business.

Given the storm related damage in the Village, we need more reasons to bring people down to the Village.

Sal and Michelle have worked hard to build a great venue - I am a proud supporter of theirs.

Please give their request the favorable decision it deserves.

Thanks for your consideration.

Regards,

Mike Craig

Moss, Julia

From: Julie Monet <juliemonet59@icloud.com>
Sent: Sunday, March 26, 2023 12:29 PM
To: Moss, Julia
Subject: I support Capitola Bar & Grill

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

I am a small business owner in the Village, Monet Salon. Nobody has ever made the location of Capitola Bar and Grill successful. LaSalle and Michelle are a great asset to our village!

Best Regards,
Julie Monet

Moss, Julia

From: John Michael <jmichael2012@gmail.com>
Sent: Monday, March 27, 2023 2:36 PM
To: City Council
Subject: John Michael Support Music
Attachments: John Michael Letter of Recommendation.docx

My name is John Michael, from the John Michael Band. I am contacting the city council in support of music in Capitola.

Attached is a letter by me for recommendation. Please read!!

John Michael
johnmichaelband.com

3/27/2023

To: Capitola City Council,

My name is John Michael, local resident and vocalist for the band John Michael Band. I am writing this letter, requesting the Council to grant a permit for The Capitola Bar and Grill, so that they can continue to present live music that many have enjoyed.

Please consider my recommendation for The Capitola Bar and Grill to continue presenting live music at their establishment.

Sincerely,

John Michael
Johnmichaelband.com

Moss, Julia

From: Flávia Oliveira <flaviaboliveira@hotmail.com>
Sent: Tuesday, March 28, 2023 2:52 PM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe; alexander.dean.pedersen@gmail.com; admin@capitolastrong.com
Subject: I support Capitola Bar & Grill

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

Flávia Oliveira
Sent from my iPhone

Moss, Julia

From: George Zaferes <gtzaferes@aol.com>
Sent: Wednesday, March 29, 2023 2:00 PM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe
Subject: April 13 Board Meeting: RE: Capitola Bar and Grill Live Music Permit

Follow Up Flag: Follow up
Flag Status: Flagged

Greetings Capitola City Council:
Thank you for taking the time to read my email in SUPPORT of the LIVE MUSIC PERMIT For the Capitola Bar and Grill. As a musician and a LONG TIME patron of the businesses in Capitola Village . I support the CBG request for this permit;

This is one of the more VISIBLE venues in Capitola Village and it attracts patrons(tourists) by its location AND the MUSIC it offers in the Village.

The accusations of the LANDLORD and the Strong's persistent, yet RESPECTFUL, exchanges will be judged by you April 13.
PLEASE use your combined experience and WISDOM to grant this permit..for the Strong's, the musicians, the patrons, the live music enjoying community, of DANCERS and listeners and RESIDENTS of Capitola.

Respectfully Yours,

George Zaferes
831-251-0969
Aptos, CA

Moss, Julia

From: Alison <alikota4@gmail.com>
Sent: Wednesday, March 29, 2023 2:00 PM
To: admin@capitolastrong.com; City Council; ladykpetersen@gmail.com;
alexander.dean.pedersen@gmail.com
Cc: Keiser, Marguax; Brooks, Yvette; Clarke, Joe
Subject: I support Capitola Bar and Grill

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill. Please support a locally owned business! As a long time local I enjoy going to this restaurant!!

Thanks,

Alison McClure, owner of Ohana Wealth Management

Moss, Julia

From: Ed Vyeda <evyeda@gmail.com>
Sent: Thursday, March 30, 2023 10:58 AM
To: City Council
Subject: I support Capitola Bar & Grill

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

Ed Vyeda
Soquel

Moss, Julia

From: Ryan Yates <rynyates@outlook.com>
Sent: Sunday, April 2, 2023 11:03 AM
To: Dally, Andrew (adally@ci.capitola.ca.us); Ryan, Sarah (sryan@ci.capitola.ca.us); Dally, Andrew (adally@ci.capitola.ca.us); Moss, Julia
Subject: [PDF] Capitola Bar and Grill
Attachments: Chapter 5.24 ENTERTAINMENT PERMITS.pdf; Facebook.png; License Details Alcoholic Beverage Control.pdf; Matt Hereford Email.pdf

Good Day Chief Dally,

I hesitate to write in on this matter however feel compeled to do so given the circumstances. I have attempted to make it a personal point to not be bothersome to you or your force unnessisarily. However, I wanted to give you notice in advance on some issues to hopefully not have problems in the future.

In a very blatent and obvious retaliory manner Capitola Bar and Grill increased the volume and bass of their music in the bar, directly below the apartment. It starts between 7:30 am and goes until roughly between 10:30 and 11pm. There appears to be a new system installed as of the January storms as it was never this way previously. I bring this to your attention not to be petty. If the music was incidental I would of course have no issues with hearing it as I only want the best for the patrons in the village. I am aware living here comes with noise so I assure you I am not being unreasonable. The levels are obvious, deliberete and loud and intrusive enough that no person could resonably tolerate it for an extended period of time.

Additionally, Capitola Bar and Grill has begun promoting live music again starting wednesday the 5th, this week. Advertisement attached.

Both of these matters are concerning given.

- CBG has no entertainment permit from the city.
- Capitola code 5.24.010 describes entertainment as: (copy attached)

A. " a performance by live entertainers for the purpose of entertaining the partons of a business; or

B. "Playing recorded music, whether with or without video, for the specific purpose of entertaining the patrons, invitees or visiors of a business, commercial establishment or meeting facility"

- Capitola Bar and Grill has specific restrictions on their liquor license with regard to noise stating (attached)

"Entertainment provided shall not be audible beyond the area under the control of the licensee"

These are matters of the law and I thought it best to bring it to the attention of yourself and your team. I have personally seen entertainers playing an acoustic guitar on the sidewalk asked to leave by the police for playing music without a permit, so I don't really understand the tolerance for the abysmal behavior of Capitola Bar and Grill.

One last note I wanted to make you aware of. Due to Michelle and Lasalle Strong's publications of my personal phone number and name on social media and website, I have had an unsolicited outreach of ex-employee's of theirs offering to help speak up about the actions and behavior of the owner and her husband, Michelle and Lasalle Strong. One in particular is their previous general manager Matt Hereford. I have attached a letter from him simply regarding the sound and previous complaints received from other residents and tourists. In addition, he is insisting on not only speaking at the hearing, but writing a full account of the retaliation and harassment he witnessed towards me, from Lasalle Strong, during his time as the general manager of Capitola Bar and Grill. Given what Matt has told me, any form of mobilization or emboldened behavior with impunity is especially concerning.

Thank you for your time and attention to this matter.

Best,

Ryan A. Yates
831.247.7604

Complaint outline

Matthew Hereford <matt.hereford@gmail.com>

Fri 3/31/2023 11:13 PM

To: rynyates@outlook.com <rynyates@outlook.com>

To whom it may concern.

I was the GM for Capitola Bar and Grill from March 2022 to late July 2022.

I'm sending and creating this important preliminary email for the city council to review and police to review.

During my tenure at Capitola Bar & Grill it was a nightmare for lots reasons. I received dozens of local complaints regarding the noise and sound levels from the restaurant's music but was instructed by the owner to do otherwise. Residents from residential and both commercial all voiced how disruptive and obnoxious the sound level was in and outside the restaurant. I know for a fact that most complaints came from residents living along the creek and visitors renting at the Venetian hotel across the creek , along with residents from the same building. Many of them, if they didn't call Capitola PD came in person to share their frustrations and talk to me.

To summarize I was the GM there for roughly 5 months and I had to deal with noise complaints from more than 2 dozen sources. I started wearing earplugs inside at time because I knew the music level was damaging and extreme.

Regards,

Matt Hereford



CALIFORNIA DEPARTMENT OF

Alcoholic Beverage Control

Report Date: Sunday, April 02, 2023

LICENSE INFORMATION

License Number: 628965 **Primary Owner:** CAPITOLA STRONG INC.

Office of Application: 26 - SALINAS

BUSINESS NAME

CAPITOLA BAR & GRILL

BUSINESS ADDRESS

231 ESPLANADE , CAPITOLA, CA, 95010

County: SANTA CRUZ **Census Tract:** 1218.01

LICENSEE INFORMATION

Licensee: CAPITOLA STRONG INC.

Company Information

OFFICER: STRONG, MICHELLE ELIZABETH (DIRECTOR)

OFFICER: STRONG, MICHELLE ELIZABETH (CHIEF FINANCIAL OFFICER)

OFFICER: STRONG, MICHELLE ELIZABETH (PRESIDENT/SECRETARY)

STOCKHOLDER: STRONG, MICHELLE ELIZABETH

LICENSE TYPES

Allow up to six weeks for expiration date updates after fee waiver or renewal fee submittal.

47 - ON-SALE GENERAL EATING PLACE

License Type Status: ACTIVE **Status Date:** 01-NOV-2021 **Term:** 12 Month(s)

Original Issue Date: 29-OCT-2021 **Expiration Date:** 30-SEP-2023 **Master:** Y **Duplicate:**

From License Number: 47-601423

0 **Fee Code:** P0 **Transfers:** Transferred On: 29-OCT-2021

OPERATING RESTRICTIONS:

The premises shall comply with the provisions of Section 23038 of the Business and Professions Code and acknowledge that incidental, sporadic or infrequent meals or a mere offering of meals without actual sales shall not be sufficient to consider the premises in compliance with the aforementioned code section.

During normal meal hours, at least PERCENTAGE 50% of the premises seating shall be designed and used for and must possess the necessary utensils, table service, and condiment dispensers with which to serve meals to the public.

The quarterly gross sales of alcoholic beverages shall not exceed the quarterly gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.

Entertainment provided shall not be audible beyond the area under the control of the licensee.

The subject alcoholic beverage license shall not be exchanged for public premises type license.

DISCIPLINARY ACTION:

No Active Disciplinary Action found

DISCIPLINARY HISTORY:

No Disciplinary History found.

Item 7 A.

HOLDS:

No Active Holds found

ESCROWS:

No Escrow found

Chapter 5.24

ENTERTAINMENT PERMITS

Sections:

5.24.005 Findings.

5.24.010 Entertainment defined.

5.24.020 Entertainment permit required.

5.24.025 Theater defined.

5.24.030 Permit classifications.

5.24.040 Permit issuance.

5.24.045 Appeals.

5.24.050 Duration of permits.

5.24.060 Revocation or nonrenewal.

5.24.065 Violation of permit conditions.

5.24.070 Fees.

5.24.080 Application forms.

5.24.090 Violations.

5.24.005 Findings.

The city council finds as follows:

A. Entertainment often produces noise which is obtrusive to persons not patronizing the business or activity which produces the noise.

B. The availability of entertainment is often a significant factor in attracting patrons who infringe upon the peace and quiet and nightly sleep of nonpatrons, and is exacerbated by any of the following:

1. The entertainment is offered in conjunction with the distribution of alcohol.
2. The entertainment is offered by businesses which are open after nine p.m. and do not, like theaters, have fixed beginning and ending times at which most of the patrons enter and exit.
3. The entertainment is offered in an area where there is a concentration of similar businesses, thereby resulting in the area becoming an after-hours draw and the patrons of those businesses frequently entering and exiting the other establishments.
4. The entertainment is offered in locations where many of the patrons, when leaving, pass through or near areas where people reside.

C. To protect the peace and quiet of nonpatrons and their nightly ability to sleep it is necessary to have a licensing system and to thereby limit and condition the establishments offering such entertainment.

D. Policing and monitoring entertainment licenses entails considerable expense to the city, such that it is appropriate to collect a portion of such expenses from the entities providing the entertainment. (Ord. [1020](#) § 1 (part), 2018; Ord. [699](#) (part), 1990)

5.24.010 Entertainment defined.

“Entertainment,” as used in this chapter, means and includes:

A. A performance by live entertainers for the purpose of entertaining the patrons of a business; or

B. Playing recorded music, whether with or without video, for the specific purpose of entertaining the patrons, invitees or visitors of a business, commercial establishment or meeting facility.

“Entertainment,” as used in this chapter, does not include a speech, pantomime or enactment (whether live or recorded), the primary purpose of which is to convey ideas of a political or religious nature, or to explain or critique the activities of public figures or of governmental or other institutions. It does not include mere background (“Muzak”) music played at moderate levels. (Ord. [1020](#) § 1 (part), 2018; Ord. [745](#) § 2, 1992; Ord. [699](#) (part), 1990)

5.24.020 Entertainment permit required.

No owner, manager or operator of any business or establishment (except theaters, as defined in Section [5.24.025](#)) may arrange for or allow entertainment to be conducted on the premises of any such business or establishment without obtaining an entertainment permit as provided in this

chapter. No person shall arrange for or promote entertainment on any publicly owned park, street or facility without first obtaining an entertainment permit as provided in this chapter. However, entertainment which is entirely enclosed within a structure and which cannot, at any time, be audible outside of that structure, need not have any entertainment permit. (Ord. [1020](#) § 1 (part), 2018; Ord. [699](#) (part), 1990)

5.24.025 Theater defined.

“Theater,” for purposes of this chapter, means an establishment:

- A. Whose primary activity is showing movies or staging theatrical productions which have fixed beginning and ending times; and
- B. Primarily offer food or drinks only to those attending the movie or theatrical event. (Ord. [1020](#) § 1 (part), 2018; Ord. [699](#) (part), 1990)

5.24.030 Permit classifications.

Entertainment permits shall be classified as follows:

- A. A single-event entertainment permit may be issued for activities that will all occur within a single seven-day period.
- B. A minor entertainment permit is for a business which offers entertainment incidental to the primary business, does not qualify for a single-event permit, and which has no dance floor or elevated stage and which never has a cover charge.
- C. A regular entertainment permit is for businesses which offer entertainment, but which do not qualify for a single-event entertainment permit or a minor entertainment permit. (Ord. [1020](#) § 1 (part), 2018; Ord. [699](#) (part), 1990)

5.24.040 Permit issuance.

- A. The city council shall issue new regular entertainment permits.
- B. The city manager or department head designee may issue recurring regular entertainment permits, single-event entertainment permits and minor entertainment permits. The city manager, in the exercise of his or her discretion, may refer any single-event entertainment permit application, recurring regular entertainment permit, or minor entertainment permit application to the city council for its consideration.

C. Entertainment permits may be issued as herein provided for upon the city council's or city manager's finding that:

1. No significant number of nonpatrons will be disturbed by the entertainment, which is the subject of the permit application or, by the goings and comings of the people patronizing the entertainment events, which are the subject of the permit application;
2. The establishment at which the entertainment is to be provided or the entity which is applying for the entertainment permit is currently in compliance with all applicable state and local building, zoning, fire, and other regulations pertaining to public health and safety as well as any other statutes, ordinances, regulations, or permits that pertain to the establishment or the property on which the establishment is situated.

D. When necessary to assure that the entertainment which is the subject of the permit application will not result in disturbance to nonpatrons, the city council or city manager may condition the permit to assure nondisturbance by imposing permit-specific conditions relating to, but not limited to, days of operation, hours of operation, best practices to minimize public safety issues, noise level limitations, noise reduction and other, similar measures. (Ord. [1020](#) § 1 (part), 2018; Ord. [855](#) § 1, 2003; Ord. [835](#) § 2, 2002)

5.24.045 Appeals.

A permit applicant whose application for a single event entertainment permit, recurring regular entertainment permits or minor entertainment permit is denied by the city manager, or who is dissatisfied with the conditions imposed upon the permit issued by the city manager, may appeal to the city council in accordance with Chapter [2.52](#) of this code. The city council's decision with regard to the issuance and conditions of new regular entertainment permits and the city council's decision on appeal or city manager referral with regard to single-event or minor entertainment permits shall be final. (Ord. [1020](#) § 1 (part), 2018; Ord. [835](#) § 2, 2002)

5.24.050 Duration of permits.

The operative period of time for a single-event entertainment permit shall be set forth in the permit itself. All other permits shall expire no later than one year from the date of issuance. The issuance of a permit for one year does not establish a vested right to a renewal of the permit. If, during any permit period, the nature of the business activity or the circumstances surrounding the event to which the permit pertains change from the way it was initially permitted, the city in its sole discretion may require any permit holder to immediately apply for a new permit. (Ord. [1020](#) § 1 (part), 2018; Ord. [699](#) (part), 1990)

5.24.060 Revocation or nonrenewal.

A permit may be revoked by the city council, with at least five days' written notice to the permit holder (who shall have an opportunity to be heard) for failure to comply with permit conditions or for having supplied false information in obtaining the permit. The city manager, or department head designee, may suspend or impose new conditions with at least five days' written notice to the permit holder for failure to comply with permit conditions. (Ord. [1020](#) § 1 (part), 2018; Ord. [777](#) § 1, 1995; Ord. [699](#) (part), 1990)

5.24.065 Violation of permit conditions.

Whenever a permit is suspended due to a violation of this chapter or of permit conditions, the city manager shall so report such suspension to the city council. (Ord. [1020](#) § 1 (part), 2018; Ord. [777](#) § 2, 1995)

5.24.070 Fees.

The city council may establish fees for applications for any of the permits described in Section [5.24.030](#) of this chapter. It may also prescribe fees for the issuance of the permit itself. Any schedule or formula of permit fees may be based on reasonable estimations of the cost to the city of monitoring or enforcing permit compliance. (Ord. [1020](#) § 1 (part), 2018; Ord. [699](#) (part), 1990)

5.24.080 Application forms.

The city manager may develop application forms pertinent to this chapter. Applicants may be required to submit any nonprivileged information reasonably related to the concerns expressed in Section [5.24.005](#). (Ord. [1020](#) § 1 (part), 2018; Ord. [699](#) (part), 1990)

5.24.090 Violations.

The operation of any business or entertainment activity contrary to the provisions of this chapter shall constitute a nuisance subject to abatement as provided in Title [4](#) of this code. Operating a business contrary to the business's entertainment permit and associated conditions, or violations of this chapter are also criminal acts subject to penalties provided in Section [1.01.090](#) and Title [4](#) of this code. (Ord. [1020](#) § 1 (part), 2018; Ord. [955](#) § 2, 2011; Ord. [699](#) (part), 1990)

The Capitola Municipal Code is current through Ordinance 1056, passed November 22, 2022.

Disclaimer: The city clerk's office has the official version of the Capitola Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.cityofcapitola.org/>

City Telephone: (831) 475-7300

[Code Publishing Company](#)



Capitola Bar & Grill

18h · 🌐

Item 7 A.

CAPITOLA

BAR & GRILL

SING-A-LONG

Join the Acapella Fun

GLENNIE B

Wednesday April 5th

6-8pm

Drafts \$7

Wine \$7

Well \$7

Cosmo \$7

Margaritas \$7

support our entertainment permit
more info: capitolastrong.com



Mishelleena Strong is at Capitola Bar & Grill.

19h · Capitola · 🌐

Join our special guest Glennie B as he leads our Wednesday nights sign-a-long. No amplified instruments allowed, as we are still awaiting approval for our Enter... See more

👍 7

👍 Like

💬 Comment

➦ Share



Write a comment...



317

Moss, Julia

From: Jefferson Hancock <jehancoc@hotmail.com>
Sent: Wednesday, April 5, 2023 8:44 PM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; admin@capitolastrong.com
Subject: I support Capitola Bar & Grill

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

Capitola needs live music and musicians like me love having a place to play like Capitola Bar and Grill. Patrons dance, sing, eat, drink, and love Capitola. If live music continues here, they will spend money -- and time -- in Capitola.

This town has something rare in its appreciation for live music. Don't lose it. Approve the live music permit for Capitola Bar and Grill.

Moss, Julia

From: Ryan Yates <rynyates@outlook.com>
Sent: Thursday, April 6, 2023 10:05 AM
To: Keiser, Marguax; Brown, Kristen; Brooks, Yvette; Clarke, Joe; City Council
Cc: Gonzalez, Francisco@ABC; Moss, Julia
Subject: [PDF] Support for the City of Capitola's DENIAL of appeal by Capitola Bar and Grill for live music
Attachments: City Council Letter.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Honorable City Council Members and Madam Mayor,

I am a concerned citizen of this community, writing to express my support for the City of Capitola's **denial** of the appeal made by Capitola Bar and Grill to have live music at their establishment. Please find attached a letter that provides further details on my concerns regarding this issue for your upcoming hearing.

Thank you,

Ryan A. Yates
831.247.7604

Dear Honorable City Council Members and Madam Mayor,

I am Ryan Yates, a concerned citizen of this community, writing to express my support for the City of Capitola's denial of the appeal made by Capitola Bar and Grill to have live music at their establishment. I know that it may be easy to conclude that I am simply in support of their denial on my own behalf. I assure you that is not the case. It is true that I do not want horrific cover bands blasting into my home at 80 – 100 decibels, however there are far more concerning matters to consider.

The owner of Capitola Bar and Grill has squandered the unique opportunity of having a beautiful restaurant on the beach by alienating 99% of locals with loud and invasive music, which forces unwilling families, children, patrons of other businesses, and community members to bear an incredibly intrusive experience that they do not want, nor did they ask to be apart of. The negative impact of the bar's amplified music is evident in the experiences of individuals who have dined there, such as finding human fecal matter on the restroom floor and walls, management allowing weed to be smoked on the deck during dinner service or children experiencing overly intoxicated patrons smoking cigarettes on the street corner while they walk home from Jr. Guards. (yelp)

In addition to the negative impact on the community, the owner and her husband have exhibited deliberate and intentional tactics to attempt to harass, annoy, and intimidate me personally into submission or remove me from my home. Matt Hereford, their previous general manager has quoted; "Lasalle is an incredibly mean spirited and two-faced individual. He would insist the band spread out as wide as possible and press the subwoofer and speaker stacks up against the column in the dining room that runs up through the bedroom of the apartment." Matt quoted Lasalle saying: "were gonna rock the house for that motherfucker." Matt goes on to state. "So many people complained. I was instructed to NEVER turn down the music but offer anyone who complained 2 free drinks any time they wanted."

During this time they were having bands 6 nights a week. 2 of which were horrific karaoke blasted at full volume. How is this a restaurant? I have also recently discovered that Lasalle Strong, who exhibits such behavior, is not an owner of Capitola Bar and Grill and has no standing with Capitola Strong, Inc., nor is he on the liquor license. Lasalle and Michelle Strong or Mishelleena Mendez, or what every she is calling herself to people here in Capitola, do not care about anyone or anything but themselves.

Secretary of State documents (available to anyone) attached along with further unsolicited statements in writing from Matt Hereford regarding complaints.

Additionally, the ABC (alcoholic beverage control for the state of California) has imposed specific restrictions on Capitola Bar and Grill's license to sell alcohol. This is one of many restrictions on them that reads verbatim: "Entertainment provided shall not be audible beyond the area under the control of the licensee." Meaning. A person walking down the sidewalk should not hear their music per the liquor license. Full Stop.

Liquor license (available to anyone) attached.

Thus, in support of the denial to their "music permit" I urge you to consider the abysmal content of character of the owner and her husband and what their idea of "music in the village" really means. I ask you to consider the unique restrictions on Capitola Bar and Grill's liquor license by the state and the specific literature from the city regarding entertainment and its impact on non-patrons. Please consider asking the following questions as you deliberate: Why is the ABC imposing such a specific restriction on their ability to sell alcohol? Why does the City of Capitola have such specific literature regarding entertainment, as well as the impact of said entertainment on non-patrons? Why does the lease in the building, the city of Capitola, the county of Santa Cruz, and the State of California have laws and regulations regarding quiet enjoyment of others? Why is the person who claims to be the owner nowhere to be found on any of the business documentation regarding Capitola Bar and Grill, or any of their other "businesses".

Thank you for your attention and I look forward to standing before you in person on this matter.

Sincerely,

Ryan Yates



Complaint outline

Matthew Hereford <matt.hereford@gmail.com>

Fri 3/31/2023 11:13 PM

To: rynyates@outlook.com <rynyates@outlook.com>

To whom it may concern.

I was the GM for Capitola Bar and Grill from March 2022 to late July 2022.

I'm sending and creating this important preliminary email for the city council to review and police to review.

During my tenure at Capitola Bar & Grill it was a nightmare for lots reasons. I received dozens of local complaints regarding the noise and sound levels from the restaurant's music but was instructed by the owner to do otherwise. Residents from residential and both commercial all voiced how disruptive and obnoxious the sound level was in and outside the restaurant. I know for a fact that most complaints came from residents living along the creek and visitors renting at the Venetian hotel across the creek , along with residents from the same building. Many of them, if they didn't call Capitola PD came in person to share their frustrations and talk to me.

To summarize I was the GM there for roughly 5 months and I had to deal with noise complaints from more than 2 dozen sources. I started wearing earplugs inside at time because I knew the music level was damaging and extreme.

Regards,

Matt Hereford



CALIFORNIA DEPARTMENT OF

Alcoholic Beverage Control

Report Date: Sunday, April 02, 2023

LICENSE INFORMATION**License Number:** 628965 **Primary Owner:** CAPITOLA STRONG INC.**Office of Application:** 26 - SALINAS**BUSINESS NAME**

CAPITOLA BAR & GRILL

BUSINESS ADDRESS

231 ESPLANADE , CAPITOLA, CA, 95010

County: SANTA CRUZ **Census Tract:** 1218.01

LICENSEE INFORMATION**Licensee:** CAPITOLA STRONG INC.**Company Information**

OFFICER: STRONG, MICHELLE ELIZABETH (DIRECTOR)

OFFICER: STRONG, MICHELLE ELIZABETH (CHIEF FINANCIAL OFFICER)

OFFICER: STRONG, MICHELLE ELIZABETH (PRESIDENT/SECRETARY)

STOCKHOLDER: STRONG, MICHELLE ELIZABETH

LICENSE TYPES

Allow up to six weeks for expiration date updates after fee waiver or renewal fee submittal.

47 - ON-SALE GENERAL EATING PLACE

License Type Status: ACTIVE **Status Date:** 01-NOV-2021 **Term:** 12 Month(s)

Original Issue Date: 29-OCT-2021 **Expiration Date:** 30-SEP-2023 **Master:** Y **Duplicate:**

From License Number: [47-601423](#)

Fee Code: P0 **Transfers:** Transferred On: 29-OCT-2021

OPERATING RESTRICTIONS:

The premises shall comply with the provisions of Section 23038 of the Business and Professions Code and acknowledge that incidental, sporadic or infrequent meals or a mere offering of meals without actual sales shall not be sufficient to consider the premises in compliance with the aforementioned code section.

During normal meal hours, at least PERCENTAGE 50% of the premises seating shall be designed and used for and must possess the necessary utensils, table service, and condiment dispensers with which to serve meals to the public.

The quarterly gross sales of alcoholic beverages shall not exceed the quarterly gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.

Entertainment provided shall not be audible beyond the area under the control of the licensee.

The subject alcoholic beverage license shall not be exchanged for public premises type license.

DISCIPLINARY ACTION:

No Active Disciplinary Action found

DISCIPLINARY HISTORY:

No Disciplinary History found.

Item 7 A.

HOLDS:

No Active Holds found

ESCROWS:

No Escrow found



California Secretary of State
Electronic Filing



Corporation - Statement of Information

Entity Name: CAPITOLA STRONG INC.

Entity (File) Number: C4768976
 File Date: 01/13/2022
 Entity Type: Corporation
 Jurisdiction: CALIFORNIA
 Document ID: H110924

Detailed Filing Information

1. Entity Name: CAPITOLA STRONG INC.

2. Business Addresses:
 - a. Street Address of Principal Office in California: 231 Esplanade #102
 Capitola, California 95010
 United States of America

 - b. Mailing Address: 231 Esplanade #102
 Capitola, California 95010
 United States of America

 - c. Street Address of Principal Executive Office: 231 Esplanade #102
 Capitola, California 95010
 United States of America

3. Officers:
 - a. Chief Executive Officer: Michelle Strong
 231 Esplanade #102
 Capitola, California 95010
 United States of America

 - b. Secretary: Michelle Strong
 231 Esplanade #102
 Capitola, California 95010
 United States of America

Document ID: H110924



California Secretary of State Electronic Filing

Officers (cont'd):

c. Chief Financial Officer: Michelle Strong
231 Esplanade #102
Capitola, California 95010
United States of America

4. Director: Michelle Strong
231 Esplanade #102
Capitola, California 95010
United States of America

Number of Vacancies on the Board of Directors: 0

5. Agent for Service of Process: Michelle Strong
231 Esplanade #102
Capitola, California 95010
United States of America

6. Type of Business: Restaurant

No Officer or Director of this Corporation has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code.

By signing this document, I certify that the information is true and correct and that I am authorized by California law to sign.

Electronic Signature: Michelle Strong

Use bizfile.sos.ca.gov for online filings, searches, business records, and resources.

LETTER IN OPPOSITION TO RENEWAL OF A LIVE ENTERTAINMENT
PERMIT TO CAPITOLA BAR AND GRILL.

CITY OF CAPITOLA
CITY CLERK

From La Serena Properties & Steve Yates landlord -owner

APR 6 2023

Capitola City Council

My main position as owner and landlord for the building is to help insure the inhabitants within, a peaceful coexistence . In the case of each and all tenants the leases state;

"Tenant shall not cause or permit the Premises to be used in any way that constitutes a violation of any law, ordinance, or governmental regulation or order, or that unreasonably interferes with the rights of other tenants."

Basically the universal right to "quiet enjoyment" of your home or space.

A landlord may not discriminate based on the amount of rent coming in from one tenant over another. That a restaurant pays more rent does not give that owner expanded rights over an apartment tenant.

To further expand on this point, the authority that sits above even the City and the landlord is the State Alcohol Beverage Commission (the ABC). They have further defined the conditions wherein the commercial tenant may serve alcohol to the public. Stated as OPERATING RESTRICTIONS FOR CAPITOLA BAR AND GRILL:

"ENTERTAINMENT PROVIDED SHALL NOT BE AUDIBLE BEYOND THE AREA UNDER CONTROL OF THE LICENSEE."

This means that having a 5 person band like Cougar Unleashed playing in the dining room and making conversation on the deck of Margaritaville impossible is a direct violation of the ABC license. That the tenant directly upstairs can't even think or talk on the phone is a violation of the lease.

The OPERATING RESTRICTIONS go on to state:

"DURING NORMAL MEAL HOURS, AT LEAST 50% OF THE PREMISES SEATING SHALL BE DESIGNED AND USED FOR AND MUST POSSESS THE NECESSARY UTINSELS, TABLE SERVICE, AND CONDIMENT DISPENSERS WITH WHICH TO SERVE MEALS TO THE PUBLIC."

Here the applicant removes the tables and chairs to provide room for dancing, a band stage, drum set, amplifiers and the band members.

