



CITY OF MORRO BAY CITY COUNCIL AGENDA

The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

Regular Meeting – Tuesday, December 10, 2019 Veterans Memorial Hall - 5:30 P.M. 209 Surf St., Morro Bay, CA

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION

CLOSED SESSION REPORT

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

PRESENTATIONS

- City of Morro Bay Service Pin Presentation
- Morro Bay Chamber of Commerce Quarterly Report

PUBLIC COMMENT PERIOD

Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council at this time.

Public comment is an opportunity for members of the public to provide input to the governing body. To increase the effectiveness of the Public Comment Period, the City respectfully requests the following guidelines and expectations be followed:

- Those desiring to speak are asked to complete a speaker slip, which are located at the entrance, and submit it to the City Clerk. However, speaker slips are not required to provide public comment.
- When recognized by the Mayor, please come forward to the podium to speak. Though not required, it is helpful if you state your name, city of residence and whether you represent a business or group. Unless otherwise established by the Mayor, comments are to be limited to three minutes.
- All remarks should be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.
- The Council in turn agrees to abide by its best practices of civility and civil discourse according to Resolution No. 07-19.

A. CONSENT AGENDA

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

- A-1 APPROVAL OF MINUTES FOR THE OCTOBER 8, 2019, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE OCTOBER 8, 2019, CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FOR THE NOVEMBER 13, 2019, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 APPROVAL OF MINUTES FOR THE NOVEMBER 19, 2019, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-5 APPROVAL OF MINUTES FOR THE DECEMBER 4, 2019, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-6 REVIEW AND RECEIVE WATER RECLAMATION FACILITY (WRF) CAPITAL PROJECT MONTHLY UPDATE REPORT AND PROVIDE DIRECTION, IF ANY, DEEMED APPROPRIATE; (PUBLIC WORKS)

RECOMMENDATION: Council receive WRF Capital Project Monthly Update Report and provide direction, if any, deemed appropriate.

- A-7 ADOPTION OF ORDINANCE NO. 626 TO INCLUDE VACATION RENTALS IN THE MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT BY AMENDING MORRO BAY MUNICIPAL CODE CHAPTER 3.60; (ADMINISTRATION)

RECOMMENDATION: Staff recommends Council adopt, by second reading by title only and with further reading waived, Ordinance No. 626, entitled "Ordinance of the City Council of the City of Morro Bay, California to include vacation rental businesses in annual Morro Bay Tourism Business Improvement District assessment by amending Chapter 3.60 (Tourism Business Improvement District Law) of Title 3 (Revenue and Finance) of the Morro Bay Municipal Code."

- A-8 ADOPTION OF ORDINANCE NO. 628 REPEALING ORDINANCE NO. 623 IN ITS ENTIRETY; (ADMINISTRATION)

RECOMMENDATION: Staff recommends Council adopt, by second reading by title only and with further reading waived, Ordinance No. 628, entitled "An Ordinance of the City Council of the City of Morro Bay, California, Repealing Ordinance No. 623 Establishing Pre-Zoning for the 27.6-acre portion of Parcel APN #073-101-017 (Case No. #MIN19-001)."

A-9 ADOPTION OF ORDINANCE NO. 627 CONCERNING TOBACCO, VAPING AND SECONDHAND SMOKE, INCLUDING THROUGH A TOBACCO RETAILER LICENSING PROGRAM, A PROHIBITION ON THE SALE OF E-CIGARETTES (VAPING PRODUCTS), AND ENHANCING THE CITY'S CURRENT SECONDHAND SMOKING REGULATIONS BY A SMOKEFREE POLICY FOR MULTI-UNIT HOUSING; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider adopting, by second reading and by title only with further reading waived, Ordinance No. 627, entitled "An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 5.54 (Tobacco, Electronic Cigarettes and Vaping) to Title 5 (Business Tax Certificates and Regulations), and amending Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 (Public Peace, Morals and Welfare), of the Morro Bay Municipal Code, to regulate the sale of tobacco and vaping products and update and expand the City's Secondhand Smoking Regulations."

A-10 FISCAL YEAR 2019/20 FIRST QUARTER BUDGET PERFORMANCE AND STATUS REPORT FOR THE THREE-MONTH PERIOD ENDING SEPTEMBER 30, 2019
A. RECEIVE FY 2019/20 FIRST QUARTER BUDGET PERFORMANCE AND STATUS REPORT AND AUTHORIZE BUDGET ADJUSTMENTS AS RECOMMENDED IN THE ATTACHED FIRST QUARTER BUDGET PERFORMANCE REPORT; AND
B. ADOPT RESOLUTION NO. 98-19 AUTHORIZING STAFF TO PROCEED WITH THE FIRST-QUARTER BUDGET ADJUSTMENTS; (FINANCE)

RECOMMENDATION: Staff recommends that the City Council:

1. Receive the attached Fiscal Year 2019/20 First Quarter Budget Performance and Status Report for the three-month period ending September 30, 2019; and
2. Adopt Resolution No. 98-19 authorizing staff to proceed with the first-quarter budget adjustments.

A-11 FIRST QUARTER INVESTMENT REPORT (PERIOD ENDING SEPTEMBER 30, 2019) FOR FISCAL YEAR 2019/20; (FINANCE)

RECOMMENDATION: Staff recommends the City Council receive the attached First Quarter Investment Report (period ending September 30, 2019) for Fiscal Year 2019/20.

A-12 EXTENSION OF MENTAL MARKETING CONTRACT FOR TOURISM PROMOTION SERVICES BY ONE YEAR; (TOURISM/ADMINISTRATION)

RECOMMENDATION: The Tourism Business Improvement District ("TBID") Advisory Board and City staff recommend the City Council direct staff to bring back to Council a contract amendment to extend the City's contract with Mental Marketing for an additional year, so the extended term would end in June 2021 (rather than June 2020), and initiate a Request for Proposal ("RFP") process in February 2021 (rather than February 2020).

A-13 ADOPTION OF RESOLUTION NO. 99-19 APPROVING A 1-YEAR LEASE AGREEMENT WITH CIANO REAL ESTATE, INC. FOR PROPERTY LOCATED AT 781 MARKET STREET; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Staff recommends the Council adopt Resolution No. 99-19, approving a 1-year Lease Agreement for the City property located at 781 Market Street (APN: 066-321-027).

- A-14 ADOPTION OF RESOLUTION NO. 100-19 APPROVING AMENDMENT #1 TO THE COMMERCIAL BUILDING LEASE AGREEMENT WITH THREE STACKS AND A ROCK BREWING COMPANY AT LEASE SITE 69-70/69W-70W, LOCATED AT 595 EMBARCADERO ROAD; (HARBOR)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 100-19 approving Amendment #1 to the Commercial Building Lease Agreement with Three Stacks and a Rock Brewing Company, LLC for portions of the building at Lease Site 69-70/69W-70W, to extend the tenant's building remodel construction deadline.

- A-15 ADOPTION OF RESOLUTION NO. 101-19 APPROVING A NEW MASTER LEASE AGREEMENT WITH GLAD'S LANDING LLC (WILLIAM MARTONY) FOR LEASE SITE 34W, LOCATED AT 225 MAIN STREET; (HARBOR)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 101-19 approving a 22.5-year Master Lease Agreement with Glad's Landing LLC (William Martony) for the water-only Lease Site 34W, located at 225 Main Street.

- A-16 ADOPTION OF RESOLUTION NO. 102-19 APPROVING A NEW MASTER LEASE AGREEMENT WITH TODD BASTON AND TAMARA GRAY-BASTON FOR LEASE SITE 63-64/63W-64W, LOCATED AT 561 EMBARCADERO ROAD (GRAY'S INN AND GALLERY); (HARBOR)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 102-19 approving a 25-year Master Lease Agreement with Todd Baston and Tamara Gray-Baston for Lease Site 63-64/63W-64W, the Gray's Inn and Gallery located at 561 Embarcadero Road.

- A-17 PROCLAMATION RECOGNIZING THE 60TH ANNIVERSARY OF INCORPORATION OF THE CITY OF GROVER BEACH AND COMMEMORATING THE CITY'S ANNIVERSARY CELEBRATION; (ADMINISTRATION)

RECOMMENDATION: Approved as submitted.

B. PUBLIC HEARINGS

- B-1 ADOPTION OF RESOLUTION NO. 103-19, A RESOLUTION FOR THE ABANDONMENT (VACATION) OF PORTIONS OF UTILITY EASEMENT(S) ON 196 PANAY STREET (JAY FRIESEN, APPLICANT). PERMIT NO. ABN19-001; (PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 103-19, a resolution abandoning (vacating) portions of the existing utility easement(s) at 196 Panay Street.

C. BUSINESS ITEMS

- C-1 Discussion and Adoption of Resolutions Approving City Council Policies & Procedures and Advisory Bodies Handbook and By-Laws, Consideration of Vacation Rental Representation on the Tourism Business Improvement District (“TBID”) Advisory Board, and Discussion / Direction regarding Special Purpose Advisory Bodies

RECOMMENDATION: Staff recommends the City Council:

1. Discuss and adopt Resolution No. 104-19 approving the Council Policies & Procedures, including proposed amendments; and
2. Discuss and adopt Resolution No. 105-19 approving the Advisory Bodies Handbook and By-laws, including changes to qualifications for the TBID Advisory Board to include representation by owners/managers of permitted vacation rental properties.
3. Review mission, purpose and duration of existing Special Advisory Bodies

- C-2 CONSIDERATION OF ADOPTION OF URGENCY ORDINANCE NO. 629 APPROVING JUST CAUSE EVICTION PROTECTIONS AND RENTAL INCREASE LIMITS; (CITY MANAGER)

RECOMMENDATION: Staff recommends the City Council consider adoption of an Urgency Ordinance No. by number and title only with further reading waved, Urgency Ordinance No. 629, “An Urgency Ordinance of the City Council of the City of Morro Bay, California, Adopting Just Cause Eviction Protections and Rental Rate Limits Effective Immediately” to be in effect until January 1, 2020.

- C-3 REVIEW AND MODIFICATIONS TO THE CITY PARTNERSHIP POLICY AND CITY PARTNERSHIP POLICY GUIDANCE DOCUMENT; DISCUSSION OF CITY EVENT POLICIES; (CITY MANAGER)

RECOMMENDATION: City Council rescind Resolution No. 36-16 and adopt Resolution No. 106-19, review and approve staff recommended changes to the Partnership Policy and Partnership Policy Guidelines document, and direction on City review of event policies.

- C-4 REVIEW AND APPROVE THE SECOND AMENDMENT TO EMPLOYMENT CONTRACT WITH SCOTT COLLINS, CITY MANAGER; (CITY ATTORNEY)

RECOMMENDATION: Council consider approving the Second Amendment to the employment contract with Scott Collins, City Manager, and authorizing the Mayor to sign the contract on behalf of the City and adopt Resolution No. 107-19 approving the related budget adjustment.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, January 14, 2019 at 5:30 p.m.** at the Veteran’s Memorial Hall located at 209 Surf Street, Morro Bay, California.

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK’S OFFICE AT 805-772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY, CALIFORNIA DURING NORMAL BUSINESS HOURS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK’S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – OCTOBER 8, 2019
VETERANS MEMORIAL HALL
209 SURF STREET – 3:30 P.M.

AGENDA NO: A-1
MEETING DATE: December 10, 2019

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member
	Marlys McPherson	Council Member

ABSENT: None

STAFF:	Scott Collins	City Manager
	Dana Swanson	City Clerk
	Scot Graham	Community Development Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding established a quorum and called the meeting to order at 3:32 p.m. with all members present.

STUDY SESSION:

I. **AFFORDABLE HOUSING POLICY DISCUSSION**

<https://youtu.be/7MznMrJjZso?t=10>

City Manager Collins introduced the item.

Dave Mullinax, League of California Cities Regional Public Affairs Manager, provided a housing legislation update and responded to Council questions.

<https://youtu.be/7MznMrJjZso?t=275>

Carolyn Berg, San Luis Obispo County Principal Analyst, provided an update on regional housing and infrastructure efforts and responded to Council questions.

<https://youtu.be/7MznMrJjZso?t=1783>

Community Development Director Graham provided information on the following items:

- Regional Housing Needs Allocation (RHNA)
- Current efforts on the Housing Element Update
- SB-2 Grant funding opportunities

<https://youtu.be/7MznMrJjZso?t=2866>

Mayor Headding opened public comment.

Meredith Bates, Morro Bay, appreciated the move toward tiny houses and coordinated efforts to produce affordable housing.

Mayor Headding closed public comment.

During Council comments, there was general consensus on the following:

- Support for re-zoning efforts as necessary
- Increased density

- Developer incentives that help facilitate affordable housing
- Gathering information on available land and do what's possible to market the property to achieve these goals
- Support partnerships with HASLO, People Self-Help Housing and others
- Support mixed-use overlays
- Process improvements to allow development to occur at the lowest level possible
- Support local workforce for any development that occurs

The Council did not take any formal action on this item.

ADJOURNMENT

The meeting adjourned at 5:07 p.m.

Recorded by:

Dana Swanson
City Clerk

PRESENT: John Heading Mayor
Dawn Addis Council Member
Robert Davis Council Member
Jeff Heller Council Member
Marlys McPherson Council Member

ABSENT: None

STAFF: Scott Collins City Manager
Chris Neumeyer City Attorney
Dana Swanson City Clerk
Jennifer Callaway Finance Director
Rob Livick Public Works Director
Scot Graham Community Development Director
Steve Knuckles Fire Chief
Jody Cox Police Chief
Eric Endersby Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Heading called the meeting to order at 5:30 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/5X-FGM7n9Lo?t=86>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/5X-FGM7n9Lo?t=1653>

CLOSED SESSION REPORT – No closed session meeting was held.

PRESENTATIONS

- Intimate Partner Violence Awareness Month Proclamation presented to Stand Strong representatives, Karen Borges and Gabrielle Rivera.
<https://youtu.be/5X-FGM7n9Lo?t=1722>

PUBLIC COMMENT

<https://youtu.be/5X-FGM7n9Lo?t=2198>

Julie Phillips, owner of Going Coastal located at 315 Morro Bay Blvd., provided the business spot. For more information, call (805) 459-4545.

Jon Elliott announced the 6th Annual Trick or Treat event to be held October 31st from 3:00 – 5:30 p.m.

Nancy Weber, Morro Bay, opposed a bus stop at City Park.

Linda Winters, Morro Bay, spoke regarding mobile home park living as an affordable housing alternative.

Barbara Doerr, Morro Bay, commented on Item C-4 and expressed concern regarding the public comment period at the October 8th Special Meeting.

Patricia Newton, President of Morro Bay Art Association, spoke in support of staff recommendation for Item C-5.

John Weiss, Morro Bay resident and business owner, expressed concern about proposed Water Reclamation Facility (“WRF”) pipeline routing and urged the Council to not purchase property for the site until the outcome of the referendum is known.

Betty Winholtz, Morro Bay, announced the El Chorro Regional Dog Park annual celebration on Saturday, October 12, and addressed comments by the Mayor regarding the WRF project.

Lee Johnson, Morro Bay, spoke in favor of moving forward with the WRF project.

Bob Keller, Morro Bay, agreed with comments by Mr. Johnson.

Jen Ford, Morro Bay, echoed Mr. Johnson’s comments and urged the Council to move forward with the wastewater treatment facility.

Nicole Dorfman, Morro Bay, spoke in support of moving the WRF project forward.

Lynda Merrill, Morro Bay, urged the Council to continue its support for the proposed WRF.

Mayor Headding closed public comment.

At the request of the Mayor, staff responded to issues raised during public comment.

A. CONSENT AGENDA
<https://youtu.be/5X-FGM7n9Lo?t=4592>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE SEPTEMBER 24, 2019, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 PROCLAMATION DECLARING OCTOBER 2019 AS INTIMATE PARTNER VIOLENCE AWARENESS MONTH; (ADMINISTRATION)

RECOMMENDATION: Approved as submitted.

A-3 ADOPTION OF RESOLUTION NO. 81-19 APPROVING A REVISED UTILITY LEAK REVIEW POLICY; (FINANCE)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 81-19 rescinding Resolution No. 62-19 approving a revised Leak Review Policy, and re-adopting Utility Payment Arrangement, Approved Payment Types and Change of Primary Account Holder Policies.

- A-4 ADOPTION OF RESOLUTION NO. 82-19 AUTHORIZING APPLICATION SUBMITTALS FOR CALIFORNIA'S DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE) GRANTS FOR RUBBERIZED PAVING (PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council to adopt Resolution No. 82-19 authorizing the Public Works Director to:

1. Execute and submit the application to CalRecycle for any and all CalRecycle Rubberized Pavement or Tire-Derived Aggregate grants for which the City of Morro Bay is eligible for a period of five (5) years from the date of adoption of Resolution No. 82-19, and
2. To act as the City's representative in administration of the grant, including but not limited to, applications, agreements, and amendments that are necessary to implement and secure payment of CalRecycle grants to the City; if the application is successful.

- A-5 ADOPT RESOLUTION NO. 85-19 APPROVING FISCAL YEAR 2018/19 FOURTH QUARTER YEAR-END BUDGET ADJUSTMENTS; (FINANCE)

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 85-19 approving Fiscal Year 2018/19 Fourth Quarter Year-End Budget Adjustments.

- A-6 APPROVAL OF CITIZENS OVERSIGHT / CITIZENS FINANCE ADVISORY COMMITTEE MEMBER'S REQUEST FOR AN EXCUSED ABSENCE; (CITY CLERK)

RECOMMENDATION: Staff recommends the City Council consider and approve the request submitted by Citizens Oversight / Citizens Finance Advisory Committee (CFAC) Member, Lois Johnson, to excuse her absence from the October 2019, Regular Citizens Oversight / Citizens Finance Advisory Committee meeting.

- A-7 CONCEPTUAL APPROVAL OF A PILOT BUILDING LEASE AGREEMENT WITH THE PADDLEBOARD COMPANY (KEN AND SANDI TWIST) AT LEASE SITE 69-70/69W-70W, LOCATED AT 595 EMBARCADERO ROAD (THE OLD MORRO BAY AQUARIUM SITE); (HARBOR)

RECOMMENDATION: Staff recommends the City Council conceptually approve a pilot, short-term lease agreement arrangement with the Paddleboard Company at Lease Site 69-70/69W-70W as outlined herein, and direct staff to bring back a proposed lease agreement for final approval (substantively consistent with the conceptual approval).

Mayor Headding opened the public comment for the Consent Agenda; seeing none, the public comment period was closed.

Council Member Heller pulled Item A-6.

MOTION: Council Member Davis moved approval of Items A-1 through A-5 and A-7 on the Consent Agenda. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

- A-6 APPROVAL OF CITIZENS OVERSIGHT / CITIZENS FINANCE ADVISORY COMMITTEE MEMBER'S REQUEST FOR AN EXCUSED ABSENCE; (CITY CLERK)
<https://youtu.be/5X-FGM7n9Lo?t=4655>

Council Member Heller asked if Council subcommittee reviewing advisory board policies planned to review the requirement for Council to approve member absences. Mayor Headding stated it would be reviewed by the sub-committee.

MOTION: Council Member Heller moved for approval of Item A-6. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

With Council concurrence, Item C-3 was heard next.

C-3 CONSIDERATION OF VISIT SAN LUIS OBISPO COUNTY TOURISM MARKETING DISTRICT (SLOCTMD) RENEWAL WITH RECOMMENDATION; (CITY MANAGER/TOURISM MANAGER)
<https://youtu.be/5X-FGM7n9Lo?t=4750>

City Manager Collins introduced Chuck Davison, Visit SLO CAL, who provided the report and responded to Council inquires.

The public comment period for Item C-3 was opened.

Toni LeGras spoke in support of SLOCTMD.

The public comment period for Item C-3 was closed.

