

Title 2

ADMINISTRATION AND PERSONNEL

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Chapter 2.04
ADMINISTRATION

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I. Organization

2.04.010 Categories.

The governmental forces of the city shall be organized into the following categories:

A. Elective. The elective offices of the city of Capitola are the city council members.

B. The city treasurer and such city boards and commissions as are established by city council ordinance or resolution. Such boards and commissions shall have the powers and duties expressly set forth in the enabling ordinance or resolution and shall also advise the city council on matters related to the explicit function of the board or commission.

C. City Manager and City Departments. Capitola shall be administered as a city manager form of government. It shall have such administrative departments as are set forth in this chapter and as are hereafter created by ordinance or resolution. Unless a power or duty is explicitly vested in an identified city employee, all city employees are expected to function in accordance with the instruction of their department heads, and department heads are expected to function in accordance with the instructions they receive from the city manager. (Ord. 1025 § 1 (part), 2018; Ord. 830 § 1, 2001; Ord. 375 § 1, 1974)

2.04.015 Term limits for elected officials.

City council members shall serve a maximum of two elected terms consecutively. Upon completion of a second consecutive elected term, the term-limited city council member shall be eligible to seek reelection to the city council for a term commencing no earlier than two years after the second consecutive term has been completed. Nothing herein shall be construed to limit the city council's discretion to appoint an individual to fill a city council seat which has been vacated due to resignation, death, disqualification or other cause. (Ord. 1025 § 1 (part), 2018; Ord. 844 § 1, 2002)

2.04.020 Powers and duties of department heads.

The heads of the various departments established by this chapter shall have the following general powers, duties and responsibilities:

- A. To organize the department into the divisions established by this chapter in such a manner as to efficiently perform the functional responsibilities allocated. For this purpose, the department head may create such sections and subunits within such division as deemed necessary;
- B. To make recommendations regarding recruiting, disciplining and discharging of departmental personnel in accordance with any personnel rules and regulations of the city;
- C. To efficiently utilize available manpower;
- D. To keep correct attendance records on each employee for payroll purposes, and to submit such other information as required for the proper maintenance of individual personnel records, including leaves of absence, job efficiency and personal conduct;
- E. To administer the departmental budget and permit no purchase requisitions to be issued, or other expense incurred, unless an appropriation therefor has been duly authorized;
- F. Department heads shall attend meetings of the council when required;
- G. Department heads shall attend meetings of their respective boards and commissions. They shall serve as secretary and keep records of such commissions when so requested;
- H. Department heads shall carry on an active public relations program for their respective services, including the publication of educational reports and brochures, the promotion of authorized objectives, and the making of public addresses when the occasion so requires;
- I. Department heads shall recommend and administer internal rules and regulations for the proper conduct of personnel and the efficient handling of the department's duties and functions;
- J. They shall discharge such other duties as may be assigned by the city manager or required by the ordinances, resolutions or official orders of the city council. (Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

II. City Boards and Commissions Policies

2.04.030 Authority to establish.

The council may establish appropriate boards, commissions and committees by ordinance, resolution or minute order. (Ord. 830 § 1, 2001)

2.04.040 City council referrals.

The city council may refer an item to a board, commission, or advisory body by motion, passed by a simple majority, at a noticed public meeting. (Ord. 1038 § 3, 2020)

2.04.060 City personnel use.

The various boards and commissions may utilize the services of the appropriate city departmental personnel in carrying out their respective functions subject to the administrative control of the city manager. (Ord. 375 (part), 1974)

2.04.070 Policy adoption.

Repealed by Ord. 1038. (Ord. 375 (part), 1974)

III. Bonds

2.04.080 Bonds.

The bonding requirements of Government Code Section 36518 shall be fulfilled by a government crime insurance policy. (Ord. 1038 § 1 (part), 2020; Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

2.04.090 Blanket bond.

Repealed by Ord. 1038. (Ord. 375 (part), 1974)

2.04.100 Terms.

Repealed by Ord. 1038. (Ord. 375 (part), 1974)

IV. City Council

2.04.110 Regular meetings.

A. Time. Regular meetings of the city council generally shall be held on the second and fourth Thursday of each month. Any other regular meetings may be in accordance with Government Code Sections 54954 and 54955. Each year, the city council will adopt the regular meeting calendar dates and times by resolution.

B. Place. All regular meetings of the council shall be convened in the council chambers in the City Hall, 420 Capitola Avenue, Capitola, California. If, by reason of a natural disaster, emergency, or other event that makes it unsafe to meet in the place designated, the meetings may be held for the duration of the event at such place as is designated by the presiding officer of the council.

C. Public. Meetings of the council shall be open as required by the Brown Act (Government Code Sections 54950, et seq.), or other applicable law. (Ord. 1038 § 1 (part), 2020; Ord. 920 § 1, 2007; Ord. 830 § 1, 2001; Ord. 456, 1979; Ord. 375 (part), 1974)

2.04.120 Special meetings.

Special meetings of the city council shall be held under the conditions and in the manner set forth in the Brown Act. (Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

2.04.130 Council chambers.

The room designated as the city council chambers at 420 Capitola Avenue in the city, is fixed as the place of regular and special meetings of the city council, and such council chambers and the adjacent offices and rooms used and occupied by the city clerk and administrative officers of the city, shall henceforth be known and designated as the city hall of the city. (Ord. 375 (part), 1974)

2.04.140 Agenda.

The following have authority to place a matter on the council agenda:

A. The mayor or any member of the city council with the condition that the proposed agenda item be requested at an open city council meeting;

B. The city manager;

C. The city council may, after the seventy-two-hour agenda-posting deadline has expired, add items to the agenda in the manner provided in Government Code Section 54954.2(b);

D. Repealed by Ord. 1038.

E. The city treasurer, city clerk, or city attorney, provided the subject is reasonably related to their powers and duties and concerns a subject upon which the council has authority to act.

Other persons must direct their agenda requests to the city council (at council meetings), the mayor, or the city manager. Agendas shall otherwise be prepared under the direction of the city manager and shall be posted, noticed and distributed in accordance with the Brown Act. For purposes of Government Code Section 54954.2(a), agendas shall be posted in the entrance area to the city council chambers. (Ord. 1038 § 1 (part), 2020; Ord. 999 § 1, 2015; Ord. 919 § 1, 2007; Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

2.04.150 Selection of the mayor (presiding officer).

A. Each year the city council shall select a mayor and vice mayor ~~pro-tempore~~. During years with a general election, such selection shall be made at the meeting at which the declaration of the election results for a general municipal election is made. During years without a general election, such selection shall be made approximately one year after the prior selection.

B. The mayor, or ~~mayor pro tempore~~ [vice mayor](#), may be replaced if at least three council members vote for the removal of the mayor, or ~~mayor pro tempore~~ [vice mayor](#), at a noticed city council meeting. (Ord. 1038 § 1 (part), 2020; Ord. 768, 1994; Ord. 375 (part), 1974)

2.04.160 Vice Mayor pro tempore.

In case of the temporary absence or inability of the mayor to act as presiding officer the [vice mayor pro tempore](#) shall preside. In case of the absence or disability of both the mayor and [vice mayor pro tempore](#) the council shall elect one of its members to act as [vice mayor pro tempore](#). Upon the arrival of the mayor, the [vice mayor pro tempore](#) shall relinquish the chair upon the conclusion of the business immediately before the council. (Ord. 375 (part), 1974)

2.04.165 Appointment of standby city council members. (Repealed)

~~Government Code Sections 8635 and following provide that the city council shall have the authority to appoint up to three standby city council members per council position. Such standby members would serve as city council persons in the event that a council member is "unavailable" in an "emergency" as those words are defined in the California Emergency Services Act. Each council member may nominate from one to three persons to serve as his or her standby members. In making that nomination, the council member shall follow the criteria of Government Code Section 8639 which reads as follows:~~

~~Consideration shall be given to places of residence and work, so that for each office for which standby officers are appointed there shall be the greatest probability of survivorship. Standby officers may be residents or officers of a political subdivision other than that to which they are appointed as standby officers.~~

~~The duties of such standby council members shall be as set forth in Government Code Section 8641. To become effective the nomination must be approved by the city council, and the nominee must take the oath of office. Terms of office and method of removal shall be as provided in Government Code Section 8640. (Ord. 782, 1995) Repealed.~~

2.04.170 Conduct of meeting.

The mayor, or in his or her absence, the [vice mayor pro tempore](#), shall take the chair at precisely the hour appointed for the meeting and shall immediately call the council to order. The mayor or [mayor pro tempore \[vice mayor\]\(#\) shall preserve strict decorum at all regular and special meetings of the council. He or she shall state every question coming before the council, call for the vote, announce the decision of the council on all subjects and decide all questions of order, subject, however, to an appeal to the council, in which a majority vote of the council shall govern and conclusively determine such question of order. \(Ord. 375 \(part\), 1974\)](#)

2.04.180 Quorum/action.

A majority of the entire membership of the council shall constitute a quorum to do business. A majority of that quorum may act on matters before the council, unless a city ordinance or state law requires a greater number. When less than the full council is present and there is a tie vote, the chair, unless overridden by a majority of present council members, may continue the matter to another meeting. When there is a tie council vote on an appeal from a board or commission action, unless the matter is continued, the appeal will be deemed denied and the board or commission action becomes final. (Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

2.04.190 Order of business.

The chair, ~~subject to the concurrence of the council~~, may vary the sequence of business from that shown on the posted agenda. (Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

2.04.200 Reading of minutes.

Unless the reading of the minutes of a council meeting is requested by a member of the council, such minutes may be approved without reading if the clerk has previously furnished each member with a copy thereof. (Ord. 375 (part), 1974)

2.04.210 Rules of debate.

A. Presiding Officer May Debate. The mayor or [mayor pro tempore \[vice mayor\]\(#\) may debate from the chair, subject only to such limitations of debate as are imposed upon all members by the rules set forth in this section.](#)

B. Getting the Floor. Every member desiring to speak shall address the chair, and upon recognition by the presiding officer, shall confine himself or herself to the question under debate, avoiding all personalities and indecorous language.

C. Interruptions. A member, once recognized, shall not be interrupted when speaking unless it is to call him or her to order. If a member, while speaking, is called to order, he or she shall cease speaking until the question of order is determined and, if in order, he or she shall be permitted to proceed.

D. Privilege of Closing Debate. The councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate.

E. Remarks of Councilmember. A councilmember may request, through the presiding officer, the privilege of having an abstract of his or her statement on any subject under consideration by the council entered in the minutes. If the council consents thereto, such statement shall be entered; provided, however, any council member without council consent shall have the right to have the reasons for his or her dissent from, or protest against, any action of the council entering in the minutes.

F. Synopsis of Debate. The city clerk may be directed by the presiding officer, with consent of the council, to enter in the minutes a synopsis of the discussion on any question coming regularly before the council.

G. Rules of Order. Except as otherwise provided in this chapter, the rules of order that govern the conduct of the meetings of the city council and other city advisory bodies shall be those rules of order designated by city council resolution. (Ord. 914 § 1, 2007; Ord. 375 (part), 1974)

2.04.220 Addressing council – Permission required.

Any person desiring to address the council at a meeting shall first secure the permission of the presiding officer to do so; provided, however, that under the heading oral communications, after being recognized by the presiding officer, interested parties or their authorized representatives may address the council on matters concerning their interests. (Ord. 1038 § 1 (part), 2020; Ord. 375 (part), 1974)

2.04.230 Addressing council – After motion made.

After a motion is duly made and seconded by the council, no person other than a member of the council shall address the council without first securing the permission of a majority of the council to do so. This address, upon the subject to be voted upon, may not exceed three minutes duration and no person may speak more than once at this time. (Ord. 375 (part), 1974)

2.04.240 Addressing council – Manner.

Each person addressing the council shall be requested to give his or her name and address in an audible tone of voice for the records. All remarks shall be addressed to the council as a body and not to any member thereof. No person, other than the council and person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the council, without permission of the presiding officer. No question shall be asked a councilmember or staff member, except through the presiding officer. (Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

2.04.250 Voting.

No member of the council shall be allowed to explain his or her vote or discuss the question while the roll is being called, and no member shall be allowed to change his or her vote after the vote is announced by the presiding officer. (Ord. 375 (part), 1974)

2.04.260 Adjournment – Time and date continued.

The council may adjourn any regular, adjourned or special meeting to a time and place specified in the order for adjournment. Whenever an order for adjournment fails to state the hour at which the adjourned meeting is to be held, it shall be at seven-six p.m. on the day specified in the order for adjournment. All matters may be considered and passed upon at such adjourned meetings as could have been considered and passed upon at the meetings from which such adjournments were taken and shall be deemed to be a continuation of the meeting from which the adjournment was taken. (Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

2.04.270 Adjournment – When in order.

A motion to adjourn, except during roll call, shall always be in order and decided without debate. When a motion is made and seconded to adjourn, it shall be in order for the presiding officer before putting the question, to permit any member to state any fact to the council relating to the condition of the business of the council which would seem to render it improper to adjourn at that time. Such statement shall not be debatable and shall not be of more than two minutes duration. (Ord. 375 (part), 1975)

2.04.275 City council member salary.

Pursuant to California Government Code Section 36516, commencing December 2022 the salary for city council members shall be six hundred and sixty dollars per month and may be adjusted in accordance with state law. Such salary shall be payable in the same manner as salaries are paid to other officers and employees of the city. (Ord. 1054 § 2, 2022; Ord. 1032 § 2, 2019; Ord. 901 § 2, 2006)

2.04.280 Administrative procedures.

A. The administrative procedures of the city shall be established through formal documents approved by the city manager.

B. In the absence of established administrative procedures, the appropriate department head may establish an interim procedure pending the formal action of the city manager on the subject provided that the procedure has been submitted to the city manager's office for later review.

C. In cases of conflict between such administrative procedure and: state law, federal law, council resolution, council ordinance or council policy adopted pursuant to Section 2.04.070, the latter shall supersede the administrative procedure. (Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

2.04.285 Redevelopment agency.

Repealed by Ord. 1038. (Ord. 505 §§ 1 – 4, 1981)

2.04.290 Public Participation at Meetings.

The chair of the meeting may establish a uniform time limit for public comments.

A. Comments on Non-Agendized Items: members of the public may address the Ceity councilCouncil on any consent item, or on any topic within the subject matter jurisdiction of the cityCity Council that is not on the general government or public hearing section of the agenda, during the oral communications portion of the agenda. Individuals may not speak more than once during oral communications. All speakers must address their comments to the City Council. the entire legislative body and will not be permitted to engage in dialogue.

B. Comments on ~~On~~-Agendizeda Items: members of the public may address the city council on any general government or public hearing item following staff's presentation and council questionsduring the public comment period on that particular item. Individuals may not speak more than once during the public comment period. All speakers must address their comments to the City Council. the entire legislative body and will not be permitted to engage in dialogue.

A.C. Removing an Item from Consent: Any Council Member may pull an item from the consent calendar by motion. Items pulled from the consent calendar will be considered following general government items.