"We want to bring live music and dancing to the village." Michelle Strong

These are clear violations of the ABC license to sell alcohol. Food sales go to near zero and alcohol to near 100%. This is generally from 4PM on. (dinner time)

"We are losing nearly \$5000 a week without live bands and dancing." Michelle Strong."

The location in question has been a true restaurant for over 50 years. Stockton Bridge Grill operated for nearly 30 years successfully as a restaurant. Sotola came in post SBG and was wildly successful. Here the applicant simply wants to redirect sales from food to alcohol for unknown reasons. They are, according to their own website extremely successful in food service and preparation. They have as many 5 star Yelp ratings as Tressels or Shadowbrook. This should remain their focus.

Here the restaurant owner knew of the OPERATING RESTRICTIONS placed on them by the ABC. They never the less elected to apply for a permit for entertainment, expand that definition to include "live bands and dancing" and then chose to violate those restrictions placed on them by the ABC and the lease.

For the reasons stated above the applicants request for an appeal of a live band and dancing (ENTERTAINMENT PERMIT) permit must be denied.

Respectfully,

Steve Yates owner of the property

CA



CALIFORNIA DEPARTMENT OF

Alcoholic Beverage Control

Report Date: Saturday, March 25, 2023

LICENSE INFORMATION

License Number: 628965 **Primary Owner:** CAPITOLA STRONG INC.

Office of Application: 26 - SALINAS

BUSINESS NAME

CAPITOLA BAR & GRILL

BUSINESS ADDRESS

231 ESPLANADE , CAPITOLA, CA, 95010

County: SANTA CRUZ **Census Tract:** 1218.01

LICENSEE INFORMATION

Licensee: CAPITOLA STRONG INC.

Company Information

OFFICER: STRONG, MICHELLE ELIZABETH (DIRECTOR)

OFFICER: STRONG, MICHELLE ELIZABETH (CHIEF FINANCIAL OFFICER)

OFFICER: STRONG, MICHELLE ELIZABETH (PRESIDENT/SECRETARY)

STOCKHOLDER: STRONG, MICHELLE ELIZABETH

LICENSE TYPES

Allow up to six weeks for expiration date updates after fee waiver or renewal fee submittal.

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Original Issue Date: 29-OCT-2021 **Expiration Date:** 30-SEP-2023 **Master:** Y **Duplicate:**

From License Number: 47-601423

0 Fee Code: P0 **Transfers:** Transferred On: 29-OCT-2021

These are specific to this licensee

OPERATING RESTRICTIONS:

The premises shall comply with the provisions of Section 23038 of the Business and Professions Code and acknowledge that incidental, sporadic or infrequent meals or a mere offering of meals without actual sales shall not be sufficient to consider the premises in compliance with the aforementioned code section. *They pull most food out*

During normal meal hours, at least PERCENTAGE 50% of the premises seating shall be designed and used for and must possess the necessary utensils, table service, and condiment dispensers with which to serve meals to the public.

The quarterly gross sales of alcoholic beverages shall not exceed the quarterly gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.

Entertainment provided shall not be audible beyond the area under the control of the licensee.

The subject alcoholic beverage license shall not be exchanged for public premises type license.

DISCIPLINARY ACTION:

No Active Disciplinary Action found

DISCIPLINARY HISTORY:

Moss, Julia

From: msm@portata.com
Sent: Thursday, April 6, 2023 5:27 PM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; admin@capitolastrong.com
Subject: Entertainment permit for Capitola Bar and Grill

Dear Council Members,

No doubt you have received many letters and other communications about the importance of the entertainment permit. The devastation of the pandemic lockdown and the recent storm have battered local businesses and our community of workers whose livelihoods were disrupted. For those reasons, it is important for our business to quickly rebuild for the sake of the businesses, their staff, and the community which benefits from their businesses.

However, there is another issue that I believe is equally important. We have had a heavy blow to the spirit and soul of our community. People feel battered. Three long years of our lives have been disrupted by the lockdown and then spiked by the destruction of our favorite places on the Esplanade and wharf.

We need to feel good again. We need to feel hope. We need to be able to come together to listen to music and to dance. We need to rebuild our humanity and the bonds that tie us together in the community.

Now is not the time to quibble over bureaucratic details. We need bold leadership to rebuild our community. For all of our benefit, please issue the permit so that we come together, heal, and rebuild our community.

Respectfully,

Mark McWhinney

Moss, Julia

From: Roberta Marquis <lyricalnote@gmail.com>
Sent: Friday, April 7, 2023 9:46 AM
To: City Council; Keiser, Marguax; ladykpeterson@gmail.com
Subject: Capitola Bar and Grill Live Music Permit Please
Attachments: capitola letter.docx

Sent from [Mail](#) for Windows

April 6th2023

To: The City Council of Capitola

Please allow Capitola Bar and Grill to have music again! We miss music in Capitola! I moved here because of the fantastic music community here in Capitola. Now due to the storms, this is a no music community, there is only one wonderful place to go and dance with friends, Cork and Fork. With our wonderful Sand Bar rebuilding there is no place to enjoy live music with room to dance and enjoy a variety of food and cocktails.

Capitola Bar and Grill always brought in wonderful musicians. We would dance in that beautiful view with so much space, and delight our souls. It was wonderful to walk into the village and walk by and hear music from their door step. Bringing life to the Village. I also loved that they had music early evening. Having a variety of music venues keeps people in the village spending money on food at other places, plus I always seem to leave with a gift from my favorite gift stores or clothing.

Example of what is happening. Last Sunday friends and I finished a practice and wanted to meet in Capitola for music. Cork and Fork being the only music stopped at 5:30. We missed it. I walked to Capitola Bar and Grill with the sadness of no music.... Looked around, no music anywhere. Texted my group, what to do. We all decided to go other places in Santa Cruz. I live in Aptos so I went to watch sunset at Seabright and went home. I normally would go have a bite at Britannia or Thai, then go dance and work off my meal, enjoy friends and leave Capitola with joy in my heart. Now I leave with such sadness.

I am 60, female, a Boat Captain in Moss Landing who thrives on the community of dance and friendships we had in Capitola. I am missing this very much in my life!

Please give Capitola Bar and Grill their Permit to have live music back and support our local musicians and the Village.

Sincerely, with all my heart

Roberta Marquis

Lyricalnote@gmail.com

831-600-6990

Moss, Julia

From: madeline adamczeski <adamczeski1@gmail.com>
Sent: Friday, April 7, 2023 11:15 AM
To: City Council
Subject: Capitola Bar & Grill's Live Music

To: City Council Members
Mayor - Margaux Keiser
Vice Mayor - Kristen Brown
Council Member - Yvette Brooks
Council Member - Joe Clarke
From: Madeline Adamczeski
Re:Capitola Bar & Grill (CBG)
Date: 4/7/2023

Dear Member(s) of the City Council,

I'm both surprised and dismayed to learn that CBG's permit to allow live music has not yet been approved in spite of multiple efforts by the business owners/leasers. Family, friends, and I are big music enthusiasts and fans of local musicians hosted local establishments. Specifically, we are loyal patrons to CBG employers and employees as well as their musicians. Can you kindly help me/us understand why live music at CBG has been discontinued & has been allowed to lapse despite a staunch fan base comprised of current business owners and their clientele? In the meantime, please do not hesitate to offer suggestions on how I/we can help bring back local musicians so that CBG can continue hosting live music in this jewel of a venue.

Thank you.

Respectfully,
Madeline Adamczeski

Moss, Julia

From: Michelle Strong <info@capitolabarandgrill.com>
Sent: Friday, April 7, 2023 11:58 AM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; admin@capitolastrong.com; Moss, Julia
Subject: [PDF] I support Capitola Bar & Grill
Attachments: support-live-music-at-capitola-bar-amp-grill_040723.pdf

Dear Mayor and City Councilmembers:

This is additional information for your consideration of our appeal. Attached petition signatures to print.

Our operation hours are Monday through Thursday 8:00am to 9:00pm, Saturday and Sunday 8:00am to 10:00pm. Total hours per week average 93 hours. Of the 93 hours of business, our music program at most was 9 hours per week, that is less than 10%. Selling food is our primary focus of business and we serve food until closing.

It's not our goal to be a nightclub. We were very clear in our lease application that we want to join the vibrant Village and offer live music. Our restaurant is in the "Mixed Use Village" Zone. There should be an expectation of daytime noise while living in a mixed-use zone.

Calls for service since our occupancy have decreased along with being less severe violations. Among the calls of 2022 and 2023 the calls are unfounded noise complaints or normal business activity of the tourist area.

The umbrella noise ordinance for the City of Capitola is 10:00pm. Even the residential units in our building can have live entertainment until 10:00 pm. The coffee shop in the building has live music.

We offer entertainment during our operations hours, for which we close by 10:00pm. Municipal Code 5.24.005 Entertainment Permit states the permit is to regulate "night time noise". Several times it states, "Infringe upon the peace and quiet and nightly sleep of non patrons", "open after 9:00pm," and "an afterhours draw".

As business owners, we have made many alterations to assist in noise control, however the landlord has made no efforts to meet for a compromise nor has he made any efforts to add soundproofing for his son's unit. The unit above our bar area not only has noise from the surrounding traffic from the Village; there are several exhaust systems for the two restaurant's kitchen hoods, and a Verizon cell tower that has a generator and motor running 24 hours per day. The City of Capitola itself offers live music in the open outdoor Esplanade Park Bandstand. There are several neighboring

businesses that have some form of entertainment or amplified music. Through the street traffic, the pedestrians, the normal sounds of a restaurant, we should not have an expectation to keep all sounds inside our building. The landlord is responsible for the walls, roof and membrane of the building. It would fall on his burden to provide the building with proper insulation.

Out of the mixed-use building there are three restaurants and three residential units. The landlord's agent, Steve Yates, has concern of the "tenants" of the building. However out of the six commercial and residential units, we occupy two of the spaces out of six, that's one-third of the building's occupancy. As we occupy the restaurant and an apartment in the building. Of the two other restaurants, the Coffee shop offers live music, and has a piano in its dining area, while Margaritaville does offer background music in the dining and the patio. Among the neighboring businesses Paradise Beach Grille, less than 10 feet from our building, offers live entertainment, which from their permit, may go later than 10:00pm. Directly across the street from our restaurant, The Mercantile has an entertainment permit, with events that are held outdoors. This is what the Village is made off and what draws our customers. Visitors and locals alike come for breakfast and stay all day, finding new gems that have become their favorites, shops, eats, and music.

We are not asking you to rewrite the municipal code, nor are we asking for anything out of your reach. The City Manager's form has a place for the landlord's signature or consent; however the landlord has already given consent by signing our lease and agreeing that we would offer live music. The landlord cannot now add words to the lease as "sit-down only", nor can it exclude music after signing. The time for the landlord to exclude live music was before signing, as it did when it excluded the use of a "Mexican restaurant" in the lease.

Per our lease, "Section 1.09. Permitted Use/Exclusive Use. Tenant shall use the Premises for a restaurant, as defined in the City of Capitola use permit existing at the time of execution of this Lease, and for no other purpose. Notwithstanding, in no event shall the use include a Mexican food type restaurant."

Attached is a list I received of the Entertainment Permits issued in 2021. Out of the 43 permits issued, all 43 would fall under the "Restaurant" as permitted use. In our appeal we are asking to receive a permit in absence of the landlord's signature, as has been the City's typical procedure, as only 19 of the 43 have an actual application on file with the landlord's signature.

The landlord has not presented any support for loss; however, we have a significant loss of revenue, along with the loss of clientele, and staff. Our staff highly relies on tips, and through the reduction of sales, we are not able to retain valuable staff, especially in the slow season.

My husband, Lasalle Strong, and I have three restaurants. We are a part of this community, and we do our part to make the community a functioning place. By owning two businesses in Santa Cruz County, we employ over 40 residents, not to mention the many artists and musicians that have received income from playing at our establishments. Our business not only provides sales tax for the county, through our commercial lease we are responsible for paying the property and sewage taxes for the building, as a split cost with the other two commercial tenants.

We own a business in a tourist-driven community. Restaurants are an anchor for the retail and rental properties. This is not a zoning issue that should require the landlord's consent. The multi-use building has obstacles for both the residential and the commercial tenants. LaSalle and I have compromised enough by closing early, scheduling entertainment to end by 10:00 pm.

The residential landlords of the Multi-Use Village know what our Village entails, being in the Village adds value to their rental income. They should not be allowed to interfere with that mixed use in the Village, or impose on the businesses there that provide entertainment.

This location has changed hands numerous times. The past six years, we are the fourth business owners. We are proudly coming upon our two year anniversary, surviving two winters in a tourist town is not an easy feat. Consequently, the most unfortunate obstacle for our business has been the lack of support from our landlord.

I understand this matter has taken a lot of thought and may have caused some discomfort for those that are aware of Steve Yates' rath. However instead of looking at the negative repercussions, we ask that you look at, "How can the City Council of Capitola, help this family owned small business continue in their success?"

We are a BLACK owned, MEXICAN owned, WOMAN owned business, why is the landlord and his son "intimidated" by us?

Yours very truly,

LaSalle and Michelle Strong
Proprietors, Capitola Bar & Grill



Please attach the petition signatures attached.



Support Live Music at Capitola Bar & Grill

<https://www.thepetitionsite.com/464/903/626/support-live-music-at-capitola-bar-amp-grill/>

Author: LaSalle & Michelle Strong

Recipient: Capitola City Council

Petition:

Please support live music at Capitola Bar & Grill. We plan to meet at CBG at 5:00pm and walk over to Capitola City Hall. If you cannot join us in person, there is a link to attend via zoom. All are requested to email a letter of support to the City Council of Capitola. More information at capitolastrong.com

Please CC admin@capitolastrong.com on emails to the City Council, we will also print and bring to the meeting.

	Name	From	Comments
1.	Kelly G	Santa Cruz, CA	
2.	Xavier G	Santa Cruz, CA	
3.	Jennifer	Martinez, CA	
4.	Lori L	Antioch, CA	
5.	Marlene M	Fresno, CA	Please continue to allow Live Music at Capitola Bar & Grill. .
6.	Trisha A	Watsonville, CA	Please allow music at capitola bar and grill it also helps bring in tourist to visit other capitola village bussinesses
7.	Elizabeth P	Campbell, CA	Why are they being treated differently than other business\'s that have live music.
8.	Marji K	La Selva Beach, CA	
9.	Dawn C	Capitola , CA	
10.	scott m	scotts valley, CA	
11.	Chick G	Soquel, CA	Enjoyed music in Capitola for over 40 years. Capitola Bar and Grill has supplied some of the best of recent years AND it is early for those of us that don't stay up late. It brings us and our wallets into the village instead of staying home and we spend money on food and other things once we're in the village.
12.	Steven H	Santa Cruz, CA	Keep the village alive with live music at Capitola bar and grill
13.	Andrea I	Fresno, CA	
14.	Laurie L	La Selva Beach, CA	
15.	josie F	Capitola, CA	Live music and Dancing in the village is so important to us. This venue is so lovely and always bring us out to spend money and have a great time. As someone who lives and works in town it\'s great to have a place I like and can also refer tourists to also. They make a fun experience for locals and out of towners alike. Especially in this time when most of the other live music venues are closed, lets support joy in our village
16.	Kim M	Santa Cruz, CA	
17.	Belinda G	Martinez, CA	
18.	Anonymous	SANTA CRUZ, CA	
19.	Ted W	Santa Cruz, CA	
20.	Paul W	Capitola, CA	
21.	Karen M	Capitola , CA	
22.	CARALEENA M	Lemoore , CA	
23.	Julie L	Aptos, CA	
24.	Rick A	Capitola, CA	

	Name	From	Comments
25.	Jasmine A	Salinas , CA	Fingers crossed band night comes back, we miss our magical nights with our cbg family !
26.	Sheamir I	Salinas , CA	☺☺☺Music soothes the soul ☺☺
27.	Glenn B	Santa Cruz , CA	
28.	Andre M	Long Beach, CA	
29.	Shameeka M	Long Beach, CA	
30.	Belita M	Santa Cruz, CA	
31.	Anonymous	HOMETOWN, IL	
32.	Dawn S	CAPITOLA, CA	
33.	Nancy W	Santa Cruz, CA	
34.	Jennifer W	Soquel, CA	
35.	Shelly M	Watsonville , CA	Margaux you know how much music helps. Let them have it
36.	Pam L	Aptos, CA	We've been enjoying live music in the village for over a decade. This situation sounds personal and I suggest the city council stay out of that and continue to allow the show to go on as they have in the past.
37.	Rupert H	Ben Lomond, CA	
38.	Natalie M	Soquel, CA	Live music is essential for the Village
39.	Emanuel B	Santa Cruz, CA	Music heals everything!
40.	Janice. W	Santa Cruise, CA	
41.	Amy V	Santa Cruz , CA	As a neighboring store owner to this business who has also been very challenged staying afloat in this economy we ask you approve this permit not only to help a local business survive but so we go enjoy the music! My store is also in Capitola village right on Capitola avenue
42.	Alexa T	Capitola , CA	
43.	Joseph U	Santa Cruz , CA	Bring back the music !!!
44.	Lucas C	Capitola, CA	☺☺
45.	Ed V	Soquel, CA	
46.	Kyle C	Soquel, CA	Thank you!
47.	Karen B	Sacramento, CA	
48.	Elizabeth P	Santa Cruz, CA	
49.	Ingrid S	Capitola, CA	
50.	Tamara J	Felton , CA	
51.	Kylie O	Santa Cruz, CA	
52.	Michael W	San Jose, CA	
53.	Timothy P	Santa Cruz, CA	
54.	Scott O	Santa Cruz, CA	
55.	Jennifer F	Gilroy , CA	

	Name	From	Comments
56.	Donna D	San Martin, CA	
57.	Will L	Capitola , CA	
58.	Jack G	San diego, CA	
59.	Lynn Y	Santa Cruz, CA	
60.	Ariana K	Campbell, CA	
61.	Emma S	slo, CA	
62.	kyle y	santa cruz, CA	
63.	Michelle R	Santa Cruz, CA	
64.	Ed L	Davis, CA	
65.	Erin B	Benicia, CA	
66.	Diane G	Gilroy, CA	
67.	Stan E	San Francisco , CA	Capitola Bar and Grill has had music for years. Why would that change? Besides offering customers quality entertainment, it helps the restaurant make a profit. Don't we all want that? Things are difficult enough for business owners in Capitola, after the recent storms. Let's help the businesses that are still open. Thank you. -Stan
68.	James M	Campbell , CA	Let the music play every day and every way
69.	Anonymous	Capitola, CA	Please we support live music in Capitola at Capitola Bar and Grill!
70.	Lisa H	Campbell , CA	I'm someone who loves Capitola and the music scene! Please don't take this away from this business!
71.	Mark M	SCOTTS VALLEY, CA	
72.	Amber C	Martinez, CA	
73.	Ron G	Santa Cruz, CA	I support the Capitola Bar & Grill.
74.	Debra K	Aptos, CA	
75.	Serena W	Santa Cruz, CA	I live in Capitola Village. I support and expect the legal right to have an entertainment permit not be denied to CBG due to any landlord request. I want live entertainment where I live it's a main reason why I moved here! Thank you.
76.	Andrew E	Capitola, CA	Hearing live music as we walk into the village is a huge part of the experience that makes Capitola as charming as it is. Personally, I'm sensitive to loud sounds so karaoke and live band nights at CBG are nights I avoid eating there, but I still enjoy the atmosphere that they create! It's very disappointing to see the news that they are now being told that they can't do this. Please provide them with whatever permits are required so they can continue entertaining our residents and visitors
77.	Kevin M	Capitola, CA	We need to support our local businesses, Music and art! Show your support for Capitola Bar & Grill to get permitted and continue to serve our Community

	Name	From	Comments
78.	John Z	Modesto, CA	Supporting live music
79.	Carol D	Imperial Beach , CA	Keep the music! Thank you.
80.	Kara D	Soquel, CA	
81.	Rigo A	Soquel, CA	Bring back live music!
82.	Dennis F	Santa Cruz, CA	Down with the haters! Bring back live music!
83.	Roberta M	Aptos, CA	
84.	James L	Martinez, CA	
85.	Tim H	Santa Cruz, CA	
86.	Joezette M	Madera , CA	Best of luck on this journey to win for Capitola Village!!
87.	David D	Santa Cruz, CA	
88.	Sandra R	Santa Cruz, CA	
89.	Amber G	Hollister , CA	
90.	Lorette K	Santa Cruz, CA	
91.	Molly W	Aptos, CA	
92.	Jefferson H	APTOS, CA	
93.	Amy T	Santa Clara, CA	If you are allowing other businesses to have music you need to allow ALL Businesses. Do better City of Capitola!
94.	Raina C	Aptos, CA	
95.	Madeline A	Santa Cruz, CA	What is the reasoning and who is behind the effort to prohibit live music that: 1. support musicians & 2. Support local business and 3. bring immense joy to a wide range of a large swath of members of this community?
96.	Danielle S	Capitola, CA	
97.	Dan S	Capitola, CA	
98.	Robert J	Capitola, CA	

Moss, Julia

From: Debra de Roos <debra.deroos@gmail.com>
Sent: Friday, April 7, 2023 12:06 PM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; admin@capitolastrong.com
Subject: I support Capitola Bar & Grill

I am writing this letter in support of Capitola Bar & Grill. I request the City Council of Capitola, CA approve the Entertainment Permit for Capitola Bar & Grill.

Sincerely,
Debbie de Roos. 805-259-6456

Moss, Julia

From: Michelle Strong <info@capitolabarandgrill.com>
Sent: Friday, April 7, 2023 12:15 PM
To: City Council; Keiser, Marguax; ladykpetersen@gmail.com; Brooks, Yvette; Clarke, Joe; Pedersen, Alexander; admin@capitolastrong.com; Moss, Julia
Subject: [PDF] RE: I support Capitola Bar & Grill
Attachments: Public Records - List of Entertainment Permits.pdf

Attached is the list of Entertainment Permits from 2019 to Feb. 21, 2023.

Thank you,

Michelle Strong
 231 Esplanade #102
 Capitola, CA 95010
 Cell #559-341-5418



From: Michelle Strong
Sent: Friday, April 7, 2023 11:57:51 AM
To: citycouncil@ci.capitola.ca.us <citycouncil@ci.capitola.ca.us>; margauxkeiser@gmail.com <margauxkeiser@gmail.com>; ladykpetersen@gmail.com <ladykpetersen@gmail.com>; ybrooks@ci.capitola.ca.us <ybrooks@ci.capitola.ca.us>; jclarke@ci.capitola.ca.us <jclarke@ci.capitola.ca.us>; apedersen@ci.capitola.ca.us <apedersen@ci.capitola.ca.us>; admin@capitolastrong.com <admin@capitolastrong.com>; Moss, Julia <jmoss@ci.capitola.ca.us>
Subject: I support Capitola Bar & Grill

Dear Mayor and City Councilmembers:

This is additional information for your consideration of our appeal. Attached petition signatures to print.

Our operation hours are Monday through Thursday 8:00am to 9:00pm, Saturday and Sunday 8:00am to 10:00pm. Total hours per week average 93 hours. Of the 93 hours of business, our music program at most was 9 hours per week, that is less than 10%. Selling food is our primary focus of business and we serve food until closing.

It's not our goal to be a nightclub. We were very clear in our lease application that we want to join the vibrant Village and offer live music. Our restaurant is in the "Mixed Use Village" Zone. There should be an expectation of daytime noise while living in a mixed-use zone.

Calls for service since our occupancy have decreased along with being less severe violations. Among the calls of 2022 and 2023 the calls are unfounded noise complaints or normal business activity of the tourist area.

The umbrella noise ordinance for the City of Capitola is 10:00pm. Even the residential units in our building can have entertainment until 10:00 pm. The coffee shop in the building has live music.

We offer entertainment during our operations hours, for which we close by 10:00pm. Municipal Code 5.24.005 Entertainment Permit states the permit is to regulate “night time noise”. Several times it states, “Infringe upon the peace and quiet and nightly sleep of non patrons”, “open after 9:00pm,” and “an afterhours draw”.

As business owners, we have made many alterations to assist in noise control, however the landlord has made no efforts to meet for a compromise nor has he made any efforts to add soundproofing for his son’s unit. The unit above our bar area not only has noise from the surrounding traffic from the Village; there are several exhaust systems for the two restaurant’s kitchen hoods, and a Verizon cell tower that has a generator and motor running 24 hours per day. The City of Capitola itself offers live music in the open outdoor Esplanade Park Bandstand. There are several neighboring businesses that have some form of entertainment or amplified music. Through the street traffic, the pedestrians, and the normal sounds of a restaurant, we should not have an expectation to keep all sounds inside our building. The landlord is responsible for the walls, roof and membrane of the building. It would fall on his burden to provide the building with proper insulation.

Out of the mixed-use building there are three restaurants and three residential units. The landlord’s agent, Steve Yates, has concern of the “tenants” of the building. However out of the six commercial and residential units, we occupy two of the spaces out of six, that’s one-third of the buildings occupancy. As we occupy the restaurant and an apartment in the building. Of the two other restaurants, the Coffee shop offers live music, and has a piano in its dining area, while Margaritaville does offer background music in the dining and the patio. Among the neighboring businesses Paradise Beach Grille, less than 10 feet from our building, offers live entertainment, which from their permit, may go later than 10:00pm. Directly across the street from our restaurant, The Mercantile has an entertainment permit, with events that are held outdoors. This is what the Village is made off and what draws our customers. Visitors and locals alike come for breakfast and stay all day, finding new gems that have become their favorites, shops, eats, and music.

We are not asking you to rewrite the municipal code, nor are we asking for anything out of your reach. The City Manager’s form has a place for the landlord’s signature or consent; however the landlord has already given consent by signing our lease and agreeing that we would offer live music. The landlord cannot now add words to the lease as “sit-down only”, nor can it exclude music after signing. The time for the landlord to exclude live music was before signing, as it did when it excluded the use of a "Mexican restaurant" in the lease.

Per our lease, “Section 1.09. Permitted Use/Exclusive Use. Tenant shall use the Premises for a restaurant, as defined in the City of Capitola use permit existing at the time of execution of this Lease, and for no other purpose. Notwithstanding, in no event shall the use include a Mexican food type restaurant.”

Attached is a list I received of the Entertainment Permits issued in 2021. Out of the 43 permits issued, all 43 would fall under the “Restaurant” as permitted use. In our appeal we are asking to receive a permit in absence of the landlord’s signature, as has been the City’s typical procedure, as only 19 of the 43 have an actual application on file with the landlord’s signature.

The landlord has not presented any support for loss; however, we have a significant loss of revenue, along with the loss of clientele, and staff. Our staff highly relies on tips, and through the reduction of sales, we are not able to retain valuable staff, especially in the slow season.

My husband, Lasalle Strong, and I have three restaurants. We are a part of this community, and we do our part to make the community a functioning place. By owning two businesses in Santa Cruz County, we employ over 40 residents, not to mention the many artists and musicians that have received income from playing at our establishments. Our business not only provides sales tax for the county, through our commercial lease we are responsible for paying the property and sewage taxes for the building, as a split cost with the other two commercial tenants.

We own a business in a tourist-driven community. Restaurants are an anchor for the retail and rental properties. not a zoning issue that should require the landlord's consent. The multi-use building has obstacles for both the residential and the commercial tenants. Lasalle and I have compromised enough by closing early, scheduling entertainment to end by 10:00 pm.

The residential landlords of the Multi-Use Village know what our Village entails, being in the Village adds value to their rental income. They should not be allowed to interfere with that mixed use in the Village, or impose on the businesses there that provide entertainment.

This location has changed hands numerous times. The past six years, we are the fourth business owners. We are proudly coming upon our two year anniversary, surviving two winters in a tourist town is not an easy feat. Consequently, the most unfortunate obstacle for our business has been the lack of support from our landlord.

I understand this matter has taken a lot of thought and may have caused some discomfort for those that are aware of Steve Yates' rath. However instead of looking at the negative repercussions, we ask that you look at, "How can the City Council of Capitola, help this family owned small business continue in their success?"

We are a BLACK owned, MEXICAN owned, WOMAN owned business, why is the landlord and his son "intimidated" by us?

Yours very truly,

LaSalle and Michelle Strong
Proprietors, Capitola Bar & Grill



Please attach the petition signatures attached.



Re: February 21, 2023, Public Records Act Request

Dear Mr. and Mrs. Strong,

The City of Capitola ("City") is in receipt of the appeal to the City Council of City Manager's decision regarding your entertainment permit, received on February 21, 2023. As part of your appeal documents, you also posed a list of questions, which appear to request public records. Thus, consistent with its duty to assist the public in making a focused and effective request that reasonably describes an identifiable record(s), the City has interpreted these requests to constitute a Public Records Act request ("Request").

The City intends to cooperate to the fullest extent possible with the Public Records Act ("PRA") (Government Code section 7920.000 et seq.) Under established California law, the City is obliged to comply with a request for a public record so long as the requestor makes a specific and focused request for information, that information is maintained by the City in its ordinary course of business, the information is disclosable, and the record can be located with reasonable effort. The PRA provides for the inspection or copying of existing identifiable public records; it does not compel the City to respond directly to questions or create new records, lists, or reports in response to a request.

The City now makes the following determinations:

Request No. 1: "Did the City Manager delegate his authority to issue Entertainment Permits to the Chief of Police?"

Determination No. 1: Request No. 1 appears to request information only, and therefore does not request any public records.

Request No. 2: "Did the police exercise discretion to issue permits with or without the explicitly landlord consent on the form?"

Determination No. 2: Request No. 2 appears to request information only, and therefore does not request any public records.

Request No. 3: "How many entertainment permits issued in the last five years? How many with explicit landlord consent on the form? How many without?"