MOTION: Mayor Headding moved to adopt Resolution No. 84-19 granting consent to the San Luis Obispo County Board of Supervisors to renew the SLOCTMD for lodging establishments in Morro Bay for a 10-year period with a 1.5% assessment and authorizing the Mayor to send an accompanying letter to the County and Visit SLO CAL Boards, making recommendations for improving collaborative performance going forward. The motion was seconded by Council Member Davis for discussion.

Following discussion, the motion carried 5-0 by roll call vote.

C-1 REVIEW OF OPTIONS RELATED TO LOCAL TOBACCO AND VAPING REGULATIONS; (CITY MANAGER)
<https://youtu.be/5X-FGM7n9Lo?t=6859>

City Manager Collins provided the report and responded to Council questions.

The public comment period for Item C-1 was opened.

Inger Appanaitis, Tobacco Control Program Manager for San Luis Obispo County Public Health Department, applauded the City for its efforts and suggested the Council also consider restricting online distribution.

The public comment period for Item C-1 was closed.

Following discussion, there was Council consensus to move forward with changes to the City's secondhand smoke ordinance, including restrictions on multi-family units, a local tobacco retail license program, ban on all vaping/e-cigarette products with no sunset clause, and suggested "bonus point" regulations to address emerging issues.

The Council took a brief recess at 8:09 p.m. The meeting reconvened at 8:17 p.m. with all but Council Member Addis present. Ms. Addis rejoined the meeting at 8:19 p.m.

- C-2 REVIEW PROGRESS UPDATE FROM CENTRAL COAST AQUARIUM FOR POTENTIAL FUTURE MORRO BAY AQUARIUM; (CITY MANAGER)
<https://youtu.be/5X-FGM7n9Lo?t=9540>

Harbor Director Endersby introduced the item and turned to Christine Johnson, Central Coast Aquarium Executive Director, who provided the report and responded to Council questions.

The public comment period for Item C-2 was opened; seeing none, the public comment period was closed.

The Council did not take any formal action on this item.

- C-4 CONSIDERATION OF THE MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID) SUPPLEMENTAL ANNUAL REPORT WITH THE INCLUSION OF VACATION RENTALS (VR'S) IN THE EXISTING 3% ANNUAL ASSESSMENT AND CONTINUATION OF THE EXISTING TBID ASSESSMENT FOR FISCAL YEAR 2019/20; ADOPTION OF RESOLUTION NO. 83-19 DECLARING THE INTENT TO CONTINUE THE PROGRAM AND LEVY ASSESSMENTS FOR THE REMAINDER OF FISCAL YEAR 2019/20; AND, SCHEDULING BOTH A PUBLIC MEETING TO CONSIDER LEVYING THE ASSESSMENTS AS WELL AS A PUBLIC HEARING TO CONSIDER PROTESTS TO THE LEVYING OF THE ASSESSMENTS; (CITY MANAGER/TOURISM MANAGER)
<https://youtu.be/5X-FGM7n9Lo?t=10603>

City Manager Collins provided the report and responded to Council questions.

The public comment period for Item C-4 was opened; seeing none, the public comment period was closed.

MOTION: Council Member Davis moved the Council to adopt Resolution No. 83-19 approving the Supplemental Fiscal Year 2019/20 Annual Report for expenditure of funds to be derived from the addition of Vacation Rentals and declaring the intent to continue the program and levy assessments for the remainder of Fiscal Year 2019/20, and schedule both a Public Meeting to consider levying the assessments as well as a Public Hearing to consider protests to the levying of the assessments; and approve moving \$10,000 from the accumulation fund to the TBID FY 2019-20 Budget for visiting journalists and grants expenses; and honor vacation rental contracts put in place prior to VRs being added to the TBID for stays in Morro Bay through June 30, 2020, with all stays thereafter being assessed the 3% TBID assessment regardless of contract execution date. The motion was seconded by Council Member Addis and carried 4-1 by roll call vote with Council Member Heller opposed.

- C-5 REVIEW OF CITY PARK TRANSIT HUB IMPROVEMENTS STUDY; (PUBLIC WORKS)
<https://youtu.be/5X-FGM7n9Lo?t=11613>

Public Works Director Livick provided the report and responded to Council questions.

The public comment period for Item C-5 was opened.

Linda Winters, Morro Bay, asked if there was any form of security at the bus stops.

The public comment period was closed.

MOTION: Council Member Davis moved to accept the Morro Bay City Park Transit Hub Improvements Study and select the existing site option for vehicle pull in/pull out and passenger shelter area improvements; and direct staff to pursue transportation grants to fully fund the improvements. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/5X-FGM7n9Lo?t=12296>

Council Member Heller requested staff come back to Council with list of potential actions to reduce General Fund expenses as a way of eliminating the structural deficit. Council Member McPherson noted the City had made several cuts and may have to do that in the future but not at this time. Council Member Addis stated she would like to remain focused on increasing revenues. There was no Council support for the request.

E. ADJOURNMENT

The meeting adjourned at 9:07 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
NOVEMBER 13, 2019 – 5:30 P.M.
CITY HALL CONFERENCE ROOM.

AGENDA NO: A-3
MEETING DATE: December 10, 2019

PRESENT: John Headding Mayor
Dawn Addis Council Member (*Arrived at 5:35 pm*)
Robert Davis Council Member
Marlys McPherson Council Member

ABSENT: Jeff Heller Council Member

STAFF: Scott Collins City Manager
Chris Neumeyer City Attorney
Rob Livick Public Works Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 p.m. with all but Council Members Addis and Heller present.

SUMMARY OF CLOSED SESSION ITEMS – The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENT – Mayor Headding opened public comment for items on the agenda seeing none, the public comment period was closed.

The City Council moved to Closed Session and heard the following items:

CS-1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8

Property: Assessor Parcel No. 064-101-007
Property Negotiators: Dan Shepard et al
Agency Negotiators: Scott Collins, City Manager; Rob Livick, Public Works Director; Eric Casares,
WRF Program Manager and Chris Neumeyer, City Attorney
Under Negotiation: Price and Terms of Payment

CS-2 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8

Property: Assessor Parcel No. 066-331-046
Property Negotiators: Vistra Energy
Agency Negotiators: Scott Collins, City Manager; Rob Livick, Public Works Director; Eric Casares,
WRF Program Manager and Chris Neumeyer, City Attorney
Under Negotiation: Price and Terms of Payment – Easement Acquisition

CS-3 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8

Property: Assessor Parcel No. 066-331-036
Property Negotiators: Pacific Gas & Electric
Agency Negotiators: Scott Collins, City Manager; Rob Livick, Public Works Director; Eric Casares,
WRF Program Manager and Chris Neumeyer, City Attorney
Under Negotiation: Price and Terms of Payment – Easement Acquisition

CS-4 PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Conduct an employee evaluation of City Manager pursuant to Government Code section 54957

CS-5 CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representatives: Chris F. Neumeyer, City Attorney
Unrepresented employee, as defined by Government Code subdivision 54957.6(b): City Manager

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. The Council did not take any reportable action in accordance with the Brown Act.

ADJOURNMENT - The meeting adjourned at 8:05 p.m.

Recorded by:

Heather Goodwin
Deputy City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
NOVEMBER 19, 2019 – 7:30 A.M.
CITY HALL CONFERENCE ROOM.

AGENDA NO: A-4
MEETING DATE: December 10, 2019

PRESENT:	John Headding Dawn Addis Robert Davis Jeff Heller	Mayor Council Member Council Member Council Member
ABSENT:	Marlys McPherson	Council Member
STAFF:	Scott Collins Chris Neumeyer Colin Tanner Steve Knuckles	City Manager City Attorney (<i>via teleconference</i>) Special Legal Counsel (<i>via teleconference</i>) Fire Chief

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 7:30 a.m. with all but Council Member McPherson present.

SUMMARY OF CLOSED SESSION ITEMS – The Mayor read a summary of Closed Session item.

CLOSED SESSION PUBLIC COMMENT – Mayor Headding opened public comment for items on the agenda; seeing none, public comment was closed.

The City Council moved to Closed Session and heard the following item:

CS-1 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: One matter.

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. Mayor Headding reported out the City Council approved in closed session by a vote of 4-0-1 with Council Member McPherson absent, a Settlement Agreement with Mr. Todd Gailey and authorized the City Manager to execute same on behalf of the City. Mr. Gailey has executed the Settlement Agreement. The substance of the Settlement Agreement is Mr. Gailey withdraws his appeal of his December 4, 2018 involuntary separation from the City, resigns his employment effective December 4, 2018, provides the City with a general release of liability and waiver of rights, and receives a lump sum of Eighty Thousand Dollars (\$80,000.00), less all required deductions and taxes. A copy of the fully executed Settlement Agreement will be available at the City Clerk's office.

ADJOURNMENT - The meeting adjourned at 7:45 a.m.

Recorded by:

Dana Swanson
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
DECEMBER 4, 2019 – 3:30 P.M.
CITY HALL CONFERENCE ROOM.

AGENDA NO: A-5
MEETING DATE: December 10, 2019

PRESENT: John Headding Mayor
Dawn Addis Council Member
Robert Davis Council Member
Jeff Heller Council Member
Marlys McPherson Council Member

ABSENT: None

STAFF: Scott Collins City Manager
Chris Neumeyer City Attorney (*via teleconference*)
Scot Graham Community Development Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 3:30 p.m. with all members present.

SUMMARY OF CLOSED SESSION ITEMS – The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENT – Mayor Headding opened public comment for items on the agenda seeing none, the public comment period was closed.

The City Council moved to Closed Session and heard the following item:

CS-1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8

Property: 781 Market Avenue, APN 066-321-027

Property Negotiators: Ciano Real Estate, Frankie Ciano

Agency Negotiators: Scott Collins, City Manager, Scot Graham, Community Development Director
and Christopher Neumeyer, City Attorney

Under Negotiation: Price and Terms

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. The Council did not take any reportable action in accordance with the Brown Act.

ADJOURNMENT - The meeting adjourned at 3:35 p.m.

Recorded by:

Heather Goodwin
Deputy City Clerk

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AGENDA NO: A-6

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor & City Council **DATE:** December 5, 2019

FROM: Rob Livick, PE/PLS – Public Works Director/City Engineer
Eric Casares, PE – Water Reclamation Facility (WRF) Program Manager

SUBJECT: Review and Receive Water Reclamation Facility (WRF) Capital Project Monthly Update Report and Provide Direction, if any, Deemed Appropriate

RECOMMENDATION

Council receive WRF Capital Project Monthly Update Report and provide direction, if any, deemed appropriate.

DISCUSSION

Provided as Attachment 1 is the Monthly WRF Project Report for October 2019 for Council and public review. Typically, these reports are received by City Council the second Council meeting of each month. However, there was no second meeting in November 2019, thus City Council is receiving the October monthly report now. The data presented in the report is as of October 30, 2019.

Due to the timing of WRF Capital Project Monthly Update Report preparation, the schedule in this report does not account for project delays resulting from the additional time necessary for the Environmental Protection Agency (EPA) to consult with the US Fish and Wildlife Service (USFW) on impacts to California Red Legged Frog (CRLF) habitat. This will likely delay the start of construction on the Water Reclamation Facility component between one and three months, dependent on the level of consultation. The WRF Quarterly report to be presented at the second Council meeting in January will better quantify this impact.

ATTACHMENT

1. City of Morro Bay Water Reclamation Facility Project Monthly Report October 2019

Prepared By: <u>ec/rl</u>	Dept Review: <u>RL</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>n/a</u>



City of Morro Bay
Water Reclamation Facility Project

MONTHLY REPORT OCTOBER 2019

FINAL | December 2019





City of Morro Bay
Water Reclamation Facility Project

MONTHLY REPORT OCTOBER 2019

FINAL | December 2019

This document is released for the
purpose of information exchange review
and planning only under the authority of
Eric T. Casares
November 2019
State of California, P.E. 73351

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Abbreviations

APE	Area of Potential Effect
BDR	Basis of Design Report
BOD	Biochemical Oxygen Demand
CCC	California Coastal Commission
CDP	Coastal Development Permit
CDR	Concept Design Report
CEQA	California Environmental Quality Act
CPT	Cone Penetration Test
CWSRF	Clean Water State Revolving Fund
DDW	Division of Drinking Water
EPA	Environmental Protection Agency
ESCP	Enhanced Source Control Program
FEIR	Final Environmental Impact Report
GMP	Guaranteed Maximum Price
IPR	Indirect Potable Reuse
IUP	Intended Use Plan
IWS	Industrial Waste Survey
KPI	Key Performance Indicator
MBPFC	Morro Bay Public Facilities Corporation
MBR	Membrane Bioreactor
NEPA	National Environmental Policy Act
NOI	Notice of Intent
NPDES	National Pollution Discharge Elimination System
PCO	Potential Change Order
PPP	Pollution Prevention Program
RO	Reverse Osmosis
RWQCB	Regional Water Quality Control Board
SHPO	State Historic Preservation Office
SPI	Schedule Performance Index
TSO	Time Schedule Order
TSS	Total Suspended Solids
USACE	United States Army Corps of Engineers
USBR	United States Bureau of Reclamation
USFW	United States Fish and Wildlife
UVAOP	Ultraviolet Advanced Oxidation Process
WIFIA	Water Infrastructure Finance and Innovation and Act

WRF Water Reclamation Facility
WRFCAC Water Reclamation Facility Citizens Advisory Committee
WWE Water Works Engineers

Section 1

PROJECT OVERVIEW

1.1 General Project Status Update

All components of the Water Reclamation Facility Project (Project) are currently in progress. City staff and the Program Manager (Carollo) are actively working with the design-build team (DB team) and the pipeline designer to advance the design of the Water Reclamation Facility (WRF) and Conveyance Facilities project components, respectively. In October 2019, City staff and the Program Manager continued to focus on moving the WRF component of the Project into construction. In order to start construction, the following activities must be completed:

- Property and Easement Acquisition.
 - Purchase the WRF site currently owned by Tri W.
 - Acquire both the temporary and permanent easements on property adjacent to Teresa Road owned by the Shepherd Trust.
- Funding Agency Coordination.
 - Negotiate and sign the final loan agreement for the Environmental Protection Agency's (EPA's) Water Infrastructure Finance and Innovation and Act (WIFIA).
 - Facilitate completion of the Clean Water State Revolving Fund's (CWSRF's) Environmental Checklist.
- Coastal Development Permit (CDP) Receipt.
- Environmental Documentation Completion.
 - Receipt of the Final Environmental Impact Report (FEIR) addendum by the City Council.

A status update for these specific activities related to the start of construction is provided below. Brief updated on the status of each Project components is also provided as well.

1.1.1 Property and Easement Acquisition

In October 2019, the City finalized and signed the purchase agreement for the Tri W property and entered into escrow of the 27.6-acre parcel. The City also negotiated and executed a right of entry agreement with the Shepherd Trust for the temporary construction and permanent easements needed for the facility access road and construction laydown area, respectively. The purchase agreement for the Tri W property allows the City to access the property and start construction before the close of escrow. All property and easement acquisition necessary to start construction for the WRF has been completed at this time.

1.1.2 Funding Agency Coordination

City staff and the Program Manager have been working with the City Attorney and EPA staff for the last several months to finalize the terms and specific language of the WIFIA loan agreement. The WIFIA loan agreement will cover 49 percent of the total \$126 million cost for the Project. Final edits have been provided to the City by WIFIA staff and it is anticipated that the final loan agreement will come back to City Council for review and approval in January 2020.

In addition to loan terms, the Program Manager has been working to facilitate the review of both the WIFIA and CWSRF applications with their respective staffs. Specifically, CWSRF requires an applicant to complete the Environmental Checklist before construction can begin. These activities include coordination with various stakeholders including the United States Fish and Wildlife (USFW), National Marine Fisheries Service (NMFS), and the State Historic Preservation Office (SHPO).

The City has been negotiating a programmatic agreement (PA) regarding the treatment and handling of cultural resources with SHPO for the last six months. In October 2019, the City met with SHPO staff in Sacramento to finalize the PA. It is anticipated that the PA will be signed by the EPA and SHPO in November 2019. Construction can begin once the PA is signed.

In early October 2019, the City was notified by EPA staff that the USFW, through Section 7 consultation, did not agree with their initial findings regarding the California red legged frog (CRLF). As a result, WIFIA entered into more discussions with USFW on October 22, 2019. The City is supporting the EPA in their review efforts. Once the Section 7 consultation is completed, the EPA can close the environmental process and construction of the WRF can begin.

1.1.3 Coastal Development Permit Receipt

On July 11, 2019, CCC approved the City's CDP with special conditions. On July 19, 2019, the City received a Notice of Intent (NOI) to issue the CDP 3-19-0463 that included several conditions that must be met before either the CDP can be issued or before construction can be started. In order to receive the CDP, the City must satisfy Special Condition 1 (Revised Final Plans) and Special Condition 2 (Construction Plans). A third condition, Special Condition 6 (Recycled Water Management Plan), must be satisfied before construction of the Project can begin. In October 2019, the Program Manager finalized these documents with CCC staff and anticipates receiving the fully executed CDP in early November 2019.

1.1.4 Environmental Documentation Completion

On August 08, 2019, Environmental Science Associates (ESA) completed the FEIR Addendum for the Project. While not required by the California Environmental Quality Act (CEQA) to be circulated, the State Water Board requires that all environmental documents for projects that receive CWSRF funding be circulated for a minimum period of 14 days. The FEIR Addendum was put on the agenda for the September 10, 2019 City Council meeting and City Council approved a motion to receive and file the addendum.

1.2 Water Reclamation Facility

The design of the WRF has been progressing since the agreement with the DB team was signed in October 2018. The 90-percent design submittal will be delivered to the City by the end of calendar year 2019/early 2020.

1.3 Conveyance Facilities

The City received the 60-percent design submittal in September 2019. It is anticipated that the 90-percent design deliverable will be submitted to the City by the end of calendar year 2019/early 2020.

1.4 Recycled Water Facilities

Challenges to advancement of the hydrogeological work to support design of the Recycled Water Facilities have resulted from problems accessing the Vistra Energy (Vistra) property. In early 2019, the City's hydrogeologist (GSI) completed Phase 1 of the hydrogeology work for the Project focused on long-term nitrate concentrations and the potential for seawater intrusion in the Lower Morro Groundwater Basin. GSI also completed the first component of the Phase 2 hydrogeology work focused on identifying the optimal groundwater injection location. The work consisted of pump testing of an existing well on Errol Street and cone penetration tests (CPTs) at the east injection area.

The next step in the hydrogeology work includes completion of Phase 2 or improved characterization at the west injection area. Completion of this component of the work has been contingent upon accessing the Vistra property to drill a pilot injection well or use an existing Morro Bay Mutual Water Company (MBMWC) well to conduct the pumping and injection tests. The City has reached an agreement with Vistra regarding use of the MBMWC well. Testing for this well can be started once the City receives the final CDP. While the City anticipates receipt of the CDP in early November 2019, it will likely take several months to coordinate with Vistra and begin the testing.

1.5 Quarterly Budget Revision

The original \$126 million baseline budget was developed in June 2018 (Q4 Fiscal Year 2017/2018) and was used as the basis for the rate study prepared by Bartle Wells. At the beginning of each fiscal year, the budget is updated and used as the measure of performance for the Project during that upcoming fiscal year. The budget is then reviewed and reconciled on a quarterly basis so it can be compared to both the current fiscal year and baseline budgets. The next budget reconciliation will occur at the end of Q2 Fiscal Year 2019/2020 (December 31, 2019). A summary of the baseline, reconciled quarterly, and fiscal year budgets are summarized in Table 1. Subsequent budget reconciliations (quarterly) and fiscal year budgets (annual) will also be presented in this table for reference.