V. City Manager

2.04.290 Office established.

The office of city manager is established by Chapter 2.08. (Ord. 375 (part), 1974)

2.04.300 Powers and duties.

The powers, duties and responsibilities of the city manager shall be set forth in Chapter 2.08. In addition to those responsibilities therein set forth it shall be his or her responsibility to cause to be prepared administrative manuals setting forth administrative rules, regulations and procedures necessary for the proper functioning of a coordination

among all departments of city government. These administrative manuals shall be consistent with the provisions of the code and city ordinance. (Ord. 375 (part), 1974)

VI. City Clerk

2.04.310 Office created.

The office of city clerk is established pursuant to Government Code Sections 40800 through 40814 subject to the modifications set forth in Section 2.04.600. This office shall be under the direct control of the city clerk as to statutory duties but subject to the general administrative direction of the city manager. (Ord. 830 § 1, 2001; Ord. 375 (part), 1974)

2.04.320 Powers and duties.

The powers and duties of the city clerk shall be as set forth in applicable Government Code sections. (Ord. 375 (part), 1974)

2.04.330 Insurance and Claims.

Process all insurance matters and claims against the city.

VII. City Attorney

2.04.330 Office created.

The office of the city attorney is created pursuant to Government Code Sections 41800 through 41804. (Ord. 375 (part), 1974)

2.04.340 Powers and duties.

The powers and duties of the city attorney are set forth in Government Code Sections 41801 through 41804. In addition to those powers and duties therein set forth, the city attorney shall be responsible for and be required to:

A. Legislation. Keep the council and city manager informed as to all legislation affecting the city government;

~~B. Insurance and Claims. Process all insurance matters and claims against the city;~~

C. Meetings. Attend designated meetings of boards, commissions and special committees of the city government, and represent city departments and offices before state and local courts, boards or commissions when there is opposing counsel;

D. Proposed Legislation. Prepare and promote state and federal legislation proposed by the city;

E. Annexation Proceedings. Process all annexation proceedings;

F. Ordinance Summaries. For any ordinance, which is lengthy and which can be adequately summarized, the city attorney is empowered to prepare, as an alternative to publishing the full text of the proposed ordinance, a summary in the manner set forth in Government Code Section 36933. (Ord. 591, 1985; Ord. 375 (part), 1974)

VIII. City Treasurer

2.04.350 Office created.

The office of city treasurer is created pursuant to Government Code Sections 41001 through 41007. (Ord. 1028 § 1 (part), 2019; Ord. 375 (part), 1974)

2.04.360 Powers and duties.

The powers and duties of the city treasurer shall be as set forth in applicable Government Code sections. (Ord. 1028 § 1 (part), 2019; Ord. 375 (part), 1974)

2.04.365 Appointment.

The city manager shall nominate a city treasurer for consideration by the city council, which may appoint the nominee with a majority vote. (Ord. 1028 § 1 (part), 2019)

IX. Department of Public Works

2.04.370 Created.

The department of public works is created. (Ord. 375 (part), 1974)

2.04.380 Director – Appointment.

The director of public works shall be the head of the department of public works and shall be appointed by the city manager. ~~The city manager shall serve as director of public works until such time as the growth and expansion of city services demands an increase in staff and personnel in this office.~~ (Ord. 375 (part), 1974)

2.04.390 Director – Powers and duties.

In all cases where the duty is not expressly charged to any other department or office, it shall be the duty of the director of public works to act to secure and preserve the physical properties of the city and to direct and control all the functions assignable to this department. The director of public works shall:

- A. Public Works and Utilities. Supervise the construction, inspection maintenance and operation of the city's public works;
- B. Buildings and Installations. Direct and be responsible for the proper maintenance of city-owned buildings and installations which are not directly assigned to another department or office or which may be assigned by the city manager;
- C. Laws and Regulations. Enforce the laws, ordinances and regulations relating to work done in public streets, easements and rights-of way;
- D. Engineering Work. Perform or direct all phases of engineering work required in connection with the functions of the city;
- E. Contract Work. Approve for acceptance after proper inspection all contract work let by the city affecting streets, alleys;
- F. Other Duties. Perform such other duties as may be required by the city manager. (Ord. 357 (part), 1974)

X. Department of Police

2.04.450 Created.

The department of police is created. (Ord. 375 (part), 1974)

2.04.460 Chief – Appointment.

The police department shall be under the direct supervision of a chief of police who shall be appointed by the city manager. (Ord. 375 (part), 1974)

XI. Director of Finance

2.04.600 Powers and duties.

The power and duties of the director of finance are as follows:

- A. With respect to the city's accounting and necessarily related matters, the director of finance shall act within the official and professional rules of his or her profession and may not be directed to act contrary to those rules.
- B. The director of finance prepares, or supervises preparation of, the city ~~and redevelopment agency~~'s annual financial report(s); oversees annual independent audits; and interfaces with independent auditor(s).
- C. The director of finance conducts, directs and/or oversees all investigative and corrective accounting projects.
- D. As requested, the director of finance advises and consults with the city treasurer on accounting and financial matters relative to his or her office. The director of finance is not staff to the city treasurer, but works closely with and assists that office. The director of finance may serve as the city treasurer.

E. “Finance” and “financial” primarily refers to accounting, reporting and information management aspects of city/agency fiscal activities and procedures related to those activities. It does not include providing advice as to the social desirability of any proposed expenditure over another.

F. Pursuant to Government Code Section 37209, the director of finance shall have the powers and duties otherwise vested in the city clerk under the Government Code Sections 37203, 37205, 37207, 37208, 40802 and 40804. (Ord. 1028 § 1 (part), 2019; Ord. 830 § 1, 2001)

Chapter 2.08

CITY MANAGER

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- 2.08.020 Residence.
- 2.08.030 Council member eligibility.
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- 2.08.220 Departmental cooperation.
- 2.08.230 Attendance at commission meetings.
- 2.08.240 At-will employment.

2.08.010 Office created.

The office of the city manager of the city is created and established. The city manager shall be appointed by the city council wholly on the basis of his or her administrative and executive ability and qualifications and shall hold office for and during the pleasure of the city council. (Ord. 990 § 1 (part), 2014; Ord. 308 § 1, 1968)

2.08.020 Residence.

Residence in the city at the time of appointment of a city manager shall not be required as a condition of the appointment, but within one hundred eighty days thereafter the city manager must become a resident of the county of Santa Cruz. (Ord. 990 § 1 (part), 2014; Ord. 308 § 2, 1968)

2.08.030 Council member eligibility.

No member of the city council shall be eligible for appointment as city manager until one year has elapsed after such council member has ceased to be a member of the city council. (Ord. 990 § 1 (part), 2014; Ord. 308 § 3, 1968)

2.08.040 ~~Bond.~~

~~The city manager shall furnish a corporate surety bond to be approved by the city council in such sum as may be determined by the city council and shall be conditioned upon the faithful performance of the duties imposed upon the city manager as prescribed in this chapter. Any premium for such bond shall be a proper charge against the city. (Ord. 990 § 1 (part), 2014; Ord. 308 § 4, 1968) Repealed to align with Chapter 2.04.080. Repealed by Ord. _____, 2023.~~

2.08.050 Acting city manager.

The assistant city manager shall serve as manager pro tempore during any temporary absence or disability of the city manager. In the event there is no assistant city manager, the city manager, by a letter filed with the city clerk, shall designate a qualified city administrative officer to exercise the powers and perform the duties of manager during his or her temporary absence or disability. In the event the city manager's absence or disability extends over a six-month period, the city council may, after the six-month period, appoint an acting city manager. (Ord. 990 § 1 (part), 2014; Ord. 308 § 5, 1968)

2.08.060 Compensation.

The city manager shall receive such compensation and expense allowances as the city council from time to time determines, and said compensation and expenses shall be a proper charge against such funds of the city as the city council designates.

In addition, the city manager shall be reimbursed for all actual and necessary expenses incurred by him or her in the performance of his or her official duties, including those incurred when traveling on business pertaining to the city; reimbursement shall only be made, however, when an itemized claim, setting forth the sums expended for such business for which reimbursement is requested, has been presented to and approved by the mayor. (Ord. 990 § 1 (part), 2014; Ord. 308 § 6, 1968)

2.08.065 Exemption from civil service.

The city manager is excluded from civil service or personnel system of the city, and the city manager shall not be entitled to the benefits, advantages or protection of the civil service or personnel system and shall not be subject to the procedures outlined or prevailing to such system. (Ord. 990 § 1 (part), 2014)

2.08.070 Powers and duties.

The city manager shall be the administrative head of the government of the city under the direction and control of the city council except as otherwise provided in this chapter. The city manager shall be responsible for the efficient administration of all the affairs of the city which are under his or her control. In addition to these general powers and administrative head, and not as a limitation thereon, it shall be his or her duty and he or she shall have the powers set forth in Sections 2.08.080 through 2.08.200. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7, 1968)

2.08.080 Law enforcement.

It shall be the duty of the city manager to enforce all laws and ordinances of the city and to see that all franchises, contracts, permits and privileges granted by the city council are faithfully observed. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.1, 1968)

2.08.090 Authority over employees.

It shall be the duty of the city manager and he or she shall have the authority to control, order and give directions to all heads of departments and to subordinate officers and employees of the city under his or her jurisdiction through their department heads. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.2, 1968)

2.08.100 Power of appointment and removal.

It shall be the duty of the city manager to, and he or she shall, appoint, remove, promote and demote any and all officers and employees of the city except the city attorney subject to all applicable personnel ordinances, rules and regulations. (Ord. 1028 § 2, 2019; Ord. 990 § 1 (part), 2014; Ord. 308 § 7.3, 1968)

2.08.110 Administrative reorganization of officers.

It shall be the duty and responsibility of the city manager to conduct studies and effect such administrative reorganization of offices, positions or units under his or her direction as may be indicated in the interest of efficient, effective and economical conduct of the city's business. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.4, 1968)

2.08.120 Ordinances.

It shall be the duty of the city manager and he or she shall recommend to the city council for adoption such measures and ordinances as he or she deems necessary. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.5, 1968)

2.08.130 Attendance at council meetings.

It shall be the duty of the city manager to attend all meetings of the city council unless excused therefrom by the mayor individually or city council as a whole, except when his or her removal is under consideration. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.6, 1968)

2.08.140 Financial reports.

It shall be the duty of the city manager to keep the city council at all times fully advised as to the financial condition and needs of the city. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.7, 1968)

2.08.150 Budget.

It shall be the duty of the city manager to prepare and submit the proposed annual budget to the city council for its approval. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.8, 1968)

2.08.160 Purchasing agent.

It shall be the duty of the city manager and he or she shall be responsible for the purchase of all supplies and services for all the departments or divisions of the city in accordance with city purchasing policy. The city manager shall make no purchase exceeding twenty-five thousand dollars without prior city council approval. No expenditures shall be submitted or recommended to the city council except on report and approval of the city manager. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.9, 1968)

2.08.170 Investigations and complaints.

It shall be the duty of the city manager to make investigations into the affairs of the city and any department or division thereof, and any contract or the proper performance of any obligations of the city. Further, it shall be the duty of the city manager to investigate all complaints in relation to matters concerning the administration of the city government in regard to the service maintained by public utilities in the city. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.10, 1968)

2.08.180 Public buildings.

It shall be the duty of the city manager and he or she shall exercise general supervision over all public buildings, public parks and all other public property which are under the control and jurisdiction of the city council. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.11, 1968)

2.08.190 Hours of employment.

It shall be the duty of the city manager to devote his or her entire time to the duties of his or her office and in furthering the interests of the city. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.12, 1968)

2.08.200 Additional duties.

It shall be the duty of the city manager to perform such other duties and exercise such other powers as may be delegated to him or her from time to time by ordinance or resolution or other official action of the city council. (Ord. 990 § 1 (part), 2014; Ord. 308 § 7.13, 1968)

2.08.210 Internal relations with council.

The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry, and neither the city council nor any member thereof shall give orders to any subordinates of the city manager. The city manager shall take his or her orders and instructions from the city council only when sitting in a duly convened meeting of the city council and no individual councilmember shall give any orders or instructions to the city manager. (Ord. 990 § 1 (part), 2014; Ord. 308 § 8, 1968)

2.08.220 Departmental cooperation.

It shall be the duty of all subordinate officers and the city treasurer and city attorney to assist the city manager in administering the affairs of the city efficiently, economically and harmoniously. (Ord. 990 § 1 (part), 2014; Ord. 308 § 8.1, 1968)

2.08.230 Attendance at commission meetings.

The city manager may attend any and all meetings of the planning commission, ~~recreation and park commission~~, and any other commissions, boards or committees created by the city council, upon his or her own volition or upon direction of the city council. At such meetings which the city manager attends, he or she shall be heard by such

commissions, boards or committees as to all matters upon which he or she wishes to address the members thereof, and he or she shall inform said members as to the status of any matter being considered by the city council, and he or she shall cooperate to the fullest extent with the members of all commissions, boards or committees appointed by the city council. (Ord. 990 § 1 (part), 2014; Ord. 308 § 8.2, 1968)

2.08.240 At-will employment.

The city manager shall be an at-will employee, who may be removed from office, or his or her authority temporarily suspended, at the sole discretion of the majority vote of the whole city council, subject to any such restrictions as are specifically set forth in the city manager's contract of employment. (Ord. 990 § 1 (part), 2014; Ord. 818 § 1, 2000; Ord. 308 § 9, 1968)

Chapter 2.12

PLANNING COMMISSION

Sections:

- 2.12.010 Members – Number.
- 2.12.020 Appointment.
- 2.12.030 Vacancy filling.
- 2.12.035 Alternates.
- 2.12.040 Officers – Organization.
- 2.12.050 Powers and duties.
- 2.12.054 Historic preservation duties.
- 2.12.060 Reference for study.

2.12.010 Members – Number.

The planning commission of the city shall consist of five members. Those commissioners serving at the time of adoption of the ordinance codified in this chapter may continue to serve until replaced in the manner provided in this chapter. All commissioners shall live within the city limits of Capitola or within the sphere of influence of Capitola, as defined by the Santa Cruz Local Area Formation Commission. (Ord. 1036 § 1, 2019; Ord. 428 (part), 1978; Ord. 295 § 1, 1967; Ord. 58 § 1, 1951)

2.12.020 Appointment.

Beginning as soon as the ordinance codified in this chapter becomes effective, each council member may appoint one planning commission member. Except as provided in this chapter, the term of any commissioner so appointed shall terminate fourteen days after the canvassing of the next regular election of council members. However, a commissioner may serve until his or her successor takes office.