Determination No. 3: The City is not required to create records in response to a request for public records. However, in an effort to provide available information to you, the City provides the following information:

2023 – Four Entertainment Permits have been issued; four applications are pending:

Britannia Arms (Signed by property owner) – Permit issued on 1/26/2023

Capitola Mercantile (Signed by property owner) – Pending Captain Ryan's review

Capitola Wine Bar (Signed by property owner) – Pending Central Fire Inspection Report

Gayle's Bakery (Signed by property owner) – Permit issued on 1/9/2023



Monarch Cove Inn (Signed by property owner) – Permit issued on 2/28/2023
Paradise Beach Grille (Signed by property owner) – Permit issued on 2/28/2023
The Sand Bar (Signed by property owner) – Pending ABC Alcohol License
Zelda's (Signed by property owner) – Pending Captain Ryan's review

2022 – Twelve Entertainment Permits were issued:

Bay Bar and Grill (Signed by property owner) – Permit issued on 2/23/2022
Britannia Arms (Signed by property owner) – Permit issued on 1/27/2022
Capitola Bar & Grill (NOT signed) – Permit issued on 1/27/2022
Capitola Mercantile (Signed by property owner) – Permit issued on 2/14/2022
Capitola Wine Bar (Signed by property owner) – Permit issued on 6/6/2022
Cork & Fork (Signed by property owner) – Permit issued on 2/14/2022
Gayle's Bakery (Signed by property owner) – Permit issued on 7/5/2022
Monarch Cove Inn (Signed by property owner) – Permit issued on 3/22/2022
Paradise Beach Grille (Signed by property owner) – Permit issued on 3/29/2022
The Sand Bar (Signed by property owner) – Permit issued on 1/27/2022
Wharf House (NOT signed) – Permit issued on 1/27/2022
Zelda's (Signed by property owner) – Permit issued on 2/14/2022

2021 – Seven Entertainment Permits were issued:

Bay Bar & Grill (No application on file) – Permit issued on 4/27/2021
Britannia Arms (No application on file) – Permit issued on 4/28/2021
Capitola Bar & Grill (NOT Signed) – Permit issued on 11/16/2021
Cork & Fork (No application on file) – Permit issued on 4/23/2021
Paradise Beach Grille (No application on file) – Permit issued on 4/6/2021
Wharf House (No application on file) – Permit issued on 3/23/2021
Zelda's (No application on file) – Permit issued on 4/2/2021

2020 – Ten Entertainment Permits were issued:

Britannia Arms (No application on file) – Permit issued on 1/3/2020
Capitola Wine Bar (No application on file) – Permit issued on 11/4/2020
Cork & Fork (No application on file) – Permit issued on 12/31/2019
Fast Eddy's (No application on file) – Permit issued on 1/10/2020
Gayle's Bakery (No application on file) – Permit issued on 12/19/2019
Monarch Cove Inn (Signed by property owner) – Permit issued on 6/9/2020
Paradise Beach Grille (No application on file) – Permit issued on 12/31/2019
Shadowbrook (No application on file) – Permit issued on 1/10/2020
The Sand Bar (No application on file) – Permit issued on 1/10/2020
Zelda's (No application on file) – Permit issued on 1/21/2020



2019 – Six Entertainment Permits were issued:

Britannia Arms (No application on file) – Permit issued on 1/30/2019
Cork & Fork (No application on file) – Permit issued on 5/2/2019
Fast Eddy’s (No application on file) – Permit issued on 6/14/2019
Gayle’s Bakery (No application on file) – Permit issued on 12/27/2018
Monarch Cove Inn (No application on file) – Permit issued on 2/25/2019
Wharf House (No application on file) – Permit issued on 1/10/2019

If the information above is not what you intended to request or you would like to request additional documentation, please inform us.

Request No. 4: “Why that change in policy?”

Determination No. 4: Request No. 4 appears to request information only, and therefore does not request any public records.

Request No. 5: “Did the City Manager, Police Department, or any other staff communicate with Steve Yates about this matter?”

Request No. 6: “When, how, and what did he say?” Did Mr. Yates say that he never consented to entertainment, or that he changed his mind?

Request No. 7: “Did he say or imply he would sue the City if the permit was not cancelled or not reviewed?”

Determinations Nos. 5-7: The City is interpreting these three requests to seek correspondence between City staff (including the City Manager and Police Department) and Mr. Yates between August 1, 2021 through February 21, 2023. Consistent with its interpretation, the City possesses records responsive to this request, and is currently collecting and reviewing such records.



420 Capitola Ave.
Capitola, California 95010
Telephone: (831) 475-7300
FAX: (831) 479-8879
Website: <http://www.cityofcapitola.org>

If the City's interpretations of the above requests do not reflect the public records you intended to request, please provide additional clarification to assist the City in effectively searching for and collecting responsive public records. The City is collecting and reviewing records for responsiveness and privilege. Review is ongoing. The City will endeavor to provide a first batch of responsive records on or before March 16, 2023. If you have any questions regarding the City's response or would like to discuss your Request, please contact me at jmoss@ci.capitola.ca.gov.

Thank you,

Julia Moss
City Clerk
831-475-7300 (ext. 228)



Capitola Bar and Grill Entertainment Permit Appeal

Item 7 A.

Capitola City Council Meeting
June 21, 2023



Appeal – Capitola Bar and Grill

Presentation Overview

1. City Entertainment Permit requirements
2. Capitola Bar and Grill application
3. Reasons for City's denial
4. Appeal



Municipal Code 5.24

Capitola Municipal Code Chapter 5.24

- 5.24 – Governs entertainment permits issued by the City
- Identifies three categories of entertainment permits:
Single, Minor, and General
- Authorizes CM, or Department Head, to issue permit, set with conditions to assure entertainment does not cause a disturbances
- Authorizes City Council or City Manager to add conditions including date/time of operation, and operating noise levels, to further manage noise level limits.



Entertainment Application

Entertainment Application

- 5.24.080 – Authorizes City Manager to create application forms. Applicants may be required to submit nonprivileged information reasonably related to intent of Ordinance.
- Current application requires:
 - Information about the business
 - Proposed entertainment including the hours of intended operation
 - Proper licensing and Fire inspections
 - Property Owner's Statement, including the property owner's signature
- Current application has been in place since **2018** and is **consistent with all neighboring jurisdictions.**



Types of Entertainment Permits

Capitola Municipal Code Chapter 5.24 – Entertainment Permits

Police Department issues entertainment permits

Year	Number of Permits
2023	8
2022	12
2021	7
2020	10
2019	6

- Single EP \$41
 - Single event within seven-day period
- Minor EP \$174
 - Entertainment that is incidental to the primary business
- General EP \$652
 - Live music that attracts business



Timeline - Capitola Bar and Grill

Capitola Bar and Grill (CBG) History of Entertainment Permits:

October 21, 2021 – CBG applied and received **Minor EP**. Permit was valid for approximately 6 weeks - issued on Nov 16, and expired on December 31, 2021.

January 2022 – CBG applied for Minor EP. Based on application, staff required permit to be upgraded to a **General Entertainment Permit**.

Summer of 2022, staff received complaints about entertainment at CBG and discovered the property owner's statement had not been completed

December 2022 – CBG applied for a General EP, without property owner authorizing signature



Property Owner Statement

Property Owner Statement:

As the property owner, I do hereby consent to live entertainment of the type described in this application to be conducted upon the premises occupied by the above-named applicant in accordance with the provisions set for by Chapter 5.24 of the City of Capitola Municipal Code.

Property Owner's Signature

Date



Staff Research

- Prior to issuing final staff decision on 2023 CBG entertainment permit staff researched history of property owner consent
 - All existing records were examined
 - Staff who oversaw entertainment permits in prior years interviewed
 - Results showed that no other entertainment permits were issued without property owner consent



Staff Determination and Appeal

- Staff met with applicants in Dec. 2022 to explain situation and offered to encourage parties to mediate.
 - CBG expressed interest in mediating
 - Staff reached out to property owner to encourage mediation
- After entertainment continued into January 2023, staff issued notice of final decision denying the 2023 application on Jan 31
 - Appeal received from CBG on Feb. 21, 2023



Appeal Summary

Appeal Point 1

City staff exceeded its authority to put requirement for property owner authorization on the application

Response:

Muni Code authorizes City Manager to develop an application for entertainment permits to implement the City's Code

City's Code is intended to protect persons not patronizing the business that is hosting entertainment

Because property owners often have multiple tenants in a building, ensuring the property owner is supportive of the permit request helps protect property owner's other tenants in the same building.



Appeal Summary

Appeal Point 2:

City should not cancel that permit unless there is a good reason such as excessive noise complaints

Response:

City did not cancel or revoke the entertainment permit

Entertainment permits are issued on an annual basis

City denied applicant's 2023 entertainment permit because it lacked property owner's signature granting permission to use their property for entertainment purposes



Appeal Summary

Appeal Point 3:

Landlord is legally bound by his agreements to allow Entertainment.

Response:

City is not a party to lease between landlord and appellant

Staff cannot comment on the provisions in the lease.

City is charged with administering and enforcing its own Municipal Code.



Appeal Summary

Appeal Point 4:

Because City has twice issued the permit in the past, without the landlord's signature, it should reissue it now.

Response:

Staff acknowledges its error in previously issuing entertainment permits to Capitola Bar and Grill without landlord's signature.

However, the remedy for that mistake is not to grant another permit for 2023.



Recommendation

- Adopt resolution denying an appeal of the City Manager's decision to deny an application for a 2023 Regular Entertainment Permit for Capitola Bar and Grill.

Capitola City Council

Agenda Report

Meeting: June 22, 2023

From: Public Works Department

Subject: Grand Avenue Pathway



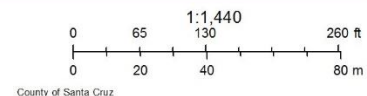
Recommended Action: Direct staff to relocate and repair existing fencing to maintain a minimum walkway width of eight feet on the Grand Avenue Pathway.

Background: The Grand Avenue Pathway, which historically ran along the top of the bluff on Depot Hill between Central Avenue and Sacramento Avenue, is designated as part of the California Coastal Trail. The path is treasured by residents and visitors alike for providing public access to stunning views of the City of Capitola and the Monterey Bay. Due to coastal bluff erosion, Grand Avenue east of Central Avenue has been closed to vehicular traffic since approximately the 1980's. The pedestrian walkway currently extends two blocks east of Central Avenue to Oakland Avenue.

Grand Avenue Pathway



June 12, 2023



On March 24, 2005, the City Council directed staff to maintain a minimum walkway width of eight feet (from bluff face to edge of pathway) within the Grand Avenue right-of-way, and that the public walkway be relocated within the right-of-way as necessary until such time that the path is no longer usable. That action also included a non-binding recommendation that future City Councils should not consider eminent domain for the public walkway should the right-of-way become too narrow to safely accommodate pedestrians.

Road right-of-way is an easement for the purposes of constructing and maintaining roadways, including pedestrian facilities. The City may claim all or only a portion of a road right-of-way for these purposes. In the case of Grand Avenue, between Central Avenue and Oakland Avenue, the City has not used or maintained the right-of-way between the old asphalt roadway and the right-of-way boundary, and some adjacent property owners have utilized this area for their benefit, generally for landscaping. Private property owners may not establish prescriptive rights against a public easement, so the City maintains the right to claim the unused right-of-way at any time.

On May 25, 2017, the City Council directed the closure of a block of the Grand Avenue Pathway between Oakland Avenue and Hollister Avenue due to the threat of continuing bluff failures in the area, based on the results of a geologic assessment. The City Council also authorized the formation of a citizen group (Ad Hoc Depot Hill Bluff Group) charged with studying potential long-term solutions for preservation of the pathway. On October 11, 2018, the Ad Hoc Depot Hill Bluff Group presented options for path preservation that were considered by the City Council, inclusive of filling undercut areas and construction of a groin or seawall. The City Council did not take any action at that time. The pathway between Oakland Avenue and Hollister Avenue remains closed, and portions of that section of path have since eroded away.

Discussion:

Geological Investigation

The January 2023 storms caused additional bluff failures to occur on Grand Avenue, one resulting in the loss of bluff and fencing between Saxon Avenue and Oakland Avenue. To assess the safety of the path after these failures, the City contracted with Erik Zinn of Pacific Crest Engineering (PCE), the geologist who completed the 2017 bluff studies, to evaluate the bluff’s condition and prepare a study to document findings.

The PCE evaluation (Attachment 1) found that the bluff is in various states of failure between Saxon and Oakland Avenues. Portions of the bluff failed from top to bottom in response to the intense storms this past winter and other areas appear to be primed for failure. PCE observed additional fractures which indicate that some locations in the bluff face are continuing to fail in reaction to the most recent bluff failures. The evaluation also noted that portions of the bluff between Oakland Avenue and Hollister Avenue have continued to retreat since last evaluated in 2017 (Attachment 2).

Overall, the current evaluation estimates the top bluff will retreat between 11 to 19 feet from the current position within the next one to six years.

Potential Actions

Options to maintain the Grand Avenue Pathway

- 1. Relocate and repair existing fencing

This option would move the fencing for the pathway inland approximately ten feet, resulting in a pathway between Saxon Avenue and Oakland Avenue of approximately eight to ten feet wide. Based on the updated geological report, staff anticipates that relocating the path will extend its useful life for one to six years between Saxon Avenue and Oakland Avenue without removing private encroachments.

Staff recommends this alternative for the pathway at this time as it meets Council’s 2005 direction to maintain a minimum walkway width of eight feet within the Grand Avenue right-of-way. This alternative can be executed at a low capital cost and minimal amount of staff time, as discussed in the fiscal impacts below. This does not stop the City from pursuing alternative 2, below, at a later date when additional bluff failures occur.

- 2. Remove encroachments in the Grand Avenue right-of-way

Between Central Avenue and Oakland Avenue, the remaining pavement from the old vehicular roadway does not extend to the limits of the dedicated right-of-way easement. Based on preliminary investigations of this area, it appears the road right-of-way extends beyond the walkway between 4 and 14 feet.

This option would move the fencing for the pathway inland approximately 10 feet, remove private improvements in the City's right-of-way, and relocate the pathway between Saxon Avenue and Oakland Avenue at a width of approximately 12-24 feet. This may extend the life of the pathway for a period of time beyond the one to six years estimated in Option 1.

3. Closure of the pathway at Saxon Avenue and abandon the road right-of-way

Closure of the pathway at the beginning at Saxon Avenue would relieve the City of maintenance of this area. Closure would require the issuance of a Coastal Development Permit, as was done for the pathway between Oakland Avenue and Hollister Avenue in 2017. The permit could be appealed to the California Coastal Commission (CCC).

In a letter dated May 23rd, 2017, CCC urged the City Council to explore other alternatives to closing the pathway, including reclaiming "all areas of the publicly owned right-of-way along this entire stretch of Depot Hill that have been encroached upon by such private residential development so that this publicly-owned right-of-way property can be used to ensure that a path remains available for public access." This option is discussed under option 1, above.

Abandonment of a right-of-way relinquishes the City's interest in all or a portion of the previously dedicated public easement, thereby giving a property owner more usable area. Abandonment does not assign ownership or affect other property rights in the abandoned property, but rather releases the City's interest and liability in the area.

Fiscal Impact: Fiscal impacts vary greatly depending on Council direction. Table 1 below provides a comparison of potential costs for the options discussed above.

Table 1. Relative Costs

Option	Capital Cost	Staff Time	Risk
1. Relocate Fencing	Low	Low	Moderate
2. Remove Encroachments	Moderate	High	Low
3. Closure Pathway	Low	Moderate	Low

Attachments:

1. Geological Investigation – Oakland to Saxon (Pacific Crest Engineering, 2023)
2. Geological Investigation – Hollister to Oakland (Zinn Geology, 2017)
3. Correspondence

Report Prepared By: Jessica Kahn, Public Works Director

Reviewed By: Julia Moss, City Clerk

Approved By: Jamie Goldstein, City Manager

9 June 2023

Project No. 2381

City of Capitola, Public Works
Attention: Jessica Kahn, Public Works Director
420 Capitola Ave
Capitola, California 95010
Phone: (831) 475-7300
jkahn@ci.capitola.ca.us

Re: Limited geological investigation of coastal bluff failure
Grand Avenue footpath near intersection with Oakland Avenue and Saxon Avenue
Capitola, California 95010

Dear Jessica:

This letter presents the results of our limited geological investigation of the bluff failure that has undermined portions of the footpath along Grand Avenue between its intersection with Oakland Avenue and Saxon Avenue (see Plate 1).

Over the long term, the bluff below the footpath has been episodically retreating as the soil and bedrock exposed on the bluff face erodes and fails in the form of shallow landslides, debris flows and rock falls, mostly in response to intense storms, wave erosion and earthquakes. The most recent shallow landslides that have caused the top of the bluff to retreat and undermine the footpath this winter appear to have been driven by saturation of the marine terrace deposits soil that caps the underlying Purisima Formation bedrock, as well as toppling failures of slabs of the bedrock from top to bottom (see Plate 2).

The overall failure process for the coastal bluff at this location is a two-part process. The Purisima Formation bedrock exposed in the lower bluff is eroded and notched by waves until the notch intersects a nearly vertical bluff-parallel joint set, at which point a slab of bedrock topples, typically from top to bottom for the exposed slab. The bedrock topple process also takes the overlying marine terrace deposits along with it leaving a very steeply dipping to nearly vertical scar in the bluff face that freshly exposes both the bedrock and marine terrace deposits. At that point, the wave scour process begins anew at the base of the bluff, eventually carving another notch into the bedrock. The marine terrace deposits concurrently begin to erode and slide in a piecemeal fashion as they seek the angle of repose of about 38 degrees for the sand and gravels that compose that formation. This process continues unabated until the bedrock topples again in the future, resetting the entire retreat process geometry and clock.

We mapped the position of the bluff and the exposed formations using the base map by Bowman and Williams provided to us by the City of Capitola. We relocated the top of the bluff on that map as well as the fence line because the bluff has apparently receded since

the last time that portion of the map was modified and the fence at the top of the bluff has been relocated in locations in response to the bluff failures.

The bluff is in various states of failure between Saxon and Oakland Avenues. Portions of the bluff failed from top to bottom in response to intense storms of this past winter. In some locations, the bedrock exposed in the bluff is dilated and appears to be primed for toppling. Deep notches within the bedrock at the base of the bluff and sea caves were observed during our field reconnaissance on 14 May 2023. Extensional fractures (marked by red hachured lines on Plate 1) were observed on the ground surface in several locations, which indicates that the Marine Terrace Deposits in the bluff face are continuing to fail in reaction to this past winter's landslide.

The base of the bluff where it intersects with the modern day wave cut platform (called the "shoreline angle") was covered by sand, landslide deposits and rubble during our 14 May 2023 reconnaissance. It is likely that the wave carved notches into the bedrock at the base of the bluff are even deeper than observed.

We also reviewed a geological report for the Depot Hill Geological Hazard Abatement District, prepared on 12 April 2000 by Rogers Johnson and Associates. The report documents a past calculated long term bluff retreat rate of about 1.0 feet per year at that time which seems reasonable based upon our experience with past geological investigations in this area. The authors also cautioned the reader that the bluff had been severely undercut at that point, implying that a large failure of the bluff was imminent. This process described by them isn't a one time event – as noted above this is an ongoing cyclical process that is constantly driving the face of the bluff landward.

As noted at the beginning of this letter, the fate of the bluff and the retreat is always tied to what is happening at the base of the bluff with respect to notching and formation of sea caves. We noted two distinct conditions with respect to that observation for the area studied:

1. Various portions of the bluff between Saxon and Oakland Avenues that occurred this winter appear to have been triggered by toppling of undercut bedrock (see Plate 2). Although we could not observe the absolute bottom of the base of the bluff in this area, since it is still obscured by sand and landslide debris, the volume of large sandstone blocks in the debris indicates that bedrock portion of the bluff failed, perhaps more than five feet of the undercut bluff face.
2. Some of landslides that occurred this winter between Saxon and Hollistr Avenues , appear to have been within the marine terrace deposits only (see Plate 2). The bedrock bluff face in some of those areas appears to be undercut by at least five feet and is primed to topple.



3. Although no landsliding occurred this past winter in some locations between Saxon and Oakland Avenues (see heavily vegetated areas on bluff face on Plate 2), the bedrock is primed to topple at this location due to being notched at the base.

Most of the marine terrace deposits in this area are over steepened and will likely lay back to an average angle of about 38 degrees. This may come about in one to three rainy seasons. Since this region is subject to wet and dry cycles that can last for years, we need to assign a range of years to the concept of one to three rainy seasons. The conservative analysis would assume that we will have back-to-back wet seasons for the next several years, which may lay back the marine terrace deposits to the angle of repose. A more liberal analysis would assume that we will enter a drought period of three to five years, followed by wet year. Using those ranges implies that the top of the bluff within Blocks A and C may retreat significantly within one to six years.

A review of the most recent El Nino status by NOAA (which can be accessed here: https://www.cpc.ncep.noaa.gov/products/analysis_monitoring/lanina/enso_evolution-status-fcsts-web.pdf) indicates that “A transition from ENSO-neutral to El Niño is favored during May-July 2023, with chances of El Niño increasing to greater than 90% into the winter 2023-24.” Although El Nino climatic conditions do not always result in greater than average precipitation and large storm waves, the condition itself raises the probability of those types of events impacting central California. If we have a repeat of this past storm season next year, the top of the bluff may retreat significantly by the end of next winter in the study area.

We have projected where the top of the bluff will retreat if the marine terrace deposits lay back to the angle of repose of about 38 degrees on two cross sections and the site map (see Plate 1). Using just this analysis pushes the top of the bluff back between 11 to 19 feet from the current position. This line represents the retreat that could happen in one to six years.

We have not factored in the collapse of the undercut portion of the bluff bedrock or the landsliding and subsequent retreat that would occur in the event of a large magnitude earthquake. If either of those processes are factored in and occur within that time period of one to six years, the amount of bluff retreat may be even greater.

On a final note, we understand that if the footpath is to be reopened, it will need to be repositioned further landward from its current position. Any work toward that end should be completed in a manner that will not exacerbate the tenuous stability of the marine terrace deposits exposed in the bluff face.



BLUFF TOP BETWEEN OAKLAND AND HOLLISTER AVENUES

We also mapped the current position of the top of the bluff between Oakland and Hollister Avenues. Portions of the bluff have continued to retreat since the author of this letter last looked at it in 2017 (Zinn Geology, 2017). The portion of the bluff nearest to the residence on the northeastern side of Oakland Avenue (402 Oakland Avenue) appears to have retreated the most in the last five years since we looked at this area, with very little of the original 2017 footpath remaining.

FINDINGS

Turning to Plate 1, the reader may note that our projected one to six year bluff retreat line impinges upon the seaward end of the residential properties. This implies that even if the footpath is pushed landward and snugged up against those properties, it may be undermined and threatened in less than a decade.

The marine terrace deposits exposed in the upper bluff are in a very fragile state with respect to landsliding. The usage of heavy equipment within 15 feet of the top of the bluff, particularly if the soils are wet, may trigger further landsliding of the marine terrace deposits.

RECOMMENDATIONS

1. The City should consider the effective life of the footpath when contemplating short term and long term expenditures for keeping the footpath open. In the long term, the City will need to protect the entire bluff from further erosion and landsliding with very expensive top-to-bottom armoring methods if they want to keep the existing alignment of the footpath open.
2. Any work performed on the footpath between Oakland Avenue and Saxon Avenue should be done by hand within 15 feet of the top of the bluff. The use of heavy vibratory equipment should be avoided if possible, to lessen the possibility of triggering further landsliding of the bluff. If heavy equipment is used, the work should only be performed when the marine terrace deposits are dry, typically late spring (May) through fall (October).



This concludes our geological letter regarding the impacts of landslide and bluff top retreat for the Grand Avenue footpath between its intersection between Saxon Avenue and Oakland Avenue. Please do not hesitate to contact us if you have any questions about this letter or our work or need further assistance.

Sincerely,

PACIFIC CREST ENGINEERING INC.



Erik N. Zinn
Principal Geologist
P.G. #6854, C.E.G. #2139

Attachments: Plate 1 – Site Map & Geologic Cross Sections
Plate 2 – Annotated April 2023 Snapshot Of Coastal Bluff




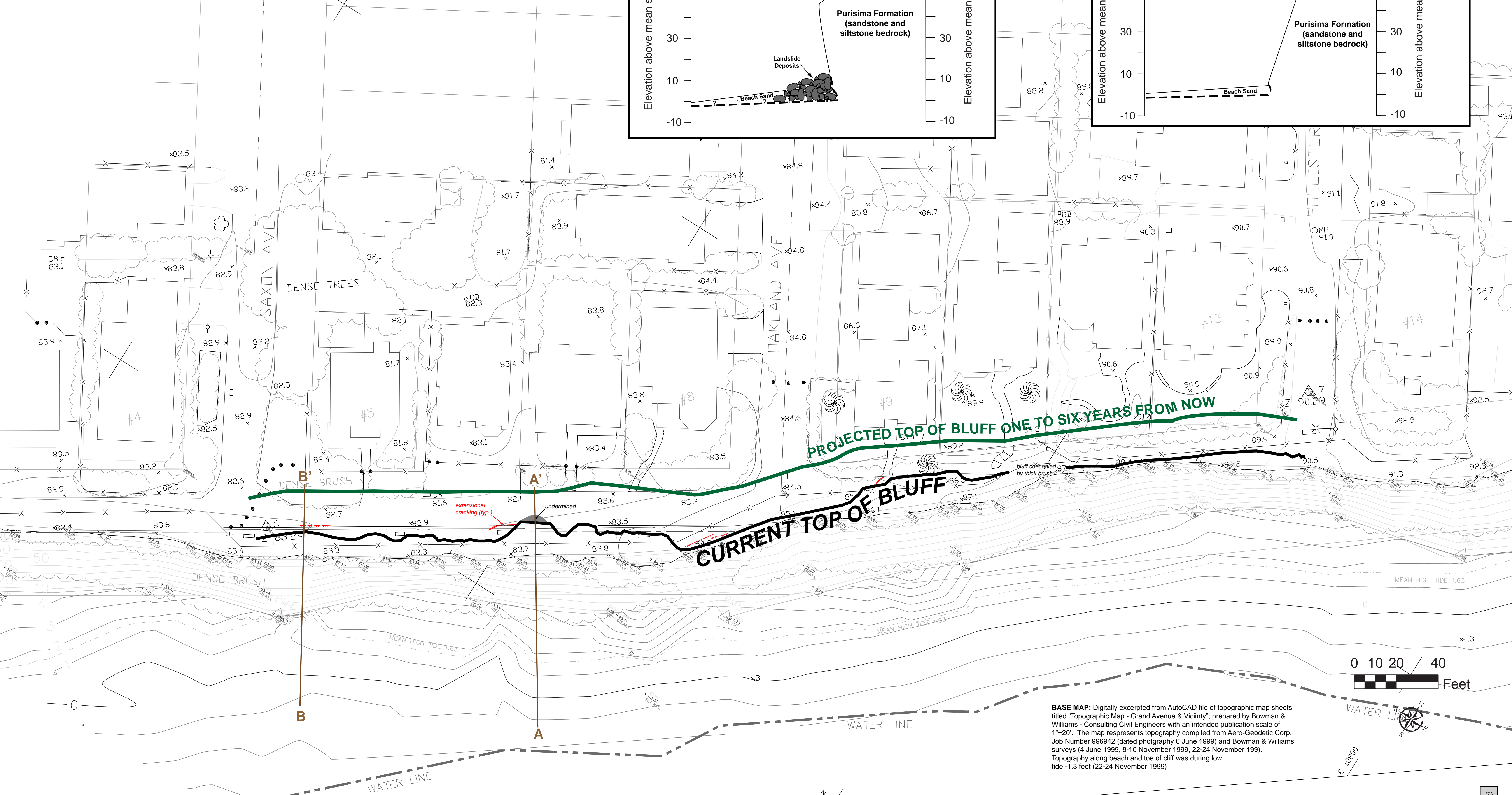
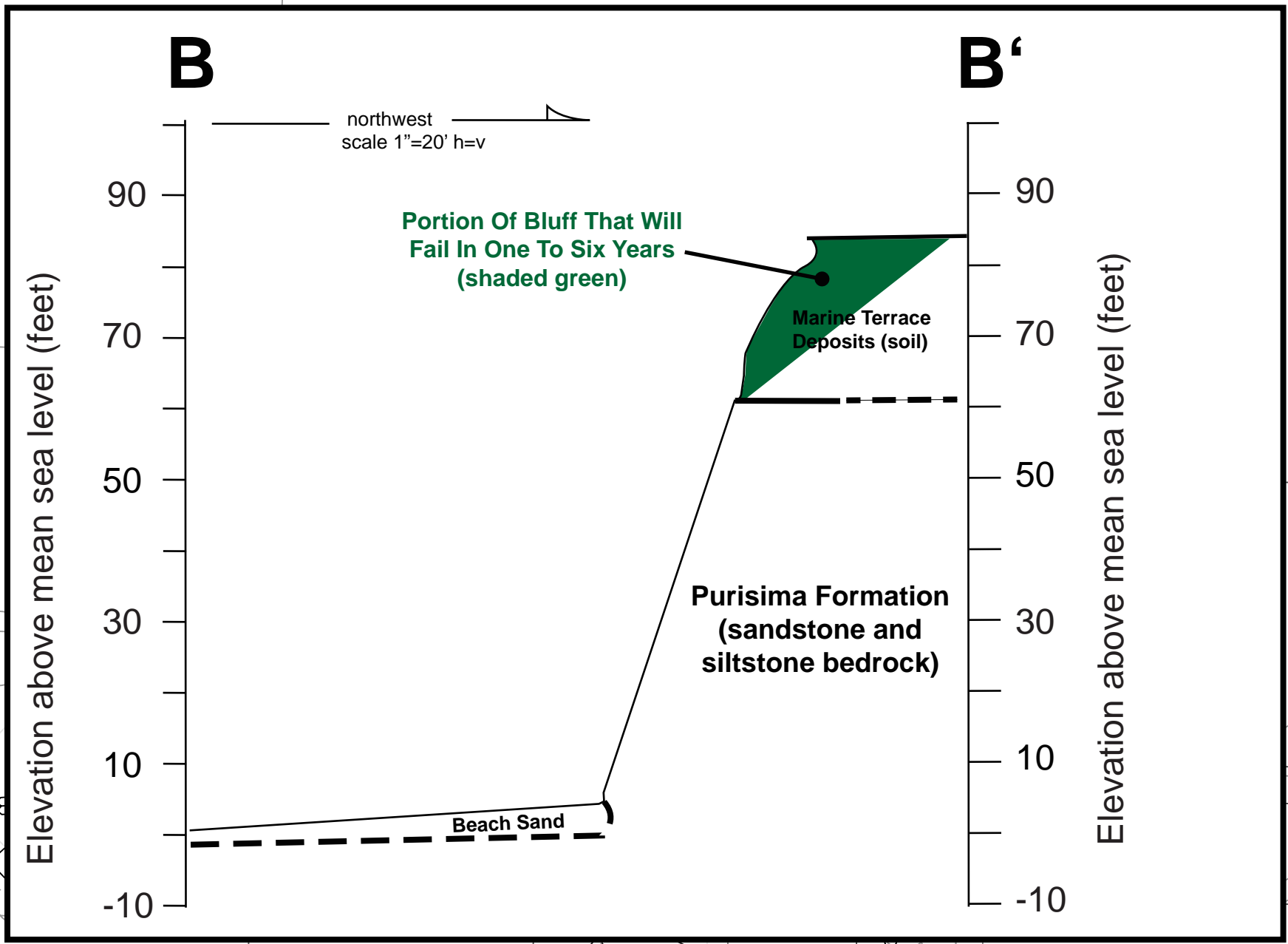
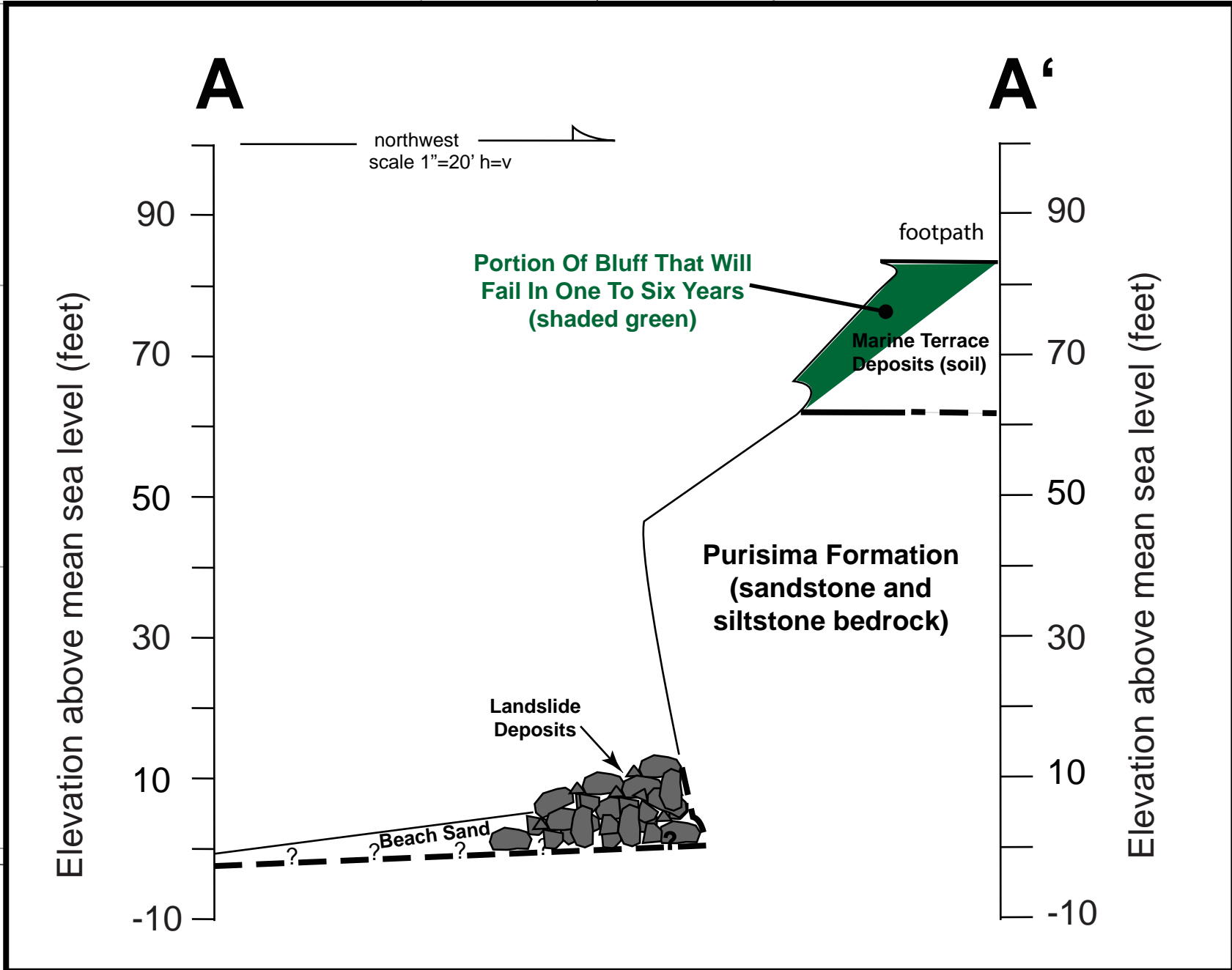
Pacific Crest
ENGINEERING INC
SITE MAP & GEOLOGIC CROSS SECTIONS
City of Capitola
Grand Avenue Footpath
Between Saxon Ave. and Oakland Ave.