Table 1 Budget Revision Summary

Project Component	Baseline (Q4 FY 17/18)	Quarterly Reconciliation (Q3 FY 18/19)	Current Fiscal Year (Q4 FY 18/19)	Quarterly Reconciliation (Q1 FY 19/20)
Water Reclamation Facility	\$62,414,000	\$74,059,000	\$72,891,000	\$72,598,000
Conveyance Facilities	\$21,087,000	\$27,108,000	\$28,864,000	\$28,524,000
Recycled Water Facilities	\$8,593,000	\$5,366,000	\$5,250,000	\$5,212,000
General Program	\$24,403,000	\$11,614,000	\$11,801,000	\$11,625,000
Construction Contingency ⁽¹⁾	\$9,444,000	\$6,450,000	\$7,132,000	\$7,131,000
Total	\$125,941,000	124,597,000	\$125,938,000	\$125,090,000

Notes:

(1) Breakdown of the current contingency (\$7,131,000) is as follows: WRF = \$4,373,000; Conveyance Facilities = \$2,458,000; and Recycled Water Facilities = \$300,000

Table 2 summarizes some of the key accomplishments and critical challenges identified for the Project in October 2019.

Table 2 Project Accomplishments and Challenges

Project Component	Key Accomplishments	Critical Challenges	Actions to Overcome Challenges	Likely Outcomes
General Project	Receipt of the fully-executed CDP.			
	Execution of the purchase agreement for the Tri-W property and right of entry agreement with the Shepherd Trust, which gives the City the access needed to start construction of the WRF.			
Water Reclamation Facility	Continued development of the 90-percent design deliverable			
		As design has continued, additional PCOs have been identified that are being evaluated by the City.	In order to minimize the impacts of future PCOs, the City is critically evaluating the need for PCOs and identifying cost-saving measures to offset cost increases.	The overall impact of the PCOs will lead to an increase in the Guaranteed Maximum Price (GMP), but costs will be maintained with the contingency identified for the WRF component of the Project.
		Missing the 12-month construction Notice to Proceed (NTP) milestone.	Complete the consultation with United States Fish and Wildlife (USFW) as expeditiously as possible.	Missing the 12-month NTP milestone in October 2019 could result in an increase to the DB team's GMP as a result of delay and escalation costs.
Conveyance Facilities	Continued development of the 90-percent design deliverable.			
		Schedule recovery due to issues surrounding access to Vistra and PG&E property. These issues have been resolved at this time.	Work with WWE to expedite the final design schedule (options could include eliminating some intermediate deliverables)	Without expediting the schedule, delayed construction completion could impact the schedule for start-up of the WRF.
Recycled Water Facilities		Schedule recovery due to issues surrounding access to Vistra and PG&E property.	Work with GSI to expedite the completion of the Phase 2 hydrogeology work. The City will work with Vistra following receipt of the CDP to start the necessary pump testing as soon as possible.	Without expediting the schedule, the completion of the injection wells could be delayed (does not impact compliance with the time schedule order [TSO]).

Section 2

KEY PERFORMANCE MEASURES

2.1 Performance Measures

A set of five (5) Key Performance Indicators (KPIs) were established to readily measure the progress of the Project. These KPIs represent various success factors associated with the WRF project management and delivery that were established by the Program Manager and City staff and are summarized as Table 3. The Project's performance is also illustrated graphically in Figures 1 and Figure 2.

Table 3 WRF Project Performance Measures

Performance Measure	Data	Baseline (Q4FY 18/19)	Current (Q1 FY 19/20)	Delta	Status	G	Y	R
1: Total Project Costs	Total Project Projected Cost at Completion versus the Baseline Budget (budget as of 10/31/19)	\$125.9 M	\$125.1 M	0.0%	G	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.1: WRF Costs	On Site WRF Projected Cost at Completion versus the Baseline Budget (budget as of 10/31/19)	\$77.3 M	\$77.0 M	0.0%	G	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.2: Conveyance Facilities Costs	Conveyance Facilities Projected Cost at Completion versus the Baseline Budget (budget as of 10/31/19)	\$31.3 M	\$31.0 M	-1.0%	G	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.3: Recycled Water Facilities Costs	Off Site Injection Facilities Projected Cost at Completion versus the Baseline Budget (budget as of 10/31/19)	\$5.6 M	\$5.5 M	-1.8%	G	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
1.4: General Project Costs	General Project Projected Cost at Completion versus the Baseline Budget (budget as of 10/31/19)	\$11.7 M	\$11.6 M	-0.9%	G	Estimated cost within 5% of target budget	Estimated cost > 5% above target budget	Estimated cost > 10% above target budget
2: Program Manager Earned Value	Ratio of Program Manager Earned Value to Actual Invoiced Cost-to-Date (as of 10/31/19)	1.00	1.08	0.08	G	>= 1.00	0.99 to 0.90	< 0.90
3: Schedule Performance Index⁽¹⁾	Ratio of Planned Percent Complete to Actual Percent Complete (as of 9/30/19)	1.00	0.94	-0.06	Y	>=1.00	0.99 to 0.80	<0.80
4: Conveyance Pipeline Installed	Feet of conveyance pipeline installed (thru 10/31/19)	18,500 LF	0.0 LF	0.0%	G	<= 5%	> 5% and <=7.5%	> 7.5%
5: Compliance Date Countdown	Days Remaining to Compliance Date (as of 10/31/19)	1,216 days	852 days	-364 days	Y	<= 365 days	364 days and 180 days	> 179 days

Section 3

PROJECT COSTS

3.1 Project Budget

The overall budget status for the Project is summarized in Table 4. The top half of the table provides a summary of total estimated Project costs, including original and current estimated costs for the entire Project. The bottom half of Table 4 shows the total amount of work currently under contract and provides a summary of total charges.

Table 4 WRF Project Overall Budget Status (thru October 2019)

Summary of Total WRF Project Cost	
Original Baseline WRF Project Budget ⁽¹⁾	\$125,941,000
Current Fiscal Year WRF Project Budget (as of 6/30/19) ⁽²⁾	\$125,884,000
Current WRF Project Budget (as of 9/30/19) ⁽³⁾	\$125,090,000
Budget Percent Change (Current versus Fiscal Year)	-0.6%
Total Expenditures for October 2019 ⁽⁴⁾	\$1,532,585
Total Expenditures to Date (thru 10/31/19 invoices)	\$14,579,794
Percent of Current WRF Project Budget Expended	11.66%
Summary of Contracted Work	
Total Contracted Amount	\$80,323,869
Percent of Current WRF Project Budget Contracted	64.2%
Total Contracted Amount Expended	\$12,839,724
Percent of Contracted Amount Expended	16.0%
Remaining WRF Project Contracted Amount	\$67,484,145

Notes:

- (1) Developed in June 2018 as the basis of the approved rate surcharge that took effect in July 2019.
- (2) The budget for the Project is reviewed on an annual basis at the end of each fiscal year (June 30th) and is used as the basis of performance for the Project for the upcoming fiscal year.
- (3) The Project budget is reconciled on a quarterly basis and compared to the current fiscal year budget (i.e., September 30th, December 31st, and March 31st)
- (4) Monthly expenditure is significantly less than expected due to the timing of the preparation of this report. Monthly expenditures do not include invoices from the design-build team (Overland Contracting) or Program Manager (i.e., Carollo).

3.2 Project Cash Flow

Figure 1 presents the projected and actual expenditures for the Project through October 2019 compared to the Fiscal Year 2019/2020 budget developed at the end of Q4 Fiscal Year 2018/2019. The line graph shows the cumulative values for the Project and the bars show the discrete monthly values. Actual and budgeted expenditures from 2013 to the end of Fiscal Year 2018/2019 have been combined to improve readability. Milestones have been added to the cumulative fiscal year budget and cumulative forecasted expenditures to show changes in the Project schedule that have occurred between development of the fiscal year budget from June

2019 and the current, reconciled budget developed at the end of September 2019. The milestone corresponds to the substantial completion of the WRF, which coincides with the City being in compliance with the TSO issued by the Regional Water Quality Control Board (RWQCB) in June 2018. It should be noted that the cash flow in Figure 1 reflects the latest schedule revisions as a result of delays in completion of the hydrogeological work due to issues with access to the Vistra property and delays in receipt of the CDP. While compliance with the TSO has not changed since last quarter, completion of construction of the injection wells has been delayed.

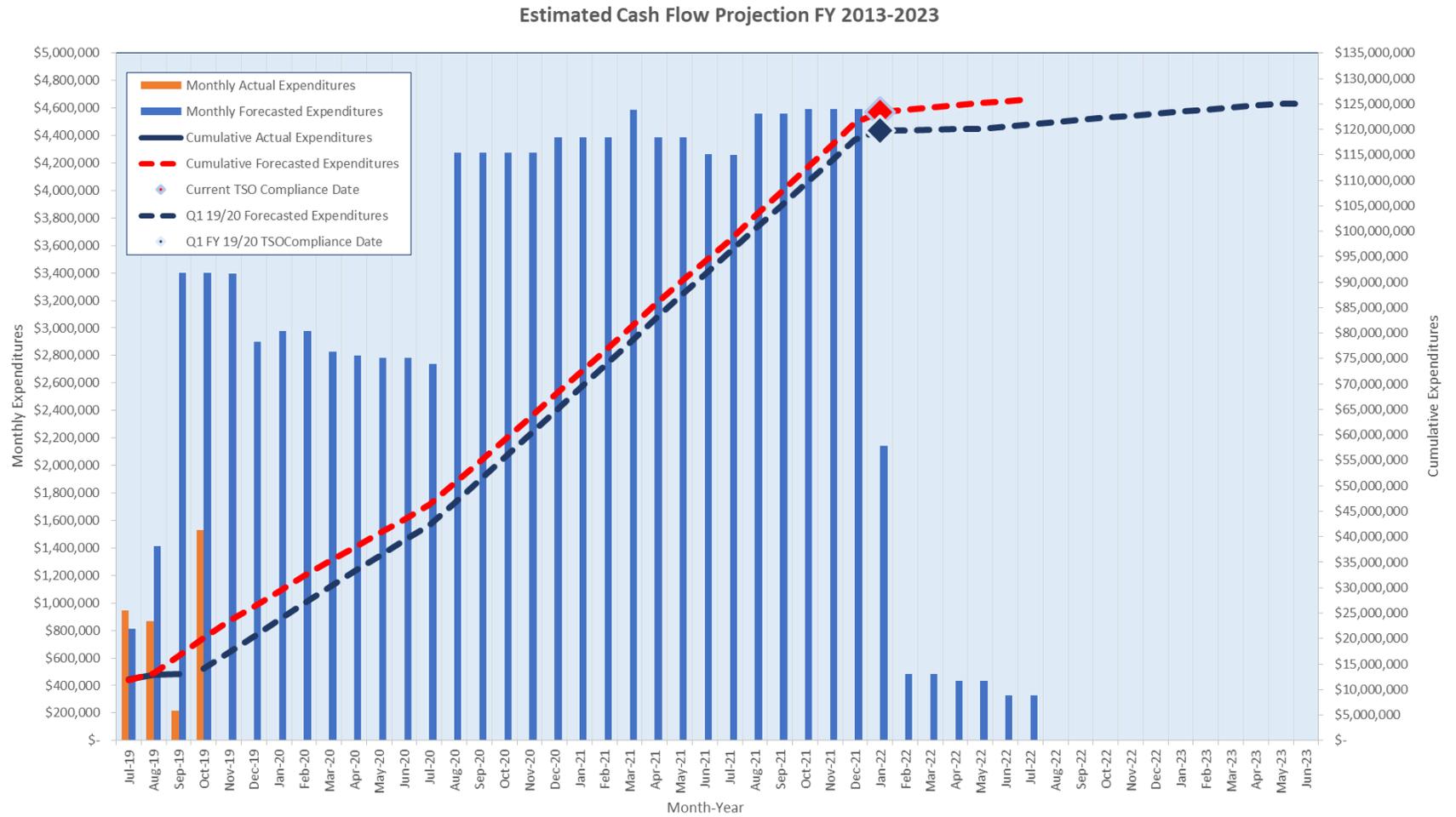


Figure 1 Project Cash Flow Projections and Actual Expenditures

Section 4

PROJECT SCHEDULE

A summary of the Project schedule is presented in Figure 2. The light blue bars for each major task represent the planned progress based on the baseline schedule. The dark blue bars represent the current actual progress as of September 2019. For each major line item, the schedule performance index (SPI) has been provided as well as an overall SPI for the entire Project. The SPI is a ratio of the planned percent complete versus the current actual percent complete. A SPI of greater than 1.00 indicates that the Project is on or ahead of schedule and a SPI of less than 1.00 indicates the Project is running behind the planned schedule.

4.1 Project Milestones

In June 2018, the City received a TSO from the RWQCB. The TSO requires the City to comply with a time schedule that will, within five years of adoption, allow the City to achieve full compliance with biochemical oxygen demand (BOD) and total suspended solids (TSS) final effluent limitations established in Order No. R3-2017-0050. In addition to the final compliance date, a number of intermediate milestones are provided in Table 3 (Compliance Schedule) of the TSO. Table 5 below provides a summary of the milestones in the TSO.

Table 5 Project Construction Milestones

Required Actions	Compliance Due Date	Planned Compliance Date	Actual Compliance Date
Release of Public Draft EIR	March 30, 2018	-	March 30, 2018
Release of Updated Rate Study	June 30, 2018	-	July 05, 2018
Proposition 218 Hearing	August 30, 2018	-	September 11, 2018
Certification of Final EIR	June 30, 2018	-	August 14, 2018
Award of Contract for WRF	September 30, 2018	-	October 23, 2018
Develop, Implement, and Submit Pollution Prevention Plan (PPP) for BOD and TSS	December 01, 2018	TBD ⁽¹⁾	-
Award of Contract for Construction of Conveyance Facilities	November 30, 2019	July 31, 2020	-
Completion of WRF Improvements with Completion Report	December 30, 2022	March 10, 2022	-
Full compliance with final effluent limitations	February 29, 2023	March 10, 2022	-

Notes:

- (1) The City and Program Manager have noted this requirement in the previous quarterly progress reports sent to the RWQCB (as required by the TSO). The City has requested that the Enhanced Source Control Program (ESCP) required as part of the Title 22 Engineer's Report be considered acceptable for this requirement in lieu of the PPP identified in the TSO.

An expanded milestone schedule has also been developed for outstanding Project activities.

Table 6 Expanded Milestone Schedule

Milestone	Baseline Schedule due Date	Planned Completion Date
<u>General Project</u>		
Compliance with the TSO ⁽¹⁾	November 11, 2021	March 10, 2022
<u>Water Reclamation Facility</u>		
Begin Construction	August 08, 2019	January 01, 2020
Deliver 90 Percent Design	October 24, 2019	December 19, 2019
Substantial Completion	November 11, 2021	March 10, 2022
Final Completion	June 09, 2022	September 22, 2022
<u>Conveyance Facilities</u>		
Deliver 90 Percent Design	October 15, 2019	December 31, 2019
Deliver 100 Percent Design	December 17, 2019	March 10, 2020
Bid Advertisement	February 21, 2020	May 15, 2020
Award Construction Contract	May 08, 2020	July 31, 2020
Substantial Completion	September 17, 2021	December 07, 2021
Final Completion	November 19, 2021	February 08, 2022
<u>Recycled Water Facilities</u>		
Select Preferred Injection Area	May 28, 2019	February 28, 2020
Deliver 30 Percent Design	August 04, 2020	July 09, 2021
Deliver 60 Percent Design	November 10, 2020	October 15, 2021
Deliver 90 Percent Design	February 16, 2021	January 21, 2022
Deliver 100 Percent Design	April 27, 2021	April 01, 2022
Award Construction Contract	July 21, 2021	June 24, 2022
Substantial Completion	April 21, 2022	April 28, 2023
Final Completion	June 21, 2022	May 26, 2023

Notes:

(1) The TSO requires compliance with full secondary treatment by February 28, 2023

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2019/20 Budget (1989 Law) and authorize the continued 3% assessment for hoteliers and addition of vacation rentals at the 3% assessment, as required by State law – Streets and Highway Code (SHC) sections 36530 to 36537 (*see steps below*).

The 1989 Law – Annual Improvement District Renewal Process

1. Completed in three City Council sessions (following review and recommended approval by the Tourism Business Improvement District Advisory Board):
 - a. Step 1: The amended Annual Report (SHC section 36533) was produced by the MBTBID and filed with the City Clerk for Council consideration and approval. At the first Council session, the Council approved the amended annual report. The Council also adopted a resolution of intention to supplement the program through the addition of vacation rentals and levy assessments for FY 2019/20. That Resolution stated the date and time of a public hearing (SHC section 36534) and a public meeting. That Resolution was mailed to affected business owners. The resolution of intention was also published once in the newspaper of general circulation in the City not less than 7 days before the public hearing. That resolution was adopted at the Council meeting of October 8, 2019 (Resolution No. 83-19).
 - b. Step 2: City Council held a public input session for hoteliers and vacation rental stakeholders at the October 22, 2019 Council meeting.
 - c. Step 3: City Council held a public hearing on November 12, 2019, following the negative protest procedure, that was held pursuant to SHC sections 36524 and 36525. Upon the conclusion of that public hearing, the City had received eleven (11) protests paying 0.64% of the assessment, which was less than the 50 percent threshold. At the conclusion of the public hearing, the Council, pursuant to the authority provided by the Streets & Highways Code, both adopted Resolution No. 94-19 continuing the MBTBID program and assessments as currently levied, as well as introduced for first reading Ordinance No. 626 amending Morro Bay Municipal Code (MBMC) Section 3.60 to add vacation rentals to the MBTBID.

The MBTBID assessment is a crucial revenue stream that allows the City to market Morro Bay to tourists. MBMC Chapter 3.60 outlines the creation of the MBTBID, the assessment, and the way assessment funds can be used.

The use of funds is designed to enhance tourism to the community, which should increase overall Transient Occupancy Tax revenues that are utilized in the City's General Fund, and directly benefit the community's hotels, which see an increase in overnight stays.

As part of the process to bring vacation rentals into the MBTBID, the City Council must adopt Ordinance No. 626 amending MBMC Chapter 3.60.

CONCLUSION

Staff recommends that the City Council adopt Ordinance No. 626.