Once appointed, a planning commissioner may serve the term above provided unless:

- A. The council member who made the appointment requests removal; or
- B. At least three council members vote for the commissioner's removal at a noticed open city council meeting. (Ord. 1038 § 1 (part), 2020; Ord. 428 (part), 1978; Ord. 295 § 2, 1967; Ord. 58 § 2, 1951)

2.12.030 Vacancy filling.

In case of a vacancy on the planning commission for any reason except the swearing into office of a new city council member, the city council member who made the appointment to the then vacated position may appoint the replacement. If for any reason the appropriate council member fails to make an appointment to the planning commission within fourteen days after a term has ended or a position vacated, the mayor shall appoint a commissioner to the vacancy. Council members shall appoint either by oral announcement at any regular meeting or special meeting or by a writing delivered to the city manager. Any such appointee may take office as soon as state law allows. (Ord. 428 (part), 1978; Ord. 419, 1977; Ord. 391, 1975; Ord. 295 § 3, 1967; Ord. 285, 1966; Ord. 58 § 3, 1951)

2.12.035 Alternates.

If a planning commissioner does not intend to vacate his or her position, but will be unable to attend two or more consecutive meetings, he or she should, in writing, so notify the city clerk and the council member that appointed him/her. The appointing council member may at any time before or during any long term absence, name an alternate, remove an alternate, or replace an alternate. Three members of the city council may nullify any such appointments. (Ord. 732 § 1, 1992)

2.12.040 Officers – Organization.

The commission shall elect its chairperson from among the appointed members for a term of one year and subject to other provisions of law, may create and fill such other offices as it may determine and may employ such individuals and/or firms as may be required to carry on the work of the commission; provided, however, that expenditures covering such employment must first be authorized by the city council. The commission shall hold at least one

regular meeting in each month. The commission shall adopt rules for the transaction of business, and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record. (Ord. 58 § 4, 1951)

2.12.050 Powers and duties.

It shall be, the function and duty of the commission to make, adopt and recommend city council adoption of a master plan for the physical development of the city, and of any land outside of the boundaries which, in the judgment of the commission, bears relations to the planning thereof, and to perform all other proper functions of a planning commission pursuant to and in accordance with the planning and zoning law of the state, beginning with Section 65100 of the Government Code and pursuant to and in accordance with any directions issued by the city council whether by ordinance, resolution or minute order. (Ord. 295 § 4, 1967; Ord. 58 § 5, 1951)

2.12.054 Historic preservation duties.

The planning commission shall have the following historic preservation duties:

A. Advise the city council how best to preserve and enhance the historic resources of Capitola and carry on consultations for this purpose;

B. Review periodically the historic preservation element of the general plan;

C. Carry out, assist, and collaborate in studies to identify and evaluate improvements, sites, areas, and vistas worthy of preservation; and recommend to the council designation of historic landmarks, (including archaeological resources) and of vistas to be protected;

D. Advise the council with respect to execution and administration of historic property contracts permitted by Sections 50280 and 50281 of the California Government Code; and advise the council upon aid and assistance available to Capitola under federal, state, county, or other grants-in-aid;

E. Maintain for commission use and for consultation by the public a copy of the register of historic features, of which the city clerk is the official custodian;

F. Recommend a standard design for the markers of plaques which may be erected at designated historic landmarks or historic features. (Ord. 515 § 2, 1982)

2.12.060 Reference for study.

The council may by general or special rule, provide for the reference of any other matter or class of matters to the commission before final action thereon by the public body or officer of the city having final authority thereon, with the provisions that final action thereon shall not be taken until the commission has submitted its report thereon or has had reasonable time to submit the report. The commission shall have full power and authority to make such investigations, maps and reports, and recommendations in connection therewith relating to the planning and development of the city as it seems desirable, providing the total expenditures of the commission shall not exceed the funds available therefor. (Ord. 58 § 6, 1951)

Chapter 2.16

PLANNING DEPARTMENT

Sections:

- 2.16.010 Created.
- 2.16.020 Employees.
- 2.16.030 Director – Appointment and qualifications.
- 2.16.040 Director – Powers and duties.
- 2.16.050 *Repealed.*

2.16.010 Created.

The department of planning is created and established in accordance with Section 65200 et seq., of the Government Code of the state of California. (Ord. 991 § 1 (part), 2014; Ord. 331 § 1, 1970)

2.16.020 Employees.

The number of employees to carry out the functions of the planning department shall be designated by the city manager and the community development director with the approval of the city council. (Ord. 991 § 1 (part), 2014; Ord. 331 § 2, 1970)

2.16.030 Director – Appointment and qualifications.

The community development director shall be appointed by the city manager. He or she shall be qualified pursuant to Section 65201 of the Government Code of the state of California and shall have the ability to manage and direct the planning department, and possess knowledge of the principles of state laws and city ordinances relating to zoning and planning, together with a working knowledge of engineers' drawings, mapping and topography, and have the ability to collect, analyze and interpret data pertaining to planning and zoning activities. (Ord. 991 § 1 (part), 2014; Ord. 331 § 3, 1970)

2.16.040 Director – Powers and duties.

The community development director shall plan and supervise the technical work and administrative detail of the planning commission; serve as secretary to the planning commission and carry out their directives; develop and promote long range planning programs; prepare zoning and other regulatory ordinances in preliminary form; supervise the work of the staff of the planning department; supervise and participate in the administration of zoning ordinances; make land use studies and reports; consult with citizens and officials on planning problems; advise the city council on planning problems; maintain cooperative liaison with other agencies in the planning field, including state and local agencies; answer inquiries from the public concerning zoning regulations. (Ord. 991 § 1 (part), 2014; Ord. 331 § 4, 1970)

2.16.050 Director – Compensation.

Repealed by Ord. 991. (Ord. 331 § 5, 1970)

Chapter 2.18

MOBILE HOME PARK RENT STABILIZATION Revised 7/23

Sections:

- 2.18.010 Purpose and findings. Revised 7/23
- 2.18.020 Definitions. Revised 7/23
- 2.18.030 Applicability. Revised 7/23
- 2.18.031 Exemptions. Revised 7/23
- 2.18.040 Stabilization of rents. Revised 7/23
- 2.18.050 Vacancy control – Establishment of a new base rent. Revised 7/23
- 2.18.060 Anniversary date. Revised 7/23
- 2.18.070 Rent increase limitations. Revised 7/23
- 2.18.080 Information required from mobile home park owner. Revised 7/23
- 2.18.090 Rent dispute resolution process. Revised 7/23
- 2.18.110 Standards of review. Revised 7/23
- 2.18.120 Net operating income. Revised 7/23
- 2.18.130 Gross income. Revised 7/23
- 2.18.140 Operating expenses. Revised 7/23
- 2.18.150 Special base year NOI/base rent adjustments. Revised 7/23
- 2.18.160 Obligations of the parties. Revised 7/23
- 2.18.170 Homeowner's right of refusal. Revised 7/23
- 2.18.180 Retaliatory acts – Homeowner's right to organize. Revised 7/23
- 2.18.190 Fees. Revised 7/23
- 2.18.200 Remedies and waiver of rights. Revised 7/23
- 2.18.210 Rights of affected parties reserved. Revised 7/23
- 2.18.220 Extension of time limits. Revised 7/23
- 2.18.230 Regulations. Revised 7/23

2.18.010 Purpose and findings. Revised 7/23

A. The purpose of this chapter is to stabilize mobile home space rents by preventing excessive and unreasonable rent increases, and to assure that mobile home park owners receive a fair and reasonable return on their investment.

B. The city council finds and declares the following:

1. Mobile homes provide an important alternative form of housing; and
2. Based on the most recent available data, within Capitola city limits there are mobile home parks with a total of six hundred eighty-one spaces. Approximately six hundred seventy-four of those spaces are occupied, thus resulting in a vacancy rate of just one percent, and market conditions suggest that the high demand for mobile home spaces is likely to persist; and
3. Capitola does not currently regulate rental amounts or rent increases on mobile homeowners to ensure that rents remain affordable; and
4. Residents of mobile home parks, unlike apartment tenants or residents of other rental properties, are in a unique position in that they have made a substantial investment in a residence for which space is rented or leased; and
5. Some residents of mobile home parks own their coaches, and rent space from the park owner; and
6. The imposition of sudden and excessive rent increases that are beyond the reach of mobile home park residents require such residents to identify alternative sites for the relocation of mobile homes, which is difficult to do given the shortage of vacant mobile home spaces, and restrictions on the age, size or style of mobile homes permitted in many mobile-home parks; and

7. The potential for rents to increase within mobile home parks within the city could cause hardship to a substantial number of mobile homeowners and residents of the parks, many of whom are elderly, on fixed incomes, or are persons of low or moderate income, and these residents would be vulnerable to displacement; and

8. It is necessary to protect mobile homeowners and residents of mobile home parks from unreasonable rent increases and at the same time recognize the rights of mobile home park owners to receive a reasonable return on their investments. (Ord. 1060 § 1 (Att. A), 2023)

2.18.020 Definitions. Revised 7/23

A. “Administrator” means the administrator of the city’s mobile home space rent stabilization program. The administrator shall be the community development director, or such other city employee as the city manager may appoint to serve as administrator.

B. “Affected homeowners” means those mobile homeowners who are subject to a rent increase. For purposes of providing notice of any rent increase and copies pursuant to this chapter and calculating the number of affected homeowners in support of a rent arbitration petition, each mobile home space subject to a rent increase shall be deemed to have only one affected homeowner. Reference to “all affected homeowners” shall mean one homeowner from each mobile home space subject to the proposed rent increase.

C. “Arbitrator” refers to a person who is appointed by the administrator, and is neither a homeowner, nor has an interest in a mobile home park of a nature that would require disqualification under the provisions of the Political Reform Act.

D. “Arms-length transaction” shall refer to a transaction negotiated by unrelated parties, each acting in his or her own self-interest, which serves as a basis for a fair return determination in this chapter.

E. “Base rent” means the authorized rent calculated pursuant to the provisions of Section 2.18.040, plus any rent increase allowed under this chapter, unless it is expressly excluded from base rent, plus any adjustment attributable to vacancy control as provided in Section 2.18.050.

F. “Capital improvements” means those new improvements, replacements, upgrades, or remodeling, which directly and primarily benefit and serve mobile home park homeowners by materially adding to the value of the property and appreciably prolonging its useful life or adapting it to new uses. Capital improvements consist of more than ordinary maintenance and/or repairs, and may be amortized over the useful remaining life of the improvement to the property. Capital improvement costs shall include all costs reasonably and necessarily related to the planning, engineering, and construction of the improvement or replacement and shall include debt service costs, if any, incurred as a direct result of the capital improvement or replacement.

G. “City information sheet” is prepared by the city, and will provide information about the mobile home park rent stabilization ordinance and include the administrator’s contact information.

H. “Comparable space” means a mobile home space in the same mobile home park that is suitable for comparison, taking into account such characteristics as the location and size of the space, lot size, landscaping, adjacency to freeways, ocean views or amenities.

I. “Consumer Price Index” or “CPI” shall mean the Consumer Price Index for All Urban Consumers, San Francisco-Oakland-San Jose region.

J. “Gross income” shall have the meaning set forth in Section 2.18.130.

K. “Homeowner” shall mean an existing mobile homeowner.

L. “Homeowner representative” shall mean a designated homeowner association (HOA) or its designee who shall have the authority to represent the interest of, negotiate on behalf of, and bind the homeowners.

M. “Housing service” shall mean a service or facility provided by the mobile home park owner related to the use or occupancy of a mobile home space, which is neither a capital improvement nor a substantial rehabilitation.

“Housing service” includes, but is not limited to, repairs (including street repairs), replacement, maintenance, landscaping, painting, lighting, heat, water, utilities, laundry facilities, refuse removal, recreational and meeting facilities, parking, security service, and employee services.

N. “Mobile home” has the same meaning as the definition of “mobilehome” defined in Civil Code Section 798.3, as it may be amended from time to time, or a successor code provision.

O. “Mobile homeowner” means a person who owns a mobile home and also rents a mobile home space in a mobile home park pursuant to a rental agreement that is not otherwise exempt from regulation under this chapter.

P. “Mobile home park” has the same meaning as the definition of “mobilehome park” defined in Civil Code Section 798.4, as it may be amended from time to time, or successor code section.

Q. “Mobile home park owner” means a park owner, lessor, or sublessor of a mobile home park in the city who receives or is entitled to receive rent for the use or occupancy of any mobile home space thereof and who reports to the Internal Revenue Service any income received or loss of income resulting from such ownership or claims any expenses, credits, or deductions because of such ownership.

R. “Mobile home space” means any site within a mobile home park located in the city intended, designed, or used for the location or accommodation of a mobile home. “Mobile home space” includes any accessory structures or appurtenances attached to the mobile home or used in conjunction therewith.

S. “Net operating income” shall have the meaning set forth in Section 2.18.120.

T. “Operating expenses” shall have the meaning set forth in Section 2.18.140.

U. “Rent” means the total consideration, including any bonus, benefit, or gratuity, demanded or received by a mobile home park owner for or in connection with the use occupancy of a mobile home dwelling unit.

V. “Rent increase” means any additional rent demanded of, or paid by, a homeowner for mobile home space. “Rent increase” includes any reduction in housing services without a corresponding reduction in the amount demanded or paid for rent.

W. “Rent stabilization administration fee” means a fee established by resolution of the city council in accordance with the provisions of Section 2.18.190.

X. “Substantial rehabilitation” means that work done by a mobile home park owner to a mobile home space or to the common areas of the mobile home park, exclusive of capital improvements, which has a value in excess of twenty thousand dollars, and is performed either to secure compliance with any state or local law, or to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such work is not reimbursed by insurance or other benefits. Costs of substantial rehabilitation include all costs reasonably and necessarily related to the planning, engineering, and construction of the work. Such costs shall also include debt service costs incurred as a direct result of the substantial rehabilitation work, if any. (Ord. 1060 § 1 (Att. A), 2023)

2.18.030 Applicability. Revised 7/23

This chapter applies to every mobile home park within the city, except those to which an exemption applies. (Ord. 1060 § 1 (Att. A), 2023)

2.18.031 Exemptions. Revised 7/23

A. This chapter shall not apply to mobile home spaces that are subject to a written rental agreement exempt from regulation pursuant to Civil Code Section 798.17. This chapter shall also not apply to a newly constructed space exempt from regulation pursuant to Civil Code Sections 798.45 and 798.7.

B. These exceptions shall be effective only until the expiration or other termination of the rental agreement subject to the exception, whereupon all provisions of this chapter shall immediately be applicable to the mobile home space, unless the rental agreement meets the criteria of Civil Code Section 798.17.

C. This chapter shall not apply to any mobile home spaces that are exempt from local mobile home rent stabilization ordinances as required by law, including, but not limited to, Civil Code Section 798.21, and including but not limited to mobile home spaces that are not the principle residence of the mobile homeowner and mobile homeowner has not rented the mobile home to another party.

D. This chapter shall not apply to any mobile home parks that are owned by the mobile homeowners in the mobile home park, pursuant to Civil Code Section 799.1(a).

E. This chapter shall not apply to any mobile home space subject to any agreement that restricts rent increases in a manner that is more protective than this chapter. (Ord. 1060 § 1 (Att. A), 2023)

2.18.040 Stabilization of rents. Revised 7/23

A. It shall be unlawful to demand, accept, receive, or retain rent for a mobile home space in excess of the base rent plus any increases that are authorized by this chapter, unless an exemption applies.

B. Base Rent Calculation.

1. Except as provided herein, a mobile home park owner shall not demand, accept, or retain rent for a mobile home space exceeding the rent in effect for that space on May 25, 2023. In the event that a mobile home space was not occupied on May 25, 2023, the base rent for that mobile home space shall be the highest mobile home space rent charged by the mobile home park owner for a comparable space in the mobile home park on May 25, 2023, plus any rent increases allowed thereafter pursuant to this chapter.

2. If a mobile home space is exempted from the provisions of this chapter because it is the subject of a rental agreement pursuant to California Civil Code Section 798.17, and that agreement expires or is terminated by operation of law and is not renewed, then the base rent, until the next annual adjustment pursuant to this chapter, shall be the average of the three highest rents of comparable spaces on May 25, 2023, plus any rent increases allowed thereafter pursuant to this chapter.

3. It shall be presumed that the base rent yields a fair return.

C. A mobile home park owner may seek an adjustment to the initial base rent if it can be clearly established that an adjustment is necessary for the mobile home park owner to receive a fair return. In seeking an adjustment to the initial base rent under this section, the procedures set forth in Sections 2.18.080 and 2.18.090 shall apply.

