Outlook

PLEASE CONFIRM RECEIPT: Beveridge & Diamond Letter re September 10, 2026 Meeting Agenda Item 8.E

From Sydney K. Prall <SPrall@bdlaw.com>
Date Wed 9/9/2026 3:30 PM
To City Council <citycouncil@cityofcapitola.gov>
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1 attachment (108 KB)
2026-09-09 - Beveridge & Diamond Letter re Drugs and Sharps Disposal Ordinance.pdf;

PLEASE CONFIRM RECEIPT

Dear City Council:

Please consider the attached letter regarding the City Council's September 10, 2026 Meeting Agenda Item 8.E: Chapter 8.40: Capitola Municipal Code.

I am sending this email on behalf of Jesse C. Miles of Beveridge & Diamond, P.C.

Thank you,

Sydney K. Prall
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September 9, 2026

VIA EMAIL
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Re: September 10, 2026 Agenda Item 8.E - Chapter 8.40; Urgency Ordinance No. 1077 and Proposed Ordinance No. 1078 (re City's Safe Drug and Sharps Disposal Ordinance)

Members of the City Council:

Beveridge & Diamond PC represents MED-Project, LLC (MED-Project). We submit this letter for the Capitola City Council's (Council) consideration at its September 10, 2026 meeting concerning Agenda Item 8.E. The City of Capitola's (City) Safe Drug and Sharps Disposal Ordinance No. 1006, codified at Chapter 8.40 of the Capitola Municipal Code (2016 Ordinance), sunsetted on September 8, 2026.

Five days before that sunset, the Council convened a special meeting and adopted Ordinance No. 1077, an urgency ordinance deleting Section 8.40.150(G), the sunset provision, and purporting to take effect immediately (Urgency Ordinance). The Urgency Ordinance is unlawful. The City had ten years' notice of the sunset written into its own law, and then invoked an extraordinary procedure five days before the sunset took effect. The record does not establish facts showing that immediate enactment was required to preserve public health or safety. Furthermore, even if the Urgency Ordinance was lawful, its September 3, 2026 effective date makes the local program subject to express preemption under SB 212.[1]

The Council also introduced Ordinance No. 1078, a regular ordinance scheduled for consideration and possible adoption on September 10, 2026 (Proposed Ordinance). That ordinance cannot cure the problem. First, the Urgency Ordinance did not lawfully remove the September 8 sunset. Thus, the 2016 Ordinance expired before the Proposed Ordinance could take effect. Second, because the Proposed Ordinance has a 2026 effective date, it is also preempted by state law.

For these reasons, the City should reject the void Proposed Ordinance, rescind the void Urgency Ordinance, and acknowledge the forthcoming transition to the state drug and sharps take-back program.

The Council unlawfully adopted the Urgency Ordinance.

The Council circumvented California's procedural safeguards by passing the Urgency Ordinance without justification. A regular city ordinance generally cannot be passed within five days of introduction or at a special meeting, and it ordinarily does not take effect until 30 days after final passage. Those safeguards create time for notice, review, deliberation, and public participation.

The urgency exception is not a shortcut around that process. Government Code section 36937(b) provides a narrow urgency ordinance exception that requires an ordinance to be

1 City of Capitola, Special City Council Meeting Minutes, Sept. 3, 2026 (recording adoption of Urgency Ordinance No. 1077 and introduction of Ordinance No. 1078); City of Capitola Urgency Ordinance No. 1077, § 6 (Sept. 3, 2026) (providing that the ordinance would take effect immediately).

necessary for the immediate preservation of the public peace, health, or safety, to declare the facts constituting the urgency, and to receive a four-fifths vote. Urgency ordinances exist for situations in which action truly must be taken immediately, not to enact a regular ordinance in the guise of an urgency measure.[2]

The Council cannot invoke the statutory exception merely by labeling Ordinance No. 1077 "urgent." The declaration is not conclusive. The record itself must establish the urgency required by section 36937(b).[3]