Date: 8 June 2022 Revised:
Job #2381
Scale: 1"=20'
Drawn by: ENZ/enz

Plate 1

PROFESSIONAL GEOLOGIST
ERIK N. ZINN
No. 6854
STATE OF CALIFORNIA


CERTIFIED ENGINEERING GEOLOGIST
ERIK N. ZINN
No. 2139
STATE OF CALIFORNIA

2023 04 04 Capitola Depot Hill and Esplanade



BASE PHOTO: Screen shot taken of "2023 04 04 Capitola Depot Hill and Esplanade" by Misa Burich; drone video can be accessed at <https://www.youtube.com/watch?v=Lt5N3-GI5zM&t=1s>



Pacific Crest
ENGINEERING INC

ANNOTATED APRIL 2023
SNAPSHOT OF COASTAL BLUFF
City of Capitola
Grand Avenue Footpath
Between Saxon Ave. and Oakland Ave.

Date: 8 June 2022	Revised:
Job #2381	
Scale: n/a	Plate 2
Drawn by: ENZ/enz	

PROFESSIONAL GEOLOGIST
ERIK N. ZINN
No. 6854
STATE OF CALIFORNIA

CERTIFIED ENGINEERING GEOLOGIST
ERIK N. ZINN
No. 2139
STATE OF CALIFORNIA

Ey



Revised 15 May 2017

Job #2017013-G-SC

City of Capitola, Public Works
Attention: Steve Jesberg, Public Works Director
420 Capitola Ave
Capitola, California 95010
Phone: (831) 475-7300
sjesberg@ci.capitola.ca.us

Re: Limited geological investigation of coastal bluff failure
Grand Avenue near intersection with Oakland Avenue and Hollister Avenue
Capitola, California 95010

Dear Mr. Jesberg:

This letter presents the results of our limited geological investigation of the bluff failure that has undermined the footpath along Grand Avenue between its intersection with Oakland Avenue and Hollister Avenue (see Plate 1).

The bluff below the footpath has been episodically retreating as the the soil and bedrock exposed on the bluff face erodes and fails in the form of shallow landslides, debris flows and rock falls, mostly in response to intense storms, wave erosion and earthquakes. The most recent shallow landslides that have caused the top of the bluff to retreat and undermine the footpath this winter appear to have been mostly driven by saturation of the marine terrace deposits soil that caps the underlying Purisima Formation bedrock.

The overall failure process for the coastal bluff at this location is a two-part process. The Purisima Formation bedrock exposed in the lower bluff is eroded and notched by waves until the notch intersects a nearly vertical bluff-parallel joint set, at which point a slab of bedrock topples. The bedrock topple process also takes the overlying marine terrace deposits along with it. This typically leaves behind a very steeply dipping to nearly vertical scar in the bluff face that exposes both the bedrock and marine terrace deposits. At that point, the wave scour process begins anew at the base of the bluff, eventually carving another notch into the bedrock. The marine terrace deposits simultaneously begin to erode and fail in a piecemeal fashion as they seek the angle of repose of about 38 degrees for the sand and gravels that compose that formation. This process continues unabated until the bedrock topples again in the future, resetting the retreat process clock.

*Limited geological investigation
City of Capitola - Grand Avenue foot path
Revised 15 May 2017
Page 2*

We mapped the position of the bluff and the exposed formations using the base map by Bowman and Williams provided to us by the City of Capitola. We relocated the top of the bluff on that map because the bluff has apparently receded since the last time that portion of the map was modified.

The portion of the bluff studied for this investigation can be broken into three distinct zones based upon the stage of failure of the bedrock at the base (see Figure 1). The portion of the bluff nearest to the Oakland Avenue, designated "Block A", involved a toppling failure this past winter of the undercut bedrock and the marine terrace deposits. Additional failure of just the marine terrace deposits also occurred with Block A due to intense storms that saturated the slope of the upper bluff.

The portion of the bluff designated "Block B" on Figure 1 did not fail this winter. This block is marked by a vegetated upper bluff and a significantly undercut bedrock bluff face mid- and lower-bluff. This block is primed and ready to fail in a fashion similar to Block A.

The portion of the bluff designated "Block C" on Figure 1 failed only within the marine terrace deposits on the upper portion of the bluff. The bedrock exposed in the bluff face for this portion is undercut in a fashion similar to Block B and will likely fail in the near future.

We also reviewed a geological report for the Depot Hill Geological Hazard Abatement District, prepared on 12 April 2000 by Rogers Johnson and Associates. The report documents a past calculated long term bluff retreat rate of about 1.0 feet per year at that time which seems reasonable based upon our experience with past geological investigations in this area. The authors also cautioned the reader that the bluff had been severely undercut at that point, implying that a large failure of the bluff was imminent.

As noted at the beginning of this letter, the fate of the bluff and the retreat is always tied to what is happening at the base of the bluff with respect to notching and formation of sea caves. We noted two distinct conditions with respect to that observation for the area studied:

1. The landslide that occurred this winter closest to Oakland Avenue within Block A appears to have been triggered by toppling of undercut bedrock. Although we could not observe the base of the bluff in this area, since it is still obscured by landslide debris, the volume of large sandstone blocks in the debris indicates that bedrock portion of the bluff failed, perhaps as much as five to eight feet of the undercut bluff face.
2. The landslide that occurred this winter closest to Hollister Avenue in Block C, appears to have been within the marine terrace deposits only. The bedrock bluff face in this area appears to be undercut by at least ten feet and is primed to topple.

3. Although no landsliding occurred within Block B, between the end blocks A and C, the bedrock is primed to topple at this location due to being notched at the base and overhung above the base (see Figure 1).

The marine terrace deposits within Blocks A and C are over steepened and will likely lay back to an average angle of about 38 degrees. This may come about in one to three rainy seasons. Since this region is subject to wet and dry cycles that can last for years, we need to assign a range of years to the concept of one to three rainy seasons. The conservative analysis would assume that we will have back-to-back wet seasons for the next several years, which will lay back the marine terrace deposits to the angle of repose. A more liberal analysis would assume that we will enter a drought period of three to five years, followed by wet year. Using those ranges implies that the top of the bluff within Blocks A and C may retreat significantly within one to six years.

A review of the most recent El Nino status by NOAA (which can be accessed here: http://www.cpc.ncep.noaa.gov/products/analysis_monitoring/lanina/enso_evolution-status-fcsts-web.pdf) indicates that El Nino neutral conditions are present, with increasing chances for El Nino development by late summer and fall. If we have a repeat of this past storm season next year, the top of the bluff may retreat significantly by the end of next winter.

We have projected where the top of the bluff will retreat if the marine terrace deposits lay back to the angle of repose of about 38 degrees on two cross sections and the site map (see Plate 1). Using just this analysis pushes the top of the bluff back from its current 20 to 22 feet. This line represents the retreat that could happen in one to six years.

We have not factored in the collapse of the undercut portion of the bluff or the landsliding and subsequent retreat that would occur in the event of a large magnitude earthquake. If either of those processes are factored in and occur within that time period of one to six years, the amount of bluff retreat may be even greater.

Turning to Block B, we note that the marine terrace deposits are over steepened AND the bedrock is significantly undercut. Although there is a little bit more of a buffer between the top of the bluff and the current foot path for this block as compared to the other two blocks, the buffer is not enough to push an expected time to undermining of the foot path beyond one to six years. Seismic shaking from a nearby earthquake (which can happen at any time) or another winter with large damaging waves will trigger a toppling failure of the bedrock, that will trim Block B and bring it in line with Block A.

On a final note, we understand that if the footpath is to be reopened, it will need to be repositioned further landward from its current position. Any work toward that end should be completed in a manner that will not exacerbate the tenuous stability of the marine terrace deposits exposed in the bluff face.

FINDINGS

Turning to Plate 1, the reader may note that our projected one to six year bluff retreat line impinges upon the seaward end of the residential properties. This implies that even if the footpath is pushed landward and snugged up against those properties, it may be undermined and threatened in less than a decade.

The marine terrace deposits exposed in the upper bluff are in a very fragile state with respect to landsliding. The usage of heavy equipment within 15 feet of the top of the bluff, particularly if the soils are wet, may trigger further landsliding of the marine terrace deposits.

RECOMMENDATIONS

1. The City should consider the effective life of the footpath when contemplating short term and long term expenditures for keeping the footpath open. In the long term, the City will need to protect the entire bluff from further erosion and landsliding with relatively expensive armoring methods if they want to keep the footpath open.
2. Any work performed on the footpath between Oakland Avenue and Hollister Avenue should be done by hand within 15 feet of the top of the bluff. The use of heavy vibratory equipment should be avoided if possible to lessen the possibility of triggering further landsliding of the bluff. If heavy equipment is used, the work should only be performed when the marine terrace deposits are dry, typically late spring (May) through fall (October).

Sincerely,
ZINN GEOLOGY



Erik N. Zinn
Principal Geologist
P.G. #6854, C.E.G. #2139



Attachment: Figure 1 - Oblique Photo Of Study Area On 19 April 2017
Plate 1 - Geologic Site Map And Cross Sections

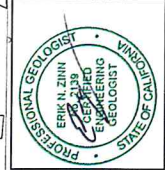
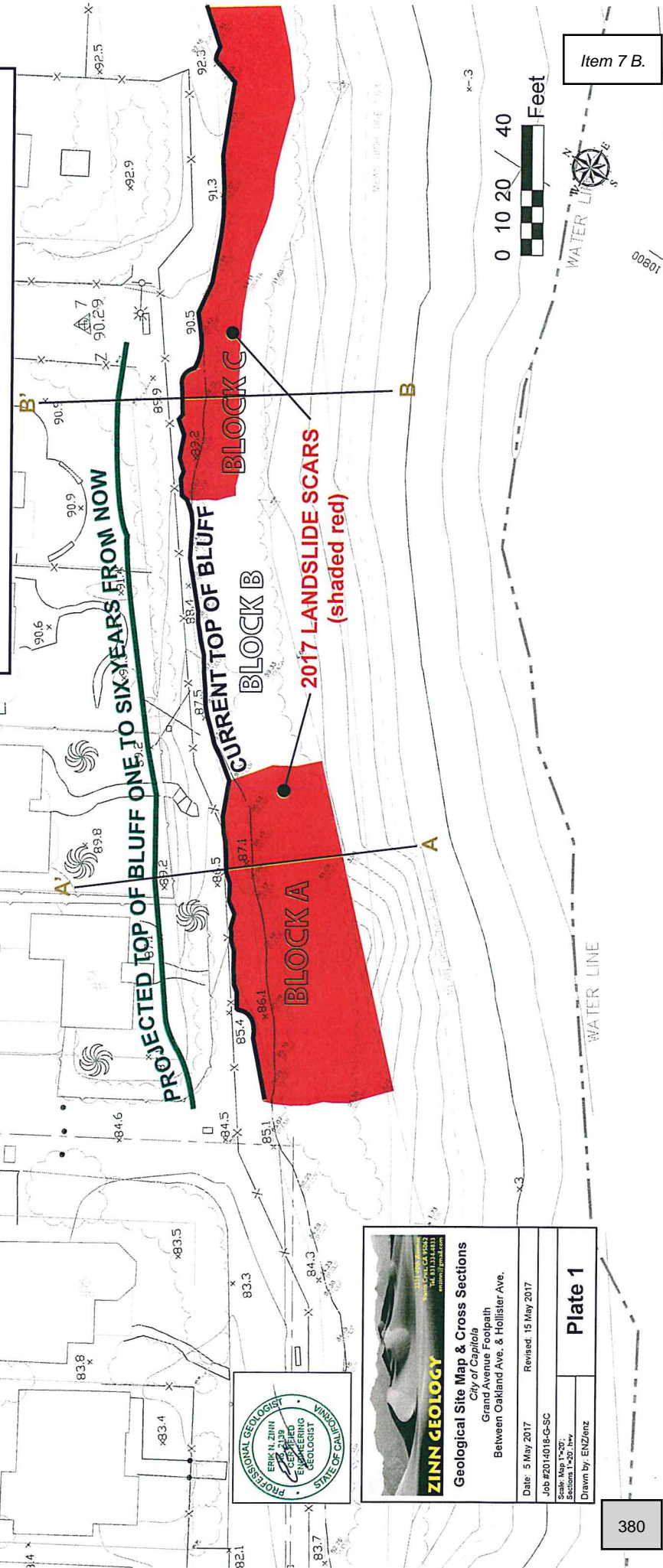
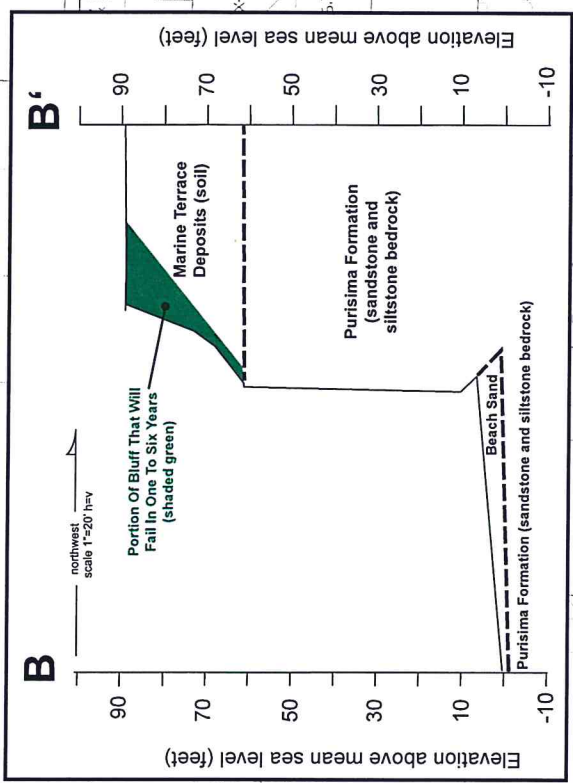
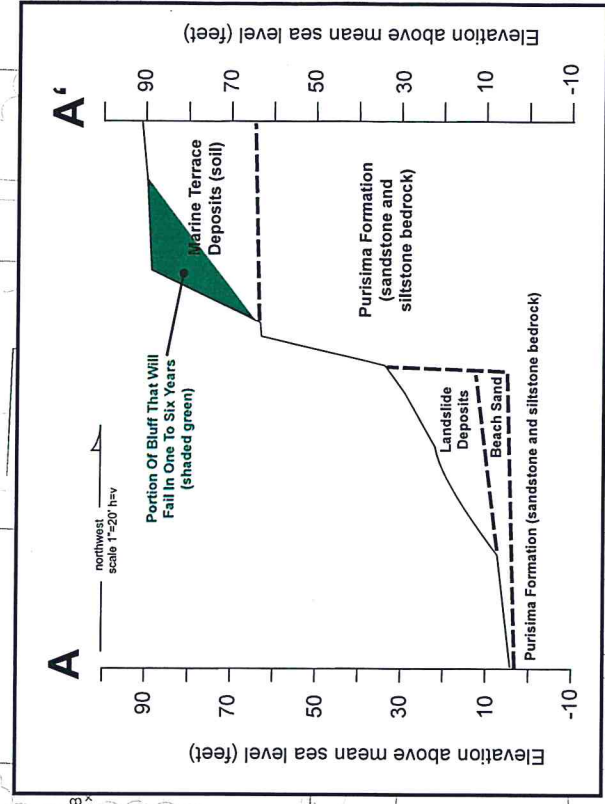
Photo Credit : Snapshot taken from video shot on 19 April 2017, provided by Misha Burich. Original video can be seen on Youtube at <https://youtu.be/YtkbzJJPhk>



Oblique Photo Of Study Area On 19 April 2017
City of Capitola
Grand Avenue Coastal Bluff Footpath
Capitola, California

FIGURE #	1
JOB #	2017013-G-SC

Item 7 B.



ZINN GEOLOGY
 Geological Site Map & Cross Sections
 City of Capitola
 Grand Avenue Footpath
 Between Oakland Ave. & Hollister Ave.

Date: 5 May 2017
 Job #2014015-G-SC
 Scale: Map 1"=20';
 Sections 1"=20' h=v
 Drawn by: ENZ/ENZ

Revised: 15 May 2017

Plate 1

Moss, Julia

From: skip allan <skipallan@sbcglobal.net>
Sent: Tuesday, June 13, 2023 1:16 PM
To: City Council; CapitolaDPW
Cc: allan skip
Subject: June 22 Grand Ave. Geologic Discussion

Follow Up Flag: Follow up
Flag Status: Flagged

6/13/2023

To Whom It May Concern,

Though not a Depot Hill resident, I've regularly walked and relaxed along the public path on the Grand Ave. cliff for near 50 years. Along the way I've admired the finest and most historical of views overlooking Monterey Bay, admiring sea life and vistas, sun and moon rises, as well as meeting friends from all over the world on this delightful and user friendly path.

As you know, the Grand Ave. public right-of-way continues to be compromised and closed in sections due to erosion and cliff collapse on its south side as well as encroachments by homeowners' walls, fences, cement steps, and hedges on its north side. Some of these encroachments extend as far as 10-20 feet into the right-of-way from property lines. As former director of Public Works Steve Jesberg can verify, these property encroachments into Grand Ave. are revocable and never meant to be of permanent nature.

Before more of our beautiful walkway and window on the Bay is considered for closure due to a doom and gloom geology report, my family and neighbors ask that Capitola City Council and Public Works request property owners to return their fences, barriers and landscaping to their property lines so the Grand Ave. path can continue to be safely used rather than closed to public enjoyment. Indeed, this action was unanimously mandated by Capitola City Council members Termini, Harlan, Norton, and Nicol on March 24, 2005 (report 940-15) when it was written that the "City of Capitola maintain an 8 foot pathway along the Grand Ave. right-of-way, and that the public pathway would remain until such time as it diminishes and is no longer usable."

Some concerned citizens have asked "where are the property lines?" My reply is Capitola has survey maps, including a comprehensive one by Bowman&Williams on Dec. 23, 1999 that clearly delineate property lines and encroachments. Since that time, visible survey markers have been placed along Grand Ave. properties when proposed projects have been presented to the City for permitting.

Certainly we are aware that eventually "Nature will Take Its Course" along Grand Ave. That may be years in the future. In the meantime it will cost the City of Capitola little to nothing to have encroachments removed so residents, neighbors, and visitors alike can continue to enjoy Grand Ave. public right-of-way.

Thank you for your consideration.

~Skip Allan 310 McCormick Ave., Capitola, 95010, 831-475-0278, skipallan@sbcglobal.net

Item 7 B.

Grand Avenue Pathway



City Council
June 22, 2023

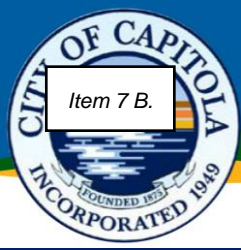


Background

- Between Central Avenue and Sacramento Avenue
 - Closed to vehicular traffic since the 1980's
- Pedestrian walkway currently extends two blocks east of Central Avenue to Oakland Avenue

Grand Avenue Pathway

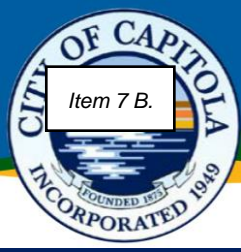
Previous Council Direction



2005

Grand Avenue Pathway

2023 Bluff Failure

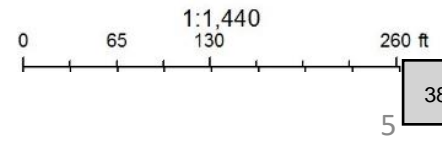


Grand Avenue Pathway

Item 7 B.



June 12, 2023




Private Property Encroachments

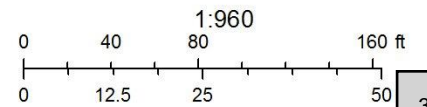
Item 7 B.



June 22, 2023

Parcels

 Parcels



County of Santa Cruz

388



Erik Zinn of Pacific Crest Engineering (PCE)

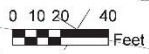
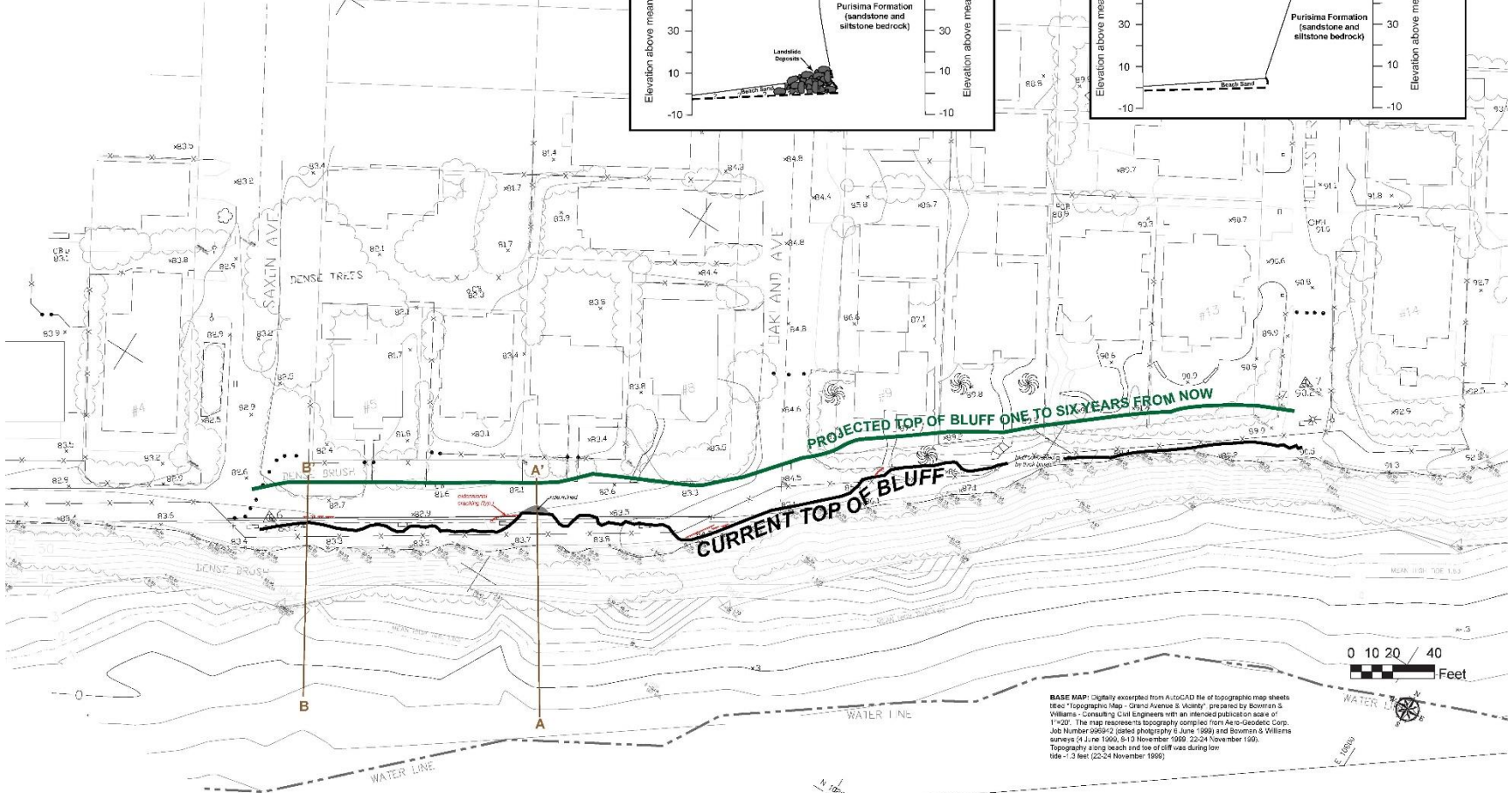
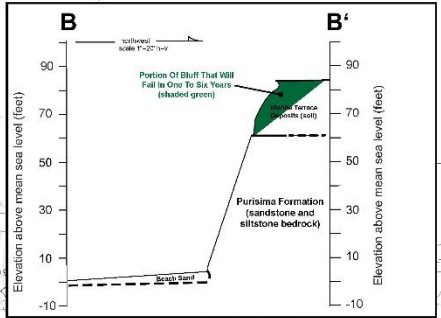
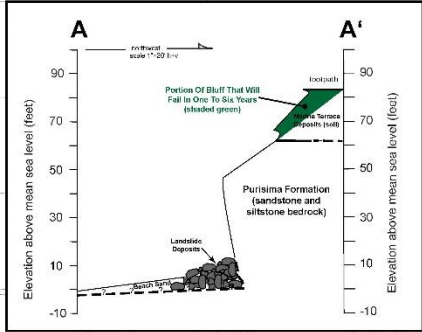
- Completed previous studies

Pacific Crest
ENGINEERING INC
SITE MAP & GEOLOGIC CROSS SECTIONS
1234567890
City of Avenue 100, 111
Del Mar, CA 92014, 919.391.1111

DATE: 9. June 2007 Revision:
JOB #2237
SCALE: 1"=40'
DRAWN BY: D. Carter

Plate 1

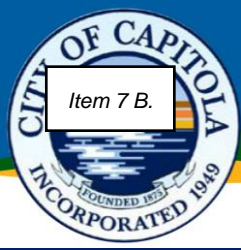
Professional Engineer Seal for Erik N. Zinn, No. 8854, State of California.
Professional Engineer Seal for Erik N. Zinn, No. 2139, State of California.



BASE MAP: Digitally excerpted from AutoCAD file of topographic map sheets (see "Topographic Map - Grand Avenue & vicinity" prepared by Bowen & Williams - Consulting Civil Engineers with an intended publication on scale of 1"=20'). The map reflects its topography compiled from A-C Geomatics Corp. Job Number 065912 (aerial photography 6 June 1999) and Bowen & Williams surveys (4 June 1999, 8-10 November 1999, 22-24 November 1999). Topography a strip search and low of cliff was during low tide - 3 feet (22-24 November 1999).