ATTACHMENT

1. Ordinance No. 626

ORDINANCE NO. 626

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA TO INCLUDE VACATION RENTAL BUSINESSES IN ANNUAL MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT ASSESSMENT BY AMENDING CHAPTER 3.60 (TOURISM BUSINESS IMPROVEMENT DISTRICT LAW) OF TITLE 3 (REVENUE AND FINANCE) OF THE MORRO BAY MUNICIPAL CODE

WHEREAS, the Parking and Business Improvement Area Law of 1989, section 36500 *et seq.*, of the California Streets and Highway Code, authorizes cities to establish and review business improvement areas for the purpose of promoting tourism; and

WHEREAS, on April 13, 2009, City Council held a public hearing for the introduction and first reading of Ordinance 546 amending the Morro Bay Municipal Code (MBMC) to add a new Chapter 3.60 to establish the Morro Bay Tourism Business Improvement District (“MBTBID” and/or “TBID”), and adopted Ordinance 546 at its April 27, 2009 meeting, which set the MBTBID assessments at 3% from June 1, 2009 to May 31, 2010, and 2% from June 1, 2010 and thereafter; and

WHEREAS, on June 1, 2010, the MBTBID assessments returned to the 2% level, as established by Ordinance 546; and

WHEREAS, on September 13, 2010, the City Council held a public hearing and first reading of Ordinance 562 to amend MBMC section 3.60.050, changing the assessment percentage to 3%, and adopted Ordinance 562 at its September 27, 2010, meeting; and

WHEREAS, on May 16, 2019, at a duly noticed public meeting, the MBTBID advisory board, formed pursuant to MBMC, section 3.60.100, recommended the renewal of the MBTBID for Fiscal Year (FY) 2019-20 to continue its activities, and the City Council has approved that renewal for the past eight years; and

WHEREAS, all other findings of Ordinances 546 and 562 remain unchanged except as provided herein; and

WHEREAS, on May 28, 2019, City Council conducted a public meeting where staff presented the annual assessment report, which provided a full and detailed description of activities to be provided during the FY 2019-20, as provided in the proposed budget for that Fiscal Year, and available for review in the City Clerk’s office, and the City Council approved that Annual Assessment Report and declared its intention to renew the Morro Bay Tourism Business Improvement District for the 2019/20 Fiscal Year, and to levy and collect 3% assessments from hoteliers calculated in the manner set forth in MBMC, section 3.60.050, and that budget generally described the funded activities to be marketed, which attract and extend overnight stays in Morro Bay hotels, and are consistent with the authorized uses for the assessment revenue set forth in MBMC, section 3.60.030, and it was the intention of the City Council to levy and collect 3% assessments from the hoteliers within the TBID for the FY 2019-20; and

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WHEREAS, at the public meeting held on May 28, 2019, City Council additionally set a public hearing, for the intent to levy the MBTBID assessment for Fiscal Year 2019/20, to be held at the Morro Bay Veterans Memorial Hall located at 209 Surf Street, Morro Bay, California, in accordance with the California Streets and Highway Code, sections 36534 and 36535; and

WHEREAS, that public hearing to adopt a resolution to reaffirm the MBTBID, and levy and collect the 3% assessments from hoteliers, was held on Tuesday, June 11, 2019. Before or at that public hearing written protests to the continuation of the MBTBID and the levy of the assessment were considered, consistent with the requirements of Streets & Highways Code, sections 36524 and 36525 and MBMC, section 3.60.060, and written protests were not received from hoteliers which pay 50% or more of the proposed continued assessment, and as such the annual assessment was continued for FY 2019-20; and

WHEREAS, on September 19, 2019, at a duly noticed public meeting, the TBID advisory board, formed pursuant to MBMC, section 3.60.100, pursuant to the request of the City Council at its August 27, 2019 regular meeting, considered the addition of vacation rentals (“VRs”) to the existing MBTBID at the existing TBID assessment rate of 3% levied on hotels, and at that September 19, 2019 meeting, the TBID Board conducted a supplemental review of its Annual Report for FY 2019-20 (required by Section 3.60.060 of the Morro Bay Municipal Code and Streets & Highways Code section 36533 (“Section 36533”)), which was initially approved by the TBID Board on May 7, 2019, and then subsequently approved by the City Council on May 28, 2019; and

WHEREAS, the Annual Report pursuant to Streets & Highways Code Section 36533(a) provides that the TBID Board “shall cause to be prepared a report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report.” Subsection (b)(1-6) of Streets & Highways Code Section 36533 provides the Annual Report “shall contain” six elements. All six elements were addressed in the prior report submitted to, and approved by City Council, on May 28, 2019. Section 36533 also provides in subsection (a) that the TBID Board Annual Report submitted to the City Council “may propose changes, including, but not limited to, the boundaries of the parking and business improvement area or any benefit zones within the area, the basis and method of levying the assessments, and any changes in the classification of businesses.”; and

WHEREAS, pursuant to the request from City Council to add VRs to the TBID, the TBID Board recommended at its September 19, 2019 meeting the Council should approve a Supplemental Annual Report for FY 2019-20. This supplemental report both provided a supplemental recommendation on changes to “the basis and method of levying the assessments, and any changes in the classification of businesses,” so as to add VRs to the TBID at the existing assessment rate of 3%, and further addressed the effect of those proposed changes through a supplemental recommendation concerning the six required elements of an annual report; and

WHEREAS, the City timely mailed to all businesses subject to the existing and proposed TBID assessment a joint notice of both an upcoming public meeting on October 22, 2019 for the City Council to allow public testimony regarding the addition of VRs in the TBID, and an upcoming public hearing concerning the addition of VRs in the TBID to determine if written protests are received from the owners of all businesses in the current and proposed TBID which will pay 50 percent or more of the current and proposed assessments; and

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WHEREAS, on October 8, 2019, City Council conducted a public meeting where staff presented the Supplemental Annual Report for FY 2019-20, available for review in the City Clerk's office, and the budget generally described the funded activities to be marketed, which attract and extend overnight stays in Morro Bay hotels and vacation rentals, and are consistent with the authorized uses for the assessment revenue set forth in MBMC, section 3.60.030, and City Council approved the Supplemental Annual Report for FY 2019-20 and declared its intent to continue the levy and collection of 3% assessments from the hoteliers within the TBID for the FY 2019-20, and to levy and collect 3% assessments from vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) within the TBID for the remainder of FY 2019-20 consistent with the effective date of an amendment of Chapter 3.60 (Tourism Business Improvement District Law) of the Morro Bay Municipal Code, so as to add vacation rental businesses to the TBID at the existing assessment rate of 3% and consistent with MBMC section 3.60.050; and

WHEREAS, on October 8, 2019, City Council also set a date of October 22, 2019 for a public meeting on the addition of vacation rentals businesses to the Morro Bay Tourism Business Improvement District, to solicit and allow public testimony regarding the addition of vacation rental businesses to the Morro Bay Tourism Business Improvement District so as to levy an annual assessment on vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) at the existing TBID rate of 3% calculated in the manner set forth in MBMC, section 3.60.050;

WHEREAS, on October 8, 2019, City Council also set a date of Tuesday, November 12, 2019 for a public hearing to adopt a Resolution to reaffirm the MBTBID, and to affirm the renewal of the Morro Bay Tourism Business Improvement District for the 2019/20 Fiscal Year, to continue the levy and collection of 3% assessments from hoteliers calculated in the manner set forth in MBMC, section 3.60.050, and to levy and collect 3% assessments from vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) for the remainder of FY 2019-20 consistent with the effective date of amendment of Chapter 3.60 (Tourism Business Improvement District Law) of the Morro Bay Municipal Code so as to add vacation rental businesses to the TBID at the existing assessment rate of 3%, calculated in the manner set forth in MBMC, section 3.60.050; and

WHEREAS, the City timely mailed to all businesses subject to the existing and proposed TBID assessment the resolution adopted on October 8, 2019 concerning the continuation of the levy of the annual TBID assessment, the intention to add vacation rental businesses to the TBID, and confirming the date and time for a public meeting on October 22, 2019 and a public hearing on November 12, 2019 concerning the addition of vacation rental businesses to the TBID; and

WHEREAS, on October 22, 2019, City Council at a public meeting solicited and allowed public testimony regarding the addition of vacation rental businesses to the Morro Bay Tourism Business Improvement District so as to levy an annual assessment on vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) at the existing TBID rate of 3% calculated in the manner set forth in MBMC, section 3.60.050; and

WHEREAS, the City timely published in a newspaper of general circulation in the City the resolution adopted on October 8, 2019 concerning the continuation of the levy of the annual TBID assessment, the intention to add vacation rental businesses to the TBID, and confirming the date and time for a public meeting on October 22, 2019 and a public hearing on November 12, 2019 concerning the addition of vacation rental businesses to the TBID; and

WHEREAS, before or at the public hearing held on November 12, 2019, the City Council considered written and oral protests, from owners of businesses in the current and proposed assessment area, to the continuation of the MBTBID and the levy of the continued and proposed assessments, consistent with the requirements of Streets & Highways Code, sections 36524 and 36525 and MBMC, section 3.60.060, and such written protests were not received from the owners of businesses which will pay 50 percent or more of the existing and proposed assessments to be levied, and as such the annual assessment for FY 2019-20 was reaffirmed as continued; and

WHEREAS, the City Council having on October 8, 2019 affirmed and approved the Supplemental Annual Report for FY 2019-20 and declared its intent to continue the levy and collection of 3% assessments from the hoteliers within the TBID for the FY 2019-20, and to levy and collect 3% assessments from vacation rental businesses within the TBID for the remainder of FY 2019-20 consistent with the effective date of an amendment of Chapter 3.60 the MBMC, so as to add vacation rental businesses to the TBID at the existing assessment rate of 3% and consistent with MBMC section 3.60.050, and having on October 22, 2019 held a public meeting on such addition of vacation rentals businesses to the MBTBID, and on November 12, 2019 held a public hearing wherein written protests were not received from the owners of businesses which will pay 50 percent or more of the existing and proposed assessments to be levied, now desires pursuant to the authority provided by the Parking and Business Improvement Area Law of 1989, section 36500 *et seq.*, of the California Streets and Highway Code, to amend Chapter 3.60 (Tourism Business Improvement District Law) of Title 3 (Revenue and Finance) of the Morro Bay Municipal Code, so as to add vacation rental businesses to the Morro Bay Tourism Business Improvement District so as to levy an annual assessment on vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) at the existing TBID rate of 3% of the rent charged by the operator of the vacation rental for all transient occupancies; and

WHEREAS, the City Council further recognizes that contracts for vacation rental tenancies may have been entered into before the effective date of the inclusion of vacation rentals in the MBTBID assessment, and thus in the interests of equity the City Council desires that contracts executed, between owners/managers of vacation rental businesses and their customers, prior to the effective date of the inclusion of vacation rentals in the MBTBID as an operation of law, for tenancies up to and including June 30, 2020, be provided a limited exemption from the assessment; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 3.60 (TOURISM BUSINESS IMPROVEMENT DISTRICT LAW) OF TITLE 3 (REVENUE AND FINANCE) OF THE MORRO BAY MUNICIPAL CODE IS TO READ AS FOLLOWS (WITH NEW TEXT IN *BOLD ITALICS* AND DELETED TEXT IN STRIKETHROUGH):

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CHAPTER 3.60 - TOURISM BUSINESS IMPROVEMENT DISTRICT LAW

Sections:

3.60.010 - Title.

This chapter shall be known as the "City of Morro Bay Tourism Business Improvement District Law."

3.60.020 - Definitions.

"City Council" means the City Council of the City of Morro Bay.

"City Advisory Board" means the advisory body appointed by the City Council, pursuant to this chapter.

"District" means the City of Morro Bay Tourism Business Improvement District (or "MBTBID") created by this chapter and as delineated in Section 3.60.040.

"Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, motel, ***vacation rental***, or bed and breakfast that pays transient occupancy tax. ***For purposes of this chapter the definition of "hotel" shall include vacation rentals.*** For purposes of this chapter the definition of "hotel" shall not include RV parks ~~and vacation rentals.~~

"Law" means the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Sections 36500 et seq., as amended.

"Operator" means the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

"Transient" means any person who exercises occupancy or who is entitled to occupancy, by reason of concession, permit, right of access, license, or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days.

"Vacation rental" shall have the same meaning as the term "Short-term vacation rental" has as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code.

3.60.030 - Authorized uses.

This chapter is made and enacted pursuant to the provisions of the Parking and Business Improvement Area Law of 1989 (Sections 36500, et seq., of the Streets and Highways Code)

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(the "law"). The purpose of forming the district as a business improvement area under the Parking and Business Improvement Area Law of 1989 is to provide revenue to defray the costs of services, activities and programs promoting tourism which will benefit the operators of hotels in the district through the promotion of scenic, recreational, cultural and other attractions in the district as a tourist destination. It is the intent of this chapter to provide a supplemental source of funding for the promotion of tourism in the district. The specific services, activities and programs to be provided by the district are as follows:

- A. The general promotion of tourism within the district is to include costs as specified in the business plan to be adopted annually;
- B. The marketing of conference, group, and film business that benefits local tourism and the local hotel industry in the district; and
- C. The marketing of the district to the travel industry in order to benefit local tourism and the local hotel industry in the district.

3.60.040 - Boundaries.

The boundaries of the MBTBID shall be the boundaries of the City of Morro Bay.

3.60.050 - Levy of assessment and exemptions.

The MBTBID shall include all hotel businesses located within the MBTBID boundaries. The assessment to be levied on all hotel businesses within the MBTBID boundaries shall be based upon three percent of the rent charged by the operator per occupied room per night for all transient occupancies. The assessment shall be collected monthly, based on percent of the rent charged by the operator per occupied room per night in revenues for the previous month. New hotel businesses within the boundaries shall not be exempt from the levy of assessment authorized by Section 36531 of the law. Assessments pursuant to the MBTBID shall not be included in gross room rental revenue for purpose of determining the amount of the transient occupancy tax. The value of extended stays of more than thirty consecutive calendar days shall be exempt from the levy of assessment. Any other exclusion shall be based on benefit and the policies and ordinances of the collecting agency.

3.60.060 - Annual review of assessment.

All of the assessments imposed pursuant to this chapter shall be reviewed by the Morro Bay City Council annually, based upon the annual report prepared by the advisory board appointed pursuant to this chapter and Sections 36530 and 36533 of the law. After approval of the annual report, the Morro Bay City Council shall follow the hearing process as outlined in Section 36534 of the law. At the public hearing the Morro Bay City Council shall hear and consider all protests. If written protests are received from hotel businesses in the district paying fifty percent or more of the annual assessment, no further proceedings to continue the levy of assessments shall take place. The protests shall be weighted based upon the annual assessment for the prior year by each hotel business.

3.60.070 - Imposition of assessment.

The Morro Bay City Council hereby levies and imposes and orders the collection of an additional assessment to be imposed upon hotel businesses in the district described above, which shall be calculated pursuant to Section 3.60.050 above. Such levy shall begin on June 1, 2009. ***Vacation rental businesses are subject to such assessment upon the effective date of the inclusion of vacation rental businesses in the MBTBID as an operation of law. Rent charged by vacation rental businesses, for tenancies through June 30, 2020, that are pursuant to contracts entered into between the business and a tenant prior to the effective date of the inclusion of vacation rental businesses in the MBTBID as an operation of law, shall not be subject to the assessment.***

3.60.080 - Use of revenue.

The activities to be provided by the MBTBID will be funded by the levy of the assessments and any voluntary contributions. The total revenue from the levy of assessments and any other voluntary contributions within the MBTBID shall not be used to provide improvements or activities outside the MBTBID or for any purpose other than the purposes specified in the resolution of intention. The proceeds of the hotel business assessment and any other voluntary contributions shall be spent to administer marketing and visitor programs to promote the City of Morro Bay as a tourism visitor destination. All funds shall be expended consistent with the purposes of this section. Funds remaining at the end of any MBTBID term may be used in subsequent years in which MBTBID assessments are levied as long as they are used consistent with the requirements of this section. The Morro Bay City Council shall consider recommendations made by the advisory board created by Section 3.60.100 of this chapter as to the use of assessment revenue.

3.60.090 - Delinquency, penalty and interest.

Any hotel business that fails to remit any assessment imposed by this chapter within the time required shall pay a penalty of ten percent of the assessment amount in addition to the assessment. Any and all remedies available to the City of Morro Bay for non-payment of assessment or taxes shall be applicable in the event of non-payment of an assessment under this chapter. Any penalty and interest fees collected from a hotel business due to delinquency shall go to the City of Morro Bay.

3.60.100 - Advisory board.

The City Council shall appoint an advisory board pursuant to Section 36530 of the California Streets and Highways Code in order to make recommendations to the City Council on the expenditure of revenues derived from the levy of assessments, on proposed improvements and activities, and on the method and basis of levy assessments. The City Council may, by resolution, adopt bylaws governing the membership and operations of the advisory board.

3.60.110 - Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the chapter. The Morro Bay City Council hereby declares that it would have passed the ordinance codified in this chapter and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any

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one or more of the sections, subsections, sentences, clauses or phrases hereof be declared invalid or unconstitutional.

3.60.120 - Modification or disestablishment.

The City of Morro Bay, by ordinance, may modify the provisions of this chapter and may disestablish the district or parts of the district, after adopting a resolution of intention to such effect. Such resolution shall describe the proposed change or changes, or indicate that it is proposed to disestablish the district, and shall state the time and place of a hearing to be held by the Morro Bay City Council to consider the proposed action. If the operators of hotels which pay fifty percent or more of the assessments in the district file a petition with the City Clerk of the City of Morro Bay requesting the Morro Bay City Council to adopt a resolution of intention to modify or disestablish the district, the Morro Bay City Council shall adopt such resolution and act upon it as required by law. Signatures on such petition shall be those of a duly authorized representative of the operators of hotels in the district. In the event the resolution proposes to modify any of the provisions of this chapter, including changes in the existing assessments or in the existing boundaries of the district, such proceedings shall terminate if protest is made by the operators of hotels which pay fifty percent or more of the assessments in the district, or in the district as it is proposed to be enlarged.

In the event the resolution proposes disestablishment of the district, the Morro Bay City Council shall disestablish the district, unless at such hearing protest against disestablishment is made by the operators of hotels paying fifty percent or more of the assessments in the district.

3.60.130 - Effective date.

The City Clerk of the City of Morro Bay shall certify to the passage of this chapter by the Morro Bay City Council and cause it to be posted in three conspicuous places in the City of Morro Bay and it shall take effect on the thirty-first day after it is approved by the Morro Bay City Council.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage.

SECTION 4. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the 12th day of November 2019, by motion of Council Member McPherson and seconded by Council Member Davis.

PASSED AND ADOPTED on the ____ day of _____, 2019, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO
HEREBY CERTIFY that the foregoing Ordinance Number 626 was duly adopted by the
City Council of the City of Morro Bay at a regular meeting of said Council on the ____
day of _____, 2019, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official
seal of the City of Morro Bay, California, this ____day of _____, _____.

DANA SWANSON, City Clerk



AGENDA NO: A-8

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 3, 2019

FROM: Dana Swanson, City Clerk
Heather Goodwin, Deputy City Clerk

SUBJECT: Adoption of Ordinance No. 628 repealing Ordinance No. 623 in its entirety.

RECOMMENDATION

Staff recommends Council adopt, by second reading by title only and with further reading waived, Ordinance No. 628, entitled "An Ordinance of the City Council of the City of Morro Bay, California, Repealing Ordinance No. 623 Establishing Pre-Zoning for the 27.6-acre portion of Parcel APN #073-101-017 (Case No. #MIN19-001)."

ALTERNATIVES

No alternatives are being recommended.

FISCAL IMPACT

None.

BACKGROUND/DISCUSSION

Ordinance No. 628 was introduced for first reading at the November 12, 2019 meeting. Linked [here](#) is the previous agenda, staff report and attachments with more detailed background.

CONCLUSION

Staff recommends that the City Council adopt Ordinance No. 628 by second reading by title only.

ATTACHMENT

1. Ordinance No. 628

Prepared By: DS/HG Dept Review: _____
City Manager Review: City Attorney Review: CFN

ORDINANCE NO. 628

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
REPEALING ORDINANCE NO. 623
ESTABLISHING PRE-ZONING FOR THE 27.6-ACRE PORTION OF
PARCEL APN #073-101-017 (CASE NO. #MIN19-001)**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, California Government Code subdivision 65859 (a) states, a city may pre-zone unincorporated territory to determine the zoning that will apply to that territory upon annexation to the city. The zoning shall become effective at the same time that the annexation becomes effective; and

WHEREAS, the City intended to pursue annexation and a sphere of influence (SOI) amendment of the subject 27.6-acre parcel, which is currently uninhabited and located in unincorporated San Luis Obispo County and to be addressed as 555 South Bay Blvd; and

WHEREAS, on June 25, 2019, the City Council authorized filing of two separate applications with the San Luis Obispo County Local Agency Formation Commission (LAFCO) through Resolution Nos. 54-19 and 55-19, which respectively authorized: 1) an application with LAFCO for a sphere of influence (SOI) designation and annexation of the South Bay Site for the public purpose of construction of the City's Water Reclamation Facility (WRF), and 2) a SOI designation for a remainder parcel known as the Tri-W parcel; and

WHEREAS, the application requirements of LAFCO for said resolutions include City Council approval of Pre-Zoning of the South Bay WRF site; and

WHEREAS, the current zoning designation in the unincorporated County is agriculture and the City desired to pre-zone the subject 27.6-acre parcel as Public Facility (PF); and

WHEREAS, PF zoning is consistent with the Public/Institutional General Plan Land Use Designation; and

WHEREAS, the Site is currently uninhabited and is designated by the draft combined General Plan / Local Coastal Program ("Plan Morro Bay") for Public/ Institutional land use with the draft Zoning Code to be Public Facility (PF) zone district.; and

WHEREAS, the City of Morro Bay received approval on July 11, 2019, for a coastal development permit from the California Coastal Commission for construction of a Water Reclamation Facility to be located on the subject 27.6-acre portion of an overall 396 acre parcel (APN #073-101-017); and

WHEREAS, at its meeting of July 16, 2019, the Planning Commission took the following actions:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Conducted a public hearing to obtain public testimony on the proposed project;

WHEREAS, at its meeting of August 13, 2019, the City Council took the following actions:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Considered the recommendations of the Planning Commission;
- c. Conducted a public hearing to obtain public testimony on the proposed project;
- d. Approved Resolution 70-19 approving General Plan and Local Coastal Program Text and Map amendments adding the Public/Institutional land use classification to both documents to facilitate the rezoning of the site.