The guidelines for determining an adjustment to the initial base rent are set forth in Section 2.18.150. (Ord. 1060 § 1 (Att. A), 2023)

2.18.050 Vacancy control – Establishment of a new base rent. Revised 7/23

A. A mobile home park owner shall be permitted to increase the space rent by up to 15 percent whenever a lawful vacancy occurs, and this amount shall be considered the new base rent for a mobile home space. For purposes of this chapter, “lawful space vacancy” shall mean:

1. A vacancy occurring because of the termination of the tenancy of a mobile homeowner in accordance with California Civil Code Sections 798.56 through 798.58; or

2. A vacancy occurring because of the abandonment of a mobile home pursuant to California Civil Code Section 798.61; or

3. A vacancy occurring due to sale of a mobile home on site to any mobile home park owner-approved purchaser, pursuant to California Civil Code Section 798.74.

B. Any alleged violation of this section shall be subject to arbitration pursuant to Section 2.18.090. (Ord. 1060 § 1 (Att. A), 2023)

2.18.060 Anniversary date. Revised 7/23

The anniversary date for all rent increases in the mobile home park owner’s park shall be established by city council resolution. Rent increases, if any, except as specified below, shall be enacted only on the anniversary date. The

mobile home park owner shall post the anniversary date in the park office or areas where it can easily be seen by homeowners. (Ord. 1060 § 1 (Att. A), 2023)

2.18.070 Rent increase limitations. Revised 7/23

A. As of the effective date of the ordinance codified in this chapter, no rent increases may be implemented within twelve months of the effective date of the preceding rent increase unless otherwise authorized under this chapter. The permissible annual increase shall be the lesser of:

1. Five percent of the base rent plus one hundred percent of the preceding year's annual average change in the Consumer Price Index; or
2. Ten percent of the base rent.

B. A mobile home park owner shall not implement any additional rent increase within a twelve-month period above the authorized amount pursuant to subsection A of this section, unless otherwise provided in this chapter.

C. In the event that a mobile home park owner wishes to implement a rent increase on the anniversary date or within a twelve-month period more than the amount permitted in subsection A of this section the procedures set forth in Sections 2.18.080 and 2.18.090 shall apply.

D. The arbitrator may reduce the proposed rent increases pursuant to subsection B or C of this section to a figure based on the evidence submitted by the mobile home park owner or the park owner representative to be a fair return.

E. Any notice of a rent increase shall be provided in writing to affected homeowners at least ninety days before any rent increase is to take effect. (Ord. 1060 § 1 (Att. A), 2023)

2.18.080 Information required from mobile home park owner. Revised 7/23

A. Within thirty days after the effective date of this chapter and upon the re-renting of each mobile home space thereafter, the mobile home park owner shall supply each affected homeowner or prospective homeowner with a copy of the city information sheet.

B. Whenever the mobile home park owner serves a notice of a proposed rent increase, except a notice of proposed rent increase implemented pursuant to Section 2.18.070(A), the mobile home park owner shall simultaneously serve a written notice that sets forth the following:

1. The amount of the rent increase both in dollars and as a percentage of existing rent and documentation supporting the proposed increase, including but not limited to: a summary of the unavoidable increases in maintenance and operating expenses; a statement of the cost, nature, amortization, and allocation among mobile home spaces of any substantial rehabilitation or capital improvement; a summary of the increased cost of the mobile home park owner's debt service and the date and nature of the sale or refinancing transaction; a summary of the mobile home park owner's net operating income of the preceding twenty-four months and other relevant information that supports the level of rent increase desired;
2. The availability of a current listing of all other affected homeowners and the spaces which they rent;
3. The address and telephone number of the administrator and statement that the homeowner is encouraged to contact the administrator for an explanation of this chapter;
4. A copy of the petition form prepared and provided by the administrator that initiates the rent review process established by this chapter;
5. The time and place for a mandatory meeting with the mobile home park owner and homeowners to be held on the mobile home park premises. The meeting shall be held within ten days from the service of the notice of proposed rent increase. The mobile home park owner and homeowner shall endeavor to resolve the dispute informally.
6. In the event the dispute is not resolved informally, the mobile home park owner shall, within ten days of the meeting required in subsection (B)(5) of this section, file with the administrator two copies of the notice and

summary of expenses required in subsection (B)(1) of this section, along with two copies of all relevant financial records, bills or documents that substantiate the proposed increase. This financial information shall be verified in writing by an auditor or certified public accountant or certified in writing as true and correct under penalty of perjury by the mobile home park owner. This information will be made available at City Hall for inspection and copying by the affected homeowners.

C. A mobile home park owner failing to provide any information, documents, or notices required by this section shall not be entitled to collect any rent increase that might otherwise be awarded by an arbitrator. Such failure shall also be a defense in any action brought by the mobile home park owner to recover possession of a mobile home space or to collect any rent increase from the homeowner.

D. An affected homeowner who is given notice of a rent increase is entitled to file a petition for rent review as provided in Section 2.18.090 regardless of whether the mobile home park owner has provided the affected homeowner with all the information, documents and notices required by this chapter. (Ord. 1060 § 1 (Att. A), 2023)

2.18.090 Rent dispute resolution process. Revised 7/23

A. If a rent increase is proposed pursuant to Section 2.18.070(B) and (C), then after service of the rent increase notice and the production of the accompanying information required by Section 2.18.080, the mobile home park owner shall set a time and place for an informational meeting with the homeowners on the mobile home park premises, or an alternative location with the agreement of the homeowners' representative. The informational meeting shall be held within twenty days from the service of the notice of proposed rent increase. The mobile home park owner shall give affected homeowners and the administrator at least ten days' advance written notice of this meeting.

B. Petition Procedures.

1. If discussions between the mobile home park owner and affected homeowners do not resolve the dispute, the homeowners or homeowner representative may file with the administrator a petition for rent review with a copy of the notice of rent increase within thirty days after receipt of the rent increase notice.
2. As soon as possible after a petition has been filed with respect to mobile home spaces that are within a mobile home park, the administrator shall, to the extent possible, consistent with the time limitations provided herein, consolidate petitions involving similarly situated affected homeowners.
3. Upon the filing of a petition, the rent increase shall not be implemented until and to the extent it is awarded by an arbitrator or until the petition is abandoned by the affected homeowners or the homeowner representative. "Abandoned" as used herein shall mean a failure to actively pursue the necessary steps to prepare the homeowners' case for the arbitration.

C. Contents of Petition.

1. The petition for rent review shall: (a) set forth the total number of affected mobile home spaces in the mobile home park; (b) identify the name of the homeowners who occupy each space; and (c) state the date upon which the notice of the rent increase was received by the homeowner.
2. After obtaining the required signatures of affected homeowners, the homeowners shall deliver the petition or mail it by certified mail to the administrator at the following address: City of Capitola, 420 Capitola Avenue, Capitola, California 95010. No petition shall be accepted unless it is accompanied by the requisite number of signatures and is received in the office of the administrator within the thirty-day period set forth in subsection B of this section. The administrator shall provide a copy of the completed petition to the mobile home park owner and the arbitrator.

D. After the administrator has accepted a petition for rent review, the administrator shall remit to the mobile home park owner and petitioning homeowners or the homeowner representative an information questionnaire in such form as the administrator may prescribe. The completed information questionnaire must be returned to the administrator at least five business days prior to the date scheduled for hearing of the petition by the arbitrator. The administrator

shall provide copies of the completed information questionnaire to the arbitrator, the mobile home park owner, and the affected homeowners or the homeowner representative.

E. Upon receipt of a petition, or upon an affected homeowner's claim of a vacancy control rent increase violation pursuant to Section 2.18.050, the administrator shall assign an arbitrator. The administrator shall set a date for the arbitration hearing. The mobile home park owner and all affected homeowners shall be notified immediately in writing by the administrator of the date, time, and place of the hearing either in person or by ordinary mail. Any documents to be presented at the hearing by either the park owner or the affected homeowners shall be served on the other party, the administrator, and the arbitrator at least ten working days before the hearing by mail or in-person delivery. All financial documents submitted shall be verified in writing by an auditor or certified public accountant, or certified in writing as true and correct under penalty of perjury by the mobile home park owner.

F. Arbitration Hearing.

1. The mobile home park owner and any affected homeowners, or their representatives, may appear at the hearing and offer oral and documentary evidence. The burden of proving that the amount of rent increase is reasonable shall be on the mobile home park owner by a preponderance of the evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses.
2. Any jurisdictional or procedural dispute regarding the process set forth herein may be decided by the arbitrator.
3. The arbitrator shall, within fourteen days of the conclusion of the hearing, submit by mail a written statement of decision and the reasons for the decision to the administrator. The administrator shall mail copies of the decision to the mobile home park owner and affected homeowners.
4. The decision of the arbitrator shall be final and binding upon the mobile home park owner and affected homeowners, and subject to the provisions of California Code of Civil Procedure Section 1094.5.

G. It is the intent of the council to have a final decision rendered within ninety days of the initial notice of the rent increase. The administrator or the arbitrator may, however, modify the time periods set forth herein at his or her discretion to promote the purposes of this chapter. (Ord. 1060 § 1 (Att. A), 2023)

2.18.110 Standards of review. Revised 7/23

A. The arbitrator shall determine whether rent increases proposed or imposed by the mobile home park owner are reasonable based upon the circumstances and this chapter. The arbitrator shall take into consideration that the purpose of this chapter is to permit mobile home park owners a just and reasonable return, while protecting homeowners from unnecessary or unreasonable rent increases.

B. The arbitrator shall not allow more than one rent increase per mobile home space per twelve-month period, unless a mobile home park owner can clearly establish that the rent increase is necessary to cover costs of operation, maintenance, capital improvements, and/or substantial rehabilitation not reasonably foreseeable at the time notice of the preceding rent increase was given.

C. Maintenance of Net Operating Income.

1. It shall be presumed that the base year net operating income adjusted by seventy-five percent of the increase or decrease in the CPI since the base year yields a fair return. Mobile home park owners shall be entitled to maintain and increase their net operating income in accordance with this section. The arbitrator shall make a determination of whether the mobile home park owner's net operating income yields a fair return under this standard.
2. The formula for calculating the fair NOI return shall be as follows:

$$\text{Fair NOI} = \text{Base Year NOI} \times (1 + 0.75) \% \text{ preceding years' annual average change in CPI}$$

3. Except as provided in Section 2.18.150, it shall be presumed that the net operating income produced by the mobile home park during the base year provided a fair return.

4. Calendar year 2022 shall be established as the base year for purposes of determining whether a mobile home park owner's net operating income provides a fair return. If a satisfactory base year is, in the arbitrator's opinion, not otherwise available, such as where a mobile home park owner did not own the subject property in the base year and/or the 2022 operating expenses are not available, the arbitrator may take any relevant evidence into account to construct a base year.

5. The base year CPI shall be the CPI level in May 2022.

6. The percentage change in the CPI shall be calculated by using the preceding year's average CPI prior to the noticed increase.

7. The comparison NOI year shall be the most recent calendar or fiscal year, unless another period is found by the arbitrator to be more appropriate.

D. A park owner may seek a rent increase based on the cost of a completed new capital improvement, as defined in Section 2.18.020, together with a reasonable return upon the capital improvement investment, only if the mobile home park owner has:

1. Established by written verification or other competent evidence to the satisfaction of the arbitrator that the costs of the new capital improvement are factually correct as claimed;

2. Cost factored and amortized the costs of the capital improvement over the good faith estimate of the remaining life of the improvement, but in no event for a period of less than sixty months; and

3. Allocated the increase among affected homeowners on a per space basis and separately itemized such increase on the rent bill. Such increases shall not be considered included in the base rent for purposes of the annual permissible rent increases pursuant to Section 2.18.070(A).

E. Mitigating Factors. In evaluating a rent increase, the arbitrator shall also consider the following factors in addition to any other factors the arbitrator deems relevant in order to determine whether there are any circumstances that may justify a reduction in a proposed rent increase:

1. In the event the mobile home park owner reduces or eliminates any housing services, a proportionate share of the cost savings due to such reduction or elimination shall be passed on in the form of a decrease in existing rent or a decrease in the amount of a rent increase otherwise proposed or permitted by this chapter.

2. The physical condition of the mobile home space or park of which it is a part, including the quantity and quality of maintenance and repairs performed during the preceding twelve months.

F. Notwithstanding any other provision to the contrary, no provision of this chapter shall be applied to prohibit the granting of a rent increase that is demonstrated to be necessary to provide a mobile home park owner with a fair and reasonable return. (Ord. 1060 § 1 (Att. A), 2023)

2.18.120 Net operating income. Revised 7/23

In evaluating a rent increase imposed by a mobile home park owner to maintain the mobile home park owner's net operating income, "net operating income" (NOI) shall mean the gross income as defined in Section 2.18.130 of the mobile home park less the operating expenses as defined in Section 2.18.140. (Ord. 1060 § 1 (Att. A), 2023)

2.18.130 Gross income. Revised 7/23

For purposes of calculating the net operating income pursuant to Section 2.18.120, "gross income" shall mean the sum of the following:

A. Gross mobile home space rents, computed as gross space rental income at one hundred percent occupancy; plus

B. Other income generated as a result of the operation of the mobile home park, including, but not limited to, fees for services actually rendered; plus

C. Revenue received by a mobile home park owner from the sale of water, sewer, refuse collection, gas, and electricity to homeowners where such utilities or services are billed individually to the homeowners by the mobile home park owner. Such revenue shall equal the total cost of the utilities or services to the homeowners minus the amount paid by the mobile home park owner for such utilities or services to the utility or service provider; minus

D. Uncollected mobile home space rents due to vacancy and bad debts to the extent that the same are beyond a mobile home park owner's control. Uncollected mobile home space rents in excess of three percent of gross mobile home space rents shall be presumed to be unreasonable unless established otherwise and shall not be included in computing gross income. If uncollected mobile home space rents must be estimated, then the average of the preceding three years' experience shall be used. (Ord. 1060 § 1 (Att. A), 2023)

2.18.140 Operating expenses. Revised 7/23

A. For purposes of calculating net operating income pursuant to Section 2.18.120, "operating expenses" may include:

1. Real property taxes and assessments.
2. Utility costs to the extent that they represent costs to the mobile home park owner which are not passed through to homeowners of the mobile home park.
3. Management expenses (including the compensation of administrative personnel, including the value of any mobile home space offered as part of compensation for such services), reasonable and necessary advertising to ensure occupancy, legal and accounting services as permitted herein, and other managerial expenses. Management expenses are presumed to be not more than five percent of gross income, unless established otherwise.
4. In addition to the management expenses listed above, if the mobile home park owner performs managerial or maintenance services which are uncompensated, the mobile home park owner may include the reasonable value of such services or operating expenses. Mobile home park owner-performed labor shall be limited to five percent of gross income unless the arbitrator finds that such a limitation would be substantially unfair in a given case. A mobile home park owner must devote substantially all of the mobile home park owner's time, that is, at least forty hours per week, to performing such managerial or maintenance services in order to warrant the full five percent credit as an operating expense. No credit for such services shall be authorized unless a mobile home park owner documents the hours utilized in performing such services and the nature of the services provided.
5. Normal repair and maintenance expenses for the grounds and common facilities, including but not limited to landscaping, cleaning, and repair of equipment and facilities.
6. Operating supplies such as janitorial supplies, gardening supplies, and stationery.
7. Insurance premiums prorated over the life of the policy.
8. Other taxes, fees, and permits, except as provided in Section 2.18.190.
9. Reserves for replacement of long-term improvements or facilities, provided that accumulated reserves shall not exceed five percent of gross income.
10. A mobile home park owner may include the cost of necessary capital improvement or substantial rehabilitation expenditures which would exceed existing reserves for replacement. A necessary capital improvement shall be an improvement required to maintain the common facilities and areas of the mobile home park in a decent, safe, and sanitary condition or to maintain the existing level of mobile home park amenities and services. In the event that the necessary capital improvement or substantial rehabilitation expenditure is necessitated as the result of an accident, disaster, or other event for which the mobile home park owner

received insurance or other benefits, only those costs otherwise allowable and exceeding such benefits may be calculated as operating expenses.