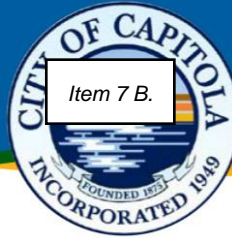
Grand Avenue Pathway

Alternative Actions: Option 2



Grand Avenue Pathway

Fiscal Impact



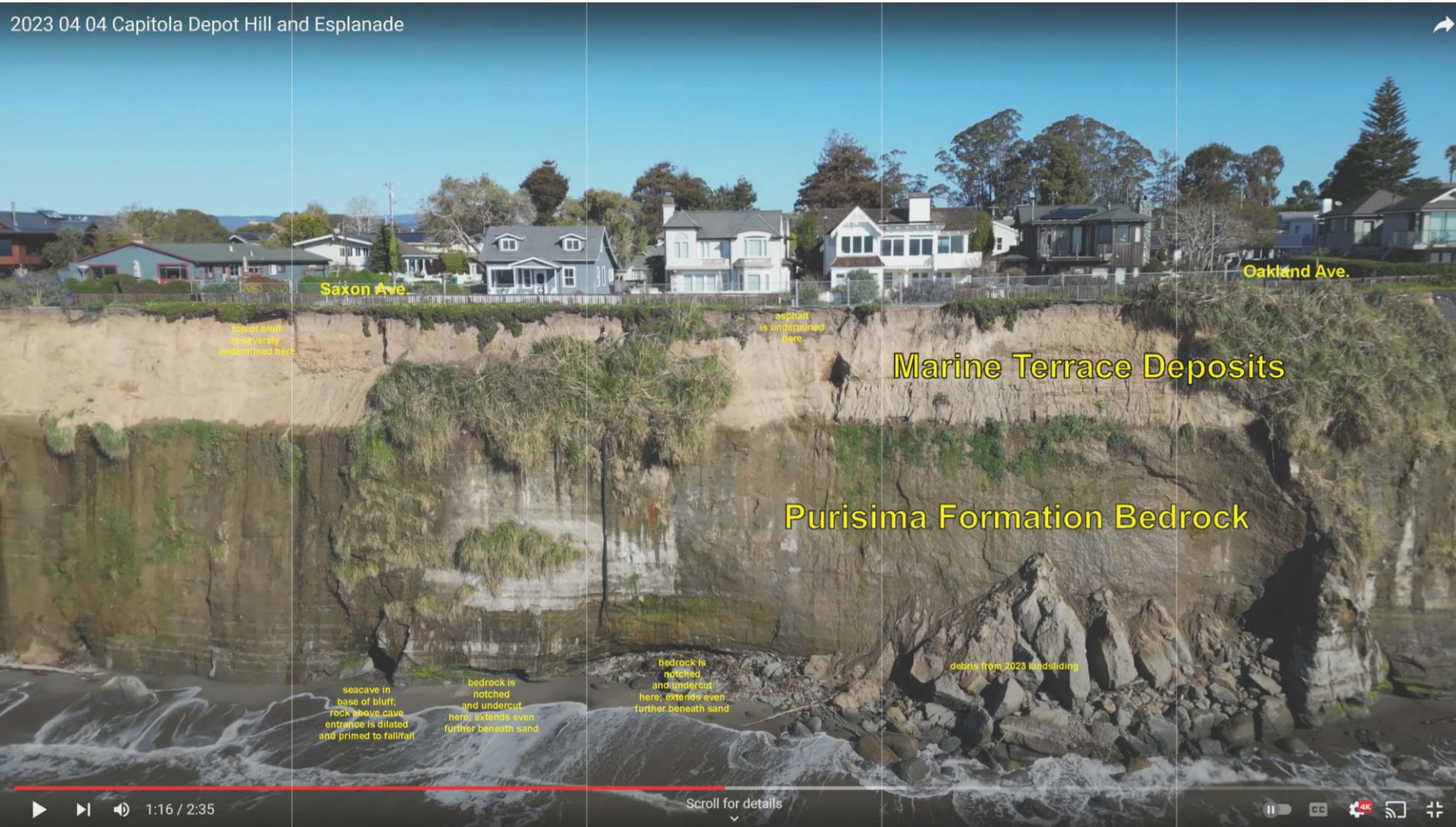
Option	Capital Cost	Staff Time	Risk
1. Relocate Fencing	Low	Low	Moderate
2. Remove Encroachments	Moderate	High	Low
3. Pathway Closure	Low	Moderate	Low

Recommendation

Direct staff to relocate and repair existing fencing to maintain a minimum walkway width of eight feet on the Grand Avenue Pathway.



2023 04 04 Capitola Depot Hill and Esplanade



Grand Avenue Viewing Enhancement Suggestions
(Saxon to Oakland Avenues)

Hem 7B
01/22/2023

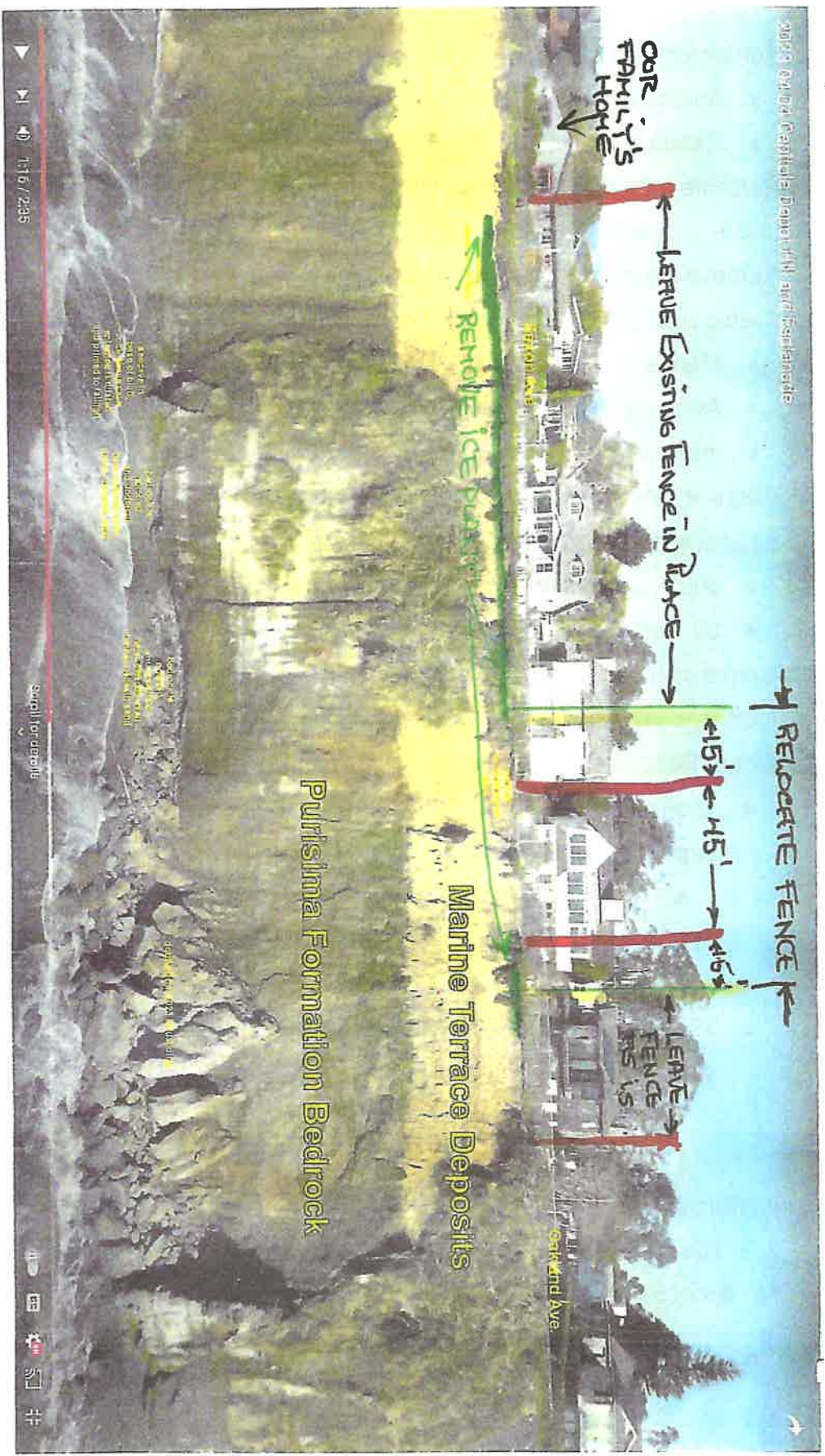
1. Remove most of the chain link fencing..... right after July 4th.
 - An embarrassing eyesore, to residents and visitors alike.
 - Retain a 45' section of the chain link fence where the cliff sluffed off.
2. Relocate only a 45' section of the wooden fence- Leave the other 225' as is, in place..... during Summer 2023.
3. Remove ice plant along the crest of the cliff..... by Fall rains 2023.
4. Create and install three nature interpretive signs..... by year end 2023.
 - Marine Species: Rays, Dolphins, Otters, Whales, etc.
 - Avian Species: Pelicans, Hummingbirds, Eagles, etc.
 - Insect Species: Monarch Butterflies, Mayflies, etc.
5. Request bids to install a canvas tarpaulin/chain link fence combination shielding against wind and rain..... in the Fall of 2023.
 - 300' from Saxon Ave. to Oakland Ave. horizontally.
 - 30' vertical from fence to top of Purisima Formation.
6. Commission a Native Plant Project Proposal to enhance bird and insect cover, food, and nesting sites by year end 2023.
7. Get a "Second Opinion" geological retreat report.
 - The Pacific Crest Study assumes multiple years of multiple "Pineapple Express" storms annually.... A worst case scenario.
 - A predicted loss of 11' to 19' over 1 to 6 years is indefensible.
 - Our property at 101 Saxon has become only 1 foot closer to the cliff edge over the last 31 years!
 - The Soquel Creek Water District uses a mega drought scenario of multiple years without adequate rain.

To quote from page 153 of the 6/22/2023 Agenda Report:

"The path is treasured by residents and visitors alike for providing public access to stunning views."

Please address comments and/or questions to Tom Mader at Twiggins1939@gmail.com.

FENCE RELOCATION SUGGESTION - SAXON FIVE TO OAKLAND FIVE



Pacific Crest
ENGINEERING INC

AMENDED APRIL 2023
SIGNED: [Signature]
City of Carson
Grand Avenue Pedestrian
Dakota, Saxon Ave and Oakland Ave.

Date: 8 June 2022 Revised

Job #2311

Scale: 1/8"

Drawn by: ENZENZ

Plate 2

DATE PHOTO: Screen shot taken of "2023 04 04 Capital Depot Hill and Esplanade" by Mass Bureau; drone video can be accessed at <https://www.youtube.com/watch?v=4L812-gD5X8&list=PL>

6/21/2023
By: [Signature]

LSM: N. 2018
No. 0351

CH: R. 1001
114.7151

- ADVANTAGES OVER TOTAL RELOCATION:**
- TO WALKERS & VIEWERS
 - CAN SEE PELICAN DIVES
 - CAN SEE RAY'S SHOEBINE FEEDING
 - CAN SEE SURFING AT THE SETTLES
 - BETTER VIEW OF WALKERS
- TO CITY OF CARSON:**
- SIGNIFICANT SAVINGS OF STAFF TIME & MATERIALS
 - 75' PARTIAL MOVE
 - 300' FULL MOVE OF FENCE

Capitola City Council

Agenda Report

Meeting: June 22, 2023

From: City Manager Department

Subject: Memorials Installed on Capitola Wharf



Recommended Action: Determine the plan for memorial plaques currently installed on Capitola Wharf.

Background: Administrative Policy I-7 outlines a uniform procedure for the public to purchase memorial items to be placed within the City of Capitola. That Policy designates locations for such memorials and allows memorials on the Wharf railings or on Wharf benches. The Wharf location has, however, been 'full' with no room for additional plaques or benches for several years.

Administrative Policy I-7 states that "the City will maintain plaques for the life of the plaque. The City will determine when the plaque is no longer reasonable to maintain and needs to either be replaced or removed". Because the plaques are made of bronze and therefore have a lifespan likely measured in centuries, staff has interpreted this to mean the City will maintain plaques in their current location for the life of the object on which it was installed (for example, as long as the bench or railing remains undamaged).

Prior to the January 2023 storms, 145 plaques were located on the wooden railing of the Capitola Wharf, along both sides and the head of the wharf. 39 plaques were located on various Wharf benches. In anticipation of the Capitola Wharf Resiliency and Public Access Project, staff photo-documented and indexed all plaques on the Wharf, so a complete record of what existed before the storm is available for reference. Approximately 20 wharf railing plaques were lost in the storm, and it is possible that upon further inspection and the removal of the current railing, staff will discover more damaged plaques. The Wharf remains inaccessible, and staff can only estimate the status of Wharf plaques and benches.

Staff has accurate contact information for roughly ten percent of all Capitola Wharf plaque owners/purchasers.

At the April 27 City Council meeting, staff presented options for the Capitola Wharf plaques in anticipation of the Wharf Project; 1) Move all memorial plaques to a new location on the Wharf, 2) Remove all plaques and return them to owners, and 3) Re-install all memorial plaques along the new Wharf railing. Staff highlighted the complications involved with reinstalling all plaques along the Wharf and on benches as they would have been before the January storm. Rather than choose one of the three options, Council asked that staff return after surveying members of the public, primarily those who had purchased and owned Wharf plaques, on what their desired outcome was.

Discussion: Staff designed and launched an online survey on May 5 to gather information and assess public opinion on the Wharf plaques. Those surveyed were asked to provide current contact information and the name on their Wharf plaque (if they own one) to help staff update the plaque database.

Staff promoted the survey in three issues of the Capitola Wave e-newsletter, highlighted the survey on the City website, emailed all members of the public who reached out regarding Wharf plaques with a direct link to the survey, and posted about the survey on the City's Facebook and Instagram accounts.

At the date of this agenda printing, the survey has received 68 responses, 64.71% of which indicate the responder owned one or more Wharf plaques. Staff will close the survey on June 21, and will present any significant responses during the presentation on June 22.

The table below shows survey responses to the question of how satisfied or dissatisfied would you be with the following three options for Wharf plaques:

<i>Place/Incorporate all memorial plaques on an artistic & contemplative memorial structure located on the Wharf</i>		
	Plaque Owners	Non-Plaque Owners
Very or Slightly Dissatisfied	63.42%	47.82%
Very or Moderately Satisfied	29.27%	39.13%
<i>Re-install all memorial plaques along the Wharf railing and on benches as they were pre-storm</i>		
Very or Slightly Dissatisfied	0	8.7%
Very or Moderately Satisfied	87.5%	78.26%
<i>Remove all plaques and offer to return them to their owners/purchasers</i>		
Very or Slightly Dissatisfied	87.5%	75%
Very or Moderately Satisfied	7.5%	16.66%

46 people wrote responses to the last survey question; “is there anything else you want to share with City staff about the Wharf memorials”. Most responses highlighted the significance of the Wharf plaques, and the emotional attachment plaque owners have for each specific Wharf location. Several responses explained that individual plaques are more meaningful than a single memorial design feature with many names on one element. Responders explained that a single memorial element would feel less personal; if installed all together on one design element, plaque owners say they would be less likely to visit their plaque to privately remember their lost loved one. Two responders replied that the presence of memorials along the Wharf detracts from their overall experience and asked that the Wharf not be a memorial site.

Staff included re-installation of all plaques in Phase 2 of the Capitola Wharf Resiliency and Public Access Improvement Project request for proposals. The lowest bidder estimated a cost of \$18,000 to re-install all plaques along the Wharf railing. Staff estimates that at least 20 plaques were lost during the storm, and proposes they be replaced by the City at a total estimated cost of \$4,000. Significant staff time is required to ensure all plaques are re-installed in the same location as pre-storm. Other considerations for this option is the future time and cost of maintaining bronze plaques along the wooden Wharf railing.

If Council directs staff to move forward in re-installing all memorial plaques, staff proposes that bench plaques be placed on whichever type of bench either the Wharf Resiliency Project or the Capitola Wharf Enhancement Project determines as part of the project’s scope.

If directed to re-install, Staff also recommends a time limit be imposed on all plaques on the Wharf (railing and bench plaques) to set a clear expectation for how long the City guarantees to maintain the memorials. If Council does not set a clear time limit, re-installing plaques along the Wharf railing and on Wharf benches may set a precedent that the City will do so in the event of any damage to the wharf, at any point in the future.

Staff estimates it would cost \$30,000 to include a memorial design element that incorporates all the plaques on the Wharf as part of the Capitola Wharf Enhancement Project.

Fiscal Impact: Dependent on Council direction.

Report Prepared By: Chloé Woodmansee, Assistant to the City Manager

Reviewed By: Julia Moss, City Clerk

Approved By: Jamie Goldstein, City Manager



Memorials Installed on Capitola Wharf

JUNE 22, 2023

Background

Memorials have been installed on Capitola Wharf for decades.

- 145 plaques on Wharf railing
- 39 plaques on benches

Post-January 2023 storm:

- 20+ plaques lost
- Wharf Resiliency and Public Access Improvement Project kicking off this Fall

Background

On April 27, three options were presented to Council:

1. Place all plaques on an artistic memorial structure on the Wharf
2. Re-Install memorial plaques along the new Wharf Railing
3. Remove all plaques and return them to owners

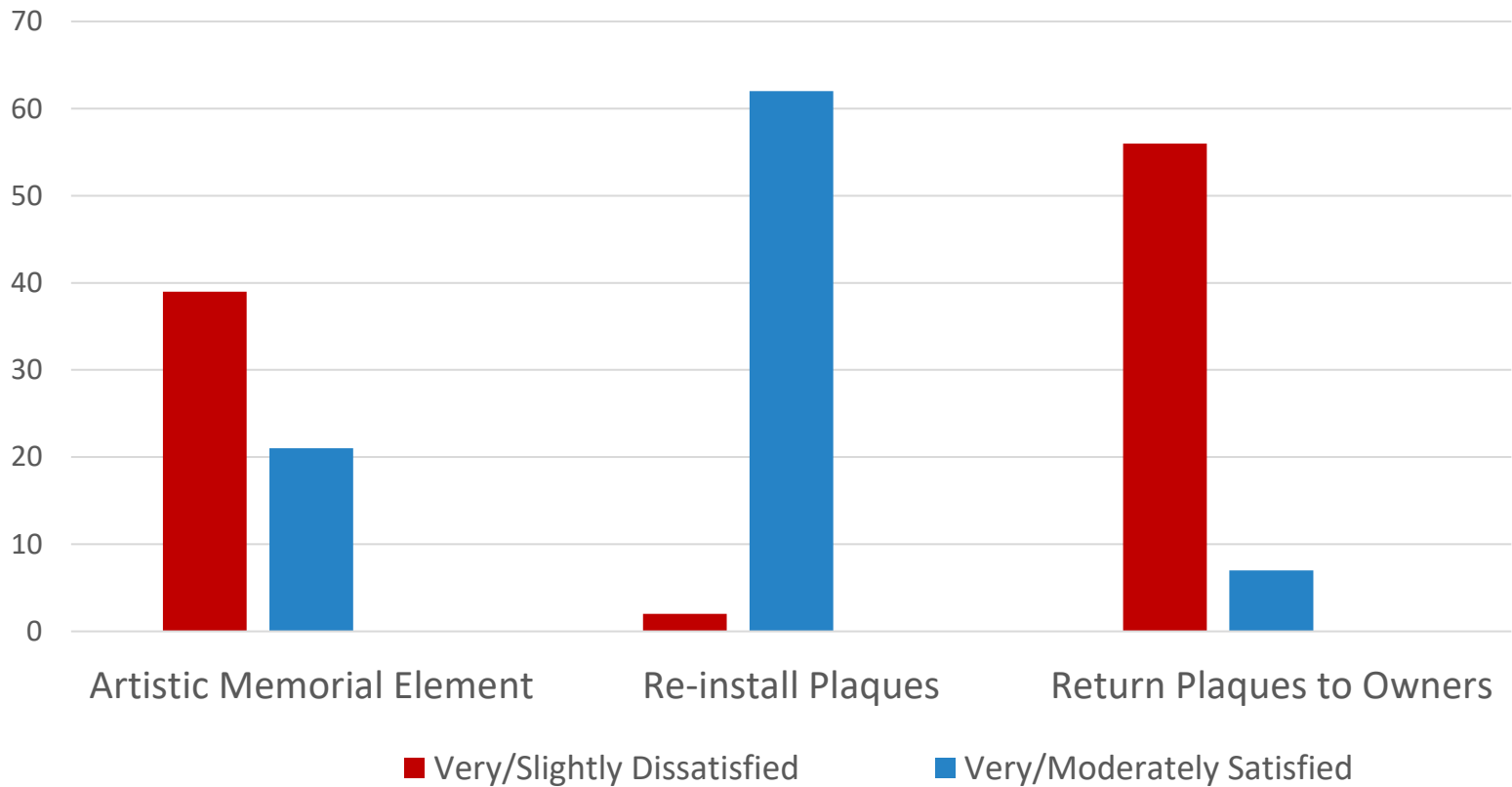
Council requested staff survey community and plaque owners and return to Council for direction

Survey

- Online survey open from May 5 – June 21
- Promoted in newsletter, social media, emailed directly to plaque enquirers, on website
- 70 responses
- 65% of responders indicated that they own a plaque

Survey Results

How Satisfied would you be with the following Options?



Option Details

ARTISTIC MEMORIAL ELEMENT

- Memorial element would be included in Capitola Wharf Enhancement Project
- Estimated cost = \$30,000
- Council would have approval over proposed RRM design

RE-INSTALL ALL PLAQUES

- Would be included in Capitola Wharf Resiliency and Public Access Project
- Estimated cost = \$22,000
- Significant staff time to re-install
- Future time and costs to maintain
- Staff recommends establishing a timeframe for guaranteed maintenance

Determine Plan for Plaques

- Direct staff to re-install all memorial plaques, and consider establishing timeline for guaranteed maintenance

Or

- Direct staff to include a memorial design element on the Wharf that incorporates all plaques

Capitola City Council

Agenda Report



Meeting: June 22, 2023

From: Community Development Department

Subject: 1098 38th Avenue Project Introduction and Funding Request

Recommended Action: Receive presentation and direct staff to prepare loan agreement to assist with for predevelopment activities for a 100% affordable multifamily rental housing development located at 1098 38th Avenue.

Background: On March 10, 2023, MidPen Housing, a local non-profit affordable housing developer, acquired 1098 38th Avenue. Upon acquiring the property, the non-profit approached City staff with a request for \$250,000 of funding for predevelopment planning costs.

Analysis: MidPen Housing intends to construct a 100 percent affordable housing development at 1098 38th Avenue. Since acquiring the site, the non-profit has been working on buildout scenarios for the site. After much consideration, MidPen has decided to pursue a 52-unit, multifamily housing development.

Recently, MidPen hired Architects FORA to design the future multifamily housing development. MidPen is requesting \$250,000 for predevelopment planning of the project, including \$200,000 for architectural design, \$32,000 for civil and survey costs, and \$19,800 in geotechnical reports and testing, with the expectation the City would consider providing additional funding in the future.

The City currently has multiple funding options which could be utilized for predevelopment planning of the project, including Permanent Local Housing Allocation Fund (PLHA) and Housing Successor Agency funds. On May 10, 2023, the City was awarded \$481,732 in PLHA funds toward predevelopment rental housing. PLHA grant funding may be utilized for predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, and rental housing that is affordable to extremely low-, very low-, low-, or moderate-income households, including necessary operating subsidies. The City also has approximately \$2 million in funds in the Housing Successor Agency fund due to a recent loan pay-off. The Housing Successor Agency funds may be utilized for new construction of an affordable housing development to households earning 80 percent or less of the area median income (AMI).

During the June 22 City Council meeting, MidPen will introduce their team and provide a conceptual overview of the proposed project. If there is conceptual support for the project, staff recommends the City Council direct staff to prepare a loan agreement for \$250,000 to assist with predevelopment planning for consideration at a future Council meeting.

Fiscal Impact: The City received a PLHA grant award for \$481,732 for 2020 - 2022 and anticipates an additional award of \$149,426 for 2023 and 2024. The City also has approximately \$2 million in the Housing Successor Agency fund. MidPen's request for \$250,000 could be fully funded through either fund. Should City Council direct staff to proceed with the loan, staff will research which funding source would be most appropriate for the project.

Report Prepared By: Katie Herlihy, Community Development Director

Reviewed By: Julia Moss, City Clerk; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager



1098 38th Avenue

Project Introduction & Funding Request

City Council June 22, 2023



Introduction

- MidPen Housing
 - Regional Non-profit Affordable Housing Developer
 - All in 1: Construct, Manage, and Provi
- Purchased 1098 38th Avenue on March 10, 2023
 - 52-unit multifamily housing development
 - 100% affordable
 - Request for \$250,000 of predevelopment planning costs



Available Funding

Available funds restricted to housing

- PLHA \$481,732
- Housing Successor Agency fund \$2 million
- Home funds \$600,000

If conceptual support for project, staff will research which fund most appropriate.

MidPen's mission is to

Provide **safe, affordable housing of high quality** to those in need

Establish **stability and opportunity** in the lives of our residents; and

Foster diverse communities that allow people from all ethnic, social and economic backgrounds to **live in dignity, harmony and mutual respect.**

Our Team



Shwetha Subramanian
Chief Real Estate
Development Officer



Joanna Carman
Director of Development



Alyssa Serrano
Associate Project
Manager



Vanessa Diffenbaugh
Project Manager

Local Communities

Item 7 D.



The Farm, Soquel, 39 units Family Housing



Parkhurst Terrace, Aptos, 68 units Family Housing



Moon Gate Plaza, Salinas
90 units Permanent Supportive Housing



San Andreas, Watsonville
43 Units Farmworker Housing

Property Management

Item 7 D.



Being Good Neighbors:

We strive to ensure that every community we manage benefits both our residents as well as the surrounding neighborhood.



Enhancing Resident's Lives:

Our staff responds to individual and community needs with a commitment to customer service.



Sustainable Operations and Maintenance:

Retrofits to improve building performance, water conservation, and indoor air quality; using drought resistant landscaping and green cleaning products; and training on environmentally-friendly practices.

Resident Services

Item 7 D.



Youth Programs:

Free afterschool, summer and leadership programs for youth prepare students for academic success.



Adult Programs:

Financial literacy and vocational development, including career counseling and ESL Classes improve job retention and increase household income.

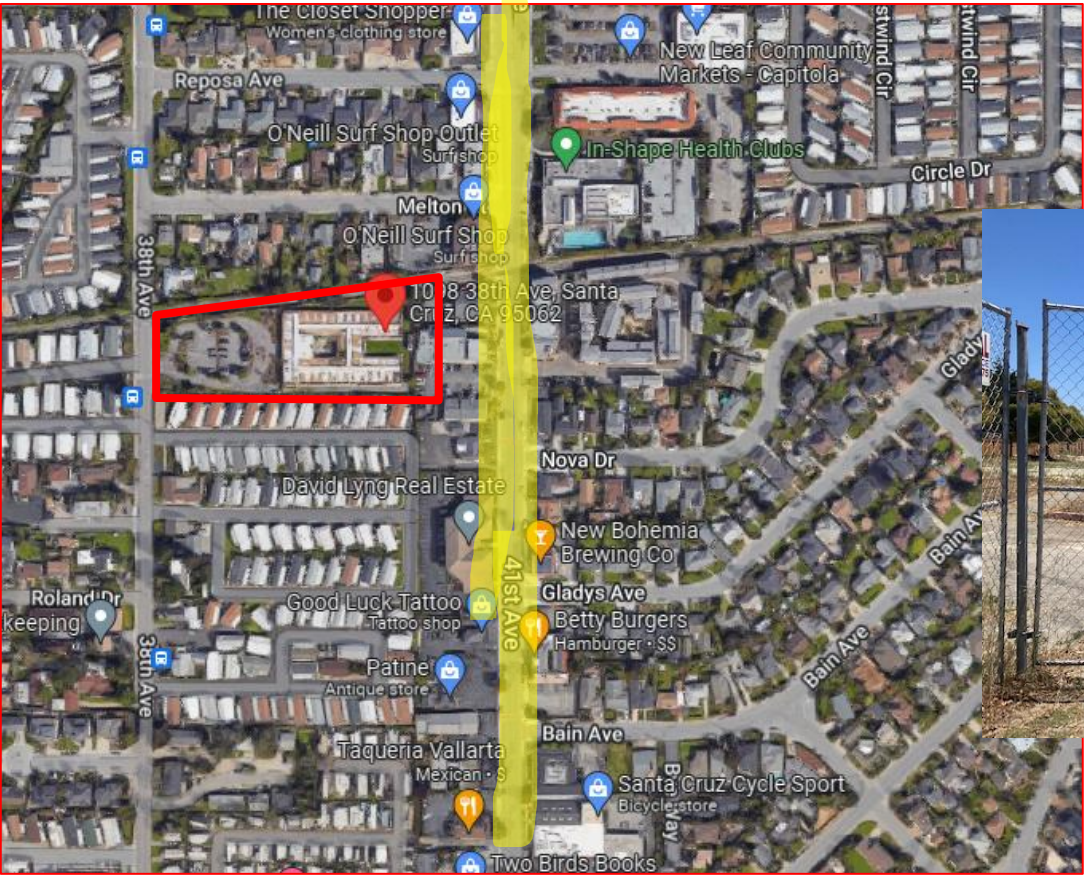


Supportive Services:

Partnerships with local agencies to provide service plans for supportive populations, including residents struggling with homelessness or mental, physical or intellectual disabilities.

1098 38th Avenue Site

Item 7 D.



Proposed Affordable Development

Item 7 D.



- ❖ **52 units** of 100% affordable housing for large families
- ❖ Affordable housing **to serve** residents earning 30% - 60% of Area Median Income
- ❖ Projected **rent ranges**:
 - \$874-\$1,749 for a 1 bedroom
 - \$1,050-\$2,100 for 2 bedroom
 - \$1,212-\$2,425 for 3 bedroom
- ❖ 25% of units will be set aside for **special needs** individuals

01 / ABOUT FORA

OUR TEAM

Item 7 D.