WHEREAS, on August 13, 2019, the City Council introduced for first reading, Ordinance No. 623, An Ordinance of the City Council of the City of Morro Bay, California Establishing Pre-Zoning for the 27.6-acre Portion of Parcel APN #073-101-017 (Case No. #MIN19-001) ("South Bay Site"), which was adopted on August 27, 2019, attested by the City Clerk on August 28, 2019, and published as required by law; and

WHEREAS, the City Council adopted Ordinance No. 623 consistent with both Government Code section 56375(A)(7) which in part reads that the LAFCO "shall require, as a condition to annexation, that a city prezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at build-out, and are consistent with the city's general plan," as well as LAFCO Policies and Procedures (February 21, 2019) which provides in Subsection 8 of Section 2.3 ("Policies for City Annexations") of Chapter 2 ("Policies") in part "That the City Prezone the area to be annexed."; and

WHEREAS, pursuant to authority provided by the California Constitution and the State Elections Code, on September 26, 2019, Dan Sedley and Linda Donnelly, presented for filing on behalf of Citizens for Affordable Living, a referendum petition against Ordinance No. 623, so as to repeal the ordinance or submit it to a vote of the qualified voters of the City of Morro Bay; and

WHEREAS, Election Code Section 9237 provides in part that a referendum petition qualifies if it "is signed by not less than 10 percent of the voters of the city,."; and

WHEREAS, in accordance with Election Code Section 9237, it was determined that the County Clerk's last official report of City of Morro Bay voter registration to the Secretary of State was 7,475 registered voters and that 10% of said registration would require 748 valid signatures to qualify the referendum petition; and

WHEREAS, on September 26, 2019, pursuant to the provisions of Election Code section 9210, the referendum petition was examined by the City's Elections Official and it was determined the number of signatures, prima facie, was in excess of the number of signatures required, and the City's Elections Official accepted the petition for filing; and

WHEREAS, based on the County of San Luis Obispo Registrar of Voters' Signature Verification Certificate and, in accordance with Election Code Sections 9114 – 9115, the referendum petition against the adoption of Ordinance No. 623 was determined to contain 894 valid signatures and deemed to be sufficient on October 23, 2019; and

WHEREAS, in accordance with Election Code Section 9114, the Elections Official certified the results of the examination to the City Council at the next regular meeting held on November 12, 2019;

WHEREAS, Election Code Section 9237 provides that when a referendum petition against an ordinance qualifies, “the effective date of the ordinance shall be suspended and the legislative body shall reconsider the ordinance,”; and

WHEREAS, Election Code Section 9241 provides in part that when a city council is presented with a qualified referendum petition, the city council shall either “entirely repeal the ordinance against which the petition is filed” or the city council “shall submit the ordinance to the voters”; and

WHEREAS, Election Code Section 9241 further provides in part: “If the legislative body repeals the ordinance ... the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body”.

THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DOES HEREBY FIND AND ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Morro Bay hereby finds and determines that the foregoing recitals of this ordinance are true and correct and are hereby incorporated into this ordinance as fully set forth herein.

SECTION 2. Based upon the forgoing, the City Council hereby repeals Ordinance No. 623 in its entirety.

SECTION 3. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. This ordinance shall be in full force and effect thirty (30) days after its passage.

SECTION 5. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the 12th day of November 2019, by motion of Mayor Heading and seconded by Council Member Davis.

PASSED AND ADOPTED on the 10th day of December 2019.

AYES:
NOES:
ABSENT:
ABSTAIN:

JOHN HEADING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 628 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____, 2019, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this ____ day of _____, _____.

DANA SWANSON, City Clerk



AGENDA NO: A-9

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council DATE: December 3, 2019

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: Adoption of Ordinance No. 627 concerning Tobacco, Vaping and Secondhand Smoke, including through a Tobacco Retailer Licensing Program, a Prohibition on the Sale of E-Cigarettes (Vaping Products), and Enhancing the City's Current Secondhand Smoking Regulations by a Smokefree Policy for Multi-unit Housing

RECOMMENDATION

Staff recommends Council consider adopting, by second reading and by title only with further reading waived, Ordinance No. 627, entitled "An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 5.54 (Tobacco, Electronic Cigarettes and Vaping) to Title 5 (Business Tax Certificates and Regulations), and amending Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 (Public Peace, Morals and Welfare), of the Morro Bay Municipal Code, to regulate the sale of tobacco and vaping products and update and expand the City's Secondhand Smoking Regulations."

ALTERNATIVES

No alternatives are being recommended.

FISCAL IMPACT

The tobacco retailer's license program (added in Chapter 5.54) will create additional administrative costs, and the new regulations may create additional enforcement costs. Chapter 5.54 provides for the recovery of administrative and enforcement costs related to the tobacco retailer's license program through the assessment of a license fee. The tobacco regulations may have an impact on the local economy in a way that would affect City finances, but the nature and extent of such effects are currently unknown.

BACKGROUND/DISCUSSION

Ordinance No. 627 was introduced for first reading at the November 12, 2019 regular City Council meeting. Ordinance No. 627 is now proposed for adoption through a second reading, and if adopted will:

1. Ban the sale of e-cigarettes and e-cigarette paraphernalia.
2. Ban the sale of all flavored tobacco products, including those flavored with menthol.

Prepared By: DS/HG Dept Review: _____
City Manager Review: SC City Attorney Review: CFN

3. Implement regulations recommended by the American Lung Association, including:
 - a. Multi-unit residences (e.g., apartments and condominium) (does not include single-family homes and mobile home parks)
 - i. Prohibiting smoking in both the units and common areas of apartment and condo complexes, senior and assisted living facilities, and long-term health care facilities, except in designated smoking areas.
 - ii. Requires that all new and renewed leases for occupancy of a unit in a multi-unit residence shall prohibit smoking.
 - iii. Requires landlords of multiunit housing to provide written notice of new restrictions to tenants and to also post “no smoking” signs.
 - b. Creating a tobacco retailer’s license program aimed at providing the City with a mechanism for punishing violations of local, state, and federal tobacco laws by tobacco retailers.
 - c. Prohibiting the sale of tobacco products by retail establishments that contain a pharmacy.
 - d. Prohibiting the sale of (a) single cigars that cost less than five dollars, (b) any number of cigars fewer than the number contained in the manufacturer’s original consumer packaging designed for retail sale to a consumer, and (c) any package of cigars containing fewer than five cigars.

Amendments made by the Council on November 12, 2019 to Ordinance No. 627 on the floor, for the introduction and first reading, are illustrated as red-line text in Attachment 1 and include the following:

- Section 5.54.020 reflects an effective date, for the ban on sales of vaping products, flavored tobacco products, and certain cigars, of March 15, 2020 (about 90 days from adoption, rather than the 30 days as an operation of law)
- Section 5.54.010 includes modified definition of “electronic cigarette” so that the exclusion of cannabis from the ban means cannabis without Vitamin E acetate, and Vitamin E acetate has been defined in the same section as well as stated below.
 - *“Vitamin E acetate,” also known as α -Tocopheryl acetate, means a synthetic form of vitamin E and/or an oil derived from vitamin E, and known to be used as an additive for vaping products.*

The effective date of both the prohibition on smoking in multi-unit residences, as well as the prohibition on the sale of vaping products, flavored tobacco products, and certain cigars, is set by the ordinance as March 15, 2020. The requirement for a tobacco retailer license will commence on January 1, 2021. These extended dates are provided to allow for reasonable time for adjustment by retailers, landlords and tenants to the new regulations, as well as for further administrative

requirements (e.g., licenses forms and fee setting) to be completed by the City. Please refer to the related staff report for the November 12, 2019 Council meeting for further details concerning Ordinance No. 627.

CONCLUSION

Staff recommends that the City Council consider adopting Ordinance No. 627 by second reading and by title only.

ATTACHMENT

1. Ordinance No. 627

ORDINANCE NO. 627

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 5.54 (TOBACCO, ELECTRONIC CIGARETTES AND VAPING) TO TITLE 5 (BUSINESS TAX CERTIFICATES AND REGULATIONS), AND AMENDING CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), OF THE MORRO BAY MUNICIPAL CODE, TO REGULATE THE SALE OF TOBACCO AND VAPING PRODUCTS AND UPDATE AND EXPAND THE CITY'S SECONDHAND SMOKING REGULATIONS

WHEREAS, the City of Morro Bay ("City") is empowered to enact legislation to protect the health, safety, and welfare of the public; and

WHEREAS, there are currently serious public health concerns about the immediate and long-term harm caused by vaping/e-cigarette use ("vaping"); and

WHEREAS, approximately 1,300 cases of vaping-related lung illnesses have been reported in hospitals, health clinics, and emergency rooms nationwide, with at least 26 confirmed vaping-related deaths; and

WHEREAS, the U.S. Surgeon General and the California Department of Public Health (CDPH) have issued health advisories to educate the public about the imminent health risk posed by vaping any product; and

WHEREAS, teen use of vaping products has grown rapidly in recent years, with a February 2019 National Institutes of Health report finding that over 17.6% of 8th graders, 32.3% of 10th graders, and 37.3% of 12th graders reported trying vaping last year nationwide; and

WHEREAS, according to a 2017-2018 California Healthy Kids Survey (CHKS) of Morro Bay High School 9th and 11th graders conducted in 2018, 18% of 9th graders and 22% of 11th graders had used vaping products at least once in the past month, and over 60% of students surveyed thought it was fairly easy or very easy for high school students to obtain vaping products; and

WHEREAS, vaping products, particularly the flavored variety, are popular among younger users, and the packaging and advertising of vaping products by vaping companies are often attractive to younger users; and

WHEREAS, there are over 15,000 vaping flavors available on the market, including youth-orientated flavors such as bubble gum, cotton candy, and fruit punch, among others; and

WHEREAS, in addition to vaping products, several other tobacco products are flavored in ways that make them attractive to minors, thus increasing the risk that minors will use, and potentially become addicted to, these products; and

WHEREAS, the Federal Family Smoking Prevention and Tobacco Control Act prohibits the sale of cigarettes with a characterizing flavor – other than tobacco and menthol – but does not apply to cigars, e-cigarettes, or other non-cigarette tobacco products; and

WHEREAS, the Tobacco Products Scientific Advisory Committee (TPSAC) issued a report on menthol cigarettes, concluding that they have “an adverse impact on public health in the United States” and that “[t]here are no public health benefits of menthol compared to non-menthol cigarettes.” The report recommended to the FDA that “[r]emoval of menthol cigarettes from the marketplace would benefit public health in the United States;” and

WHEREAS, in July 2013, the Food and Drug Administration published an independent report that concluded that “menthol use is likely associated with increased smoking initiation by youth and young adults,” “menthol in cigarettes is likely associated with greater addiction,” and “that menthol cigarettes pose a public health risk above that seen with nonmenthol cigarettes;” and

WHEREAS, through the sale of tobacco products, pharmacies, and business establishments containing pharmacies, convey tacit approval of the purchase and use of tobacco products. This approval sends a mixed message to consumers who generally patronize pharmacies for health care services; and

WHEREAS, tobacco products are often sold individually to make them less expensive, and more enticing to youth. Establishing policies to ensure minimum packaging, or a minimum unit in which cigars can be sold in, will increase the purchase price and help protect youth from the health dangers of smoking little cigars and cigarillos; and

WHEREAS, secondhand smoke has been shown to be extremely hazardous to the health and safety of those who are exposed to it; and

WHEREAS, the City’s existing secondhand smoke regulations focus on limiting or eliminating secondhand smoke in public areas; and

WHEREAS, these regulations have not completely eliminated the risks posed by secondhand smoke to the community; and

WHEREAS, the City desires to amend its regulations to make them more comprehensive and effective at protecting the community from the harmful effects of secondhand smoking.

THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DOES HEREBY FIND AND ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 5.54 (TOBACCO, ELECTRONIC CIGARETTES AND VAPING) IS HEREBY ADDED TO TITLE 5 OF THE MORRO BAY MUNICIPAL CODE, TO READ AS FOLLOWS:

“Chapter 5.54 – TOBACCO, ELECTRONIC CIGARETTES AND VAPING

5.54.010 – Definitions.

The following words and phrases, as used in this chapter, shall have the following meanings:

“Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

“Cigar” means (1) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (2) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. “Cigar” includes, but is not limited to, tobacco products known or labeled as “cigar,” “cigarillo,” “tiparillo,” “little cigar,” “blunt wrap,” or “cigar wrap.”

“Electronic cigarette,” (i.e., e-cigarettes) for purposes of solely this Chapter 5.54, means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances (excluding cannabis that contains no Vitamin E acetate), including any component, part or accessory of such a device, whether or not sold separately. Includes any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

“Electronic cigarette paraphernalia” means an item that is marketed as or can be used as a component part of an electronic cigarette.

“Flavored tobacco product” means any tobacco product that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacture of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

“Hearing officer” means the person or persons designated by the city manager to serve in this capacity. Compensation of a hearing officer shall not depend on any particular outcome of any hearings the hearing officer is involved with concerning this Chapter 5.54.

“Licensing agent” means a person or persons designated by the city manager to serve in this capacity.

“Person” means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Pharmacy” means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals. “Pharmacy” includes any retail

establishment that contains a pharmacy, even if the pharmacy is not the sole or primary business of the retail establishment.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-today operations of a business.

“Tobacco product paraphernalia” includes cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco or products prepared from tobacco.

“Tobacco product” means any product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, electronic cigarettes or any other preparation of tobacco including Indian cigarettes called “bidis.” “Tobacco product” includes electronic cigarette paraphernalia and tobacco product paraphernalia. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes and is marketed and sold solely for such an approved purpose.

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco, or any tobacco product; “tobacco retailing” shall mean the doing of any of these things.

“Vaping” is a term that commonly refers to the use of an electronic cigarette.

“Vitamin E acetate,” also known as α -Tocopheryl acetate, means a synthetic form of vitamin E and/or an oil derived from vitamin E, and known to be used as an additive for vaping products.

5.54.020 – Prohibition on sale of certain tobacco products.

It is unlawful to sell, offer to sell, or exchange or offer to exchange for consideration any of the following products in the City of Morro Bay (commencing March 15, 2020):

- A. Electronic cigarettes.
- B. Electronic cigarette paraphernalia.
- C. Flavored tobacco products.
- D. Cigars meeting any of the following criteria:
 - 1. Any single cigar, whether or not packaged for individual sale, unless the retail price exceeds \$5.00; or

2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer; or
3. Any package of cigars containing fewer than five cigars.

5.54.030 – Requirement for tobacco retailer license.

- A. Beginning on January 1, 2021, it shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur.
- B. Licenses are valid for one year and each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license prior to its expiration.
- C. The conference of a tobacco retailer license does not confer any new rights under any other law and does not exempt any business that otherwise would be subject to the smoking related provisions within the Morro Bay Municipal Code and Labor Code Section 6404.5.

5.54.040 – Retailer limitations.

- A. No license will be issued to authorize tobacco retailing at other than a fixed location. Itinerant tobacco retailing and tobacco retailing from vehicles are prohibited.
- B. No license will be issued to authorize tobacco retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); tobacco retailing in bars and restaurants serving alcoholic beverages is prohibited.
- C. No license will be issued to authorize tobacco retailing in a pharmacy and no pharmacy shall engage in tobacco retailing at any time.

5.54.050 – License application procedure.

- A. Application for a tobacco retailer's license shall be submitted to the licensing agent in the name of each proprietor/person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the licensing agent and shall contain the following information:
 1. The name, address, and telephone number of the applicant.
 2. The business name, address, and telephone number of each location for which a tobacco retailer's license is sought.

3. Such other information as the licensing agent deems necessary for enforcement of this chapter.
 4. Whether or not any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.
- B A licensed tobacco retailer shall inform the city in writing of any change in the information submitted on an application for a tobacco retailer's license within ten business days of a change.

5.54.060 – Issuance of license.

Upon the receipt of an application for a tobacco retailer's license, the licensing agent shall issue a license unless substantial evidence in the record demonstrates one of the following bases for denial:

- A. The application is incomplete or inaccurate; or
- B. The application seeks authorization for tobacco retailing at a location prohibited by section 5.54.040; or
- C. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension is in effect pursuant to Section 5.54.120 of this chapter.

5.54.070 – Display of license.

Each licensee shall prominently display the license in a public place at each location where tobacco retailing occurs.

5.54.080 – Fees for license.

The fee for a tobacco retailer's license shall be established by resolution of the city council. The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation, and prosecution of violators. The fee for tobacco retailer's license shall be paid to the licensing agent.

5.54.090 – Licenses nontransferable.

A tobacco retailer's license is not transferable to a new location or to another person. For example, if a proprietor to whom a license has been issued changes business location, that proprietor must apply for a new license prior to acting as a tobacco retailer at the new location; or, if the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer.

5.54.100 – Noncompliance with tobacco-related laws - License violation.

It shall be a violation of a tobacco retailer's license for a licensee or his or her agents or employees to violate any local, states or federal tobacco-related law.

5.54.110 – License compliance monitoring.

Compliance with this chapter shall be monitored by City law enforcement agents. At least four compliance checks of each tobacco retailer shall be conducted during each twelve-month period. The cost of compliance monitoring shall be incorporated into the license fee.

5.54.120 – Suspension or revocation of license.

- A. In addition to any other penalty authorized by law, a tobacco retailer's license may be suspended or revoked if the city finds, after notice to the licensee consistent with Section 1.03.120 of this Code, and reasonable opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to this chapter, or that the information contained in the application, including supplemental information, if any, is false in any material respect, as follows:
1. Upon a finding by the city of a first license violation within any five-year period, the license shall be suspended for thirty days.
 2. Upon a finding by the city of a second license violation within any five-year period, the license shall be suspended for ninety days.
 3. Upon a finding by the city of a third license violation within any five-year period, the license shall be suspended for one year.
 4. Upon a finding by the city of a fourth license violation within any five-year period, the license shall be revoked.
- B. During a period of license suspension, the tobacco retailer shall remove all tobacco products from public view at the retail location.
- C. The suspension or revocation of a tobacco retailer's license shall become effective on the date specified in the notice of suspension or revocation issued by the city, which shall not be sooner than the 11th business day following the date of the city's decision to suspend or revoke the license.

5.54.130 – Appeal of suspension or revocation.

A decision of the city to suspend or revoke a license is appealable to a hearing officer and must be filed with the city clerk no later than ten business days following the date of the city's decision to suspend or revoke the license. Appeal procedures shall follow those contained in Sections 1.03.080-090 of this Code except when in conflict with this Chapter 5.54. An appeal shall stay all proceedings in furtherance of the appealed action. Following appeal, the decision of the hearing officer may be appealed to the city manager or his or her designee by filing a notice of appeal with the city clerk no later than ten business days following the date of the decision of the

hearing officer. A decision of the city manager or his or her designee shall be the final decision of the city.

5.54.140 – Administrative fine – Penalties - Enforcement.