Expenditures for necessary capital improvements to upgrade existing facilities, together with a reasonable return upon the capital improvement investment made by the mobile home park owner, shall be an allowable operating expense only if the park owner has:

- a. Informed the affected homeowners prior to initiating construction or implementation of the capital improvement regarding the nature, purpose and estimated cost of the improvement; and
- b. Established by written verification or other competent evidence to the satisfaction of the arbitrator that the costs of capital improvement provided to the homeowners for their general use are factually correct as claimed; and
- c. Cost factored and amortized the costs of the improvement over the good faith estimate of the remaining life of the improvement, but in no event for a period of less than sixty months; and
- d. Allocated the increase among affected homeowners on a per space basis and separately itemized such increase on the rent bill. Such increases shall not be considered included in the base rent for purposes of the annual permissible rent increases pursuant to Section 2.18.070(A).

11. Increases in interest payments which result from one of the following situations or the equivalent thereof:

- a. Refinancing of the outstanding principal owed for the acquisition of a park where such refinancing is mandated by the terms of a financing transaction entered into prior to May 25, 2023; for instance, termination of a loan with a balloon payment; or
- b. Increased interest costs incurred as a result of a variable interest rate loan used to finance the acquisition of the park and entered into prior to May 25, 2023.
- c. In the event that the mobile home park is financed as part of a multi-asset portfolio, the allowable increase in interest costs shall be limited to the amount reasonably attributable to the mobile home park or mobile home parks located in the city, based on the percentage of total asset value or such allocation established in loan documents.
- d. In refinancing, increased interest shall be permitted to be considered as an operating expense only where the mobile home park owner can show that the terms of the refinancing were reasonable and consistent with prudent business practices under the circumstances.

B. "Operating expenses" shall not include the following:

1. Debt service expenses, except as provided in subsection (A)(11) of this section;
2. Depreciation;
3. Any expense for which the mobile home park owner is reimbursed; or
4. Attorneys' fees and costs (except printing costs and documentation as required by Section 2.18.080) incurred in proceedings before an arbitrator or in connection with legal proceedings challenging the decision of an arbitrator or the validity or applicability of this chapter.

C. Whenever a particular expense exceeds the normal industry or other comparable standard, the mobile home park owner shall bear the burden of proving the reasonableness of the expense. To the extent that the arbitrator finds any such expense to be unreasonable, the arbitrator shall adjust the expense to reflect the normal industry or other comparable standard. (Ord. 1060 § 1 (Att. A), 2023)

2.18.150 Special base year NOI/base rent adjustments. Revised 7/23

A. Mobile home park owners may obtain a one-time special adjustment to the base year NOI and/or base rent dates if the mobile home park owner rebuts the presumption that the base year NOI and/or base rent date yielded a fair return. The arbitrator shall not make such a determination unless the arbitrator has first made at least one of the following findings:

1. That the mobile home park owner's operating expenses in the base year were unusually high or low in comparison to the three years prior to the base year. The average expenses for this period shall be presumed to reflect reasonable average annual expenses and the average of such expenses shall be used to calculate and adjust the base year NOI.

In determining whether the park owner's operating expenses were unusually high or low, the arbitrator shall consider whether:

- a. The park owner made substantial capital improvements during the base year, which were not reflected in the rent levels on the base rent date.
- b. Substantial repairs were made due to uninsured damage caused by fire, natural disaster or vandalism.
- c. Maintenance and repair were below accepted standards so as to cause significant deterioration in the quality of housing services.
- d. Other expenses were unreasonably high or low notwithstanding the following of prudent business practice.

2. That the rent was disproportionate due to one of the enumerated factors below:

- a. The rent on the base date was exceptionally high or low due to the fact that the rent was not established in an arms-length transaction.
- b. The rent on the base rent date was substantially higher or lower than at other times of the year by reason of premiums being charged or rebates given for reasons unique to particular spaces.

B. If the circumstances specified in subsection (A)(2) of this section are demonstrated, the base rent date shall be adjusted to reflect the rent that would have been received if the base rent date had been set under general market conditions. In making this adjustment, the arbitrator shall utilize the median rent in effect on the base rent date, or a good faith estimate of such median rent, for comparable spaces within the mobile home park or, if necessary, other comparable parks. Comparability shall be judged based on the location of the park, services, amenities provided, ocean views, lot size, landscaping, and other relevant factors. (Ord. 1060 § 1 (Att. A), 2023)

2.18.160 Obligations of the parties. Revised 7/23

A. After the mobile home park owner's proposed effective date of a noticed rent increase, if the arbitrator finds that the proposed increase or any portion thereof that was previously inoperative is justified, all affected homeowners shall pay the amount found justified to the mobile home park within thirty days after the decision is made.

B. If the arbitrator finds that an increase or any portion thereof is not justified, the mobile home park owner shall refund any amount found to be unjustified, but that had been paid, to all affected homeowners within ninety days of the arbitrator's decision. In the event that the tenancy of an affected homeowner is terminated for any reason prior to receipt of a refund, the balance of the credit due the homeowner shall be paid by the mobile home park owner within thirty days from the date of the termination of the tenancy.

C. Any sum of money that under the provisions of this section is the obligation of the mobile home park owner or homeowner to pay, as the case may be, shall constitute a debt and, subject to the foregoing provisions of this section, may be collected in any manner provided by law for the collection of debts. (Ord. 1060 § 1 (Att. A), 2023)

2.18.170 Homeowner's right of refusal. Revised 7/23

An affected homeowner may refuse to pay any increase in rent which is in violation of this chapter, provided a petition has been filed and either no final decision has been reached by an arbitrator or the increase has been

determined to violate the provisions of this chapter. Such right of refusal to pay shall be a defense in any action brought to recover possession of a mobile home space or to collect the rent increase. (Ord. 1060 § 1 (Att. A), 2023)

2.18.180 Retaliatory acts – Homeowner’s right to organize. Revised 7/23

No mobile home park owner may retaliate against a homeowner, homeowner representative, or prospective homeowner for the assertion or exercise of rights under this chapter in any manner. This includes, but is not limited to, threatening to bring or bringing an action to recover possession of a mobile home space, engaging in any form of harassment that causes a homeowner to quit the premises, dissuading a prospective homeowner from freely exercising the homeowner’s legal option to choose a tenancy of a shorter term, decreasing housing services, increasing the mobile home space rent, or imposing or increasing a security deposit or any other charge payable by a homeowner. (Ord. 1060 § 1 (Att. A), 2023)

2.18.190 Fees. Revised 7/23

A. The city is authorized to impose a rent stabilization administration fee (“fee”) chargeable against each mobile home space in the city subject to this chapter. The administrator may recommend to the city from time to time the amount of the fee and the council may adopt such fee by resolution at a public hearing.

B. Within sixty days of the adoption of the ordinance codified in this chapter, each mobile home park owner in the city shall register with the city. The mobile home park owner shall provide the name and address of the mobile home park owner, and the current rent roll for all spaces which shall identify: (1) the length of the lease term for each space; (2) the expiration of the lease term for each space; (3) current rents and other fees or charges that are received by the mobile home park owner itemized per mobile home space; (4) the number of mobile home spaces, including both occupied and unoccupied spaces, contained in that mobile home park owner’s mobile home park; and (5) the mobile home park owner’s determination of comparable spaces in the mobile home park, along with a description of how the spaces are comparable. The provision of the information required by this subsection B must also be made immediately upon change of ownership of the mobile home park, or an increase or a decrease in the number of spaces available at a mobile home park owner’s mobile home park. (Ord. 1060 § 1 (Att. A), 2023)

2.18.200 Remedies and waiver of rights. Revised 7/23

A. In the event that a mobile home park owner demands, accepts, receives, or retains any payment in excess of the amounts allowed under this chapter, the homeowner may file a civil suit against the mobile home park owner. A mobile home park owner who demands, accepts, receives, or retains any payment of rent in excess of the amounts allowed under this chapter shall be liable to the homeowner in the amount by which the payment or payments have exceeded the allowable rent. In such a case, the rent shall be adjusted to reflect the lawful rent pursuant to this chapter.

B. A mobile home park owner who willfully demands, accepts, or retains any payment of rent in violation of the provisions of this chapter shall be liable in a civil action to the person from whom payment is demanded, accepted or retained for damages in the sum of three times the amount by which payment or payments demanded, accepted or retained exceed the maximum rent which could lawfully be demanded, accepted or retained. A prevailing homeowner in a civil action brought to enforce this chapter shall be awarded reasonable attorneys’ fees and costs as determined by the court. No administrative remedy need be exhausted prior to filing suit pursuant to this section.

C. The remedies available in this chapter are not exclusive and may be used cumulatively with any other remedies available in this chapter or at law.

D. Waiver of Rights.

1. Any waiver or purported waiver by a homeowner of rights granted under this chapter prior to the time when said rights may be exercised shall be void as contrary to public policy, except as provided in this section. It shall be unlawful for a mobile home park owner to require or attempt to require, as a condition of tenancy in a mobile home park, a homeowner, or prospective homeowner, to waive, in a lease or rental agreement, the rights granted to a homeowner by this chapter.

2. It shall be unlawful for a mobile home park owner to deny or threaten to deny a tenancy in a mobile home park to any person on account of such person’s refusal to enter into a lease or rental agreement or any other agreement under which such person would waive the rights granted to a tenant by this chapter.

3. Nothing in this section shall preclude a mobile homeowner or tenant, or prospective homeowner, from entering into a lease or rental agreement; provided, that such lease or rental agreement is not procured by a requirement that it be entered into as a condition of tenancy in the mobile home park, and is not procured under a threat of denial of tenancy in the mobile home park. (Ord. 1060 § 1 (Att. A), 2023)

2.18.210 Rights of affected parties reserved. Revised 7/23

A. This chapter shall not be construed to limit or curtail any other action or proceeding which may be pursued by an affected homeowner or mobile home park owner before any court or other body having jurisdiction thereof.

B. Defense to Action for Recovery of Possession.

1. A mobile home park owner's failure to comply with any of the provisions of this chapter or any regulations promulgated hereunder shall serve as a complete affirmative defense in any action brought to recover possession of a mobile home space.

2. A homeowner's refusal to pay rent in excess of the amount allowed under this chapter shall be a complete affirmative defense in any action brought to: (a) recover possession of a mobile home space for nonpayment of rent; or (b) collect rent in excess of the amount allowed under this chapter. (Ord. 1060 § 1 (Att. A), 2023)

2.18.220 Extension of time limits. Revised 7/23

By written agreement of the parties, or for good cause shown to the arbitrator, the time frames provided for under this chapter may be extended. (Ord. 1060 § 1 (Att. A), 2023)

2.18.230 Regulations. Revised 7/23

The city council may issue rules and regulations as necessary to further the purpose of this chapter. If any portion of this chapter is declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by law, the city council shall have the authority to enact replacement regulations consistent with the intent and purpose of the invalidated or unenforceable provisions of this chapter to the extent necessary to resolve any inconsistency. The subject matter of such replacement regulations shall be limited to the matters addressed in this chapter. (Ord. 1060 § 1 (Att. A), 2023)

Chapter 2.20
HEALTH OFFICER

Sections:

- 2.20.010 Designated.
- 2.20.020 Arrest power.

2.20.010 Designated.

The health officer of the county together with his or her delegated subordinates are designated as the health officer of the city and empowered to carry out all responsibilities of the health officer of the city as set forth in the city code or enumerated by ordinance. (Ord. 400 (part), 1976)

2.20.020 Arrest power.

The health officer and his or her delegated subordinates, pursuant to the provisions of Section 836.5 of the Penal Code of the state of California may arrest a person who has committed a misdemeanor in his or her presence which is a violation of an ordinance, statute, or law, enforcement of which is under the administration of the health officer. Upon making such an arrest, the health officer or his or her delegated subordinate shall release the person arrested pursuant to Section 853.6 of the Penal Code, the provisions of which are adopted by reference as part of this section. (Ord. 400 (part), 1976)

Chapter 2.24

CONFLICT OF INTEREST

Sections:

- 2.24.010 Adoption.
- 2.24.020 Definitions.
- 2.24.030 Applicability.
- 2.24.040 Disclosure requirements.
- 2.24.050 Circumstances requiring disqualification.
- 2.24.055 Acceptance of employment prohibited.
- 2.24.060 Copy filed.

2.24.010 Adoption.

In compliance with Section 87300 of the Government Code, the city council adopts this conflict of interest ordinance. (Ord. 405 § 1, 1976)

2.24.020 Definitions.

Except as otherwise indicated, the definitions contained in the Political Reform Act of 1974 (Government Code Section 81000) and regulations adopted pursuant hereto are incorporated into this conflict of interest code. (Ord. 405 § 5, 1976)

2.24.030 Applicability.

This conflict of interest ordinance shall be applicable to members of the city council, whether acting as council members or as members of any city board or commission. (Ord. 405 § 2, 1976)

2.24.040 Disclosure requirements.

Members of the city council are required, pursuant to Government Code Section 87200, to disclose investments, interest in real property and income. No other or no additional disclosure requirements are imposed by this conflict of interest ordinance. (Ord. 405 § 3, 1976)

2.24.050 Circumstances requiring disqualification.

Any member of the city council must disqualify himself or herself from making or participating in the making of any decisions which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on any economic interest, as defined in Government Code Section 87103. No member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. (Ord. 405 § 4, 1976)

2.24.055 Acceptance of employment prohibited.

A member of the city council, planning commission or architectural and site review committee shall not solicit employment relative to a project which has previously come before that member's council, commission or committee for hearing. (Ord. 847 § 1, 2003)

2.24.060 Copy filed.

The city clerk is directed to forward a certified copy of the ordinance codified in this chapter to the Fair Political Practices Commission. (Ord. 405 § 6, 1976)

Chapter 2.28
PUBLIC MUSEUM

Sections:

- 2.28.010 Museum.
- 2.28.015 Board.
- 2.28.020 Museum board of trustees.
- 2.28.030 Board – Duties.
- 2.28.040 Board – Meetings.
- 2.28.050 Board – Officers.
- 2.28.060 Entry fee.

* Prior ordinance history: Ord. 301.

2.28.010 Museum.

The city's public museum of natural and historical objects shall be administered as set forth in this chapter. (Ord. 735 (part), 1992)

2.28.015 Board.

The museum board of the city shall hereafter be established as set forth in this chapter. (Ord. 735 (part), 1992)

2.28.020 Museum board of trustees.

A. The museum board of trustees shall consist of seven members.

B. Members of the museum board of trustees shall be appointed by the mayor, subject to the approval of three city council members including the mayor.