The Urgency Ordinance's own explanation does not satisfy that requirement. It states that an ordinance enacted through the ordinary process would not take effect before the known sunset. But that timing problem, created by the City's own inaction, does not establish a need for immediate action to preserve public peace, health or safety. The City's own delay cannot supply the facts required for immediate effectiveness. The sunset was part of the 2016 Ordinance from the day the Council adopted it. The City's agenda report reinforces that conclusion. It is our understanding that the City had not taken steps to attempt to address the sunset date until Santa Cruz County staff contacted City staff at the end of August 2026 and encouraged the City to act. The Council then called a special meeting on September 3, only five days before the sunset.[4] Nothing in that sequence of events reflects a newly arising threat requiring emergency legislation.

Nor does the record establish an actual service emergency. By September 3, 2026, MED-Project had advised the City that MED-Project USA (MPUSA), a separate entity that operates the statewide program, would implement the statewide program within the City without interruption. The City's materials identified no reason to suggest that MPUSA (or any other program operator) would not maintain a drug and sharps take-back program for residents.[5] The staff analysis provided in the written agenda packet as well as during the September 3, 2026 special meeting failed to accurately represent state program transition plans.

The Urgency Ordinance's passage compounded these defects. The City did not publish the September 3, 2026 Special Meeting agenda until approximately 2:25 pm on Wednesday, September 2, 2026. The City's agenda warned that materials submitted after 5:00 p.m. Wednesday might not reach Councilmembers, or be read by them, before consideration.

MED-Project transmitted its September 2 letter at approximately 7:00 p.m. that Wednesday. The City then revised the special meeting materials at approximately 3:00 p.m. on Thursday for a 4:00 p.m. meeting. The official minutes show that the entire special meeting lasted ten minutes. Staff presented the item, the only listed public commenter was a Santa Cruz County representative (apparently allowed to comment remotely), and the Council adopted the Urgency

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[2] Cal. Gov. Code §§ 36934, 36937; *216 Sutter Bay Assocs. v. County of Sutter*, 58 Cal. App. 4th 860, 873-74 (1997) (stating, under parallel county urgency provisions, that urgency ordinances contemplate situations where "action must be taken immediately" and that a legislative body may not enact "a regular ordinance in the guise of an urgency ordinance").

[3] Cal. Gov. Code § 36937(b); *In re Hoffman*, 155 Cal. 114, 120 (1909) (stating that "the mere declaration of the council" that an ordinance immediately preserves public health "is neither conclusive nor yet sufficient").

[4] City of Capitola, Agenda Report, Chapter 8.40: Capitola Municipal Code, Sept. 3, 2026 (stating that, at the end of August 2026, Santa Cruz County staff contacted City staff regarding expiring local ordinances and "encouraged the City to take action" to maintain the local program).

[5] Note that the 2016 Ordinance makes sharps kiosks optional, not mandatory: retailers or providers can provide mail-back systems instead. *See* 2016 Ordinance Section 8.40.080(B)(1).

Ordinance 4-0 with one Councilmember absent. The official minutes do not reflect any consideration or discussion of MED-Project's service continuity assurance before the vote.[6]

The ordinary ordinance process exists precisely so that a legislative body does not make a permanent policy decision through an emergency exception without public and Council review and input. Here, the City published the Urgency Ordinance agenda with a little over *two hours'* notice of the deadline to receive materials and provided *one hour* for the Council to review those materials. Considering that the sunset provision had existed for nearly a decade before the City rushed a meeting to make the local program indefinite, it is clear this is not the type of fact-supported urgency ordinance section 36937 authorizes.

SB 212 independently preempts the local program purportedly continued by the Urgency Ordinance.