- A. Any violation of the provisions of this chapter by any person is a misdemeanor and is punishable as provided in Chapter 1.16 of this code. Any violation of the provisions of this chapter by any person is also subject to administrative fines as provided in Chapter 1.03 of this code.
- B. Each day that a person acts as a tobacco retailer without a valid tobacco retailer's license shall constitute a separate violation of this chapter.
- C. Violations of this chapter are hereby declared to be public nuisances.
- D. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- E. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity."

SECTION 2. CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MORRO BAY MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS (NEW TEXT IN *BOLD ITALICS* AND DELETED TEXT IN ~~STRIKETHROUGH~~):

"9.24.020 – Purpose.

This chapter is enacted with the specific intent to:

- A. Prohibit smoking in certain ~~public~~ places not preempted by California Labor Code Section 6404.5, which provides further smoking regulations;
- B. Protect the public health, safety and general welfare by prohibiting smoking in certain public places under circumstances where other persons will be exposed to secondhand smoke;
- C. Ensure a cleaner and more hygienic environment for the city, its residents, and its natural resources, including its creeks and streams and beaches;
- D. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including residents and visitors, particularly children, to breathe smoke-free air, recognizing the threat to public health and the environment which smoking causes;
- E. Designate the enforcing agency for this chapter and for Labor Code Section 6404.5.

9.24.020 – Definitions.

The following words and phrases, as used in this chapter or in any other applicable law regulating smoking, shall have the following meanings:

“Business” means any sole proprietorship, partnership, joint venture, corporation, association or other entity formed for profit-making purposes or that has an employee.

“Cannabis” means all parts of the plant *cannabis sativa linnaeus*, *cannabis indica*, or *cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

“City beach” means the sandy area on either side of the mean high tide line from Atascadero Road all the way up to, but not including the parking lot at the Rock. City beach shall also include the area of the Sand Spit that is owned by the city.

“City T-piers” means the municipal piers located North of Beach Street and at Tideland Park.

“Code compliance officer” means the city code compliance officer or duly authorized designee of the city code compliance officer.

“Common area” means every enclosed area and every unenclosed area of a multi-unit residence that residents of more than one unit are entitled to enter or use, including, without limitation, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

~~“Dining area” means any area available to or customarily used by the general public that is designed, established or regularly used for consuming food or drink.~~

“Electronic cigarette” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances (including but not limited to cannabis), including any component, part or accessory of such a device, whether or not sold separately. Includes any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

“Employee” means any person who is employed or retained as an independent contractor by any employer as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit or volunteer entity.

“Employer” means any person, partnership, corporation, association, nonprofit or other entity that employs or retains the service of one or more persons, or supervises volunteers.

“Enclosed” means any covered or partially covered space having more than fifty percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or any space open to the sky (hereinafter “uncovered”) having more than seventy-five percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard.

“Landlord” means any person or agent of a person who owns, manages, or is otherwise legally responsible for a unit in a multi-unit residence, except that “landlord” does not include a tenant who sublets a unit.

“Multi-unit residence” means a new or existing property containing two or more units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit residences do not include the following:

- 1. A hotel or motel;**
- 2. A mobile home park;**
- 3. A single-family home; and**
- 4. A single-family home with a detached or attached accessory dwelling unit or second unit.**

“Nonprofit entity” means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

“Place of employment” means any area under the legal or de facto control of an employer, business or nonprofit entity that an employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, vehicles used in employment or for business purposes, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses and private residences that are used as childcare or healthcare facilities subject to licensing requirements.

“Playground” means any park or recreational area designed in part to be used by children, that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on city property.

“Premises” means a lot or contiguous lots and any improvements thereon such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same person or are under common control.

“Present” means within a reasonable distance.

“Public place” means any public or private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, parking lots, parking garages, plazas, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, city beaches, T-Piers, taxis and buses. For the purposes of the provisions of this chapter, a “public place” does not mean a private residence except for residences used as an adult or child care, health care, board and care, or community foster care facility as such terms are defined by the state Health and Safety Code.

“Reasonable distance” means the greatest distance practicable that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty feet.

“Recreational area” means any public or private area open to the public for recreational purposes whether or not any fee for admission is charged, including without limitation, parks, trails, gardens, sporting facilities, stadiums, beaches, T-piers and playgrounds.

“Restaurant” means any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria, eating establishment, **vending cart**, boardinghouse or guest house or similar establishment which gives or offers for sale food to the public.

“Secondhand smoke” means smoke that is generated either from the burning end of a lighted tobacco, weed, cannabis or plant product, or from an electronic cigarette; or, smoke that is exhaled by a smoker, after inhaling or ingesting a lit tobacco, weed, cannabis or plant product, or after use of an electronic cigarette.

“Service area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place or make a transaction whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, taxi stands and takeout counters.

“Smoke or smoking” means the carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, cannabis, or any other combustible substance. Smoking includes emitting or exhaling the fumes of any pipe, cigar, cigarette, or any other lighted smoking equipment, including an electronic cigarette, used for burning any tobacco product, weed, plant, cannabis, or any other combustible substance.

“Sports arena” means an outdoor or nonenclosed sports pavilion, stadium, swimming pool, roller rink, or other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events, including the concession stand areas thereof.

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“Unenclosed area” means any area which is not enclosed.

“Unit” means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio.”

9.24.030 – Secondhand smoke generally.

- A. For all purposes within the jurisdiction of the city, the nonconsensual exposure to secondhand smoke and the uninvited presence of secondhand smoke on property in violation of this chapter shall constitute a nuisance, as is further described by Title 8 of the Morro Bay Municipal Code.
- B. For all purposes within the jurisdiction of the city, no person shall cause secondhand smoke to ~~unreasonably~~ interfere with the reasonable use and enjoyment of another person’s private residence.”

9.24.040 – Public and other places where smoking shall be prohibited.

Except as otherwise provided by this chapter or by state or federal law, smoking shall be prohibited everywhere in the city, including but not limited to:

- A. All public places;
- B. Residences used as child care, health care, board and care, or community foster care facility as such terms are defined by state Health and Safety Code;
- C. Places of employment, except outdoor construction sites;
- D. Enclosed and unenclosed places of hotels, businesses, restaurants, bars and other public accommodations; ~~and~~
- E. Any means of public transit including associated waiting areas, and service areas, enclosed or not-;
- F. Units in multi-unit residences; and**
- G. Common areas of multi-unit residences.**

The prohibitions stated in subsections (F) and (G) of this Section shall become effective on March 15, 2020.

9.24.050 – Reasonable distance.

Smoking in unenclosed areas shall be prohibited within a reasonable distance ~~of~~ **(at least twenty feet)** from any entrance, opening, crack or vent into an enclosed area where smoking is

prohibited, except while actively passing on the way to another destination and so long as smoke does not enter any enclosed area in which smoking is prohibited.

9.24.060 – Places where smoking may be permitted.

Except where prohibited by local, state or federal law, smoking may be permitted in the following locations within the city notwithstanding Section 9.24.040:

- A. Private **residences other than multi-unit residences**. ~~Residential and Multifamily Properties~~. This chapter does not preclude private regulation of smoking on private residential and multifamily properties.
- B. Designated **smoking areas** ~~unenclosed areas (“smokers’ outposts”)~~ provided that all of the following conditions are met:
 - 1. The area is located a reasonable distance away from any doorway or opening into an enclosed area and any access way to a public place;
 - 2. The area has a clearly marked perimeter;
 - 3. The area is posted with one or more conspicuously displayed sign(s) identifying the area as a designated ~~outdoor~~ smoking area pursuant to Section 9.24.060**090** of this code;
 - 4. Smoke is not permitted to enter adjacent areas in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property;
 - 5. Appropriate ash can(s) are placed in the smoking area and are maintained regularly by the owner, operator or manager of the smoking area; and
 - 6. No consistent complaints of secondhand smoke are filed with the city.
- C. Smoking areas at public events which have been approved as part of the special event permit or temporary use permit issued by the city.
- D. Inside a private automobile when no minor child is present, except for as prohibited by state law.

9.24.070 – Modifications of designated **smoking areas** ~~smokers’ outposts~~.

The city reserves the right to prohibit or require modifications to a **designated smoking area** ~~smoker’s outpost~~ at a certain location if it undermines the purposes of this chapter, **or violates the requirements of Section 9.24.060(B) of this code**.

9.24.080 – Allowing, aiding or abetting smoking.

- A. No person, employer, business, **landlord** or nonprofit entity shall knowingly permit smoking in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law.
- B. ~~Except as provided in Section 9.24.050 of this code, no~~ **No** person, employer, business, **landlord** or nonprofit entity shall allow the placement or maintenance of a receptacle for smoking waste in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law, provided however, that a receptacle may be placed at the entry to a nonsmoking area, along with a “No Smoking” sign, in order to encourage any smokers in violation of this chapter to immediately extinguish and properly dispose of smoking materials.
- C. No person shall intimidate, threaten, effect a reprisal or retaliate against another person who seeks to attain compliance with one or more of this chapter’s provisions.

9.24.085 – Required lease terms for all new and existing units in multi-unit residences.

- A. **Every lease or other agreement (collectively, “lease”) for the occupancy of a unit in a multi-unit residence, entered into, renewed, or continued month-to-month, effective on or after March 15, 2020, shall include the following:**
 - 1. **A clause stating that smoking is prohibited in the unit, including exclusive-use areas such as balconies, porches, or patios.**
 - 2. **A clause providing that it is a material breach of the lease for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, including sublessees, to (i) smoke in any common area of the property other than a designated smoking area, (ii) smoke in the unit, or (iii) violate any law regulating smoking anywhere on the property.**
 - 3. **A clear description of all areas on the property and in the immediate vicinity of the property where smoking is allowed or prohibited.**
 - 4. **A clause expressly conveying third-party beneficiary status to all occupants of the multi-unit residence as to the smoking provisions of the lease. Such a clause shall provide that any tenant of the multi-unit residence may sue another tenant/owner to enforce the smoking provisions of the lease but that no tenant shall have the right to evict another tenant for a breach of the smoking provisions of the lease.**
- B. **Whether or not a landlord complies with subsection (A), above, the clauses required by that subsection shall be implied and incorporated by law into every lease to which subsection (A) applies that is entered into, renewed, or continued month-to-month on or after March 15, 2020.**

- C. *This chapter shall not create additional liability for a landlord to any person for a tenant's breach of any smoking provision in a lease for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with this section.*
- D. *Failure to enforce any smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.*

9.24.086 – Notice requirements for landlords and unit owners.

- A. *On or before March 15, 2020, every landlord shall provide to the occupants of each unit of a multi-unit residence a written notice of the requirements prohibiting smoking in units and common areas as stated in Section 9.24.040 of this code.*
- B. *Beginning on March 15, 2020, every seller of a unit in a multi-unit residence shall provide prospective buyers with a written notice clearly stating that:*
 - 1. *Smoking is prohibited in units, including any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio; and*
 - 2. *Smoking is prohibited in all common areas, except for specifically designated smoking areas.*

9.24.090 – Signs.

Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

- A. "No Smoking" or "Smoke Free" signs, with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) or any alternative signage approved by the public services **community development** director must be conspicuously posted **at each entrance to any place in which smoking is prohibited by this chapter** by the person, employer, business or nonprofit entity who or which has legal or de facto control of such place ~~at each entrance to a public place in which smoking is prohibited by this chapter or any other place where the public services director reasonably determines that smoking in violation of this chapter has occurred, or is likely to occur.~~
- B. Within designated smoking areas, one or more conspicuously displayed sign(s) shall be posted identifying the area as a **designated smoking area** ~~smokers' outpost~~ pursuant to Section 9.24.060 of this code as follows: signs with arrows directing the public to the smoking area may be allowed; signs shall be no smaller than three inches high and eight inches long with a pictorial representation of a burning cigarette; signs shall contain "Designated Smoking Area" and shall be posted prominently between

five feet and seven feet above the floor or ground; and all signs are subject to approval by the ~~public services~~ **community development** director.

- C. Every hotel and motel shall have signs posted conspicuously in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available; rooms designated as being nonsmoking shall have signs announcing such restriction conspicuously placed inside the room.
- D. No person shall alter, deface, obscure, remove or destroy a sign or placard that this chapter authorizes.

9.24.100 - Disposal of smoking waste.

No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, in any place where smoking is prohibited under this chapter, except in a designated waste disposal container.

9.24.110 - Fires on city beaches.

No person shall build, light or maintain any fire on any city beach except in designated containers or areas approved by the city.

9.24.120 - Enforcement and penalties.

- A. Any violation of the provisions of this chapter is punishable as a misdemeanor or an infraction, at the discretion of the city prosecutor, pursuant to Chapter 1.16 of the Morro Bay City Code; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the city, pursuant to Chapter 1.03 of the Morro Bay City Code.
- B. Punishment under this section shall not preclude punishment pursuant to Health and Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.
- C. Any violation of this chapter shall be deemed a public nuisance which may be abated in accordance with the procedures set forth in Chapter 8.14 of the Morro Bay City Code. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the person causing the nuisance, including the property owner where the nuisance is occurring.
- D. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.
- E. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

9.24.130 - Public education—Purposes of chapter.

The code compliance officer, in conjunction and coordination with the county health officer of the county of San Luis Obispo and, where feasible, appropriate health or safety oriented community-based organizations and coalitions, shall engage in a continuing program to explain and clarify the purposes of the provisions of the chapter to citizens affected by it, and to guide business owners, operators and managers in their compliance with it.

9.24.140 - Governmental cooperation.

The city manager shall request all governmental and educational agencies which maintain an office within the city to establish local operating procedures to cooperate and comply with this chapter.

9.24.150 - Other laws.

The provisions of this chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. Further, it is not the intent of the provisions of this chapter to regulate smoking where such regulation has been preempted by the state.”

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(3) and 15061(b)(3) of the CEQA Guidelines.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage.

SECTION 6. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the 12th day of November 2019, by motion of Mayor Heading and seconded by Councilmember Addis.

PASSED AND ADOPTED on the ____ day of _____ 2019, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 627 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____, 2019, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this ____ day of _____, _____.

DANA SWANSON, City Clerk



AGENDA NO: A-10

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: December 2, 2019

FROM: Jennifer Callaway, Finance Director

SUBJECT: Fiscal Year 2019/20 First Quarter Budget Performance and Status Report for the Three-Month Period Ending September 30, 2019

- A. Receive FY 2019/20 First Quarter Budget Performance and Status Report and Authorize Budget Adjustments as Recommended in the Attached First Quarter Budget Performance Report; and
- B. Adopt Resolution No. 98-19 authorizing staff to proceed with the first-quarter budget adjustments.

RECOMMENDATION

Staff recommends that the City Council:

1. Receive the attached Fiscal Year 2019/20 First Quarter Budget Performance and Status Report for the three-month period ending September 30, 2019; and
2. Adopt Resolution No. 98-19 authorizing staff to proceed with the first-quarter budget adjustments.

BACKGROUND

The attached first Quarterly Budget Report covers the first three months of the fiscal year beginning July 1, 2019 and ending September 30, 2019. The report presents analysis related to the key General Fund revenues and expenditures by category as well as an analysis of the City's Tourism Fund, Measure Q fund, Water, Sewer and Harbor Funds as well as the City's Water Reclamation Facility (WRF) Capital Project.

Through financial analysis of activity through September 30, 2019, staff is able to provide an update based on revenue and expenditure trends for the current fiscal year and advise on potential future revenue and expenditure opportunities and/or challenges which may materialize during the fiscal year.

A draft report was presented to the Citizen's Finance Advisory Committee (CFAC) on November 19, 2019. CFAC asked numerous questions regarding the first quarter update provided as Attachment 1, those questions and staff responses are provided for Council review as Attachments 2 and 3. CFAC provided valuable feedback and concurred with the budget adjustments as presented in the first quarter FY 2019/20 Budget Performance and Status Report for the period ending September 30, 2019 (Attachment 1).

DISCUSSION

An analysis of the FY 2019/20 General Fund revenues shows they are tracking steady when compared with prior year's first quarter results at 15% of total budgeted revenues. The City's most

Prepared By: JC

Dept Review: _____

City Manager Review: _____

City Attorney Review: CFN

economically sensitive revenues are Transient Occupancy Tax (TOT), Sales Tax and Property Tax, and they are doing well, with property tax trending a bit higher than in prior years due to the early receipt of the unsecured property tax.

Staff also reviewed General Fund first quarter expenditure budget results for all City Departments and found overall expenditures are trending at about 27% of budgeted totals. While this is slightly higher than the expected 25%, the results are slightly skewed since the City made a large, lump sum payment in July to prepay the City's Unfunded Accrued Liability (UAL) for CalPERS. This was first done in FY 2018/19, however in years prior, the City paid the UAL on a monthly basis. For FY 2019/20 the lump sum prepayment that was made in July saved the City's General Fund approximately \$42,650. When removing the lump sum payment, General Fund Expenditures are trending at 22% of budget, well within the anticipated 25% threshold.

Overall, the City's general operating expenditures, which includes contract services, and supplies and materials, are trending well at 15.4% of budgeted expenditures. While initially a good indicator of annual expenditures, staff will continue to monitor those expenditures throughout the next quarter.

Lastly, a first quarter analysis of both the Morro Bay Tourism Business Improvement District (TBID), Measure Q, Water, Sewer, Harbor and WRF funds is provided. These funds are generally tracking well and consistent with prior years. Staff will continue to monitor these funds and bring forward any necessary budget adjustments during the mid-year.

Staff is recommending two budget adjustments to enhance revenues during the first quarter of FY 2019/20 – \$733,000 to recognize receipt of funds under SB 1090 Settlement for the closure of the Diablo Nuclear Energy Plant and approximately \$200,000 in anticipated miscellaneous revenue to account for funds received through cannabis community benefit agreements. These adjustments are to recognize receipt of these funds, and there is no current budget appropriation for expenditure of these funds, as that will be brought back to Council at a later date for approval. Staff recommends Council adopt Resolution No. 98-19 approving the first quarter budget adjustments as outlined above.

CONCLUSION

Staff recommends that the City Council receive the First Quarter Budget Performance and Status Report for the three-month period ending September 30, 2019 and provide feedback (Attachment 1) and adopt Resolution No. 98-19 authorizing staff to proceed with the first-quarter budget adjustments as outlined in Exhibit A to Attachment 4.

ATTACHMENTS

1. First Quarter Budget Performance and Status Report for the three-month period ending September 30, 2019
2. CFAC Committee Questions and Staff Responses – Additional questions regarding Agenda Packet Items B1, B2 and B3
3. CFAC Committee Questions and Staff Responses – Item B-1 CFAC Agenda Packet
4. Resolution No. 98-19 Authorizing Staff to Proceed with the First Quarter Budget Adjustments.

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

INTRODUCTION

Purpose

This is the first quarterly budget report for the Fiscal Year 2019/20, for the three-month period ending September 30, 2019. The purpose of this quarterly public reporting is twofold. First, it ensures that the City is consistently monitoring its revenues and expenditures so that it can proactively respond to unanticipated changes or emerging trends. Second, and equally important, these reports increase the transparency of City finances. The City is ultimately accountable to its residents to use the revenue it brings in efficiently and effectively to provide the highest quality services, and quarterly public reporting provides taxpayers with the information they need to hold the City to this standard.

Content

This quarterly report presents an overview of the City's operating revenues and expenditures from the General Fund for the quarter ending September 30, 2019, as compared to previous years, and explains any notable aberrations or trends in these numbers.

This report focuses on General Fund operating revenues and expenditures, as these represent the funds used to provide essential City services.

Timeframe and Limitations

The information in this report is the most accurate and up-to-date information available at the time of publication. However, this report is not an audited financial statement, and the numbers provided herein are preliminary and subject to change as the year progresses. No data on revenues and expenditures are final until the City has completed its annual comprehensive audit, which is released in the winter of each year for the prior fiscal year.

With respect to revenues: The City monitors and adjusts its year-end revenue projections based on revenue performance and other developments that may affect City revenues in order to develop a more

accurate picture of the City's anticipated year-end financial position.