C. Term of Office. Members of the museum board of trustees shall serve three-year terms. The terms of the museum board of trustees shall be staggered with three members serving a coextensive term and the other four members serving another coextensive term. Terms shall expire on the second Thursday of June in the year of term expiration.

D. Members of the museum board of trustees shall serve at the pleasure of the city council, and therefore may be removed from office, without cause, and at any time, by the affirmative vote of three city council members. Where a vacancy arises in the board membership prior to a term expiration, the mayor may appoint a person to fill that vacancy for the remainder of the unexpired term in accordance with this section.

E. The city council may, by resolution, establish a recruitment process for individuals who may wish to apply for appointment to the museum board of trustees. (Ord. 836 § 2, 2002)

2.28.030 Board – Duties.

The duties of the board are:

A. To advise the city council and the city manager on the following and related items: financial affairs of the museum; general museum administration; formulation of long term museum plans; formulation of written policies for acquisition by the city of museum objects; and steps that can be taken to bring about a better understanding and appreciation by the Capitola community of its history, architecture, culture, technology, and its creative and natural environment through the promotion of the city's museum and allied projects;

B. To establish the ethical standards of the Capitola Historical Museum for collecting;

C. To monitor museum finances;

D. To serve as trustees of any trust formed to receive and disburse funds collected solely for museum purposes;

E. To prepare reports, if any, which are appropriate under Government Code Section 37557;

F. To accept donations of museum objects and receive museum objects on loan;

G. To recruit and supervise volunteers. (Ord. 735 (part), 1992)

2.28.040 Board – Meetings.

The board of trustees shall meet in accord with the Brown Act and the board’s bylaws. (Ord. 735 (part), 1992)

2.28.050 Board – Officers.

The board shall elect a president, vice-president, secretary and treasurer. Officers shall serve one year and until successors are elected. In the absence of the president, the vice-president shall act as president pro tem. (Ord. 735 (part), 1992)

2.28.060 Entry fee.

Subject to the rules and regulations of the board, the museum shall be free to the inhabitants and nonresident taxpayers of the city. (Ord. 735 (part), 1992)

Chapter 2.32

PEACE OFFICER TRAINING

Sections:

2.32.010 Qualification.

2.32.020 Standards adherence.

2.32.010 Qualification.

The city declares that it desires to qualify to receive aid from the state under the provisions of Chapter 1 of Title 4, Part 4 of the Penal Code. (Ord. 291 § 1, 1967)

2.32.020 Standards adherence.

Pursuant to Section 13522 of Chapter 1 of the Penal Code, the city while receiving aid from the state pursuant to said Chapter 1 will adhere to the standards for recruitment and training established by the California Commission on Peace Officers Standards and Training. (Ord. 291 § 2, 1967)

Chapter 2.40

UNCLAIMED PROPERTY

Sections:

- 2.40.010 Return to owner.
- 2.40.020 Sale at auction.
- 2.40.030 Destruction when no bids received.

2.40.010 Return to owner.

All personal property coming into the possession of the police department, by under and through the exercise of the proper duties and functions of the police department shall be returned to and delivered to the rightful owners thereof upon presentation of proof of identity and right of possession and ownership. (Ord. 92 § 1, 1955)

2.40.020 Sale at auction.

All unclaimed personal property coming into the possession of the police department shall from and after the effective date of the ordinance codified in this chapter be dealt with in the following manner:

- A. Such unclaimed property shall be held in the possession of the police department for a period of not less than six months;
- B. On or after the expiration of six months such property shall be sold at public auction to the highest bidder; and
- C. Notice of such sale shall be given by the chief of police of the police department at least five days before the time fixed for such sale by publication once in a newspaper of general circulation published in the county. Such notice shall specify the date, hour and place at which such sale shall be conducted. At such sale the chief of police shall deliver possession of such property to the highest bidder therefor and shall receive the sum so paid and issue his or her receipt therefor. All moneys so received shall be paid to the treasurer of the city.

D. Notwithstanding the foregoing, property with a value, estimated by the chief of police, to be not in excess of five hundred dollars may be sold at other than auction in the following circumstances:

- 1. If the property is of a variety which either cannot be legally sold to the general public, or there are public policy reasons for not doing so, or
- 2. The expenses of conducting the auction would exceed the probable return.

In such cases property may be sold or exchanged to prospective purchasers who, in the determination of the chief of police, are likely to pay as much for the property as could be expected through reasonable alternative procedures. Such property may not, however, be sold to any city employee or spouse, child, or parent of a city employee. (Ord. 633 § 1, 1987; Ord. 92 § 2, 1955)

2.40.030 Destruction when no bids received.

In the event that property is not disposed of pursuant to the proceeding section, then the chief of police is authorized and directed to destroy such property. (Ord. 633 § 2, 1987; Ord. 92 § 3, 1955)

Chapter 2.44
PERSONNEL SYSTEM

Sections:

- 2.44.010 Adopted.
- 2.44.020 Definitions.
- 2.44.030 Personnel officer.
- 2.44.040 *Repealed.*
- 2.44.050 *Repealed.*
- 2.44.060 Exempted employees.
- 2.44.062 Exempted officials.
- 2.44.070 Rules adoption and amendment.
- 2.44.080 Appointments.
- 2.44.090 Probationary period.
- 2.44.100 Continuation of employment.
- 2.44.110 *Repealed.*
- 2.44.120 Disciplinary action.
- 2.44.130 Appeal.
- 2.44.140 Layoff and reemployment.
- 2.44.150 Political activity.
- 2.44.160 Discrimination prohibited.
- 2.44.170 Right to contract for special service.
- 2.44.180 Effective date.
- 2.44.190 No conflict with federal or state law.
- 2.44.200 Preemption.

2.44.010 Adopted.

In order to establish an equitable and uniform procedure for dealing with personnel matters, to attract to municipal service the best and most competent persons available, to assure that appointments and promotions of employees will be based on merit and fitness, and to provide a reasonable degree of security for qualified employees, the personnel system set forth in this chapter is adopted. (Ord. 988 § 1 (part), 2014: Ord. 381 § 1, 1974)

2.44.020 Definitions.

As used in this chapter, the following terms shall be defined as indicated:

- A. "Appointing authority" means the city manager, who is the appointing authority of employees in the competitive service; provided, however, the city manager may delegate in writing the appointing authority to any department head.
- B. "Class" means all positions sufficiently similar in duties, authority, and responsibility to permit grouping under a common title in the application with equity of common standards of selection, transfer, demotion and salary.
- C. "Competitive service" means all positions of employment in the service of the city except those specifically excluded by this chapter.
- D. "Days" means calendar days unless otherwise stated.
- E. "Demotion" means the movement of an employee from one class to another class having a lower maximum rate of pay.
- F. "Employment list" means a list of names of persons who may be considered for employment with the city under specified conditions.
- G. "Examination" means selection techniques used to measure the relative capacities of the persons applying for positions within the competitive service.

H. “Layoff” means the separation of employees from the active workforce due to lack of work or funds, or to the abolition of positions by the city council for the above reasons, or due to organizational changes.

I. “Position” means a group of duties and responsibilities in the competitive service requiring the full-time or part-time employment of one person.

J. “Probationary period” means a working test period during which an employee is required to demonstrate his or her fitness for the position to which he or she is appointed by actual performance of the duties of the position.

K. “Promotion” means the movement of an employee from one class to another class having a higher maximum rate of pay.

L. “Provisional appointment” means an appointment of a person who possesses the minimum qualifications established for a particular class and who has been appointed to a position in that class in the absence of available eligibles.

M. “Reinstatement” means the reemployment without examination of a former regular employee or probationary employee.

N. “Suspension” means the temporary separation from the service of an employee without pay, for disciplinary purposes.

O. “Transfer” means a change of an employee from one position to another position in the same class or in a comparable class.

P. “Regular” means a position in the competitive service that is, regardless of the number of hours worked per week, intended to be continuous and uninterrupted (except for authorized or unpaid leave) and receives benefits. Positions intended to be seasonal, of a limited term, on call only, emergency, intermittent, substitute or on any other irregular basis are not “regular.” (Ord. 988 § 1 (part), 2014; Ord. 829 § 1, 2001; Ord. 381 § 2, 1974)

2.44.030 Personnel officer.

The city manager shall be the personnel officer. The city manager may delegate any of the powers and duties conferred upon him or her as personnel officer under this chapter to any other officer or employee of the city or may recommend that such powers and duties be performed under contract as provided in Section 2.44.170. The personnel officer shall:

- A. Act as the appointing authority for the city;
- B. Administer all the provisions of this chapter and of the personnel rules not specifically reserved to the city council;
- C. Prepare and recommend to the city council personnel rules and revisions and amendments to such rules;
- D. Prepare or cause to be prepared a position classification plan, including class specifications, and revisions of the plan. The plan, and any revisions thereof, shall become effective upon approval by the city council;
- E. Have the authority to discipline employees in accordance with this chapter and the personnel rules of the city;
- F. Provide for the publishing or posting of notices of tests for positions in the competitive service, the receiving of applications therefor, the conducting and grading of tests, and the certification of a list of all persons eligible for appointment to the appropriate position in the competitive service. (Ord. 988 § 1 (part), 2014; Ord. 381 § 3, 1974)

2.44.040 Personnel board – Designated.

Repealed by Ord. 988. (Ord. 381 § 4, 1974)

2.44.050 Personnel board – Duties.

Repealed by Ord. 988. (Ord. 381 § 5, 1974)

2.44.060 Exempted employees.

The provisions of this chapter apply to all employees in the service of the city, except:

- A. The city manager and any assistant city manager;
- B. Any department head, including the chief of police, whose first date of employment is July 1, 2001, or after;
- C. Emergency employees who are hired to meet the immediate requirements of an emergency condition, such as fire, flood, or earthquake;
- D. Employees who are not “regular” (as defined in Section 2.44.020(P)) employees. (Ord. 988 § 1 (part), 2014; Ord. 829 § 2, 2001; Ord. 381 § 6, 1974)

2.44.062 Exempted officials.

The provisions of this chapter do not apply to any of the following:

- A. Elective officers;
- B. Members of appointive boards, commissions, and committees;
- C. Persons engaged under contract to supply expert, professional, technical or any other services;
- D. Volunteer personnel;
- E. City attorney, whether or not he or she is an employee. (Ord. 988 § 1 (part), 2014; Ord 829 § 3, 2001)

2.44.070 Rules adoption and amendment.

Personnel rules shall be adopted by resolution of the city council after notice of such action has been publicly posted in at least three public places designated by the city council, and at least five days prior to city council consideration. The personnel officer shall give reasonable written notice to each recognized employee organization affected by the ordinance, rule, resolution or regulation or amendment thereof proposed to be adopted by the city council. Amendments and revisions may be suggested by any interested party and shall be processed as provided in the personnel rules. The rules shall establish regulations governing the personnel system including:

- A. Preparation, installation, revision and maintenance of a position classification plan covering all positions in the competitive service, including employment standards and qualifications for each class;
- B. Public announcement of all tests and acceptance of applications for employment;
- C. Preparation and conduct of tests and the establishment and use of resulting employment lists containing names of persons eligible for appointment;
- D. Certification and appointment of persons from employment lists and the making of provisional appointments;
- E. Establishment of probationary periods;
- F. Evaluation of employees during the probationary period;
- G. Transfer, promotion, demotion, reinstatement, disciplinary action and layoff of employees in the competitive service;
- H. Separation of employees from the city service;
- I. The establishment of adequate personnel records;
- J. The establishment of appeal procedures concerning the interpretation of application of this chapter and any rules adopted under this chapter. (Ord. 988 § 1 (part), 2014; Ord. 381 § 7, 1974)

2.44.080 Appointments.

Appointments to vacant positions in the competitive service shall be made in accordance with the personnel rules. Appointments and promotions shall be based on merit and fitness to be ascertained so far as practicable by competitive examination. Examinations may be used and conducted to aid in the selection of qualified employees and shall consist of selection techniques which will test fairly the qualifications of candidates such as achievement and aptitude tests, written tests, personal interview, performance tests, physical agility tests, evaluation of daily work performance, work samples or any combinations of these or other tests. The probationary period shall be considered an extension of the examination process. Physical and medical tests may be given as a part of any examination.

In any examination the personnel officer may include, in addition to competitive tests, a qualifying test or tests and set minimum standards therefor. (Ord. 988 § 1 (part), 2014; Ord. 381 § 8, 1974)

2.44.090 Probationary period.

All regular appointments, including promotional appointments, shall be for a probationary period of not less than six months. Appointments to public safety positions will ordinarily be twelve months. That period may be reduced (but not below six months) if the chief of police so recommends and the city manager approves. Such a recommendation should only be made after the chief has had ample opportunity to evaluate the officer. During the probationary period, the employee may be rejected at any time without the right of appeal or hearing. An employee rejected during the probationary period from a position to which he or she has been promoted shall be reinstated to a position in the class from which he or she was promoted unless he or she is discharged from the city service as provided in this chapter and the rules.

An employee in the competitive service promoted or transferred to a position not included in the competitive service shall be reinstated to a position in the class from which he or she was promoted or transferred if action is taken to reject him or her unless he or she is discharged in the manner provided in this chapter and the personnel rules for positions in the competitive service. (Ord. 988 § 1 (part), 2014; Ord. 831, 2001; Ord. 381 § 9, 1974)

2.44.100 Continuation of employment.

Any person holding a position included in the competitive service who, on the effective date of the ordinance codified in this chapter, has served continuously in such position, or in some other position in the competitive service, for a period equal to the probationary period prescribed in the rules for his or her class, shall assume regular status in the competitive service in the position held on such effective date without qualifying test, and shall thereafter be subject in all respects to the provisions of this chapter and the personnel rules. Any other person holding positions in the competitive service shall be regarded as probationers who are serving out the balance of their probationary periods as prescribed in the rules before obtaining regular status. The probationary period shall be computed from the date of appointment or employment. (Ord. 988 § 1 (part), 2014; Ord. 381 § 10, 1974)

2.44.110 Attendance and leaves for full-time exempt positions.

Repealed by Ord. 988. (Ord. 381 § 11, 1974)

2.44.120 Disciplinary action.

The appointing authority shall have the right, for due cause, to demote, dismiss, reprimand, reduce in pay, or suspend without pay any regular non-sworn employee in accordance with procedures included in the personnel rules.

Notwithstanding any provision in this rule to the contrary, public safety personnel in the police department are subject to provisions of the Public Safety Officers Procedural Bill of Rights (POBR), as set forth in Government Code Section 3300 et seq., and wherever any provisions of these rules and regulations conflict with provisions of the POBR, the provisions of the POBR shall prevail.

The provisions of this section shall not apply to reductions in pay which are a part of a general plan to reduce salaries and wages or to eliminate positions. (Ord. 988 § 1 (part), 2014; Ord. 381 § 12, 1974)

2.44.130 Appeal.

Any employee in the competitive service shall have the right to appeal any disciplinary action, or alleged violation of this chapter, except in those instances where the right of appeal is specifically prohibited by this chapter or the rules adopted under this chapter or the personnel rules.