Sarah Vaccaro

/ Principal / Architect
/ Equitable Communities



Yoshi Jimenez

/ Designer
/ Affordable Housing



Jessica Goswick

/ Designer
/ Building Performance



Kyle Seem

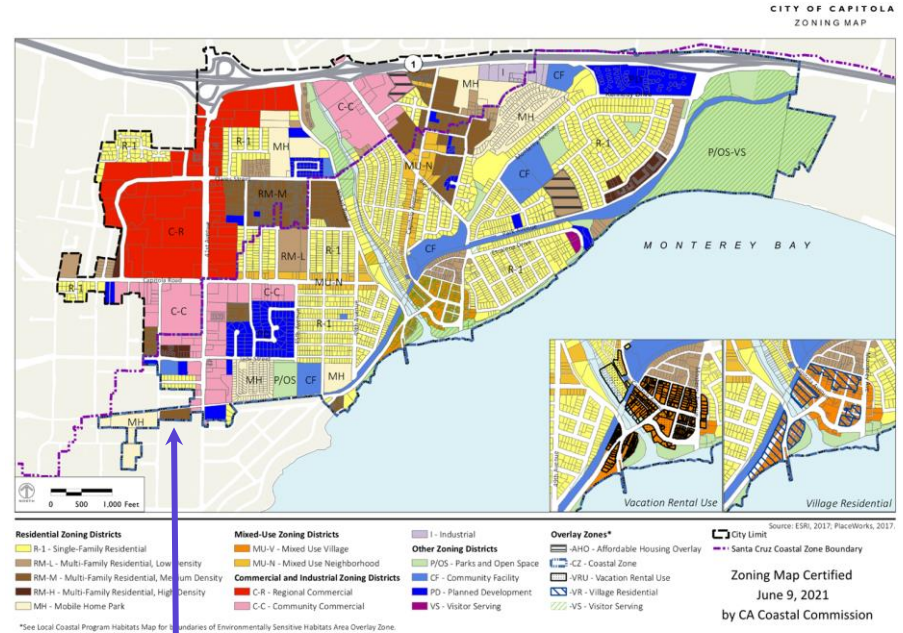
/ Designer
/ Software Engineer

ZONING

RM-M Multi-Family Residential, Med. Density

1. 97 acres Site

Plan to utilize
State Density Bonus



PROJECT SITE

CONTEXT & CHARACTER

41st Avenue/West Capitola (“North Forties”)

- / Beach town aesthetic
- / Active commercial + residential
- / Most homes constructed in 1970s and 1980s with some newer additions
- / Capitola vibe + colors + artwork



VIEWS AROUND SITE

- Residential & Commercial Surroundings:
- Rail Trail Section 10 to North
- One block from the 41st corridor
- Active pedestrian + bike usage



Community Engagement Goals

FORA Process

Our community engagement goal is to bring diverse perspectives to the table through inclusive, engaging, meaningful (and fun!) processes. We strive to co-create visions of housing futures with all those involved.



Typical CE Workshops



MidPen Process

- Goals**
- Develop trust with stakeholders
 - Develop and build on community partnerships
 - Recognize & alleviate fears of physical changes in the neighborhood
 - Ensure that outreach is equitable and inclusive
 - Establish and maintain positive community relations
 - Communicate honestly the community benefits realized by this development
 - Identify opportunities for the community to provide input

Process

1. One-on-one
2. Neighborhood

ACTION ITEM:
Hone collaboration and roles between FORA & MidPen

Collaboration

What is FORA's role in this process? How can we collaborate with MidPen?

Items to address: Public art, signage, transit corridors

their favorite place, like park/housing nearby

- CE**
- PHORR talk to key stakeholder (mobile home park)
 - potential 2nd workshop w/ design charrette
 - ex-Jesse at art table + arch style
 - may be good for signage
 - might be a good lesson
 - Follow up: How does the FORA team plug in? (before we roll out a lot of scope)
 - Traffic plans/talking pre before mtg
 - Managing "how can I live there?"
 - Get feedback on art

03 / GOALS

Capitola Colors

I'm excited for the connection to the rail trail and the proximity to the Ocean. Getting there walking via the trail.

Access to Rail Trail (3x)

Santa Cruz Capitola vibe-housing for ppl who contribute

Alliance

Inclusive spaces

Location

The landscape will be one of the sea, are affordable

new city!

VISION + PRIORITIES:

1. Emphasize the Rail Trail connection & outdoor spaces
2. Location! Proximity to beach, walk/bike-ability of neighborhood, Capitola vibe (colors, quirks), CA/Coast weather
3. It's all in the Details! Feature the art, outdoor spaces, color pops, quirky Capitola details. Design buildings as a backdrop with eye to thoughtful efficiencies

2. Partnership with The Alliance and their clients
3. Health and Living Standards for residents

VISION OF/FOR: Providing equitable/inclusive/Fa housing for and this community focus on equitable resources & support

PROJECT GOALS

- Provide **affordable, inclusive, family housing** that reflects and supports this community
- Ensure programs, resources, and physical design provide **equitable living** opportunities for residents
- Focus investment where it has the most impact on **health and living standards** for residents
- Integrate thoughtful, multi-use, multi-age **outdoor spaces**
- It's all in the **details!** Feature art, outdoor space, color, quirky Capitola vibe



04 / DESIGN

PROPOSED SITE DESIGN

Item 7 D.

CONCEPT SITE DESIGN
JUNE 2023



BASE / MidPen Housing: 38th Ave Capitola

PROJECT AMENITIES

Item 7 D.

Onsite Amenities:

- Property Management + Resident Services
- Community room with kitchen
- Laundry rooms
- Outdoor play areas for children and youth
- Outdoor dining and gathering areas
- All electric buildings with onsite generation



Anticipated Schedule

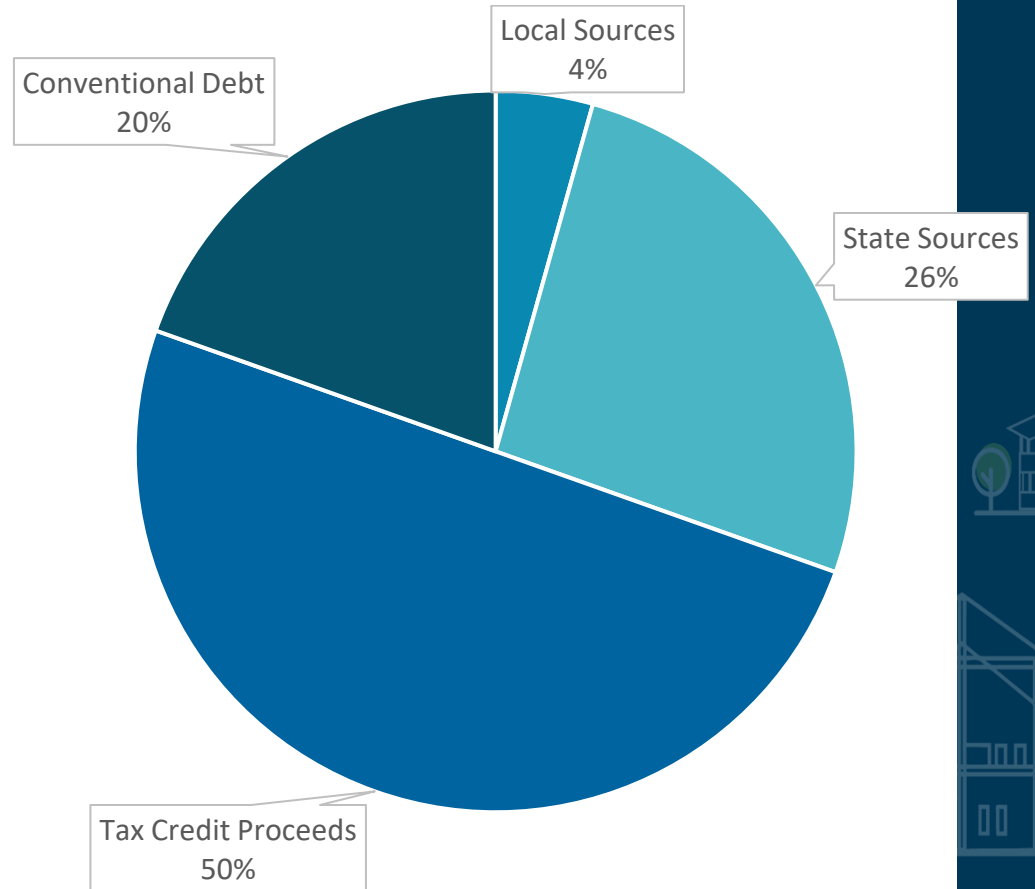
Milestone	Timing
Architect Selection	February 2023
Entitlement Application & Approval	October 2023 & January 2024
SuperNOFA Application	June 2024
Local Funding Applications	April - December 2024
Building Permits Application & Approval	January – July 2025
9% Tax Credit Application	March 2025
Investor/Lender Selection	June 2025
Execute GMP / Pull Permits / Issue NTP	October 2025
Construction	October 2025 – April 2027 (18 mos)
100% Lease Up	August 2027
Stabilized / Perm Conversion	October 2028



Financing Overview

Total Project Cost: ~\$46M

- Local Sources ~\$2M
- State Source ~\$12M
- Conventional Debt ~\$9M
- Tax Credit Equity ~\$23M



Predevelopment Request

Item 7 D.

Activity	Cost
Architectural Design	\$200,000
Civil and Survey	\$30,200
Geotech	\$19,800
Total Request	\$250,000

MidPen anticipates requesting remainder of needed local funding from City when future project milestones are met.



1098 38th Avenue

Recommendation:

Direct staff to prepare loan agreement to assist with for predevelopment activities for a 100% affordable multifamily rental housing development located at 1098 38th Avenue.

Capitola City Council

Agenda Report

Meeting: June 22, 2023

From: Finance Department

Subject: Levy of Capitola Village and Wharf Business Improvement Area Assessments for Fiscal Year 2023-24



Recommended Action: Conduct the noticed public hearing and adopt a resolution levying the Fiscal Year 2023-24 Capitola Village and Wharf Business Improvement Area Assessments and accepting the CVWBIA Annual Plan and budget.

Background: On June 23, 2005, the City Council adopted Ordinance No. 889 adding Chapter 5.10 to the Capitola Municipal Code establishing the Capitola Village and Wharf Business Improvement Area (CVWBIA). The CVWBIA assessments are renewed annually and fund various programs that benefit businesses within the CVWBIA district boundaries.

Discussion: On May 25, 2023, the City Council adopted Resolution No. 4316, Resolution of Intention to Levy Business Improvement Assessments for Fiscal Year 2023-24, which set a public hearing for June 22, 2023, in accordance with state law and Chapter 5.10 of the Capitola Municipal Code. Notice of this public hearing was published in the Santa Cruz Sentinel newspaper on Friday June 9, 2023, and was mailed to affected business owners by the CVWBIA.

The CVWBIA is a business-based, self-imposed assessment district in which the assessments are paid by business owners within the district boundary for improvements and activities that support and revitalize businesses as well as attract visitors. The assessment amount for each business is based on the business type and may be a flat fee or increasing fee based on the number of full-time equivalent employees. Consistent with the FY 2021-22 and FY 2022-23 adopted assessments, the proposed FY 2023-24 assessments are reduced by 25% from pre-pandemic levels and the assessments for the hotel/motel/inn category are proposed to be reduced by 50%.

The billing for City services identified in the CVWBIA plan was based on past agreements. The annual billing rates are \$3,000 for Public Works and \$4,200 for accounting services. The annual report and budget are included as Exhibit A.

During the public comment portion of this hearing, written and oral protests may be made pertaining to the proposed levy of assessments, the amount of the proposed assessments, and the proposed improvements and activities in accordance with California Streets & Highways Code §36524 and §36525.

In November 2018, voters approved Measure J, which increased the transient occupancy tax (TOT) from 10 percent to 12 percent. That Measure restricted 20 percent of the TOT increase to be used for local business groups' marketing and community improvements. In February 2019, the City Council directed that restricted TOT funding be split evenly between the Capitola-Soquel Chamber of Commerce and the CVWBIA. City Council also requested that a minimum of 25 percent of restricted TOT revenues be allocated toward community improvements, which may include special events. The proposed CVWBIA budget includes \$36,500 of TOT revenues for FY 2023-24. \$31,000 (85%) of the proposed TOT budget is for village enhancement and events, \$4,000 is for printing directories, and the remaining \$1,500 will rolled-over to FY 2024-25.

Staff recommends the City Council adopt the proposed resolution confirming the Fiscal Year 2023-24 CVWBIA Assessments and adopting the Annual Plan and Fiscal Year 2023-24 budget, as received by the Council on May 25, 2023, unless it receives oral and written protests from the owners of businesses that will pay 50 percent or more of the assessments as mandated by state law.

Fiscal Impact: There is no fiscal impact for the City. All administrative costs for billing and collections incurred by the City are reimbursed by the CVWBIA.

Attachments:

1. Proposed resolution
2. Exhibit A: BIA

Report Prepared By: Jim Malberg, Finance Director

Reviewed By: Julia Moss, City Clerk; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager

RESOLUTION NO. ____
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
CONFIRMING THE FISCAL YEAR 2023-2024 CAPITOLA VILLAGE AND WHARF
BUSINESS IMPROVEMENT AREA ASSESSMENTS AND ADOPTING THE ANNUAL PLAN
AND FISCAL YEAR 2023-2024 CVWBIA BUDGET

WHEREAS, the Capitola Village and Wharf Business Improvement Area (CVWBIA) has prepared a report to the City of Capitola for Fiscal Year 2023-24 pertaining to the Business Improvement Area assessments for the CVWBIA under California Streets and Highways Code §36533; and

WHEREAS, that report was filed with the City Clerk on May 18, 2023; and

WHEREAS, Capitola Municipal Code §5.10.050 requires annual assessments to be imposed within the CVWBIA pursuant to a formula set forth in City Council Resolution No. 3453 referenced in Capitola Municipal Code §5.10.030, and later amended by Resolution No. 3546 and Resolution No. 4186; and

WHEREAS, on May 25, 2023, the City Council adopted Resolution No. 4316 stating its intention to levy business improvement assessments for Fiscal Year 2023-24, receiving the Annual Report and Fiscal Year 2023-24 Budget, and approving the CVWBIA Assessment Basis/Business Addresses and Assessment Method; and

WHEREAS, pursuant to Resolution No. 4316 the City Council, in accordance with California Streets and Highways Code Section §36535, held a public hearing on June 22, 2023, as provided for in Streets and Highways Code Sections §36524 and §36525, at which time it considered the annual report, the levy of business improvement assessments for Fiscal Year 2023-24, and received oral and written protests and endorsements to the regularity or sufficiency of the proposed business improvement assessments.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS FOLLOWS:

1. The Fiscal Year 2023-24 Capitola Village and Wharf Business Improvement Area Annual Report, including the Fiscal Year 2023-24 budget, as filed with the City Clerk on May 18, 2023, and received by the City Council on May 25, 2023, as part of Resolution No. 4316, is hereby confirmed and adopted.

2. The adoption of this Resolution shall constitute the Fiscal Year 2023-24 levy of assessments provided for in Chapter 5.10 of the Capitola Municipal Code pertaining to the Capitola Village and Wharf Business Improvement Area zone and rate of assessments adopted by the City Council on June 22, 2023.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 22nd day of June 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

EXHIBIT A
Resolution No.

Annual Report & Proposed Fiscal Year 2023-2024 Budget
CVWBIA Assessment Basis
CVWBIA Business Listing and Assessment Method

Mission Statement

The objective of the CVWBIA is to provide a unified organization to promote, stimulate and improve the business conditions in the designated area, primarily during the shoulder season, September – May. The belief is that if the lodging properties and short-term rentals are full, the rest of the businesses in the area will benefit.

This can be achieved by the CVWBIA continuing to fund activities and projects that will:

- Improve access to information regarding the businesses and services provided by the Village and Wharf BIA to likely visitors to the area via newsletters, the internet, print and television advertising.
- Provide fun, family-oriented events throughout the year emphasizing the attributes of the Village and Wharf.
- Improve and enhance the appearance of the Village and Wharf in partnership with the City of Capitola.
- Enhance the ability of the CVWBIA to serve as a liaison between the business community and local governments.

In FY 2019-20 CVWBIA began to receive a portion of the Transient Occupancy Tax (TOT) collected by the City and made commitments based on projected TOT revenues. In January 2023 storm related flooding cause major damage to the wharf and some village businesses. Recovery has moved swiftly but business has not returned to pre-storm levels. FY 2023-24 assessments will remain at FY 2022-23 levels.

As the CVWBIA begins its eighteenth year we will continue and expand successful programs from prior years, which include the following:

1. **Website** – In 2021-22 the CVWBIA marketing team created a new, up to date, mobile compatible, website (www.capitolavillage.com) for ease of use and connectivity to BIA member’s businesses, lodging and short-term rentals. Each member has a unique page with links to their individual websites. There is a schedule of events and other helpful features. Visitors can sign up on the site to receive. This process continues in 2023-24 as technology changes quickly. We will also take advantage of opportunities to direct visitors to our website through QR Codes for special events, parking and other visitor information. Monthly summaries of traffic to the site has shown the businesses the value of the website.
2. **Social Media** – The Communications Manager creates a monthly newsletter, manages all our social media channels, maintains our website, and tracks performance. Our email newsletters are sent to over 24,000 subscribers each month. Our Facebook page has over 18,000 fans with our top 5 cities being: San Jose, Santa Cruz, Modesto, Sacramento, and Capitola. Our Instagram is growing the fastest with over 17,300 active followers with an average of 500 profile visits to our account every week. Our newest channel, Twitter, currently has almost 1,200 followers and continues to grow each month. The purpose of the Communication Manager is to collectively promote the Capitola Village businesses and to be a resource for

ongoing growth. Our Village Ambassador continues to develop relationships with our members to facilitate sharing their promotions and announcements with our social media contacts.

3. **Advertising** – While placing an emphasis on our social media development, there is still a need for carefully placed advertising in quality visitor publications. We are constantly monitoring these publications for the ones with the most effective online presence. In addition, in 2022-23 the BIA began a television promotion on Hulu and KCRA. With Hulu we are able to target very specific audiences by income levels and zip codes. The analytics are quite extensive as well. We are focusing on Sacramento, San Francisco and the Central Valley. This campaign will continue in 2023-24.
4. **Village Brochures** – We print 25,000 brochures and distribute them throughout Santa Cruz County. A new addition to the brochure is a QRCode taking the visitor directly to our website. Many visitors depend on their phones to access information while traveling.
We contract with Certified Display Service. This company has exclusive rights to lobby racks in the hotels, resorts, and visitor centers in the county. These brochures are also available in various places of business throughout the Village and Wharf. We feel it is important to make visitors to other areas in the county aware of Capitola Village and Wharf through these brochures. Additionally, there are distribution locations at the Gilroy Visitors Center on Hwy 101, San Jose Airport, and the Monterey Airport.
5. **Branding and Logo Development** – We continue to update logos, colors, and other marketing material to reflect current trends.
6. **Sip and Stroll & Cookie Walk** – These events benefit all the businesses in the village. We hope to be able to hold up to three Sip and Stroll events in November, February and May. The Cookie Walk is family oriented and takes place the weekend after Thanksgiving.
7. **Winter Festivities** – Window decorating contest, lighted wreaths and palm trees are components of the winter festivities with other events in the planning stages.
8. **Easter Egg Hunt** – This is a free event for children that takes place over one week of spring break.
9. **Public Works and Village Enhancement** – The CVWBIA contributes annually to the City of Capitola Public Works Department. Our contribution is used to help maintain the Village and Wharf. This year we are concentrating on landscaping and cleanliness of the village both in public spaces and private planting areas.

Capitola Village & Wharf Business Improvement Area Assessment Basis

The method of assessment classifies businesses within the CVWBIA boundaries into nine categories:

1. Retail / Service businesses
2. Restaurant - Full Bar
3. Restaurant - Beer and Wine
4. Restaurant - No Alcohol
5. Wine/Beer Service
6. Seasonal Food Service
7. Office and Professional businesses / Specialty
8. Short-term Rental businesses
9. Hotel / Motel / Inn businesses

Assessment fees are assigned to these nine business categories by number of full-time equivalent employees, a flat rate, and a per unit amount. Registered non-profits are exempt from assessment fees.

The following table shows the assessment fees for the proposed CVWBIA for FY 2023-24 at same level as last fiscal year.

Business Category	Number of Full-Time Equivalent Employees*		
	0 – 5 employees	6 – 10 employees	More than 10 employees
Retail / Service	\$315	\$630	N/A
Restaurant Full Bar	N/A	\$720	\$1,080
Restaurant Beer and Wine	\$367.50	\$682.50	\$1,042.50
Restaurant No Alcohol	\$315	\$630	N/A
	Flat Fee		
Wine/Beer Service	\$315		
Office / Professional / Specialty	\$90		
Short-term Rental**	\$135		
Seasonal Food Service	\$210		
	Per Unit Fee		
Hotel / Motel / Inn	\$180 per unit		

Footnote* “Full-time employee” is an employee who works 2,000 hours per year or more. Multiple part-time employees are combined into a single full-time employee for the basis of this assessment calculation. (i.e. “fulltime equivalents”)

Footnote** “Short-term rental” businesses are defined as those dwellings which, at least once per fiscal year, are rented to a tenant for a tenancy of less than thirty days.

Associate Membership. CVWBIA is authorized to accept “associate membership” financial contributions from businesses outside the CVWBIA with approval of the board. The category and assessment will be the same as if the business is within the CVWBIA area.

New Business Assessment. Assessments will be prorated by the quarter in which a business opens.

Business Closing. A business notifying the CVWBIA before the end of the first quarter of the fiscal year (September 30th) that it will close before December 31st will be exempt from paying the assessment for that fiscal year. If the business does not close before December 31st, it must pay the year's assessment in full.

Late Charge. No late charge will be assessed with the FY 2023-24 dues.

Delinquencies. CVWBIA has a clear policy relative to delinquent assessments. Businesses that have not paid their assessment by October 31, 2023, will be removed from the CVWBIA website and brochure. They will be ineligible to participate in any CVWBIA activity. Assessments that have not been paid by January 31, 2024, will be sent to collections.

Capitola Village & Wharf Business Improvement Area Estimated Actual for FY 2022-2023 and Proposed Budget for FY 2023-2024

	FY 21/22	FY 22/23	FY 23/24	FY 23/24	FY 23/24
	Actual	Adopted Budget	Assessment Budget	TOT Budget	Total Budget
Beginning Fund Balance	\$ 29,401	\$ 39,394	\$ 23,069		\$ 23,069
Revenues					
Member Assessment	51,619	51,775	53,584	▲	53,584
Associate Assessment		0		▲	0
Assessment Revenues - Trade	0				0
Late Fees	0				0
TOT Revenue	38,738	35,000	0	36,500	▲
Holiday Events	0				0
Palm Tree Lights	0				0
Sip N' Stroll	15,395	54,000	54,000	▲	54,000
Cookie Walk		2,500	2,500	▲	2,500
Interest Revenue	89	100	100	▲	100
Total Revenues	\$ 105,842	\$ 143,375	\$ 110,184	\$ 36,500	\$ 146,684
Total Source of Funds	\$ 135,243	\$ 182,769	\$ 133,253	\$ 36,500	\$ 169,753
Expenditures					
Chamber Services		\$3,000	\$0	▲	\$0
Charitable Donations		6,000	6,000	▲	6,000
CDS Direct Distribution	2,329	4,000	4,000	▲	4,000
Doubtful Accounts		5,000	5,000	▲	5,000
Insurance		2,000	2,000	▲	2,000
Office Supplies	20	1,200	1,000	▲	1,000
Storage Unit	1,314	1,700	1,700	▲	1,700
Renewal		800	800	▲	800
Total Administration	\$ 3,663	\$ 23,700	\$ 20,500	\$ -	\$ 20,500
City Accounting Services	\$ 4,200	\$ 4,200	\$ 4,200	▲	\$ 4,200
City Public Works	3,000	3,000	3,000	▲	3,000
Total City Services	\$ 7,200	\$ 7,200	\$ 7,200	\$ -	\$ 7,200
Ambassador	\$7,200	\$7,200	\$7,200	▲	\$7,200
Communications Manager	18,000	18,000	18,000	▲	18,000
Directories Printing	3,232	3,000		4,000	▲
VSC Newsletter	2,250	2,000	0	▲	0
VSC Travel Guide	3,000	3,000	0	▲	0
VSC TV Partnership		6,000	0	▲	0
VSC Map	770	500	0	▲	0
Insurance	1,743		2,000	▲	2,000
Miscellaneous Print	200	0	0	▲	0
Miscellaneous Advertising		7,500	15,000	▲	15,000
Monterey Travel Magazine		600	600	▲	600
Print Explore		1,000	1,000	▲	1,000
Social Media Boost	3,000	5,000	3,000	▲	3,000
Website Management	16,394	10,000	6,000	▲	6,000
Video Photo Production		3,000	6,000	▲	6,000
Village Enhancement	5,227	14,000		16,000	▲
Total Marketing	\$ 61,016	\$ 80,800	\$ 58,800	\$ 20,000	\$ 78,800
Holiday & Events	\$8,456	\$12,000		\$15,000	▲
Palm Tree Lights	500	0	0	▲	0
Sip N' Stroll - Cookie Walk	15,014	36,000	36,000	▲	36,000
Total Special Events	\$ 23,969	\$ 48,000	\$ 36,000	\$ 15,000	\$ 51,000
Total Expenditures	\$ 95,849	\$ 159,700	\$ 122,500	\$ 35,000	\$ 157,500
Ending Fund Balance	\$ 39,394	\$ 23,069	\$ 10,753	\$ 1,500	\$ 12,253

Capitola Village & Wharf Business Improvement Area Budget Discussion

The CVWBIA will begin Fiscal Year 2023-24 with an estimated fund balance of \$23,000.

Revenues: The proposed revenue is derived from the CVWBIA business roster and corresponding assessment rates.

Expenditures:

Summary. The proposed expenditures are divided into these categories: Administration \$20,500, City Services \$7,200, Marketing \$78,800, and Special Events \$51,000.

The following is a roster of open businesses in the assessment area as of June 2, 2023.

Capitola Village & Wharf Business Improvement Area Business Listing and Assessment Method

Business Type	Assessment Method	Estimate Assessment	
AM = Associate Member	Associate Member	AM	\$405
F1 = Restaurant Full Bar	Per employee category: 6-10 EEs, >10 EEs	F1	\$7,920
F2 = Restaurant Beer & Wine	Per employee category: 0-5 EEs, 6-10 EEs, >10 EEs	F2	\$3,255
F3 = Restaurant No Alcohol	Per employee category: 0-5 EEs, 6-10 EEs	F3	\$4,095
F4 = Wine & Beer Service	Flat fee	F4	\$1,575
F5 = Seasonal Food	Flat fee	F5	\$210
H = Hotel/Motel/Inn	Flat fee per unit or room	H	\$9,180
O = Office/Professional	Flat fee	O	\$1,530
R = Retail/Service	Per employee category: 0-5 EEs, 6-10 EEs	R	\$13,939
SR = Short Term Rental	Flat fee per unit	SR	\$11,475
		Total	\$53,584

<u>Business Name</u>	<u>TYPE</u>	<u>FY23-24 Est. Size</u>	<u>FY23-24 Amount</u>
Wharf House Restaurant	F1	0 - 10	\$720
Britannia Arms Pub & Rest.	F1	0 - 10	\$720
Bay Bar & Grill	F1	0 - 10	\$720
The Sand Bar	F1	0 - 10	\$720
Capitola Bar & Grill	F1	0 - 10	\$720
Shadowbrook Restaurant	F1	11+	\$1,080
Zelda's	F1	11+	\$1,080
Margaritaville	F1	11+	\$1,080
Paradise Beach Grille	F1	11+	\$1,080
El Toro Bravo	F2	0 - 5	\$368
Thai Basil	F2	0 - 5	\$368
Geisha Japanese Restaurant & Tea House	F2	0 - 5	\$368
My Thai Beach	F2	0 - 5	\$368
Caruso's Tuscan Cuisine	F2	0 - 5	\$368
Avenue Café	F2	0 - 5	\$368

Tacos Moreno 3	F2	0 - 5	\$368
Trestles Restaurant	F2	6 - 10	\$683
Mr. Toots Coffee & Tea	F3	0 - 5	\$315
Capitola Village Ice Creamery	F3	0 - 5	\$315
Castagnola Deli & Café	F3	0 - 5	\$315
Mijos Taqueria	F3	0 - 5	\$315
Lil Koe's Beach Bites	F3	0 - 5	\$315
The Daily Grind Coffee & Bottle Shop	F3	0 - 5	\$315
Reef Dog Deli	F3	0 - 5	\$315
Boba Bay	F3	0 - 5	\$315
Sandcastle Café	F3	0 - 5	\$315
Pizza My Heart	F3	6 - 10	\$630
Polar Bear Ice Cream	F3	6 - 10	\$630
Armida Winery	F4	n/a	\$315
Cork and Fork LLC	F4	n/a	\$315
Capitola Wine Bar & Merchants	F4	n/a	\$315
Capitola Tap House	F4	n/a	\$315
English Ales Brewers, Inc.	F4	n/a	\$315
Left Coast Sausage Worx	F5	n/a	\$210
Venetian Hotel	H	19	\$3,420
Capitola Beach Suites	H	10	\$1,800
Inn at Depot Hill	H	12	\$2,160
Capitola Hotel	H	10	\$1,800
David Lyng & Associates	O	n/a	\$90
Katz & Lapides	O	n/a	\$90
Michael Lavigne Real Estate	O	n/a	\$90
Newman & Marcus,LLP	O	n/a	\$90
Suess Insurance Agency	O	n/a	\$90
Capitola Village Real Estate	O	n/a	\$90
Law Offices of Sam Storey	O	n/a	\$90
John H. McSpadden	O	n/a	\$90
Miles J. Dolinger, Attorney at Law	O	n/a	\$90
Visions by Sheena	O	n/a	\$90
Capitola Village Massage	O	n/a	\$90
Yellow Bus	O	n/a	\$90
REVEST HOMES INC	O	n/a	\$90
Monet Salon	O	n/a	\$90
Community CPA	O	n/a	\$90
The Psychic Gallery	O	n/a	\$90
Bare Skin & Body	O	n/a	\$90
Capitola Boat & Bait	R	0 - 5	\$315
Capitola Beach Co.	R	0 - 5	\$315
Big Kahuna Hawaiian Shirts	R	0 - 5	\$315