With respect to expenditures: The expenditure information in this report is extracted directly from the City's financial management system, and adjustments are made to account for certain known payments, reimbursements, or transfers between City departments and funds that have not yet been processed in the system at the time of publication. It represents a snapshot of City expenditures at a certain point in time

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QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

EXECUTIVE SUMMARY

Status of FY 2019/20 Adopted Budget

Overall, first quarter revenue trends are steady when compared to the first quarter of Fiscal Year 2018/19, at about 15% of budgeted levels. Of the City's most economically sensitive revenues - sales tax and Transient Occupancy Tax (TOT) are consistent with prior year's first quarter results. Property tax is trending a bit higher than in prior years actuals due to the early receipt of unsecured property tax. Fines and Forfeitures, Charges for Service, and Licenses and Permits categories are trending consistent with prior years.

Overall, General Fund expenditures for the first quarter are consistent with prior years at approximately 27% of budgeted levels. Supplies, Materials and Services expenditures at about 15% of budget, consistent with prior years. Overall salary and benefits are trending high but primarily due to the large upfront CalPERS Unfunded Accrued Liability (UAL) payment made in July. The UAL payment is a one-time payment made in July which totaled \$1,096,232 and resulted in a savings to the City's General Fund of approximately \$43,000. When adjusted for this payment, Salaries and Benefits are consistent with prior years at approximately 22% of budgeted levels. With only three months of data available, however, it is difficult to predict revenues and expenditures for the remainder of the year. Considering this, staff continues to be cautiously optimistic while monitoring fiscal developments very closely.

U.S. Economic Outlook

The Congressional Budget Office (CBO) estimates that between 2019 and 2029, the gross domestic product is expected to slow from 2.3 percent in 2019 to a rate that is below its long-run historical average. In the third quarter 2019, real Gross Domestic Product (GDP) grew by 1.9 percent. The pickup in

growth is largely the result of increases in federal, state and local government spending, personal consumption, residential fixed investment, and faster growth in private investment.

CBO has lowered its projections of interest rates in response to new data and recent guidance from the Federal Reserve regarding its outlook for monetary policy. Projected economic growth over the next five years was revised upward, on average, because of the Bipartisan Budget Act of 2019 and recent economic developments.

State Budget Update

The State's 2019-20 adopted budget includes a \$214.8 billion spending plan, inching closer to universal health care, expanding Medi-Cal to all low-income young adults regardless of immigration status and charters a course to increase tax credits to the working poor and boost subsidies to middle income Californians to buy health coverage. The budget includes significant investments in early education and housing, also, while a portion of the surplus was diverted to pay down pension liabilities.

The state's lawmakers embraced the governor's proposal to use some of the surplus to make extra pension payments, approving supplemental payments of \$3 billion to the California Public Employees' Retirement System and \$1.1 billion to the California State Teacher's Retirement System for the state's portion of unfunded liability.

The budget also includes new commitments topping \$2 billion in housing, with the lion's share targeting the state's homeless population and affordable housing.

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

GENERAL FUND – KEY REVENUE ANALYSIS

The following discussion provides a status of significant General Fund revenue sources as of the first quarter, ending September 30, 2019.

Staff monitors each revenue source closely and may recommend certain revenue adjustments based on revenue actuals or state budget actions.

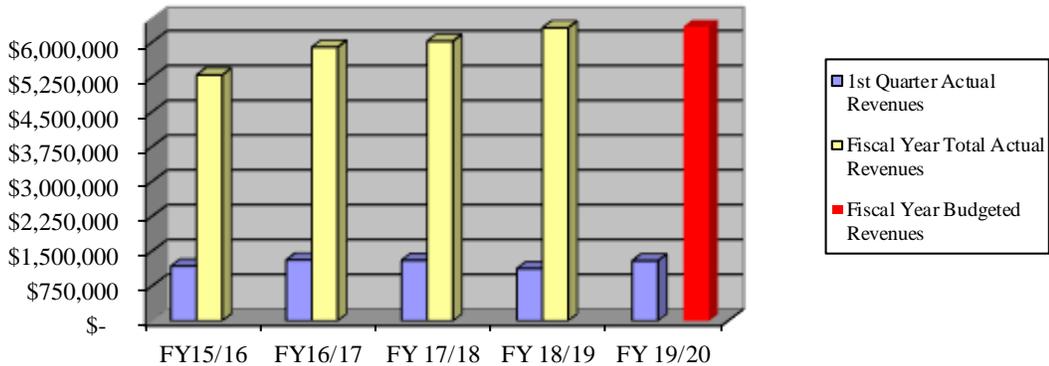
Other Taxes

Other taxes include sales and use tax, Prop 172 public safety sales tax, property transfer tax, transient occupancy tax (TOT), and Franchise Fees. As a category, other taxes represent 42% of the Cities total General Fund revenues, inclusive of transfers in, with transient occupancy tax is a component of other taxes and is the City’s second largest revenue source behind property tax. For purposes of the quarterly review, an analysis of Other Taxes as a grouping, as well as individual analysis of Sales and Use Tax, TOT and Franchise Fees will be discussed.

Analysis – First quarter receipts are trending in line with those in the same period in the past fiscal years (excluding FY 2018/19 which included underreported sales tax). A detailed analysis of sales tax, TOT and Franchise fees is following.

OTHER TAXES

Quarterly and Annual Revenues
5-Year History



	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY17/18</u>	<u>FY18/19</u>	<u>FY19/20</u>
1st Quarter Actual Revenues	\$ 1,179,798	\$ 1,311,780	\$ 1,303,092	\$ 1,124,612	\$ 1,292,975
Fiscal Year Total Actual Revenues	\$ 5,297,172	\$ 5,896,997	\$ 6,025,040	\$ 6,313,313	
Fiscal Year Budgeted Revenues					\$ 6,338,866
1st Quarter Percent of Total	22.27%	22.24%	21.63%	17.81%	20.40%

Recommended Budget Revision

No Change

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

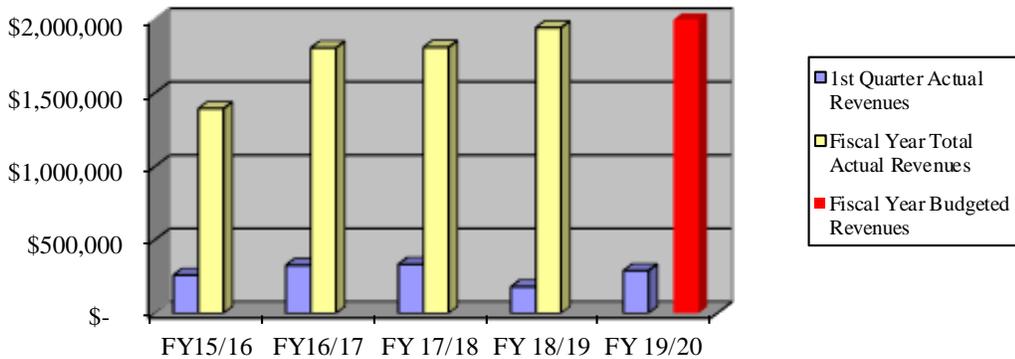
Sales Tax

Sales tax generates approximately 15% of revenues, the third largest revenue source for the City’s General Fund in FY 2018/19. The City’s General Fund receives 1 cent for every 7.5 cents of sales tax paid per dollar on retail sales and taxable services transacted within Morro Bay. Previously, the State Board of Equalization retained 25% of the City’s 1-cent share, referred to as the “Triple Flip,” requiring the San Luis Obispo County Auditor to replace it with an equal amount of property tax revenue. Revenues are remitted from the State to the City on a monthly basis, and from the County to the City on a biannual basis. These revenues are placed in the General Fund for unrestricted uses. The “triple flip” period ended in FY 2015/16, and is no longer impacting sales tax receipts.

Analysis – As a revenue category, first quarter receipts are trending in line with those in the same period in the prior fiscal year. Based on recent update from the City’s sales tax consultant, HDL, local sales tax receipts from the gas stations has boosted the City’s sales tax revenue. No budget adjustment is recommended at this time.

Sales Tax

**Quarterly and Annual Revenues
5-Year History**



	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY17/18</u>	<u>FY18/19</u>	<u>FY19/20</u>
1st Quarter Actual Revenues	\$ 259,457	\$ 326,803	\$ 333,152	\$ 180,016	\$ 290,168
Fiscal Year Total Actual Revenues	\$ 1,394,145	\$ 1,807,642	\$ 1,811,884	\$ 1,945,359	
Fiscal Year Budgeted Revenues					\$ 2,004,000
1st Quarter Percent of Total	18.61%	18.08%	18.39%	9.25%	14.48%

Recommended Budget Revision	No Change
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QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

TOT Tax

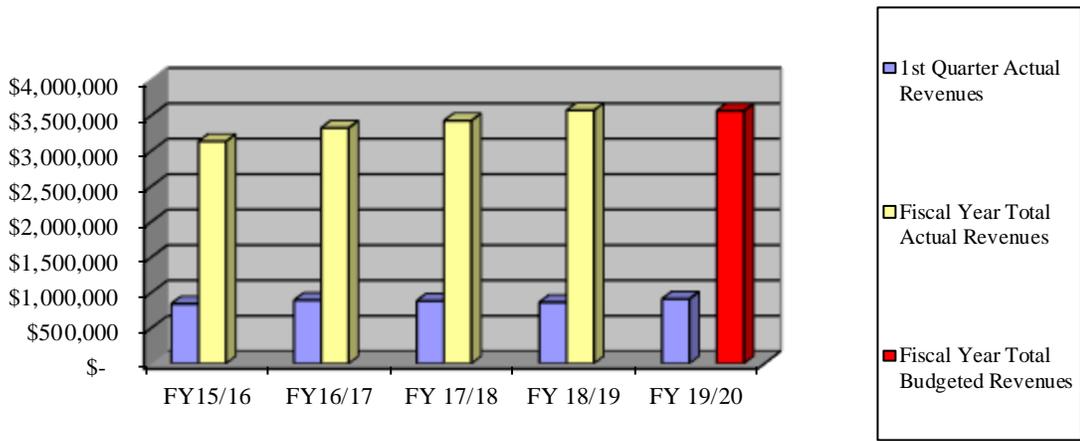
Transient Occupancy Tax (TOT) accounts for 24% of the City’s general fund revenues for FY 2019/20. As a highly economically-sensitive revenue source, the City closely monitors this funding source for any indication that the tourism market is slowing down.

The City levies a 10% transient occupancy tax (TOT) on all hotel, motel, vacation rentals and RV parks within the municipal limits of Morro Bay. This tax helps to fund City services provided to transitory visitors to Morro Bay. In addition, the City collects additional revenues for the Tourism Business Improvement District (TBID) in the amount of 3% on all hotels, motels, inns, etc., which funds the Tourism program within the City and a 1 percent tax on all hotels, motels, vacation rentals and RV parks which is the share for the County Tourism program.

Analysis – Visit California, formerly the California Travel and Tourism Commission, reports that the total number of visitors to California grew 2.8% in 2018, following a 2.0% expansion in 2017. Total international visits to California will decline by 1.7% in 2018, with similar growth expected to continue each year through 2022 (Source: California Office of Tourism). First quarter TOT revenues are trending in line with prior year first quarter results, when viewed as a percentage of budget. No budget adjustment is recommended at this time.

Transient Occupancy Tax

**Quarterly and Annual Revenues
5-Year History**



	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY 17/18</u>	<u>FY 18/19</u>	<u>FY 19/20</u>
1st Quarter Actual Revenues	\$ 843,923	\$ 895,546	\$ 885,172	\$ 864,974	\$ 913,161
Fiscal Year Total Actual Revenues	\$ 3,136,366	\$ 3,327,073	\$ 3,429,186	\$ 3,576,121	
Fiscal Year Total Budgeted Revenues					\$ 3,566,811
1st Quarter Percent of Total	26.91%	26.92%	25.81%	24.19%	25.60%

Recommended Budget Revision **No Change**

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

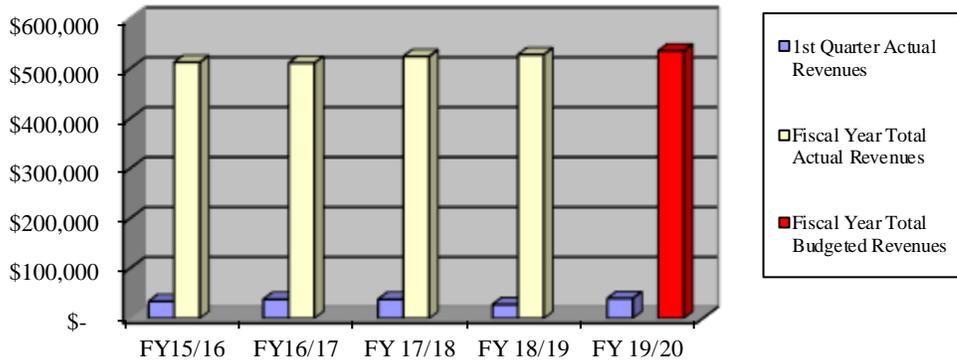
Franchise Fees

Franchise fees are collected by the City for the privilege of operating a utility service within Morro Bay, and as a fee in lieu of a business tax. Franchise fees are currently received for electricity, garbage, cable TV and natural gas. Franchise fees represent 3.6% of budgeted General Fund revenues in FY 2019-20.

Analysis – Historically, franchise payments are not remitted equally throughout the fiscal year; therefore, first quarter receipts are not necessarily predictive. Total franchise fee revenues to date are 7.49% of budgeted total receipts, generally consistent with the prior year’s first quarter results. No budget adjustment is recommended at this time.

Franchise Fees

**Quarterly and Annual Revenues
5-Year History**



	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY17/18</u>	<u>FY18/19</u>	<u>FY19/20</u>
1st Quarter Actual Revenues	\$ 34,093	\$ 38,354	\$ 38,372	\$ 27,752	\$ 40,131
Fiscal Year Total Actual Revenues	\$ 513,081	\$ 511,696	\$ 524,997	\$ 528,560	
Fiscal Year Total Budgeted Revenues					\$ 536,137
1st Quarter Percent of Total	6.64%	7.50%	7.31%	5.25%	7.49%

Recommended Budget Revision

No Change

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

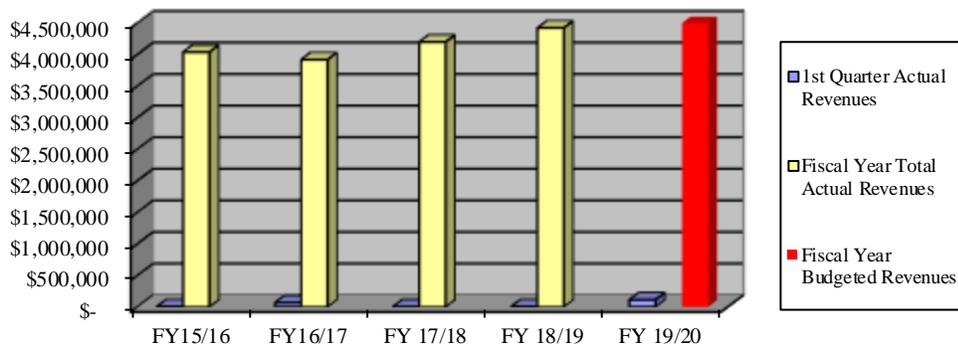
Property Tax

Property tax, including property tax in-lieu, is the second largest revenue category for the City’s General Fund, accounting for 30.6% of budgeted General Fund revenues in FY 2019/20. Property tax is levied by the San Luis Obispo County Assessor’s Office at 1% of a property’s assessed value, of which the City receives approximately 13.7 cents per dollar paid on property located within the municipal limits of Morro Bay.

Analysis – Property tax distributions are largely received in the third and fourth quarters, however the chart below depicts the 1st quarter receipts for the past four years as compared to the current fiscal year. First quarter receipts are higher than prior years due to the early receipt of unsecured property tax. Property tax revenue for FY 2019/20 was budgeted consistent with previous year’s actuals projecting relatively flat real estate transactions and based on estimates provided by the San Luis Obispo Auditor-Controller-Treasurer-Tax Collector.

PROPERTY TAX

**Quarterly and Annual Revenues
5-Year History**



	FY15/16	FY16/17	FY17/18	FY18/19	FY19/20
1st Quarter Actual Revenues	\$ 5,718	\$ 66,907	\$ 4,220	\$ 6,025	\$ 115,172
Fiscal Year Total Actual Revenues	\$ 4,035,432	\$ 3,917,348	\$ 4,197,259	\$ 4,419,459	
Fiscal Year Budgeted Revenues					\$ 4,491,880
1st Quarter Percent of Total	0.14%	1.71%	0.10%	0.14%	2.56%

Recommended Budget Revision **No Change**

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

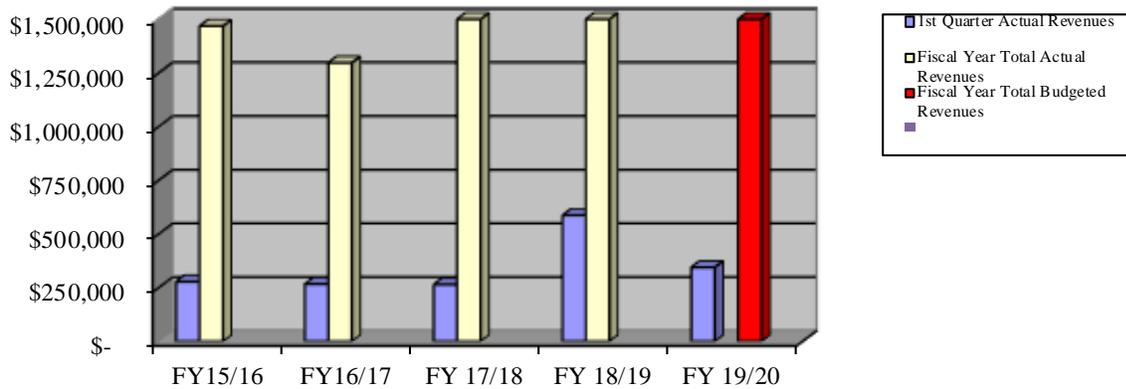
Charges for Services

City service revenues consist primarily of Plan Check fees, Building Inspection fees and Recreation sports and youth services fees. These fees are assessed based on recovery formulas, which reflect approximate costs of providing these services and, as a total category, account for 11% of the City’s General Fund revenues. Community Development and Recreation Services account for most of these fees.

Analysis – First quarter receipts are trending consistent with those in prior years (excluding FY 2018/19 which included one-time receipts of cannabis application fees). Staff will continue to monitor this revenue source; however, no budget revisions are recommended at this time.

Charges for Services

**Quarterly and Annual Revenues
5-Year History**



	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY17/18</u>	<u>FY18/19</u>	<u>FY19/20</u>
1st Quarter Actual Revenues	\$ 278,023	\$ 267,467	\$ 264,736	\$ 587,219	\$ 344,814
Fiscal Year Total Actual Revenues	\$ 1,468,119	\$ 1,297,352	\$ 1,727,579	\$1,695,853	
Fiscal Year Total Budgeted Revenues					\$1,662,355
1st Quarter Percent of Total	18.94%	20.62%	15.32%	34.63%	20.74%

Recommended Budget Revision	No Change
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QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

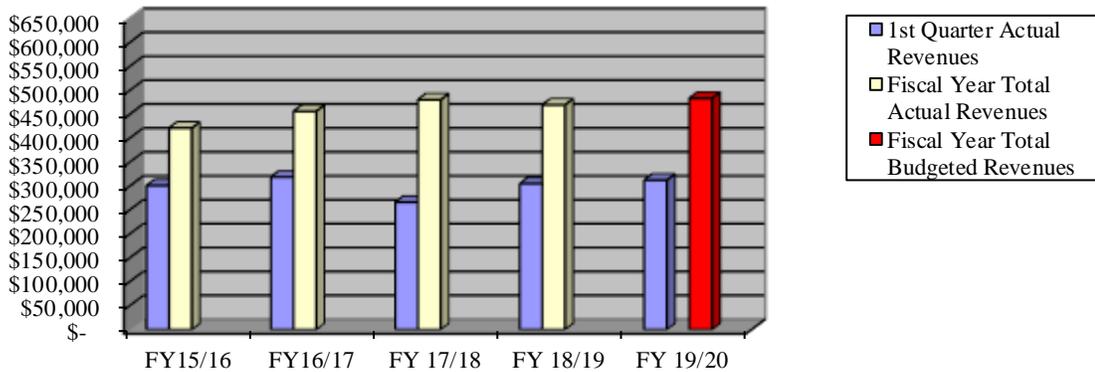
Licenses and Permits

Licenses and permits consist mainly of business and transient vendor taxes. Conditional use permits, and coastal permits are the other primary revenues sources in this category. The Licenses and Permits category represent approximately 3.3% of total City General Fund revenues for FY 2019/20. As business and transient vendor taxes are the largest subset of this revenue category, an independent analysis of that revenue source follows.