Senate Bill 212, Solid Waste: Pharmaceutical and Sharps Waste Stewardship (SB 212), preempts the local stewardship program purportedly continued by the Urgency Ordinance. Its express-preemption rule is direct: the statewide chapter "shall preempt a local stewardship program for drugs or sharps enacted by an ordinance or ordinances with an effective date on or after April 18, 2018." A conflicting local ordinance is therefore preempted and void.[7]

The Urgency Ordinance purported to take effect immediately when adopted on September 3, 2026. That is more than eight years after SB 212's April 18, 2018 cutoff. The City cannot avoid a date-based preemption rule by characterizing a 2026 ordinance as merely preserving the 2016 program. The 2016 Ordinance made the program temporary. The Urgency Ordinance removes the very provision that ends it and supplies the legal authority for a local program that will continue indefinitely. Its 2026 effective date therefore falls squarely within SB 212's preemption provision.[8]

SB 212, subsection (c) does not save the City's action. It permits a qualifying pre-2018 local program to "continue in operation," but it does not override the local ordinance's own expiration date or exempt a later ordinance from subsection (b). Nor does subsection (a) regarding an "ordinance that took effect before April 18, 2018." After the 2016 Ordinance's sunset, continued local operation necessarily depends on the legal authority supplied by the 2026 enactment. The City cannot use subsections (c) or (a) to convert an expressly temporary grandfathered ordinance into an indefinite one while disregarding the Legislature's effective-date cutoff.

The Proposed Ordinance cannot cure these defects.

The September 10 Proposed Ordinance will not lawfully extend the City's program. SB 212 expressly preempts the Proposed Ordinance because its effective date is more than eight years following SB 212's April 18, 2018 cutoff. Labeling the Proposed Ordinance an amendment does not change what it does: it attempts to give indefinite legal force to a program whose original legal authority was expressly temporary.[9] The extension of an expressly temporary ordinance is

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6 City of Capitola, Revised Special City Council Meeting Agenda, Sept. 3, 2026 (revised at approximately 3:00 p.m. for a 4:00 p.m. special meeting); City of Capitola, Special City Council Meeting Minutes, Sept. 3, 2026 (recording a 4:00 p.m. call to order, staff presentation, public comment by Darcy Pruitt of Santa Cruz County, adoption of Urgency Ordinance No. 1077 by four affirmative votes with Council Member Orbach absent, and adjournment at 4:10 p.m.).
7 Senate Bill 212, Solid waste: pharmaceutical and sharps waste stewardship, 2018 Cal. Stat. ch. 1004, codified at Cal. Pub. Res. Code §§ 42030-42036.4; Cal. Pub. Res. Code § 42036.2(b); *O'Connell v. City of Stockton*, 41 Cal. 4th 1061, 1067 (2007) (stating, "Any conflicting ordinance is preempted by state law and thus void.").
8 City of Capitola Urgency Ordinance No. 1077, § 6 (Sept. 3, 2026); Cal. Gov. Code § 36937(b); Cal. Pub. Res. Code § 42036.2(b).
9 City of Capitola Proposed Ordinance No. 1078, § 5 (providing that the ordinance takes effect 30 days after adoption); Cal. Gov. Code § 36937 (providing that ordinances ordinarily take effect 30 days after final passage).

a new governmental enactment. Whether characterized as an amendment, revival, or reenactment, the Council cannot use a September 2026 enactment to avoid SB 212's express effective-date rule.[10]

Conclusion

The City knew the 2016 Ordinance would sunset since its adoption. In a futile attempt to revive it, the City relied on a last-minute urgency procedure with a record unsupported by a genuine service emergency. The resulting Urgency Ordinance is therefore invalid. The Urgency Ordinance also carries a 2026 effective date that SB 212 expressly preempts. The Proposed Ordinance likewise cannot extend the City's program. SB 212 expressly preempts it.

Accordingly, the City should reject the Proposed Ordinance, rescind the Urgency Ordinance, and recognize the City's transition to the state program.

Sincerely,

BEVERIDGE & DIAMOND PC

/s/ R. Morgan Gilhuly

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10 *Arcadia Dev. Co. v. City of Morgan Hill*, 169 Cal. App. 4th 253, 264-65 (2008) (holding that extension of an expressly temporary restriction was a new governmental decision that depended on then-existing circumstances); Cal. Pub. Res. Code § 42036.2(b).

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