All appeals shall be concluded as expeditiously as possible and in accordance with the requirements and procedures as set forth in the personnel rules and regulations adopted pursuant to this chapter. (Ord. 988 § 1 (part), 2014: Ord. 381 § 13, 1974)

2.44.140 Layoff and reemployment.

Whenever in the judgment of the city council or the appointing authority it becomes necessary in the interest of economy, or because the necessity for a position no longer exists, the city council or the appointing authority may abolish any position or employment in the competitive service; and the employee holding such position for employment may be laid off without taking disciplinary action.

The order of layoff of employees shall follow the process outlined in the personnel rules adopted pursuant to this chapter. (Ord. 988 § 1 (part), 2014: Ord. 381 § 14, 1974)

2.44.150 Political activity.

The political activities of city employees shall conform to pertinent provisions of state and federal law. (Ord. 988 § 1 (part), 2014: Ord. 381 § 15, 1974)

2.44.160 Discrimination prohibited.

No person in the competitive service, or seeking admission thereto, shall be employed, promoted, demoted or discharged, or in any way favored or discriminated against, because of political opinions or affiliations, race, color, ancestry, national origin, religious creed, sex, age, sexual orientation, or gender identity or because of the exercise of his or her rights under Section 3502 of the Government Code. (Ord. 988 § 1 (part), 2014: Ord. 381 § 16, 1974)

2.44.170 Right to contract for special service.

The city manager shall consider and make recommendations to the city council regarding the extent to which the city should contract for the performance of technical services in connection with the establishment or operation of the personnel system. The city council may contract with any qualified person or public or private agency for the performance of all or any of the following responsibilities and duties imposed by this chapter:

- A. The preparation of personnel rules and subsequent revisions and amendments thereof;
- B. The preparation of a position classification plan, and subsequent revisions and amendments thereof;
- C. The preparation, conduct and grading of competitive tests;
- D. The conduct of employee training programs;
- E. Special and technical services of advisory or informational character on matters relating to personnel administration. (Ord. 988 § 1 (part), 2014: Ord. 381 § 17, 1974)

2.44.180 Effective date.

The ordinance codified in this chapter shall become effective immediately after the date of final passage by the city of Capitola city council. (Ord. 988 § 1 (part), 2014)

2.44.190 No conflict with federal or state law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. (Ord. 988 § 1 (part), 2014)

2.44.200 Preemption.

The provisions of this chapter shall be null and void if state or federal legislation, or administrative regulation, takes effect with the same or substantially similar provisions as contained in this chapter. The city council shall determine whether or not identical or substantially similar statewide legislation has been enacted or regulations issued. (Ord. 988 § 1 (part), 2014)

Chapter 2.48
RETIREMENT SYSTEM

Sections:

2.48.010 P.E.R.S. participation.

2.48.010 P.E.R.S. participation.

The city shall continue to participate in the Public Employees' Retirement System on such terms and conditions as are embodied in the city's contract with P.E.R.S. together with any applicable provisions and individual contracts of employment or memorandums of understanding. (Ord. 828 § 1, 2001; Ord. 334 § 1, 1970)

Chapter 2.52

APPEALS TO CITY COUNCIL

Sections:

- 2.52.010 Applicability of chapter.
- 2.52.020 Time and form of appeal.
- 2.52.030 Setting of the hearing date.
- 2.52.040 Standing to appeal.
- 2.52.050 Conduct of the hearing.
- 2.52.060 Findings.

2.52.010 Applicability of chapter.

Except when a different procedure is otherwise expressly provided by this code, all appeals to the city council from a decision of any city employee, board, or commission shall be conducted as set out in this chapter. (Ord. 519 (part), 1982)

2.52.020 Time and form of appeal.

All appeals shall be made in writing and delivered to the office of the city clerk with payment of the fee established by resolution. Such appeals shall be made within ten working days from the time of the decision that is the subject of the appeal, except that when neither the applicant nor the applicant's representative has been present at the meeting in which the decision was rendered, the appeal time shall be fourteen working days from the date the staff mails to the applicant a notice of the decision. The request for appeal shall 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. (Ord. 1038 § 1 (part), 2020; Ord. 845 § 1, 2003; Ord. 519 (part), 1982)

2.52.030 Setting of the hearing date.

The city staff can either set the hearing for the next city council meeting or shall, at the next city council meeting, request the city council to set the time and place of hearing. (Ord. 519 (part), 1982)

2.52.040 Standing to appeal.

The council may refuse to hear an appeal by a person whom the council determines does not have a significant interest in the matter. In land use matters, any citizen of Capitola or any property owner likely to be affected by the decision, shall be deemed to have a significant interest. (Ord. 519 (part), 1982)

2.52.050 Conduct of the hearing.

The hearing shall be de novo. The appellant's presentation shall be limited to issues raised in the request for appeal and to reasonable rebuttal. The ordinary order of presentation is as follows: staff report; appellant; real property in interest, if any; public comment; appellant's rebuttal; rebuttal by real party in interest, if any; council consideration. The presiding officer may set forth any reasonable time limits for any presentation, and may change these procedures, in his or her discretion. (Ord. 1038 § 1 (part), 2020; Ord. 519 (part), 1982)

2.52.060 Findings.

Findings may either be made by the city council at the time of the hearing or the council may direct the city staff to bring back findings for later council determination. The council may render a final decision, notwithstanding that the findings may be rendered at a later time. (Ord. 519 (part), 1982)

Chapter 2.56

ART AND CULTURAL COMMISSION

Sections:

- 2.56.010 Created.
- 2.56.020 Appointment.
- 2.56.030 Terms of office.
- 2.56.040 Officers, meetings, and procedures.
- 2.56.050 Duties.
- 2.56.060 Definitions.

2.56.010 Created.

The city shall continue to have an art and cultural commission. The art and cultural commission shall consist of nine members as follows:

- A. One city council member;
- B. One planning commissioner;
- C. One artist or arts organization representative member;
- D. One arts professional member;
- E. Five at-large members. (Ord. 944 § 1, 2010; Ord. 851 § 1, 2003)

2.56.020 Appointment.

The council member and planning commissioner appointees shall be selected by a majority vote of their respective boards. The artist or arts organization representative, arts professional, and the at-large appointees shall be appointed to the art and cultural commission by a majority vote of the city council. (Ord. 851 § 1, 2003)

2.56.030 Terms of office.

The art and cultural commissioners shall serve two-year terms. With the addition of two at-large member positions in 2010, one will expire on December 31, 2010, and one will expire on December 31, 2011, in order that there are two at-large member positions expiring in 2010, and three at-large member positions expiring in 2011. (Ord. 944 § 1, 2010; Ord. 851 § 1, 2003)

2.56.040 Officers, meetings, and procedures.

A. Chairperson and Vice Chairperson. As soon as practicable, following the first day of January of each year, the art and cultural commission shall select one of its members as chairperson and one of its members as vice-chairperson. The chairperson and vice chairperson shall serve a term of one year, or until a successor is elected.

B. Committees. The art and cultural commission shall designate specific committees as follows: public art, volunteers, fundraising, marketing, and any other committee as necessary. Committees shall be composed of no fewer than two and no more than three commissioners. The committees may also include nonvoting volunteer members as deemed necessary by the art and cultural commission. The committees shall report to the art and cultural commission on no less than a quarterly basis.

C. Artist Selection Panels. The art and cultural commission may establish an artist selection panel, as defined in the art and cultural master plan, to select works of art for recommendation to the city council.

D. Meetings. The art and cultural commission shall hold a regular meeting at least once each month.

E. Procedures. Procedures for the conduct of the business of the art and cultural commission, not specified in the ordinance establishing the art and cultural commission's authority, shall be set forth in bylaws, forms, applications, rules, and regulations adopted by the art and cultural commission for the conduct of its business subject to approval

of the city council. All meetings of the art and cultural commission shall be open to the public and are subject to Title 5, Division 2, Part 1, Chapter 9 of the California Government Code or successor legislation. The decisions of the art and cultural commission shall be transmitted to the city manager and to such other body or bodies which have jurisdiction to review projects under consideration. If more than one board or commission has jurisdiction over a matter decided by the art and cultural commission, the first to consider it shall refer it to the others. (Ord. 851 § 1, 2003)

2.56.050 Duties.

The art and cultural commission shall have the following duties and responsibilities:

- A. Advise the city council as to the allocation of public funds for the support and encouragement of existing and new programs in the arts, and for the acquisition by purchase, gift, or otherwise, of works of art;
- B. Subject to city council approval, initiate, sponsor, or direct special programs which will enhance the cultural climate of the city;
- C. Establish close liaison with other commissions and civic organizations in order to foster public interest in the arts;
- D. Advise the city council concerning the interpretation and implementation of the city's established policies and practices, including the art and cultural master plan, as they relate to the art and cultural commission's objectives;
- E. In February of each year, prepare for city council review an assessment of the art and cultural commission's goals, plans and objectives from the prior fiscal year and recommend for council approval the art and cultural commission's goals, plans, and objectives for the next fiscal year;
- F. Perform such other functions and duties as may be directed by the city council. (Ord. 851 § 1, 2003)

2.56.060 Definitions.

"Work of art" means, for the purposes of this chapter, any work of visual art, including, but not limited to, drawing, painting, mural, fresco, sculpture, mosaic, decoration, inscription, stained glass, monument, calligraphy, photography, graphic art, crafts, mixed media, electronic art, media art, an artistic or aesthetic element of the project architecture or landscape architecture if created by an artist or artist team, or any other element recommended by the art and cultural commission. The term "work of art" may also include functional elements of capital improvement projects, such as benches, gates, lighting, and landscaping if such elements are designed by a professional artist. (Ord. 851 § 1, 2003)

Chapter 2.58

FUNDING THE PUBLIC ART PROGRAM

Sections:

- 2.58.010 Purpose.
- 2.58.020 Definitions.
- 2.58.030 Public art account.
- 2.58.040 Applicability.
- 2.58.050 Funds for public art.
- 2.58.060 Funding exclusions from, and additions to, the public art program.
- 2.58.070 Application procedures for placement of required public art on private nonresidential property.
- 2.58.080 Approval for placement of public art on private nonresidential property.
- 2.58.090 Application procedure for acceptance of public art donated to the city.
- 2.58.100 Review of application for acceptance of public art donated to the city.
- 2.58.110 Certificate of occupancy.
- 2.58.120 Ownership of public art on private nonresidential property.
- 2.58.130 Removal or alteration of public art.
- 2.58.140 Program administration.

2.58.010 Purpose.

The city of Capitola wishes to enhance the cultural and aesthetic environment of the city, to encourage creativity, the appreciation of the arts and our cultural heritage. Through the establishment of a program of public art funded by private development, the city will promote the general welfare through balancing the community's physical growth and revitalization with its cultural and artistic resources. (Ord. 869 § 1, 2004)

2.58.020 Definitions.

A. "Acquisition" means the acquirement of works of art by donation, purchase or commission.

B. "Public place" means city or privately owned land or buildings which are open to the general public on a regular basis.

C. "Eligible public construction project" means any capital improvement project of the city involving a public place as identified in the annual capital improvement budget of the city and which is paid for wholly or in part by city funds, nonresidential development project which exceeds a total building permit valuation of two hundred fifty thousand dollars as calculated by the city of Capitola building permit application.

EXCEPTION: "Eligible construction project" shall not include capital improvement projects for which the sources of funds are limited to a specified purpose, or for which the terms of a contract, federal or state grant, law, or regulation prohibit or restrict the expenditure of funds on works of art. However, it shall be the policy of the city that all city departments shall, from the effective date of this ordinance, include a request for public art funding in all grant applications or other funding support requests for capital improvement projects to any outside funding agencies.

D. "Eligible private construction project" means and includes any private nonresidential redevelopment project with a total building permit valuation of two hundred fifty thousand dollars or more as calculated by the city of Capitola building permit application.

EXCEPTION: "Eligible private construction project" shall not include projects which consist only of heating, ventilation, air-conditioning, reroofing, cosmetic work that does not affect items regulated by the model building codes, and equipment not considered to be part of the architecture of the building or area.

E. Professional Artist or Artwork. It is the policy of the art and cultural commission that all artworks commissioned or acquired under the public art plan be designed by professional visual artists. A "professional artist" is a person who has established a reputation of artistic excellence, as judged by peers, through a record of exhibitions, public commissions, sale of works, or educational attainment.

F. Artwork may include, but is not limited to, the following:

1. Sculpture: free-standing, wall supported or suspended; kinetic, electronic; in any material or combination of materials.
2. Murals or portable paintings: in any material or variety of materials, with or without collage or addition of nontraditional materials or means.
3. Earthworks, fiber works, neon glass mosaics, photographs, prints, calligraphy, any combination of forms of media including sound, literary elements, film holographic images, and video systems; hybrids of any media and new genres.
4. Furnishings or fixtures, including but not limited to gates, railings, streetlights, signs, seating, if artist-created as unique elements or limited editions.
5. Artistic or aesthetic elements of the overall architecture or landscape design if created by a professional artist or a design team that includes a professional visual artist.
6. Temporary artworks or installations, as such artworks serve the purpose of providing community and educational outreach.
7. The incremental costs of infrastructure elements, such as sound walls, utility structures, roadway elements and other items if designed by an artist or design team that included an artist as a co-designer.

Ineligible artworks:

1. Art objects which are mass produced or of standard manufacture, such as playground equipment, fountains or statuary elements, unless incorporated into an artwork by a project artist.
2. Reproductions, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking or other media arts.
3. Decorative, ornamental, architectural or functional elements which are designed by the building architect, as opposed to the elements created by an artist commissioned for that purpose.
4. Landscape architecture and landscape gardening except where these elements are designed by a professional visual artist and/or are an integral part of the artwork.
5. Services or utilities necessary to operate and maintain an artwork over time.

G. "Total construction cost," as used in this chapter, means the valuation of the proposed structures or improvements, as calculated by the city of Capitola building permit application.

H. "Nonresidential development" means the construction of commercial, residential/ commercial, office, industrial projects or other projects which are not intended for residential purposes.

I. "Artist selection panel" means an ad-hoc committee formed and charged by the art and cultural commission for a limited period of time to recommend artists for individual projects or groups of projects. (Ord. 892 § 1, 2005; Ord. 869 § 1, 2004)

2.58.030 Public art account.

There shall be a noninterest-bearing account designated for public art, into which shall be deposited all fees paid pursuant to this chapter. This account shall be maintained by the city finance director and shall only be used for the acquisition, installation, and improvement (see Program Administration Section 2.58.140) of public art in the city. (Ord. 869 § 1, 2004)

2.58.040 Applicability.

The program described in this chapter is a mandatory program, and the standards specified are minimum standards for compliance.

A. This chapter shall apply to all eligible public and private construction projects as defined by this ordinance having a total construction cost of two hundred and fifty thousand dollars or more, as calculated by the city of Capitola building permit application. The obligation to comply with this chapter shall not be evaded by performing a series of small construction projects if the project could have been performed as a single construction project with in a three-year period.