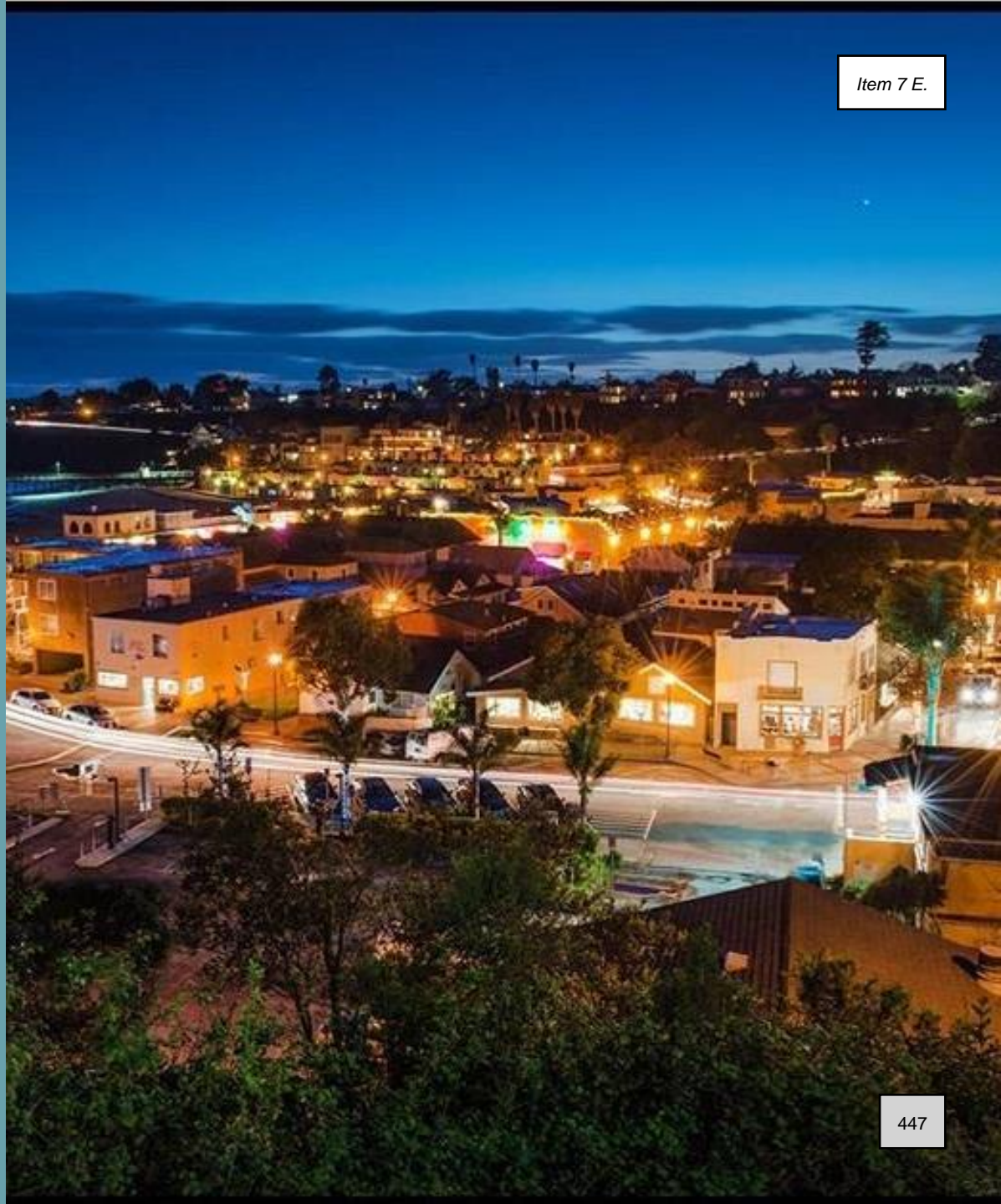
Craft Gallery	R	0 - 5	\$315
Craft Gallery Annex	R	0 - 5	\$315
Euphoria Rio Mix	R	0 - 5	\$315
Free to Ride	R	0 - 5	\$315
Hot Feet	R	0 - 5	\$315
Kickback	R	0 - 5	\$315
Latta	R	0 - 5	\$315
Nubia Swimwear	R	0 - 5	\$315
Oceania	R	0 - 5	\$315
Phoebe's	R	0 - 5	\$315
Rainbow City Limit	R	0 - 5	\$315
Slap Happy	R	0 - 5	\$315
Super Silver	R	0 - 5	\$315
Sweet Asylum	R	0 - 5	\$315
Yvonne	R	0 - 5	\$315
Southstar PM, Inc. - Parking at the Mercantile	R	0 - 5	\$315
Uchiyama - Swenson - Parking at the Theater	R	0 - 5	\$315
Lumen Gallery	R	0 - 5	\$315
Capitola Reef	R	0 - 5	\$315
Art Inspired	R	0 - 5	\$315
Sea Level T's	R	0 - 5	\$315
Vanity by the Sea	R	0 - 5	\$315
Xandra Swimwear	R	0 - 5	\$315
Quality Market	R	0 - 5	\$315
Capitola Seashells	R	0 - 5	\$315
Jade Allen	R	0 - 5	\$315
Pueblo Viejo Imports	R	0 - 5	\$315
Mia Bella Boutique	R	0 - 5	\$315
Ethos Santa Cruz	R	0 - 5	\$315
Village Sea Glass	R	0 - 5	\$315
Tony Pagliaro Photography	R	0 - 5	\$315
Mercantile Arcade	R	0 - 5	\$315
Carousel Taffy & Treats	R	0 - 5	\$315
Coastal Life	R	0 - 5	\$315
Capitola Candy Café	R	0 - 5	\$315
Capitola Sweet Shoppe	R	0 - 5	\$315
Santa Cruz Apparel	R	0 - 5	\$315
Stoke Brands dba Midtown Surf Shop	R	0 - 5	\$315
Capitola Paws	R	0 - 5	\$315
Nectar California LLC	R	0 - 5	\$315
Katalinas Boutique LLC	R	0 - 5	\$315
Clementine & CO.	R	0 - 5	\$315
Capitola Family Home	SR	1	\$135

Capitola Pelican House	SR	1	\$135
Capitola Venetian #5	SR	1	\$135
Capitola Venetian #14	SR	1	\$135
Capitola Beach Bungalow	SR	1	\$135
Capitola Beach Cottage	SR	1	\$135
Capitola Cliffs Unit 3	SR	1	\$135
Peaceful Capitola Home	SR	1	\$135
Relaxing Family Condo by the River	SR	1	\$135
Perfect Family Beach House	SR	1	\$135
Capitola Cliffs Unit 4	SR	2	\$270
Capitola Venetian #7	SR	1	\$135
Capitola Venetian Unit 3	SR	1	\$135
Capitola Venetian #1	SR	1	\$135
Oceanfront Capitola Tuscan Villa	SR	1	\$135
Capitola Cliffs #4960-2	SR	1	\$135
Capitola Venetian #11	SR	1	\$135
Beach Charmer	SR	1	\$135
Capitola Venetian #2	SR	1	\$135
Castillo Properties	SR	2	\$270
Deborah Cohen	SR	1	\$135
Bayside Capitola Beach Condo	SR	1	\$135
Oceanside Coastal Village Condo	SR	1	\$135
Capitola Sea Spray	SR	1	\$135
Creekside Cottage	SR	1	\$135
Capitola Cherry Ave	SR	1	\$135
Luxurious Historic Windmill Silo House	SR	2	\$270
Capitola Bluegum A & B	SR	2	\$270
Grandma's Nest Capitola Venetian #9	SR	1	\$135
Adorable Capitola Village Condo	SR	1	\$135
Capitola Seashell Sanctuary	SR	1	\$135
Vista Cortile Condo	SR	1	\$135
Capitola Village Deco Beach House	SR	1	\$135
Talbot Family	SR	1	\$135
Capitola Venetian #16	SR	1	\$135
Capitola Village Retreat Units A & B	SR	1	\$135
Capitola Lawn Way #5-4	SR	1	\$135
Capitola Breeze Condo & Seaview Condo	SR	2	\$270
Capitola Riverview #421	SR	1	\$135
Capitola Riverview #323	SR	1	\$135
Iconic Oceanfront Pink Venetian	SR	1	\$135
114 - 116 Lawn Way LLC	SR	2	\$270
Capitola Cliff House	SR	1	\$135
208 Monterey Ave #A	SR	1	\$135

Capitola Village #316-B & 316-C	SR	1	\$135
Capitola Cliffs 4920	SR	1	\$135
James Lin	SR	1	\$135
Michael J. Pirnik	SR	1	\$135
Capitola Riverview 414 A & B	SR	2	\$270
Capitola Venetian #8	SR	1	\$135
Capitola Oceanside	SR	1	\$135
Good Times	SR	2	\$270
Capitola Dreamin'	SR	1	\$135
Capitola Riverview #402	SR	1	\$135
Capitola Riverview #310	SR	1	\$135
Capitola Riverview #312	SR	1	\$135
Oceanside Luxury Dream Beach House	SR	1	\$135
Beautiful Oceanview Condo	SR	1	\$135
Paradise Properties Capitola Village #321-B	SR	1	\$135
Bombora LLC Capitola Village #419	SR	2	\$270
Colorful Capitola Village Cottage A & B	SR	2	\$270
Capitola Suites	SR	3	\$405
A Six Sisters Beachfront Retreat	SR	1	\$135
Capitola San Jose 122	SR	5	\$675
Capitola Monterey 109-3 & 109 10	SR	1	\$135
222 San Jose Ave	SR	1	\$135
Charming Riverview Home	SR	1	\$135
Surf Loft	SR	1	\$135
425 Capitola Ave	SR	1	\$135
208 Capitola Ave A & B	SR	2	\$270
318 Capitola Ave #2	SR	1	\$135
Capitola Village Beach Rental	SR	1	\$135
328 Riverview Ave	SR	1	\$135
Arron Thomas	SR	1	\$135
Gary & Teresa Carlisle	SR	1	\$135
Stricht/Ciolino Trusts	SR	1	\$135
Unsophisticated Builders LLC	SR	1	\$135
Debbie & Brian Tuck	SR	1	\$135
Santa Cruz Balsamics	Assoc. O	1	\$90
Fuse Architects	Assoc. O	1	\$90
Surf City Properties	Assoc. O	1	\$90
O'Neal Properties	Assoc. O	1	\$90
Beachnest Property Management	Assoc. O	1	\$90

CAPITOLA
VILLAGE
AND WHARF
BUSINESS
IMPROVEMENT
AREA
ASSESSMENTS
FY 2023-24

June 22, 2023



Background

- June 23, 2005 - City Council adopted Ordinance No. 889 establishing Capitola Village & Wharf Business Improvement Area (BIA)
- BIA is a business-based, self-imposed assessment district with assessments paid by businesses within the district for improvements & activities that support, revitalize and attract tourists to those businesses
- Assessment amounts are determined by business classification and number of full-time equivalent employees
 - *Reduced by 25% in FY 2021-22, FY 2022-23, due to COVID recovery and FY 2023-24 due to storm damage recovery*
 - *Reduced by 50% for Hotels & Lodging*
- Businesses may make in-lieu payments in the form of gift certificates for use by the BIA
 - *No in-lieu payments for FY 2023-24*

Annual Assessment Process

May 25, 2023 - City Council set a public hearing for this evening

Item 7 E.

- *Notice of the Public Hearing published in the Santa Cruz Sentinel and mailed to affected business owners*

California State Law & the Capitola Municipal Code require that the City Council conduct a public hearing annually prior to approving the assessments

- *BIA submits an annual plan and budget for Council approval*

No fiscal impact to the City – all services provided by the City are reimbursed by the BIA

Annual Assessment Process

Item 7 E.

(CONT.)

- BIA Budget includes Assessment revenue as well as Restricted Transient Occupancy Tax (TOT) revenue
 - *Measure J approved by voters in 2018 dedicated a portion of TOT revenues for local business groups*
 - *February 28, 2019, the City Council directed that the TOT revenues restricted for local business groups would be split evenly between the BIA and the Capitola Soquel Chamber of Commerce*
 - Requiring a minimum of 25% of restricted TOT revenue be allocated for Village Improvements and/or Enhancements
 - Restricted TOT revenue and its uses need to be presented separately with annual budget
 - Annual report on use of restricted TOT revenues

Annual Assessment Process

Item 7 E.

(CONT.)

- FY 2023-24 BIA Budget includes \$35,000 of restricted TOT revenue
 - Directories printing - \$4,000
 - Village Enhancements - \$16,000
 - Holidays & Events - \$15,000

Proposed Assessments

Item 7 E.

Business Category	Number of Full-Time Equivalent Employees*		
	0 – 5 employees	6 – 10 employees	More than 10 employees
Retail / Service	\$315	\$630	N/A
Restaurant Full Bar	N/A	\$720	\$1,080
Restaurant Beer and Wine	\$367.50	\$682.50	\$1,042.50
Restaurant No Alcohol	\$315	\$630	N/A
	Flat Fee		
Wine/Beer Service	\$315		
Office / Professional / Specialty	\$90		
Short-term Rental	\$135		
Seasonal Food Service	\$210		
	Per Unit Fee		
Hotel / Motel / Inn	\$180 per unit		

Recommended Action

- Conduct the Public Hearing and adopt the proposed Resolution levying the FY 2023-24 Capitola Village and Wharf Business Improvement Area Assessments and accepting the BIA Annual Plan and Budget

Capitola City Council

Agenda Report

Meeting: June 22, 2023

From: Finance Department

Subject: Fiscal Year 2023-2024 Budget and Capital Improvement Program



Recommended Action: Adopt a resolution adopting the City of Capitola's Fiscal Year 2023-24 Budget and Capital Improvement Program.

Background: The Proposed Fiscal Year (FY) 2023-24 Budget and Planned FY 2024-25 Budget was presented to the City Council at a special meeting held May 3, 2023, at which time the City Council received input from the Finance Advisory Committee (FAC). At the meeting, the City Council requested additional information which was presented at a second special meeting on May 18, 2023, at which time the City Council reviewed updates to the proposed budget and additional recommendations from the FAC and heard public comments.

At the May 18th special meeting, the City Council discussed the following, and ultimately directed staff to prepare a resolution to adopt the budget.

Discussion: The Proposed FY 2023-24 Budget estimates the General Fund ending balance on June 30, 2024, of \$1.6 million which includes a target fund balance of \$500,000, \$100,000 designated for the Employee Downpayment Assistance Program, and approximately \$954,000 for future infrastructure projects. Pursuant to City Council direction and the recommendation of the FAC, staff has allocated \$4.95 million of existing general fund resources towards the Capital Improvement Program and FY 2023-24 City Council Goals and Priorities.

Following City Council direction, the budget includes \$60,000 of Restricted TOT revenue programmed to Early Childhood and Youth Programs (ECYP) within the Community Grant Program and \$23,000 of Restricted TOT fund balance to the Recreation Division for ECYP.

Additional revisions made to the FY 2023-24 Proposed Budget since the May 18th public hearing include:

- Allocated \$18,000 to Recreation:
 - Equity Swim Program
- Increased funding for personnel \$2,500
- Allocated \$30,000 for Total Compensation Survey
- Decreased 911 JPA contribution \$2,900
 - Based on approved FY 2023-24 911 JPA budget
- Updated City Council goals in the City Manager's message

The net impact of the proposed budget revisions is a negative \$24,600. The FY 2023-24 Proposed Budget remains structurally imbalanced by design due to the allocation of \$4.95 million of available general fund resources to City Council goals and priorities. In addition, the five-year budget forecast remains structurally balanced until the sunset of the Measure F District Sales Tax in December 2027.

The resolution necessary to adopt the Fiscal Year 2023-24 Budget includes the above appropriations and adjustments (Exhibit A), a General Fund overview (Exhibit B), and an estimation of FY 2023-24 fund balances (Exhibit C). In addition, the FY 2023-24 Proposed Budget is available on the City's website at: <https://www.cityofcapitola.org/finance/page/annual-budget>

Fiscal Impact: The fiscal impact is shown in the attached General Fund overview and fund balance summary.

Attachments:

1. Proposed resolution
2. Changes to Proposed Budget
3. General Fund Summary
4. Fund Balance Summary

Report Prepared By: Jim Malberg, Finance Director

Reviewed By: Julia Moss, City Clerk; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
ADOPTING THE 2023-2024 FISCAL YEAR CITY BUDGET AND CAPITAL IMPROVEMENT
PROGRAM BUDGET**

WHEREAS, it is necessary to adopt the 2023-2024 Fiscal Year Budget for all City funds and Capital Improvement Program; and

WHEREAS, the City Council has conducted budget study sessions, has heard and considered public comments, and has modified the proposed budget accordingly, and wishes to adopt such budget for the Fiscal Year July 1, 2023, through June 30, 2024; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Capitola that the 2023-2024 Fiscal Year Budget and Capital Improvement Program is hereby adopted; and

BE IT FURTHER RESOLVED that the Finance Director is directed to enter the budget into the City's accounting records in accordance with appropriate accounting practices, and the City Manager, with the Finance Director's assistance, shall assure compliance therewith.

I HEREBY CERTIFY that the foregoing Resolution was passed and adopted by the City Council of the City of Capitola on the 22nd day of June 2023, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

Margaux Keiser, Mayor

ATTEST:

Julia Moss, City Clerk

Exhibit A
Changes to FY 2023-24 Proposed Budget

FY 2022-23 General Fund Expenditures	Amount
Recreation - Equity Swim Program	\$ 18,000
Recreation - ECYP	\$ (23,000)
Citywide presonnel	2,500
Personnel Division - Total Compensation Study	30,000
Police - 911 JPA contribution	(2,900)
Total	\$ 24,600

FY 2022-23 Restricted TOT Special Revenue Fund	Amount
Early Childhood & Youth Programming - Recreation	\$ 23,000
Total	\$ 23,000

General Fund Summary

Major Categories	FY 20/21 Actual	FY 21/22 Actual	FY 22/23 Amended	FY 22/23 Estimated	FY 23/24 Proposed	FY 24/25 Planned
Revenues						
Taxes	\$ 12,838,748	\$ 14,514,218	\$ 14,573,969	\$ 14,607,713	\$ 14,943,971	\$ 15,225,246
Licenses and permits	657,786	718,402	642,100	600,354	651,600	654,725
Intergovernmental revenues	1,404,860	1,350,001	1,442,308	105,700	89,700	91,360
Charges for services	1,604,582	1,894,868	2,076,331	1,797,950	2,157,937	2,487,760
Fines and forfeitures	494,772	588,832	592,000	648,000	607,500	607,500
Use of money & property	79,464	31,722	89,500	123,200	198,495	198,495
Other revenues	112,881	898,648	106,344	83,850	89,300	90,450
Revenues Totals	\$17,193,093	\$19,996,692	\$19,522,552	\$17,966,767	\$18,738,503	\$19,355,536
Expenditures						
Personnel	\$9,127,386	\$10,273,758	\$11,364,691	\$11,430,752	\$11,681,919	\$12,122,364
Contract services	2,250,977	2,912,962	3,777,026	3,348,754	3,290,190	3,121,345
Training & Memberships	64,292	101,501	147,645	149,959	172,736	173,786
Supplies	495,219	672,330	516,000	581,563	603,975	573,175
Grants and Subsidies	43,650	101,650	125,000	125,000	125,000	125,000
Internal service fund charges	911,212	1,192,463	1,439,415	1,439,415	1,617,843	1,647,118
Other financing uses	809,383	3,608,343	5,231,569	3,390,366	2,288,788	1,567,909
Expenditures Totals	\$13,702,120	\$18,863,007	\$22,601,346	\$20,465,809	\$19,780,450	\$19,330,697
Impact on Fund Balance	\$ 3,490,974	\$ 1,133,684	\$ (3,078,794)	\$ (2,499,042)	(\$1,041,947)	\$ 24,839
Budgetary Fund Balance	\$ 4,346,128	\$ 5,479,812	\$ 2,016,018	\$ 2,595,770	\$ 1,553,823	\$ 1,578,662
Designations						
Employee Downpayment		\$ (385,000)	\$ (385,000)		\$ (100,000)	\$ (100,000)
Infrastructure	\$ -	\$ -	\$ -	\$ -	\$ (953,823)	\$ (800,000)
Revised Budgetary Fund Balance	\$ 4,346,128	\$ 5,094,812	\$ 1,631,018	\$ 2,595,770	\$ 500,000	\$ 678,662
					(500,000)	

	Estimated Balance 7/1/2023	Revenues	Transfers In	Expenditures	Transfers Out	Estimated Balance 6/30/2024
General Fund	\$ 2,595,770	\$18,738,503	\$ -	\$ 17,491,662	\$ 2,288,788	\$ 1,553,823
Designated Reserves						
Contingency Reserve	\$2,192,346	\$ -	\$ 172,000			\$ 2,364,346
PERS Contingency Reserve	1,404,275	10,000	-	-	-	1,414,275
Emergency Reserve	1,461,506		250,000	-	-	1,711,506
Donations	-	-	-	-	-	-
Facility Reserve	332,714	100,000	100,000	140,000	-	392,714
Total Designated Reserves	\$ 5,390,840	\$ 110,000	\$ 522,000	\$ 140,000	\$ -	\$ 5,882,840
Debt Service						
Pac Cove Lease Financing	55,143	-	670,000	725,000	-	143
Pac Cove Park	12	-	87,788	87,788	-	12
Total Debt Service	\$ 55,155	\$ -	\$ 757,788	\$ 812,788	\$ -	\$ 155
Capital Improvement Fund	\$ 7,164,700	\$ 4,727,000	\$ 550,000	\$ 12,686,300	\$ -	\$ (244,600)
Internal Service Funds						
Stores	\$ 65,935	\$ 27,000		\$ 27,000	\$ -	\$ 65,935
Information Technology	340,742	630,000	235,000	626,000	-	579,742
Equipment Replacement	504,130	450,000	200,000	294,000	-	860,130
Self-Insurance Liability	246,204	622,138		622,138	-	246,204
Workers' Compensation	117,080	447,705		447,705	-	117,080
Compensated Absences	110,886	-	225,000	225,000	-	110,886
Total Internal Service Funds	\$ 1,384,977	\$ 2,176,843	\$ 660,000	\$ 2,241,843	\$ -	\$ 1,979,977
Special Revenue Funds						
SLESF-Suppl Law Enforcmnt Svc	\$ 161,451	\$ 100,500		\$ 221,000		\$ 40,951
TOT Restricted Revenue	-	101,333		(96,667)	96,667	101,333
SB1 RMRA	470,199	248,500		243,500		475,199
RTC Streets	356,823	371,000		366,000		361,823
Gas Tax	153,095	284,881		283,000		154,976
Wharf	170,681	-		17,500		153,181
General Plan Update and Maint	259,256	66,000		175,500		149,756
Green Building Education	214,349	3,000		21,000		196,349
Public Art	169,367	5,000		75,500		98,867
Parking Reserve	737	-	100,000	369,000	100,000	(368,263)
Technology Fee	97,657	11,500		13,250		95,907
PEG-Public Education and Govt.	62,168	16,000		15,000		63,168
Capitola Village/Wharf BIA	23,069	50,017	96,667	157,500		12,253
CDBG Grants	21,227	253,335		273,335		1,227
CDBG Program Income	44,891	250		-		45,141
Library	49,514	1,500		-		51,014
HOME Reuse	842,506	-		4,100		838,406
Housing Trust	336,987	10,000			201,000	145,987
Cap Hsg Succ- Program Income	2,029,648	40,000		155,807		1,913,841
Total Special Revenue Funds	\$ 5,463,624	\$ 1,562,816	\$ 196,667	\$ 2,294,325	\$ 397,667	\$ 4,531,115
Successor Agency	\$ 165,074	\$ -	\$ -	\$ -	\$ -	\$ -
Prelim. Fund Balance - All Funds	\$ 22,220,140	\$ 27,315,162	\$ 2,686,455	\$ 35,666,918	\$ 2,686,455	\$ 13,703,311



PROPOSED BUDGET FISCAL YEAR 2023-24



CITY OF CAPITOLA
Capitola, California

Proposed Budget distributed:
April 28th

FAC Meetings:
May 2nd and May 16th

City Council Meetings:
May 3rd and May 18th

City Council provided direction
for budget adoption tonight

Budget Process

General Fund & City Council Goals

- Operating Budget imbalanced by design
 - Maintaining balance of \$1.6 million
 - \$100,000 Employee Downpayment Assistance
 - \$954,000 future Capital projects
 - \$500,000 target fund balance
- Utilizing \$4.95 million of general fund resources for Capital Improvement Projects and City Council Goals
 - Community Center Renovation - \$1.65 million
 - SCCB Loan Payoff - \$725,000
 - Pavement management - \$500,000
 - PD technology upgrades - \$235,000
 - Universal Design Playground - \$200,000
 - Equipment Fund for Electric Vehicles - \$200,000

General Fund & City Council Goals

- Utilizing \$4.95 million of general fund resources for Capital Improvement Projects and City Council Goals (cont.)
 - Establish long-term strategic goals - \$50,000
 - LAFCO Sphere Study - \$30,000
 - Survey for possible ballot measure - \$25,000
 - Mall Redevelopment Committee - \$25,000
 - Capital Improvement Projects:
 - Water filling stations - \$50,000
 - Hill / Bay pilot project - \$50,000
 - Esplanade park - \$50,000
 - Replenish Emergency Reserve - \$250,000
 - Employee downpayment assistance - \$100,000
 - Future capital projects - \$954,000

General Fund & City Council Goals

- Non-monetary City Council Goals
 - Adopt Children's Bill of Rights
 - Bring climate goals to City Council
 - Reach out to school district regarding possible turf project at Monterey Park
 - Encourage local businesses to participate in the CA green business certification program
 - Explore grants for Maker Space at Community Center
 - Research intergenerational programs to connect youth with elders utilizing ECYP funding

Capital Improvements Program

FY2023-2024 Recommended Appropriations



Project	Status	Recommended Appropriations
Jade Street Park UA Playground	Construction Post-Fundraising	\$200,000
Community Center	Construction Anticipated F23-Su24	\$1,650,000
Pavement Management	Major Construction Sp24 with Prior Year	\$500,000
Capitola Road Rehabilitation	Construction Anticipated Su23	\$840,000
TOTAL		\$3,190,000

City Council Direction

- Early Childhood & Youth Program (ECYP)
 - Allocate \$23,000 of ECYP funding to the Recreation Division
- General Fund – net increase \$24,600
 - Decreased recreation funding - \$5,000
 - Decrease \$23,000 from ECYP
 - Increase \$18,000 – Swim Equity Program
 - Increase personnel - \$2,500
 - Increase contract Services - \$30,000 – compensation study
 - Decreased 911 JPA contribution - \$2,900
- Updated City Council Goals
 - City Manager Message

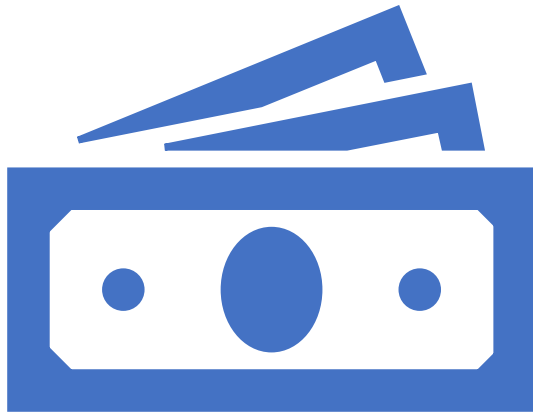
Mid-Year Budget Review

- Evaluate sales tax revenues over next two quarters
- Look at performance of other key revenue sources (TOT, Cannabis tax, etc.)
- Potential increase to parking revenue
- Projected June 30 2024 fund balance ~\$1.6 million
 - Opportunity to consider fund balance ahead of mid year if necessary

Summary

Item 7 F.

Recommended Action



Approve the Resolution
adopting
Fiscal Year 2023-2024
Operating Budget
and
Capital Improvement Program

Capitola City Council

Agenda Report



Meeting: June 22, 2023
From: Finance Department
Subject: Fiscal Year 2023-24 Fee Schedule

Recommended Action: Conduct the duly noticed public hearing on the proposed Fee Schedule for FY 2023-24 and adopt a resolution amending the current fee schedule.

Background: The annual budget process includes a review of the City’s Fee Schedule. Capitola’s current fee schedule is based on the comprehensive fee study adopted on November 24, 2015. The consultant recommended the City review the fee schedule on a yearly basis and implement a Consumer Price Index (CPI) adjustment. The fee schedule has been reviewed annually every year since 2015.

State law requires the City conduct a public hearing where testimony can be taken before any fees are added or existing fees are altered.

Discussion: Best management practices recommend conducting a comprehensive fee study every five years. In January 2020, staff began the process of performing a comprehensive fee study with City Council review tentatively planned for late April, to allow for approved fee adjustments beginning in July 2020. Due to the pandemic, these plans were put on hold. Staff intends to do a comprehensive fee study in the first half of FY 23-24.

The CPI adjustment applied to the fee schedule is 5.6%.

Police Department Fees:

- Addition of Firearm Dealer License City application fee, based on estimated staff time

<i>Employee</i>	<i>Staffing Cost per Hour</i>	<i>Time Used</i>	<i>Fee</i>
1 x Admin Records Analyst	\$154.64	40 minutes	\$100

- Addition of Carrying a Concealed Weapon (CCW) permit City application fee, based on estimated staff time

<i>Employee</i>	<i>Staffing Cost per Hour</i>	<i>Time Used</i>	<i>Fee</i>
1 x Admin Records Analyst	\$154.64	45 minutes	\$115

- Removal of Animal Services Fees imposed and collected by Santa Cruz County

Recreation Fees:

- Addition of Parks & Recreation Drop-In and Workshop registration fee – based on staff time for building set up and use.

<i>Employee</i>	<i>Staffing Cost per Hour</i>	<i>Time Used</i>	<i>Fee</i>
1 x Rec. Coordinator	\$98.35	30 minutes	\$10

- Addition of July Parks & Recreation Month Drop-In activity fee – Existing activity fee prorated for special circumstances, such as health withdrawal.
- Addition of Parent’s Night Out new program fee – Calculated based on estimated program size of 24 kids per event, staff time, and supplies.

<i>Employee</i>	<i>Staffing Cost per Hour</i>	<i>Time Used</i>	<i>Fee</i>
1 x Recreation Coordinator	\$98.35	2 hrs per event	\$25
2 x Seasonal Staff	\$22.00	4 hrs per event	\$31

- Addition of Daily rate used only to calculate program fee – daily rate for new school break camps based on existing weekly rate.

<i>Camp Length</i>	<i>FY22/23 CPI Adjusted Rate Resident/Non-Resident</i>
2 Week Session	\$336 / \$420
1 Week Session	\$170 / \$210
Daily Rate for School Break Camps	\$34 / \$42

- Addition of staffing required to prepare for or supervise Recreation activities fee – original fee recovered cost of field preparation by seasonal staff at \$13/hour, this fee did not increase with CPI or wage increases; the new fee is designed to recover cost of staff time based on which staff performs duties.
- Addition of Art & Cultural Merchandise fee - cost plus 50% administration fee.
- Addition of Art & Cultural Plein Air Artist application fee – Calculated to recover service fees for online management of applications and part of staff time spent on event.

<i>Employee</i>	<i>Staffing Cost per Hour</i>	<i>Time Used</i>	<i>Fee</i>
1 x Rec. Manager	\$98.35	25 minutes	\$50

- Addition of Art & Cultural Plein Air Art Exhibition service fee based on contractual agreement with participating artist (30% retained by City, 70% paid to Artist).

Fiscal Impact: The Fiscal Year 2023-24 Budget will incorporate the amended fees and the amended Fee Schedule will go into effect July 1, 2023.

Attachments:

1. Resolution
2. FY 2023-2024 Fee Schedule

Report Prepared By: Leda Laidlaw-Hunter, Accountant I

Reviewed By: Jim Malberg, Finance Director; Julia Moss, City Clerk

Approved By: Jamie Goldstein, City Manager

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING THE CITY'S FEE SCHEDULE FOR
FISCAL YEAR 2023-2024**

WHEREAS, the Government Code of the State of California, Section 66018 requires local agencies to notice and hold at least one open and public meeting prior to levying a new fee or increasing an existing fee; and

WHEREAS, the City Council of the City of Capitola has held a duly noticed public hearing on June 22, 2023, to consider amending existing fees charged for various City services; and

WHEREAS, the City Council adopted Resolution No. 4036 on November 24, 2015, amending the City Fee Schedule in accordance with the comprehensive fee study also presented to City Council on November 24, 2015; and

WHEREAS, City staff researched and analyzed the cost of services provided by the City and determined the appropriateness of these adjusted rates relative to the cost of providing services; and

WHEREAS, the adjusted rates do not exceed the reasonable cost of providing these services; and

WHEREAS, this fee schedule sets forth the City's cost recovery fee programs, which includes minimum deposits against which staff costs, adjusted for overhead, are assessed; and

WHEREAS, such rates must be adjusted from time to time to reflect the true costs of such services; and

WHEREAS, all flat fees, with the exception of those established by law, may be adjusted annually by the Consumer Price Index (CPI) for the San Francisco, Oakland, San Jose area; and

WHEREAS, the City of Capitola will analyze the fee schedule on a yearly basis to ensure hour estimates and staff costs are reasonable; and

WHEREAS, the City of Capitola has made available to the public the required data pursuant to Government Code Section 66018 for at least ten days prior to adoption of a revised fee schedule.

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

- Amend the City of Capitola Fee Schedule pursuant to the changes in Exhibit A attached hereto to become effective on July 1, 2023. Only the fees that are [highlighted/shown in redline] are being altered, amended, or increased. All other fees set forth in Exhibit A will remain in effect as originally adopted.; and

I HEREBY CERTIFY that the above and foregoing Resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 22nd day of June 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Margaux Keiser, Mayor

Julia Moss, City Clerk

Description	2022/23 Amended Fee Schedule	2023/2024 Proposed Fee Schedule
MISCELLANEOUS FEES		
Administrative Decision Appeal Fee	\$562	\$593
Bingo Permit	\$67	\$71
Capitola Municipal Code	0.15 / page	0.15 / page
Capitola Municipal Code Supplement Service (Per year)	\$0	\$0
Copies:		
1-5 copies	\$0	\$0
6 or more copies (per copy)	\$0.25 / page	\$0.25 / page
Gov't Code § 81008 (Political Reform Act) statements/reports (Per copy)	\$0.10 / page	\$0.10 / page
Video Tapes, Flash Drive, CD/DVD Production	Cost + \$54.18 1st Hour (Minimum) + \$27.08 / hour	Cost + \$57.21 1st Hour (Minimum) + \$28.60 / hour
Simple film permit	\$52	\$54
Major film permit	\$258	\$272
Entertainment Permit Application Fee	\$41	\$44
Single Event Permit	\$41	\$44
Minor Entertainment Permit	\$174	\$184
Regular Entertainment Permit	\$652	\$689
Pet Shops and Kennel License Fee (Municipal Code § 5.20.020) set only by ordinance	\$23	\$20
Returned Check Fee	\$41	\$44
Business License Overpayment Refund Fee (resolution 3532, ord 871)	\$0 (Set to -0- by Council in 2011)	\$0 (Set to -0- by Council in 2011)
Business License Late Payment Penalty Admin. Fee	\$35 + 10% each month late	\$35 + 10% each month late
Business License Application Fee (Reso. 3532)	\$25	\$25
Business License - Disability Access and Education Fee (State)	\$4	\$4
Temporary, Publicly Attended Activities, Application Fee (Municipal Code § 9.36.040)	\$34	\$34
Public Art (Total Building Valuation \$250,000 or more) (Municipal Code Chapter 2.58)	2% of TBV or 1% in lieu to City	2% of TBV or 1% in lieu to City
Notice of Intent to Circulate Initiative Petition (Elections Code § 9103(b))	\$200.00	\$200.00
Bandstand Rental Fee	\$233 / 4 hrs or \$699 all day / deposit \$1,500	\$246 / 4 hrs or \$738 all day / deposit \$1,500
Outdoor Dining Rental Fees		
Parking Spaces	\$3,400 annually for each space or partial space	\$3,400 annually for each space or partial space
Sidewalks and non-parking spaces	\$18.00 per square foot annually	\$18.00 per square foot annually
Outdoor Dining Maintenance Deposit		
Sidewalks and non-parking spaces	\$500	\$500
1-2 parking spaces	\$1,000	\$1,000
3-5 parking spaces	\$1,500	\$1,500
Notary Service Fees (State Code)		
Acknowledgment or proof of a deed, or other instrument, to include the seal and writing of the certificate	\$15 / signature	\$15 / signature
Administering an oath or affirmation to one person and executing the jurat, including the seal	\$15 / signature	\$15 / signature
Credit Card Transaction Fee	3%	3%
Electric Vehicle Charging Fee	\$0.50 / hour	\$0.50 / hour
Cannabis Annual License Fee	\$2,677	\$2,827
Retail Cannabis Application Fee	\$1,745	\$1,843

Description	2022/23 Amended Fee Schedule	2023/2024 Proposed Fee Schedule
POLICE DEPARTMENT FEES		
Special Event Permit	\$64	\$68
Amplified Sound Permit (Municipal Code 9.12.040)	\$30	\$32
DUI Cost Recovery Fee (Res. 3533)	Not to exceed \$12,000	Not to exceed \$12,000
Copies of reports: Crime Reports, Special Reports, etc. (Regardless of number of pages)	\$0.25 / page	\$0.25 / page
Copies of: Citations, Code sections, Ordinances, etc.	\$0.25 / page	\$0.25 / page
Bicycle Licenses (New)	\$0	\$0
Bicycle Licenses (Renewal)	\$0	\$0
Citation Sign-Offs	\$0	\$0
Photographs	\$19 + administration fees	\$20 + administration fees
VIN verifications	\$17	\$18
Video Tapes, Flash Drive, CD/DVD Production	Cost + \$54.18 1st Hour (Minimum) + \$27.08 / hour	Cost + \$57.21 1st Hour (Minimum) + \$28.60 / hour
Firearm Dealer License - City Application	n/a	\$100
Local Firearm dealers (set by state)		
New application	set by state	set by state
Renewal	set by state	set by state
Second Dealers License (set by state)		
Application	set by state	set by state
Renewal	set by state	set by state
Taxi Fee per application	set by state	set by state
Tobacco retail license	\$274	\$289
Civil Subpoena (per case) (set by state)	set by state	set by state
Parking Permits (separate action by the Council)		
Neighborhoods per year (Resolution No. 3733)	\$25	\$25
Village Preferential Permit (Resolution No. 3733)	\$50 per year	\$50 per year
Village Employer/Employee Permit (Resolution No. 3733)	\$50 per year	\$50 per year
Morning Village Parking Permit (Resolution No. 3715)	\$50 per year	\$50 per year
Carrying a Concealed Weapon (CCW) Permit - City Application	n/a	\$115
Concealed Weapon Permits (set by state)		
Application		
Standard	set by state	set by state
Judicial	set by state	set by state
Employment	set by state	set by state
Renewal		
Standard	set by state	set by state
Judicial	set by state	set by state
Employment	set by state	set by state
Firearm Surrender Fees (set by state law)		
1-5 guns	set by state	set by state
6+ guns	set by state	set by state
Vehicle Storage per day	\$28	\$30
Administrative fee to release Impounded / Stored Vehicle	\$137	\$145
Surf School Permit Fee	\$563	\$594
Animal Services Fees		
See Exhibit B "Animal Services Fees"		

Description	2022/23 Amended Fee Schedule
PUBLIC WORKS DEPARTMENT FEES	
Encroachment Permits	
Revocable Encroachment Permit - Outdoor Dining	\$230
Non-Construction Items (includes materials storage within right-of-way road and sidewalk closures)	\$71
Village Sidewalk Encroachment Permit	\$41
Village Parking Space Encroachment Permit (annually)	\$3,400
Construction Items	
Level A	\$215
Level B	\$477
Level C	\$951
Level D	\$1,546
Level E	\$2,143
Residential Blue Curb Application Fee	\$225
Residential Blue Curb Annual Fee	\$57
Blanket Permits (repair and maintenance of existing facilities)	\$2,379
Private Improvement Permits/Encroachment Agreement	
Applications for Minor Permits	\$238
Applications for Major Permits	\$595
New Memorial Bench	\$1,077
Replacement Memorial Bench	\$525
Memorial Plaque	\$808
Replacement Plaque	\$262
Memorial Plaque (tree)	\$516 + Cost of Tree
Memorial Picnic Table	\$1,725
Seasonal Boat Storage Permits	
Seasonal Permit	\$400 per month
Short Term Permit	\$15 per day
Stormwater Development Review Fee	
Stormwater Plan Review Fee	\$118
Large Project Plan Review Deposit	
Tier 2	\$3,571
Tier 3 & 4	\$4,761
Research Fee - 1/2 hour minimum charge	Cost
Information Technology Fee (Resolution No. 3796 adopted 11/12/09)	5% of Permit Fee
Final Map	Cost; \$3,000 min. deposit

2023/2024 Proposed Fee Schedule
\$230
\$75
\$44
\$3,400
\$227
\$503
\$1,004
\$1,633
\$2,263
\$237
\$60
\$2,513
\$251
\$629
\$1,137
\$554
\$854
\$277
\$545 + Cost of Tree
\$1,822
\$400 per month
\$15 per day
\$124
\$3,771
\$5,028
Cost
5% of Permit Fee
Cost; \$3,000 min. deposit

Description	2022/23 Amended Fee Schedule	2023/2024 Proposed Fee Schedule
PLANNING FEES		
Administration/Documents		
Continuance Request - Applicant (2+)	\$175	\$185
Staff Billing Rate	Cost	Cost
Appeals-by Applicant	Cost	Cost
Appeals- by City Officials	\$0	\$0
Appeals- by Other	\$562	\$594
Coastal Development Permit Appeal	\$0	\$0
Appeals -Building/Zoning Code Violations	\$562	\$594
Records Search/Research/Special Report	Cost	Cost
Administrative Permits		
Tree Removal - Staff Review	\$142	\$150
Tree Removal -- 3 or more trees on a property	\$306	\$323
Tree Installation Deposit (Refundable)	\$500 Deposit	\$500 Deposit
Tree replacement in-lieu fee (if available)	\$600 per tree	\$600 per tree
Tree removal w/ PC approval	\$1,000 deposit	\$1,000 deposit
Commercial Sidewalk/Parking Lot Sale Permit	\$85	\$89
Tenant Use Permit (MCUP)--Staff approval	\$86	\$90
Transient Rental Occupancy Use Permit	\$596	\$629
Home Occupation Use Permit	\$179	\$189
Fence Permit- Staff approval	\$47	\$50
Fence Permit- PC approval	\$893	\$943
Sidewalk vendor permit	\$131	\$138
Sidewalk vendor annual refuse fee	\$525	\$555
Temporary Sidewalk Dining	\$86	\$90
Temporary Use Administrative Permit	\$86	\$90
Sign Permits		
Temporary Signs and Banner Permits	\$42	\$45
Signs-permit - Staff Review	\$143	\$151
Signs- permit - PC Review	\$596	\$629
Master Sign Program	Cost; \$3,000 min deposit	Cost; \$3,000 min deposit
Village Sidewalk Sign Permit	\$73	\$77
Design Permits		
Residential-Single Family/Minor Design Permit - Staff Review	\$870	\$919
Residential-Single Family - PC Review	\$2,977	\$3,143
Residential Multi-Family - PC Review	\$4,165	\$4,398
Commercial - PC Review	\$4,000 Deposit	\$4,000 Deposit
Secondary Dwelling Unit- Staff Review	\$596	\$629
Secondary Dwelling Unit- PC Review	\$1,787	\$1,887
Residential Multi-Family/Minor Design Permit - Staff Review	\$2,000 deposit	\$2,000 deposit
Commercial Minor Design Permit	\$2,000 deposit	\$2,000 deposit
Historic In-Kind Replacement Design Permit	\$500 deposit	\$500 deposit
Outdoor Dining - Custom Deck	\$1,000 deposit	\$1,000 deposit
Use Permits		
Master Conditional Use Permit	Cost; \$3,500 min. deposit	Cost; \$3,500 min. deposit
Conditional Use Permit/Minor Use Permit - Staff Review	\$1,756	\$1,854
Conditional Use Permit - PC approval	Cost; \$3,000 min. deposit	Cost; \$3,000 min. deposit
Temporary Use Permit	\$89	\$94
Subdivisions		
Certificate of Compliance & Lot Merger	\$596	\$629
Boundary Line Adjustment	\$951	\$1,004
Tentative Parcel Map	Cost; \$2,000 min. deposit	Cost; \$2,000 min. deposit
Tentative Map	Cost; \$5,000 min. deposit	Cost; \$5,000 min. deposit
Revised Map	\$2,000 Deposit	\$2,000 Deposit
Time Extension	\$2,000 Deposit	\$2,000 Deposit
Subdivision Modification	\$2,000 Deposit	\$2,000 Deposit

Description	2022/23 Amended Fee Schedule
Plan Amendments	
General Plan Amendment	Cost; \$5,000 min. deposit
Local Coastal Plan Amendment	Cost; \$5,000 min. deposit
Rezone	Cost; \$5,000 min. deposit
Planned Development Rezone	Cost; \$3,500 min. deposit
Other Discretionary Permits	
Variance	\$1,787
PC review of minor modifications	\$1,606
Coastal Development Permit	\$893
Coastal Permit Exclusion	\$100
Mobile home Park Change of Use or Closure	\$5,000 Deposit
Development Agreement	\$10,000 min. deposit
Developer agreement annual review	\$2,500 deposit
Specific Plan	Cost; \$5,000 min. deposit
Permit Time Extension - Staff Review	\$596
Permit Time Extension - PC Review	\$1,787
Permit Amendment (any permit)	50% of original cost
Annexation	Costs+ overhead / \$3,000 min. deposit
Minor Modification	\$1,787
Environmental Review	
Negative Declaration (and Mitigated ND)	Cost; \$2,000 min deposit
EIR Processing	Cost; + 21% of consultant; \$10,000 min deposit
Mitigation/Condition Monitoring Program	Cost + 21%
NEPA Compliance	Cost + 21%
Other Permits/Fees	
Conceptual Review Fee- PC	\$1,787
Conceptual Review Fee- PC and CC	\$2,678
Technical Study Preparation and Review	Cost + 21%
NOTE: Third party review costs to be required as necessary	Cost + 21%
Code Compliance	Double Application Fees
Code Compliance confiscated property recovery fee	\$282
Research Fee - 1/2 hour minimum charge	Cost
Pre-Application Review	\$250
Building Plan Check & Final Inspection	20% of Building Permit Fee
Major Development Project Fee	Cost; \$5,000 min. deposit
Historical significance determination	\$4,250 deposit
Inclusionary Housing	
Inclusionary Housing - Unit Sale	\$596
Inclusionary Housing - Unit Refinance	\$238
Single Family Residence	\$2.50 per square foot
Other Fees and Assessments	
General Plan Maintenance Fee	Total Building Valuation X 0.5%
Information Technology Fee (Resolution No. 3786 adopted 11/12/09)	5% of Permit Fee
Green Building Educational Resource Fund Fee (Municipal Code 17.10.080)	Fee equals .0025 times the overall building permit valuation of the project.
Affordable Housing In-Lieu Fees	
For Sale Housing Developments of two to six units (Municipal Code Chapter 18.02) :	
All Units	\$25 per sq. ft.
For Sale Housing Developments of Seven or more units	
#Units	#Units Built
7	1
8-13	1
14	2
15-20	2
21	3
22-27	3
28	4
Rental Multi-Family	\$6 per sq. ft.
Affordable Housing Impact Fees	
For Sale Housing Developments of Six or Less Units	\$25 per square foot
Rental Multi-Family	\$6 per square foot
Additional to Housing Units of 50% or more (charged to additional square footage only)	\$2.50 per square foot

2023/2024 Proposed Fee Schedule
Cost; \$5,000 min. deposit
Cost; \$5,000 min. deposit
Cost; \$5,000 min. deposit
Cost; \$3,500 min. deposit
\$1,887
\$1,696
\$943
\$106
\$5,000 Deposit
\$10,000 min. deposit
\$2,500 deposit
Cost; \$5,000 min. deposit
\$629
\$1,887
50% of original cost
Costs+ overhead / \$3,000 min. deposit
\$1,887
Cost; \$2,000 min deposit
Cost; + 21% of consultant; \$10,000 min deposit
Cost + 21%
Cost + 21%
\$1,887
\$2,828
Cost + 21%
Cost + 21%
Double Application Fees
\$298
Cost
\$264
20% of Building Permit Fee
Cost; \$5,000 min. deposit
\$4,250 deposit
\$629
\$252
\$2.50 per square foot
Total Building Valuation X 0.5%
5% of Permit Fee
Fee equals .0025 times the overall building permit valuation of the project.
\$25 per sq. ft.
\$0
Total # units minus 7 @ \$25 per avg. sq. ft. per unit
\$0
Total # units minus 14 @ \$25 per avg. sq. ft. per unit
\$0
Total # units minus 21 @ \$25 per avg. sq. ft. per unit
\$0
\$6 per sq. ft.
\$25 per square foot
\$6 per square foot
\$2.50 per square foot

NOTES:

- All Fees are non-refundable.
- Deposit accounts are billed on a time and material basis. Additional deposits may be necessary depending on the complexity of the project. Any unused monies in a deposit account will be refunded following case closure.
- The Community Development Director may reduce the total fee/deposit requirements for applications which are unlikely to require the full deposit amounts established herein.
- Applications which include a fee and a deposit payment will be processed with a single deposit account.
- Outside agency fees, including but not limited to County recordation fees, State Fish and Wildlife fees, etc. are charged at cost.
- The Community Development Director may establish a reasonable fee or deposit amount for permit

Description	2022/23 Amended Fee Schedule
BUILDING FEES	
The cost of a "combination building permit" shall be 1.5 times the amounts shown in Table 1-A. A "combination building permit" is defined as a permit for a scope of construction work regulated by two or more of the model codes. The model codes are the building code, the plumbing code, the mechanical code and the electrical code.	
The cost of a "building permit" shall be the amounts shown in Table 1-A. A "building permit" is defined as a permit for a scope of construction work regulated solely by a single model code. The model codes are the building code, the plumbing code, the mechanical code and the electrical code.	
TABLE 1-A	
Total Valuation	FEES
\$1.00 to \$500.00	\$27.98
\$501.00 to \$2,000.00	\$27.98 for the first \$500.00 plus \$3.63 for each additional \$100.00 or fraction thereof.
\$2,001.00 to \$25,000.00	\$82.43 for the first \$2,000.00 plus \$16.66 for each additional \$1000.00 or fraction thereof.
\$25,001.00 to \$50,000.00	\$465.61 for the first \$25,000.00 plus \$12.02 for each additional \$1,000.00 or fraction thereof.
\$50,001.00 to \$100,000.00	\$766.11 for the first \$50,000.00 plus \$8.34 for each additional \$1,000.00 or fraction thereof.
\$100,001.00 to \$500,000.00	\$1,183.11 for the first \$100,000.00 plus \$6.68 for each additional \$1,000.00 or fraction thereof.
\$500,001.00 to \$1,000,000.00	\$3,855.11 for the first \$500,000.00 plus \$5.65 for each additional \$1,000.00 or fraction thereof.
\$1,000,001.00 and up	\$6,680.11 for the first \$1,000,000.00 plus \$3.06 for each additional \$1,000.00 or fraction thereof.
Building Plan Check Fee	65% of Building Permit Fee
Reinspection Fee	\$131
Resubmitted Plan Check Fee	\$115.81 / hr.
Building Permit Extension Fee	\$185
Building Permit Reinstatement Fee	50% of the original, singular building permit fee or combo building permit fee, whichever is applicable to the permit being reinstated
Stop Work Order Fee	2x the singular building permit fee
Greywater System Permit	\$0
Electric Vehicle Charging Permits (* Note: These fees were added to the fee schedule for FY2011-12, but will be waived per the Green Energy Incentive Program)	
a. Level I (120 volts)	\$0
b. Level II (208-240 volts)	\$0
c. Level III (480 volts)	\$0
Solar P.V. System	\$0
Solar P.V. System (Commercial Sale/Distribution)	\$0
Solar Hot Water Heater	\$0
Research Fee - 1/2 hour minimum charge	Cost
Information Technology Fee (Resolution No. 3786 adopted 11/12/09)	5% of Permit Fee
Temporary Trailer/Mobile Home Occupancy Permit	\$56
Structural Review of Engineered Plans	cost + 21%
Outside Consultant Plan Review	cost + 21%

2023/2024 Proposed Fee Schedule
FEES
\$29.55
\$29.55 for the first \$500.00 plus \$3.83 for each additional \$100.00 or fraction thereof.
\$87.00 for the first \$2,000.00 plus \$17.59 for each additional \$1000.00 or fraction thereof.
\$491.57 for the first \$25,000.00 plus \$12.69 for each additional \$1,000.00 or fraction thereof.
\$808.82 for the first \$50,000.00 plus \$8.81 for each additional \$1,000.00 or fraction thereof.
\$1,249.32 for the first \$100,000.00 plus \$7.05 for each additional \$1,000.00 or fraction thereof.
\$4,069.32 for the first \$500,000.00 plus \$5.97 for each additional \$1,000.00 or fraction thereof.
\$7,054.32 for the first \$1,000,000.00 plus \$3.23 for each additional \$1,000.00 or fraction thereof.
65% of Building Permit Fee
\$0
\$122.30 / hr.
\$0
50% of the original, singular building permit fee or combo building permit fee, whichever is applicable to the permit being reinstated
2x the singular building permit fee
\$0
\$0
\$0
\$0
\$0
\$0
\$0
Cost
5% of Permit Fee
\$0
cost + 21%
cost + 21%

Description	2022/23 Amended Fee Schedule
Grading Plan Review Fees	
50 cubic yard or less	\$ -
51 to 100 cubic yard	\$ 27.98
101 to 1,000 cubic yards	\$ 44.04
1,001 to 10,000 cubic yards	\$ 57.15
10,001 to 100,000 cubic yards	\$57.16 for first 10,000 plus \$29.18 for each additional 10,000 cubic yards
100,001 to 200,000 cubic yards	\$319.75 for first 100,000 plus \$15.77 for each additional 10,000 cubic yards
200,001 cubic yards or more	\$461.69 for first 200,000 plus \$8.64 for each additional 10,000 cubic yards
Grading Permit Fees	
50 cubic yard or less	\$ -
51 to 100 cubic yard	\$ -
101 to 1,000 cubic yards	\$44.04 for first 100 plus \$20.84 for each additional 100 cubic yards
1,001 to 10,000 cubic yards	\$231.60 for first 1,000 plus \$17.26 for each additional 1,000 cubic yards
10,001 to 100,000 cubic yards	\$386.94 for first 10,000 plus \$78.57 for each additional 10,000 cubic yards
100,001 to 200,000 cubic yards	\$1,094.07 for first 100,000 plus \$43.45 for each additional 10,000 cubic yards

2023/2024 Proposed Fee Schedule
\$ -
\$ -
\$ -
\$ -
\$60.36 for first 10,000 plus \$30.81 for each additional 10,000 cubic yards
\$337.69 for first 100,000 plus \$16.65 for each additional 10,000 cubic yards
\$487.57 for first 200,000 plus \$9.12 for each additional 10,000 cubic yards
\$ -
\$ -
\$46.51 for first 100 plus \$22.01 for each additional 100 cubic yards
\$244.60 for first 1,000 plus \$18.23 for each additional 1,000 cubic yards
\$408.67 for first 10,000 plus \$82.97 for each additional 10,000 cubic yards
\$1,155.40 for first 100,000 plus \$45.88 for each additional 10,000 cubic yards

Description	2022/23 Amended Fee Schedule	23/24 Fee Schedule
PARKS AND RECREATION FEES		
<u>All fees are evaluated annually to determine if they are competitive with other recreation programs in Santa Cruz County</u>		
Classes		
Activity Fee (Instructor receives 65% of this fee, Department retains 35%)		
Registration Fee - Resident - Department retains this fee	\$19	\$20
Drop-in and Workshop Registration Fee - Department retains this fee	n/a	\$10
Online Class Registration fee-Department retains this fee	5.5% of Activity Fee	5.5% of Activity Fee
Non-Resident Fee: in addition to Registration Fee - Department retains this fee	\$16	\$17
Drop-in Activity Fee	n/a	Prorated cost of Session Activity Fee
Senior Discount	10% of Activity Fee	10% of Activity Fee
Negotiated Instructor of Private Tennis Lessons Activity Fee (Instructor receives 75% of this fee, Department retains 25%)		
Sports		
League Fees	Costs + 30% admin fee	Costs + 30% admin fee
League fees will change depending upon number and type of leagues offered, number of games per league, number of officials, amount of equipment needed, field/site prep and maintenance, and whether or not playoffs & awards are offered. Fees are calculated based on direct costs + 30% admin fee.		
After School		
Resident/non resident	\$5.16 / \$5.85 per hour	\$5.45/\$6.18 per hour
*Hourly rate used only to calculate monthly fee amount		
* Scholarships may be available		
Late Pick-Up Fee	\$1 per minute	\$1 per minute
Parent's Night Out	n/a	\$25/\$31
Junior Guards		
Resident/non resident	\$287 / \$358	\$303 / \$378
U-19 resident/non resident	\$199	\$190
Late Pick-Up Fee	\$1 per minute	\$1 per minute
Regionals	98	\$103
* Scholarships may be available		
Camp Capicola		
*Daily rate used only to calculate program fee	n/a	\$34/\$42
All day 2 week session, resident/non resident	\$318 / \$398	\$336 / \$420
1/2 day 2-week session, resident/non resident	\$161 / \$200	\$170 / \$210
All day 1 week session, resident/non resident	\$161 / \$200	\$170 / \$210
All day 1 week teen session, resident/non resident	\$287 / \$358	\$303/ \$378
Junior Leader program	69.29023992	\$73
Late Pick-Up Fee	\$1 per minute	\$1 per minute
Extended Care--daily add on, resident/non resident	\$12	\$13
AM Extended Care--per 2 week session resident/non resident or AM & PM for 1 week long session	\$55	\$58
PM Extended Care--per 2 week session resident/non resident	\$55	\$58
Transportation/Lunch Break fee	\$60	\$63
* Scholarships may be available		
Family Camp		
3 night family camp Adult (13+) / Child (3-12)	\$339.39 / \$231.51 per night	\$358 / \$244 per night
Facility Rentals		
Field and Courts hourly rental; non profit youth groups/other non profit & Cap residents/all others	\$14 / \$27 / \$36	\$15/ \$29 / \$38
Jade Street Community Center		
Rooms A&B hourly rent	\$46	\$49
Room C hourly rent	\$63	\$67
Patio hourly rent	\$9	\$10
Kitchen hourly rent	\$23	\$24
Entire Center hourly rent	\$164	\$173
Non profit discount of Jade Street Facility rents	25%	25%
Community Center Deposit		
1 to 50 people	\$105	\$111
51 to 150 people	\$262	\$277
151 to 250 people	\$525	\$554
Lost key fee	\$26	\$27
Event vendor fee	\$105 per event	\$111
Staffing required to prepare for or supervise recreation activities	\$13 / hr	Cost
Notes: Resident include Soquel Union Elementary School District		
Costs mean staff costs adjusted for benefits, department overhead, and City overhead as		
Deposits are stated as minimums. Actual deposits depend on the evaluation by staff of an individual project or application. The City Manager may lower minimum deposits if the application or project justifies a lower deposit. When an application involves multiple minimum fees the highest minimum fee applies.		
Art & Cultural		
Merchandise Fee		Cost + 50% administration fee
Plein Air Artist Application Fee		\$50
Plein Air Art Exhibition service fee		30% retained by City, 70% paid to Artist

Description	2022/23 Amended Fee Schedule
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2023/2024 Proposed Fee Schedule

HISTORICAL MUSEUM FEES

HISTORICAL MUSEUM FEES

Description	Cost
Research Fee - 1/2 hour minimum charge	8
Print of an electronically available Photograph in Collection	8
Digital Copies of Collection Items	21
Scan High Resolution Tiff File of any collection item for a customer	25

Description	Cost
	8
	22
	26

Fiscal Year 2023-24 Fee Schedule

June 22, 2023

Background

- Annual review of Fee Schedule as part of budget process
 - November 24, 2015 - City Council adopted current Fee Schedule
 - Consultant recommended annual review and Consumer Price Index (CPI) increase
 - Most fees have been increased each year by the San Francisco Bay Area annual CPI rate
 - FY 2023-24 CPI rate is 5.6% (calendar year 2022)
 - Staff recommends increasing fees 5.6%
- History of annual increases:
 - FY 2019-20 = 3.87%
 - FY 2020-21 = 0%
 - CPI was 3.31% however no increase due to COVID-19
 - FY 2021-22 = 1.72%
 - FY 2022-23 = 3.21%

Background (cont.)

- Cost of Service Fee Study
 - Best Management Practice is to conduct a comprehensive fee study every 5 years
 - Staff began the fee study in January 2020
 - Anticipating fee adjustments in July 2020
 - Due to fiscal impacts from COVID-19 pandemic staff slowed the process down
 - Anticipate completing cost of service fee study this fall
 - Present results to City Council in late 2023 or early 2024
 - Fee adjustments tentatively going into effect July 1, 2024

Proposed Fee Amendments

- Police Department
 - Addition of Firearm Dealer License City application fee of \$100
 - Addition Carrying a Concealed Weapon (CCW) permit City application fee of \$115
 - Removal of Animal Service Fees imposed and collected by Santa Cruz County

Proposed Fee Amendments

- Recreation Fees
 - Addition of Drop-In and Workshop registration fee of \$10
 - Addition of July Drop-In activity fee pro-rated cost of session activity fee
 - Addition of Parent's Night Out of \$25 / \$31
 - Addition of daily rate program fee of \$34 / \$42
 - Addition of Art & Cultural merchandise fee – cost plus 50%
 - Plein Air application fee of \$50
 - Plein Air Art Exhibition fee 30% retained by City; 70% to Artist

Conduct noticed public hearing

Adopt resolution

- Adopting the Fee Schedule for FY 2023-24

Recommendation