B. This chapter shall apply to all expansion of, remodeling of, or tenant improvements to existing eligible buildings when any such work has a total construction cost of two hundred fifty thousand dollars or more, as calculated by the city of Capitola building permit application. (Ord. 892 § 2, 2005; Ord. 869 § 1, 2004)

2.58.050 Funds for public art.

A. Private Project Applicant. The project applicant shall acquire and install public art recommended by an art selection panel, with review by the art and cultural commission and approval of the city council, in a public place on or in the vicinity of the development project site. The minimum cost of the public art, including installation, shall be determined by the following:

1. After the effective date of this chapter, if a private developer makes application for a permit to develop a nonresidential project with a total building permit valuation of at least two hundred fifty thousand dollars, excluding land acquisition, not less than two percent of the project budget shall be set aside for the acquisition of art for incorporation into the project or for placement in the general vicinity of the project.
2. The private developer may, with city council approval, in lieu of incorporating public art in their project, deposit an amount equal to one percent of the total building permit valuation with the city, to be used for public art elsewhere in the city. Deposits of funds for public art from the private developer or for the in-lieu payment shall be made to the city prior to the issuance of a building permit for the project.

B. City Projects.

1. The city council shall provide in the annual capital improvement budget for an amount of not less than two percent of the total amount budgeted for each “eligible construction project” to be set aside and identified as sources of funds to be appropriated and expended for acquisition of works of art in accordance with this section. Appropriations for purposes of acquiring works of art in order to carry out the provisions of this chapter shall be made in accordance with law and the budgeting procedures of the city.
2. Appropriations for works of art may be expended to acquire works of art for any public place if the terms of a contract, federal or state grant, law or regulation do not limit or restrict the funds so appropriated to use for a specific “eligible public or private construction project.” Appropriations for works of art shall only be expended for acquisition of works of art to be located on the premises of a specific “eligible public or private construction project” if the terms of a contract, federal or state grant, law, or regulation do limit or restrict the use of funds to a specific “eligible construction project” only.
3. Subject to applicable law, appropriations and expenditures for works of art may include, but are not limited to, the costs and expenses incurred in the process of selecting and installing works of public art and for design and planning services of artists, as well as program administration and project management.
4. The city council shall approve the acquisition of works of art to be funded under the capital improvement budget.
5. All artwork donated to the city shall become the property and responsibility of the city upon acceptance of the city council.
6. Other Public Agencies. If the city enters into an agreement with another public agency, whereby city or agency funds are transferred to such agency for the purpose of performing a capital improvement project which

would otherwise be deemed an “eligible construction project” under this chapter, such agreement shall provide, whenever it is lawful or appropriate to do so, that the recipient agency or its successor in interest shall take appropriate measures to insure that not less than two percent of the city or agency funds so transferred are expended for acquisition of works of art. (Ord. 892 § 3, 2005; Ord. 869 § 1, 2004)

2.58.060 Funding exclusions from, and additions to, the public art program.

City manager responsibilities:

A. The city manager, in conjunction with the submission of the annual capital budgets of the city, and unless otherwise prohibited by law from doing so, may:

1. Propose funds to be added to the public art program, which funds may be utilized to place works of art in existing public places which do not otherwise qualify as “eligible public construction projects.”
2. Prior to the submission of the city’s proposed annual capital improvement project budget to the city council, the city manager shall notify the art and cultural commission of: (i) those capital improvement projects which are designated “eligible public construction projects” in the budget; and (ii) any proposed discretionary funds proposed for addition to the public art program.
3. The following provisions shall apply to the two percent minimum public art calculation only in those circumstances in which the city receives funds from persons, firms, organizations or other agencies which are restricted as to the use of such funds for works of art, or which such funds are otherwise restricted by law or regulation:
 - a. If the terms of a contract, federal or state grant, law or regulation prohibit the use of funds in connection with an “eligible public construction project” for expenditure upon works of art, then the basis on which the public art funding percentage is applied will exclude any funds which are so prohibited or restricted.
 - b. If the terms of a contract, federal or state grant, law or regulation provide that any additional expenditure by the city on works of art for an otherwise “eligible public construction project” shall reduce the amount of funds received by the city for the project, then the project may be wholly or partially exempted from the provisions of this chapter. (Ord. 892 § 3, (part), 2005; Ord. 869 § 1 (part), 2004)

2.58.070 Application procedures for placement of required public art on private nonresidential property.

An application for placement of public art on private nonresidential property shall be submitted to the community development director and shall include:

- A. Preliminary sketches, photographs or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art;
- B. An appraisal or other evidence of the value of the proposed public artwork, including acquisition and installation costs;
- C. Preliminary plans containing such detailed information as may be required the art and cultural commission to adequately evaluate the location of the artwork in relation to the proposed development and its compatibility to the proposed development, including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods;
- D. A narrative statement to be submitted to the community development director to demonstrate that the public art will be displayed in an area open and freely available to the general public, or that public accessibility will be provided in an equivalent manner based on the characteristics of the artwork or its placement on the site. (Ord. 869 § 1, 2004)

2.58.080 Approval for placement of public art on private nonresidential property.

A. Applications completed in accordance with Section 2.58.070 shall be submitted to the art and cultural commission for review and recommendation to the city council of public art in accordance with this chapter.

B. The art and cultural commission upon receipt of a completed application shall convene an art selection panel to review the proposed public art using adopted public art evaluation criteria.

C. The recommended completed application shall be forwarded by the art and cultural commission to the city council, which shall have the sole authority to accept, reject or conditionally accept the project.

D. All approvals for placement of public art on private property shall be obtained prior issuance of a certificate of occupancy. (Ord. 892 § 4, 2005; Ord. 869 § 1, 2004)

2.58.090 Application procedure for acceptance of public art donated to the city.

An application for the donation of public art to the city shall be submitted to the art and cultural commission and shall include:

A. Preliminary sketches, photographs, models or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art;

B. An appraisal or other evidence of the value of the proposed public art, including acquisition and installation costs;

C. A written agreement executed by or on behalf of the artist who created the public art which expressly waives his or her rights under the California Art Preservation Act or other applicable law;

D. Other information as may be required by the art and cultural commission to adequately evaluate the proposed donation of public art. (Ord. 869 § 1, 2004)

2.58.100 Review of application for acceptance of public art donated to the city.

A. The art and cultural commission shall convene an art selection panel to review the proposed public art, using adopted public art evaluation criteria.

B. Upon recommendation of the art selection panel, the public art application shall be reviewed by the art and cultural commission.

C. Following the review, the art and cultural commission shall forward the public art application to the city council, which shall have the sole authority to accept, reject or conditionally accept the donation. (Ord. 869 § 1, 2004)

2.58.110 Certificate of occupancy.

The following requirements must be met prior to the city's issuance of a certificate of occupancy:

A. Full compliance with one of the following:

1. The approved public art has been placed on the site of the approved project, in a manner satisfactory to the building official and the Capitola art and cultural commission; or

2. In-lieu art fees have been paid.

B. If public art has been placed on the site of the approved project, the applicant must execute and record with the county recorder covenants, conditions and restrictions (CC&Rs), which require the property owner, successor in interest and assigns to:

1. Maintain the public art in good condition as required by the city's public art guidelines;

2. Indemnify, defend and hold the city and related parties harmless from any and all claims or liabilities from the public art, in a form acceptable to the city attorney;

3. Maintain liability insurance, including coverage and limits as may be specified by the city manager. (Ord. 892 § 5, 2005; Ord. 869 § 1, 2004)

2.58.120 Ownership of public art on private nonresidential property.

A. All public art placed on the site of an applicant's project shall remain the property of the applicant; the obligation to provide all maintenance necessary to preserve the public art in good condition shall remain with the owner of the site.

B. Maintenance of public art, as used in this chapter, shall include without limitation, preservation of the artwork in good condition to the satisfaction of the city, protection of the public art against physical defacement, mutilation or alteration, and securing and maintaining fire and extended coverage insurance and vandalism coverage in an amount to be determined by the city manager. Prior to placement of approved public art, applicant and owner of the site shall execute and record a covenant, in a form approved by the city, requiring maintenance of the public art. Failure to maintain the public art as provided in this chapter is declared to be a public nuisance.

C. In addition to all other remedies provided by law, in the event the owner fails to maintain the public art, upon reasonable notice the city may perform all necessary repairs and maintenance or secure insurance, and the costs therefore shall become a lien against the real property.

D. All artwork donated to the city shall become the property and responsibility of the city upon acceptance by the city council. (Ord. 869 § 1, 2004)

2.58.130 Removal or alteration of public art.

A. Public art installed on or integrated into a construction project pursuant to the provisions of this chapter shall not be removed or altered without the approval of the city council.

B. If any public art provided on a development project pursuant to the provisions of this chapter is knowingly removed by the property owner without prior approval, the property owner shall contribute funds equal to the development project's original public art requirement to the city's public art in-lieu account, or replace the removed artwork with one which is of comparable value and approved by the city council. If this requirement is not met, the occupancy permit for the project may be revoked by the city council upon due notice and an opportunity to be heard. The city may, in addition, pursue any other available civil or criminal remedies or penalties. (Ord. 869 § 1, 2004)

2.58.140 Program administration.

A. Up to twenty percent of the percent for art allocations may be expended on program administration, project management and community outreach activities, including, but not limited to, staffing, artist selection, publicity, community education activities, project documentation, consultants, and other activities necessary for the administration of the program.

B. Maintenance. Proceeds of the percent for art program shall not be used for maintenance of the public art collection. Routine and preventive maintenance of works of art shall be funded by the city council and performed by the public works department, under the guidance of the art and cultural commission. The art and cultural commission as part of the annual budget process shall submit requests for non-routine and restorative maintenance, as well as other curatorial services. (Ord. 869 § 1 (part), 2004)

Chapter 2.60

MILITARY EQUIPMENT USE

Sections:

- 2.60.010 Name of chapter.
- 2.60.020 Definitions.
- 2.60.030 Military equipment use policy requirement.
- 2.60.040 Use in exigent circumstances.
- 2.60.050 Reports on the use of military equipment.
- 2.60.060 Severability.

2.60.010 Name of chapter.

A. This chapter shall be known as the military equipment use ordinance. (Ord. 1051 § 3 (Exh. A), 2022)

2.60.020 Definitions.

A. "Military equipment" includes all of the following (per Cal. Gov. Code § 7070):

1. Unmanned, remotely piloted, powered aerial or ground vehicles.
2. Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this definition.
3. High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this definition.
4. Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
5. Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
6. Weaponized aircraft, vessels, or vehicles of any kind.
7. Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this definition.
8. Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this definition.
9. Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this definition.
10. Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.
11. Any firearm or firearm accessory that is designed to launch explosive projectiles.
12. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.
13. Taser Shockwave, microwave weapons, water cannons, and the long range acoustic device (LRAD).

The Capitola Municipal Code is current through Ordinance 1061, passed June 22, 2023.

14. The following projectile launch platforms and their associated munitions: 40mm projectile launchers, “bean bag,” rubber bullet, and specialty impact munition (SIM) weapons.

15. Any other equipment as determined by a governing body or a state agency to require additional oversight.

16. Notwithstanding subsections (A)(1) through (15), “military equipment” does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.

B. “City” means any department, agency, bureau, and/or subordinate division of the city of Capitola.

C. “Police department” means any division, section, bureau, employee, volunteer and/or contractor of the Capitola police department.

D. “City council” means the governing body that is the Capitola city council.

E. “Military equipment use policy” means a publicly released, written document that includes, at a minimum, all of the following:

1. A description of each type of military equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the military equipment.

2. The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of military equipment.

3. The fiscal impact of each type of military equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.

4. The legal and procedural rules that govern each authorized use.

5. The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of military equipment to ensure the full protection of the public’s welfare, safety, civil rights, and civil liberties and full adherence to the military equipment use policy.

6. The mechanisms to ensure compliance with the military equipment use policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.

7. For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of military equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

F. “Exigent circumstances” means a law enforcement agency’s good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person is occurring, has occurred, or is about to occur.

G. “State agency” means the law enforcement division of every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

H. “Type” means each item that shares the same manufacturer model number. (Ord. 1051 § 3 (Exh. A), 2022)

2.60.030 Military equipment use policy requirement.

A. The Capitola police department shall obtain approval of the city council, by a resolution adopting a military equipment use policy (MEUP) at a regular meeting of the city council held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) prior to engaging in any of the following:

1. Requesting military equipment made available pursuant to 10 U.S.C. Section 2576a.
2. Seeking funds for military equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
3. Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
4. Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the city of Capitola.
5. Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.
6. Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, military equipment.
7. Acquiring military equipment through any means not provided by this section.

B. No later than May 1, 2022, if seeking to continue the use of any military equipment that was acquired prior to January 1, 2022, the Capitola police department shall commence a city council approval process in accordance with this section. If the city council does not approve the continuing use of military equipment, including by adoption pursuant to a military equipment use policy submitted pursuant to this code, within 180 days of submission of the proposed military equipment use policy to city council, the Capitola police department shall cease its use of the military equipment until it receives the approval of city council in accordance with this code.

C. In seeking the approval of city council, the Capitola police department shall submit a proposed military equipment use policy to the city council and make those documents available on the police department's internet website at least 30 days prior to any public hearing concerning the military equipment at issue.

D. The city council shall only approve a military equipment use policy pursuant to this chapter if it determines all of the following:

1. The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
2. The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
3. If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
4. Prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

E. In order to facilitate public participation, any proposed or final military equipment use policy shall be made publicly available on the internet website of the police department for as long as the military equipment is available for use.

F. The city council shall review this chapter at least annually and vote on whether to renew it at a regular meeting held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code). (Ord. 1051 § 3 (Exh. A), 2022)

2.60.040 Use in exigent circumstances.

A. Notwithstanding the provisions of this chapter, the police department may acquire, borrow and/or use military equipment in exigent circumstances without following the requirements of this code.

B. If the police department acquires, borrows, and/or uses military equipment in exigent circumstances, in accordance with this section, it must take all of the following actions:

1. Provide written notice of that acquisition or use to the city council within 30 days following the commencement of such exigent circumstance, unless such information is confidential or privileged under local, state or federal law.
2. If it is anticipated that the use will continue beyond the exigent circumstance, submit a proposed amended military equipment use policy to the city council within 90 days following the borrowing, acquisition and/or use, and receive approval, as applicable, from the city council.
3. Include the military equipment in the police department's next annual military equipment report. (Ord. 1051 § 3 (Exh. A), 2022)

2.60.050 Reports on the use of military equipment.

A. The police department shall submit to city council an annual military equipment report for each type of military equipment approved by the city council within one year of approval, and annually thereafter for as long as the military equipment is available for use.

B. The police department shall also make each annual military equipment report required by this section publicly available on its internet website for as long as the military equipment is available for use.

C. The annual military equipment report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of military equipment:

1. A summary of how the military equipment was used and the purpose of its use.
2. A summary of any complaints or concerns received concerning the military equipment.
3. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
4. The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
5. The quantity possessed for each type of military equipment.
6. If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

D. Within 30 days of submitting and publicly releasing an annual military equipment report pursuant to this section, the police department shall hold at least one well publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment.

E. The city council shall determine, based on the annual military equipment report submitted pursuant to this section, whether each type of military equipment identified in that report has complied with the standards for approval set forth in this code and the military equipment use policy. If the city council determines that a type of military equipment identified in that annual military equipment report has not complied with the standards for approval, the city council shall either disapprove a renewal of the authorization for that type of military equipment or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance. (Ord. 1051 § 3 (Exh. A), 2022)

2.60.060 Severability.

A. If any section, subsection, sentence, clause, phrase, or word of this chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this chapter.

B. The city council hereby declares that it would have passed this chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this chapter or application thereof would be subsequently declared invalid or unconstitutional. (Ord. 1051 § 3 (Exh. A), 2022)