Analysis – First quarter licenses and permit revenue as an overall category is trending consistent with the first quarter results from the previous fiscal year. Business tax is the largest subset of this category. Staff will continue to monitor this revenue source to assess the need for mid-year budget adjustments; however, no budget revisions are recommended at this time.

Licenses & Permits

Quarterly and Annual Revenues
5-Year History



	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY17/18</u>	<u>FY18/19</u>	<u>FY19/20</u>
1st Quarter Actual Revenues	\$ 301,018	\$ 318,860	\$ 266,122	\$ 305,079	\$ 312,413
Fiscal Year Total Actual Revenues	\$ 421,205	\$ 456,319	\$ 480,440	\$ 469,683	
Fiscal Year Total Budgeted Revenues					\$ 483,559
1st Quarter Percent of Total	71.47%	69.88%	55.39%	64.95%	64.61%

Recommended Budget Revision

No Change

Includes Business License Tax.

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

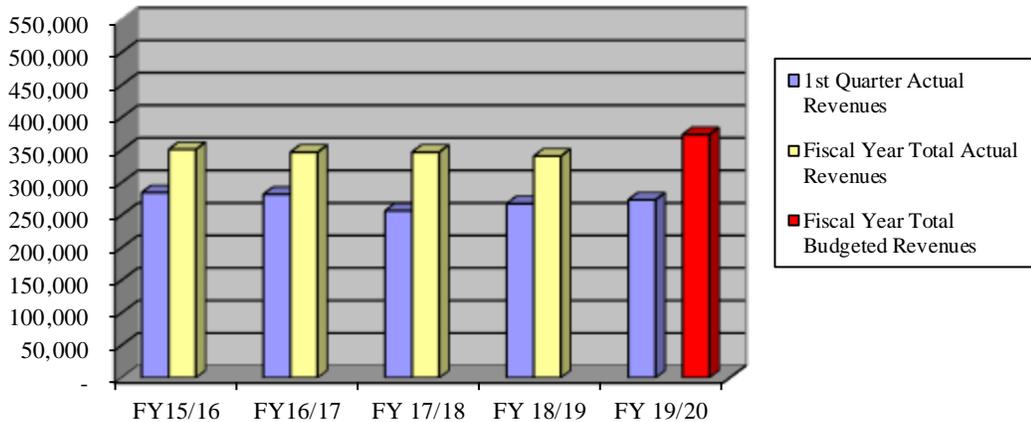
Business Tax

The City requires all business located within Morro Bay, or those that operate within Morro Bay, to obtain a business tax certificate. Business taxes apply to businesses operating as a general or sub-contractor, as a home occupation, from a commercial or office space rental, or as a business conducting temporary activities within the City limits. The amount of business tax paid by each business is based on the type of business being operated and varies depending on that type. Businesses, with gross receipts under \$4,000 per year for all work conducted within Morro Bay, are exempt from applying for and receiving a business tax certificate. These activities account for approximately 2.6% of annual General Fund operating revenues. Annual renewal payments are due on the anniversary of the license issuance.

Analysis – When viewed as a percentage of budget, current year first quarter revenues are trending consistent with those from previous years and therefore no budget adjustment is recommended at this time.

Business Tax

**Quarterly and Annual Revenues
5-Year History**



	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY17/18</u>	<u>FY18/19</u>	<u>FY19/20</u>
1st Quarter Actual Revenues	284,507	281,942	256,600	267,608	273,491
Fiscal Year Total Actual Revenues	\$ 351,055	\$ 346,704	\$ 346,700	\$ 340,629	
Fiscal Year Total Budgeted Revenues					\$ 373,700
1st Quarter Percent of Total	81.04%	81.32%	74.01%	78.56%	73.18%

Recommended Budget Revision **No Change**

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

GENERAL FUND – KEY EXPENDITURE ANALYSIS

The following discussion provides a status of significant General Fund expenditures as of the first quarter ending September 30, 2019. Staff monitors each revenue source closely, and may recommend certain expenditure adjustments based on actuals or state budget actions.

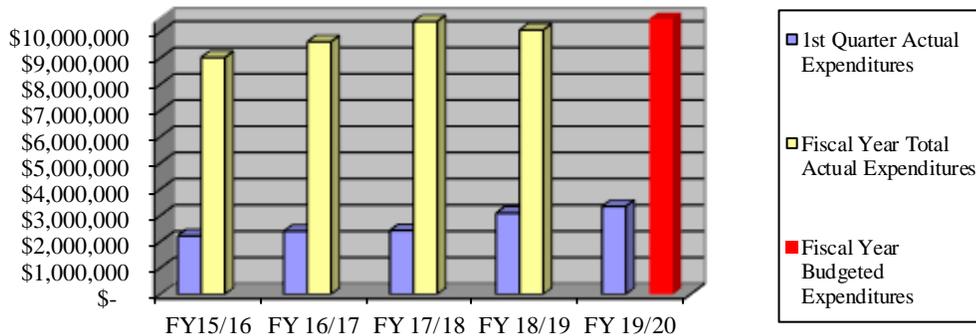
SALARIES AND BENEFITS

Salaries and benefits include full-time employee salaries, elected official's stipends, temporary/relief employees, overtime, other benefits, pensions and health care. Under typical circumstances, it would be expected that salaries and benefits would be at approximately 25% of total budget at the end of the first quarter.

Analysis – First quarter results are trending higher than those in the same period in prior years, at approximately 29.8% of budgeted totals. This is due to the \$1,096,232 upfront prepayment of the City's CalPERS UAL. This is a one-time payment which, paid in July, saved the City's general fund approximately \$42,650. When the one-time payment is removed, salaries and benefits total 22.3% of budget which is consistent with prior years. An analysis of Total Salaries and Benefits is provided below, as well as an analysis of the City's Unfunded Accrued Liability (UAL) Payment and Salaries and Benefits less the UAL payment. There is no budget adjustment recommended at this time.

SALARIES AND BENEFITS

**Quarterly and Annual Expenditures
5-Year History**



	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY17/18</u>	<u>FY18/19</u>	<u>FY19/20</u>
1st Quarter Actual Expenditures	\$ 2,227,163	\$ 2,401,146	\$ 2,430,774	\$ 3,093,334	\$ 3,350,822
Fiscal Year Total Actual Expenditures	\$ 9,027,716	\$ 9,625,716	\$ 10,400,147	\$ 10,075,471	
Fiscal Year Budgeted Expenditures					\$ 11,231,019
1st Quarter Percent of Total	24.67%	24.95%	23.37%	30.70%	29.84%

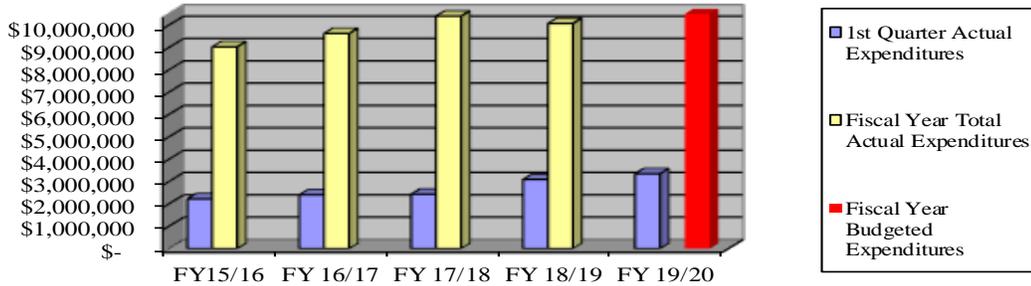
Recommended Budget Revision

No Change

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

Unfunded Accrued Liability

Quarterly and Annual Expenditures
5-Year History



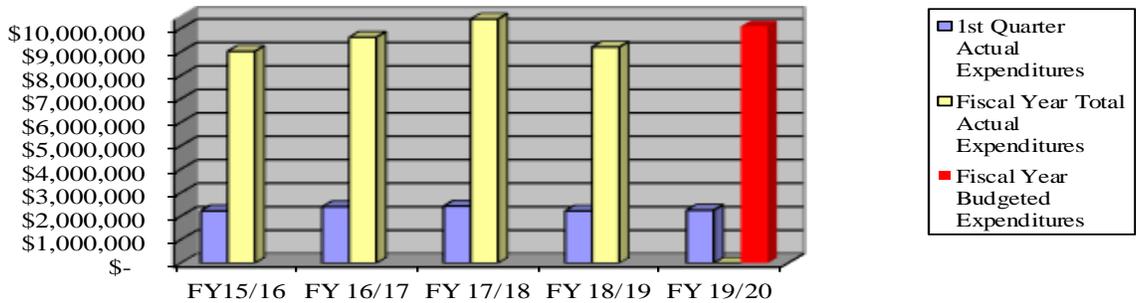
	FY 18/19	FY 19/20
1st Quarter Actual Expenditures	\$ 869,087	\$ 1,096,232
Fiscal Year Total Actual Expenditures	\$ 869,087	
Fiscal Year Budgeted Expenditures		\$ 1,138,882

1st Quarter Percent of Total	100.00%	96.26%
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Recommended Budget Revision **No Change**

SALARIES AND BENEFITS (LESS UAL)

Quarterly and Annual Expenditures
5-Year History



	FY15/16	FY 16/17	FY 17/18	FY 18/19	FY 19/20
1st Quarter Actual Expenditures	\$ 2,227,163	\$ 2,401,146	\$ 2,430,774	\$ 2,224,247	\$ 2,254,590
Fiscal Year Total Actual Expenditures	\$ 9,027,716	\$ 9,625,716	\$ 10,400,147	\$ 9,206,385	\$ -
Fiscal Year Budgeted Expenditures					\$ 10,092,137

1st Quarter Percent of Total	24.67%	24.95%	23.37%	24.16%	22.34%
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Recommended Budget Revision **No Change**

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

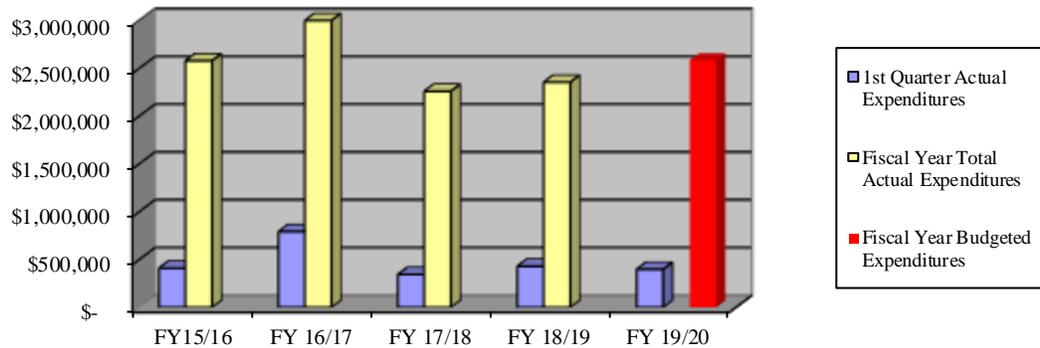
SUPPLIES, MATERIALS AND SERVICES

Operating expenditures consist of all General Fund costs to provide services, including supplies and materials, consulting services, contract services, and debt service. For analysis materials, utilities, insurance, payment to other agencies and transfers are categorized individually as they are often expenditure categories that staff have limited control or ability to reduce expenditures. The category of supplies, materials and services, the Cities most controllable expenditure category, should trend around the 25% level for the first quarter. Consulting and contractual services, a component of this category, may have various contract start dates and payments may not be equally spread throughout the fiscal year so variation from the 25% amount may be explained due to these consulting and contractual services.

Analysis – First quarter results are trending consistent with those in the same period in prior years, at approximately 15.4% of budgeted totals (exclusive of transfers). No budget adjustment is recommended at this time.

SUPPLIES, MATERIALS AND SERVICES

**Quarterly and Annual Expenditures
5-Year History**



	<u>FY15/16</u>	<u>FY 16/17</u>	<u>FY 17/18</u>	<u>FY 18/19</u>	<u>FY 19/20</u>
1st Quarter Actual Expenditures	\$ 409,774	\$ 792,839	\$ 343,802	\$ 429,439	\$ 398,070
Fiscal Year Total Actual Expenditures	\$ 2,579,514	\$ 3,022,358	\$ 2,260,582	\$ 2,354,564	
Fiscal Year Budgeted Expenditures					\$ 2,585,298
1st Quarter Percent of Total	15.89%	26.23%	15.21%	18.24%	15.40%

Recommended Budget Revision **No Change**

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

FINANCIAL SUMMARIES, PROJECTIONS AND RECOMMENDATIONS

General Fund

The following table is the *Schedule of General Fund Operating Revenues vs. Operating Expenditures* for the first quarter of FY 2019/20, and is sorted by revenue and expenditure category, which includes comparison information from the prior year. In the last column are projections of final balances for the current fiscal year, based upon the early trends observed through the first quarter.

City of Morro Bay
Schedule of General Fund
Operating Revenues vs. Operating Expenditures
By Category
For the period ended September 30, 2019

	FY18/19 Estimated YE Actuals	FY18/19 1st Qtr Actuals	FY18/19 % YTD	FY19/20 Adopted Budget	FY19/20 1st Qtr Actuals	FY19/20 % YTD	FY19/20 Finance Projection
Revenues							
Property Tax	\$ 4,419,459	\$ 6,025	0%	\$ 4,491,880	\$ 115,172	3%	\$ 4,491,880
Other Taxes	\$ 255,696	\$ 51,722	20%	\$ 231,918	\$ 49,515	21%	\$ 231,918
Transient Occupancy Tax	\$ 3,576,121	\$ 864,974	24%	\$ 3,566,811	\$ 913,161	26%	\$ 3,566,811
Sales Tax	\$ 1,945,359	\$ 180,164	9%	\$ 2,004,000	\$ 290,168	14%	\$ 2,004,000
Franchise Fees	\$ 536,137	\$ 27,752	5%	\$ 536,137	\$ 40,131	7%	\$ 536,137
Licenses & Permits	\$ 129,054	\$ 37,471	29%	\$ 109,859	\$ 38,922	35%	\$ 109,859
Business Tax	\$ 340,629	\$ 267,608	79%	\$ 373,700	\$ 273,491	73%	\$ 373,700
Charges for Services	\$ 1,695,853	\$ 587,219	35%	\$ 1,662,355	\$ 344,814	21%	\$ 1,662,355
Fines & Forfeitures	\$ 18,896	\$ 5,871	31%	\$ 16,000	\$ 4,941	31%	\$ 16,000
Intergovernmental	\$ 31,606	\$ -	0%	\$ 13,500	\$ 6,700	50%	\$ 13,500
Other Sources	\$ 56,257	\$ 13,235	24%	\$ 23,277	\$ 17,682	76%	\$ 23,277
Use of Money & Property	\$ 332,221	\$ 42,679	13%	\$ 410,341	\$ 108,940	27%	\$ 410,341
Fund Transfers	\$ 1,340,881	\$ 301,183	22%	\$ 1,581,481	\$ 48,548	3%	\$ 1,581,481
Total Revenues	14,678,170	2,385,903	16%	15,021,259	2,252,185	15%	15,021,259
Expenditures							
Salaries	5,028,978	1,136,239	23%	5,767,361	1,183,746	21%	\$ 5,767,361
Overtime	468,255	123,273	26%	218,234	126,067	58%	\$ 218,234
Part-time	784,464	256,482	33%	856,980	255,197	30%	\$ 856,980
Other Salaries	302,129	79,437	26%	480,636	66,082	14%	\$ 480,636
Labor Costs Applied	34,456	708	2%	27,012	5,452	20%	\$ 27,012
Benefits	2,588,103	628,108	24%	2,741,914	618,045	23%	\$ 2,741,914
PERS UAL	869,087	869,087	100%	1,138,882	1,096,232	96%	\$ 1,138,882
Supplies, Materials and Services	2,354,564	429,439	18%	2,585,298	398,070	15%	\$ 2,585,298
Utilities	407,620	78,006	19%	486,697	88,851	18%	\$ 486,697
Insurance	163,371	42,641	26%	167,351	41,838	25%	\$ 167,351
Debt	35,189	-	0%	35,190	-	0%	\$ 35,190
Payment to other Agencies	25,186	5,241	21%	30,250	5,325	18%	\$ 30,250
Total Expenditures	\$ 13,061,402	\$ 3,648,661	28%	\$ 14,535,805	\$ 3,884,905	27%	\$ 14,535,805
Transfers In/Out	855,149	89,270	10%	480,970	120,243	25%	480,970
Total Operating Expenditures	\$ 13,916,551	\$ 3,737,931	27%	\$ 15,016,775	\$ 4,005,148	27%	\$ 15,016,775
Net Surplus or (Use) of Reserves	\$ 761,619	\$ (1,352,028)		\$ 4,484	\$ (1,752,963)		\$ 4,484

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

The following table is the *Schedule of General Fund Operating Revenues vs. Operating Expenditures* for the first quarter of FY 2019/20 displayed by revenue type and expenditures per department. The chart includes comparison information from the prior year, and serves to monitor Department expenditures related to both budgeted amounts and prior year actuals. In the last column are projections of final balances for the current fiscal year based upon the early trends observed through the first quarter.

City of Morro Bay
Schedule of General Fund
Operating Revenues vs. Operating Expenditures
By Department
For the period ended September 30, 2019

	FY18/19 Estimated YE Actuals	FY18/19 1st Qtr Actuals	FY18/19 % YTD	FY19/20 Adopted Budget	FY19/20 1st Qtr Actuals	FY19/20 % YTD	FY19/20 Finance Projection
Revenues							
Property Tax	\$ 4,419,459	\$ 6,025	0%	\$ 4,491,880	\$ 115,172	3%	\$ 4,491,880
Other Taxes	\$ 255,696	\$ 51,722	20%	\$ 231,918	\$ 49,515	21%	\$ 231,918
Transient Occupancy Tax	\$ 3,576,121	\$ 864,974	24%	\$ 3,566,811	\$ 913,161	26%	\$ 3,566,811
Sales Tax	\$ 1,945,359	\$ 180,164	9%	\$ 2,004,000	\$ 290,168	14%	\$ 2,004,000
Franchise Fees	\$ 536,137	\$ 27,752	5%	\$ 536,137	\$ 40,131	7%	\$ 536,137
Licenses & Permits	\$ 129,054	\$ 37,471	29%	\$ 109,859	\$ 38,922	35%	\$ 109,859
Business Tax	\$ 340,629	\$ 267,608	79%	\$ 373,700	\$ 273,491	73%	\$ 373,700
Charges for Services	\$ 1,695,853	\$ 587,219	35%	\$ 1,662,355	\$ 344,814	21%	\$ 1,662,355
Fines & Forfeitures	\$ 18,896	\$ 5,871	31%	\$ 16,000	\$ 4,941	31%	\$ 16,000
Intergovernmental	\$ 31,606	\$ -	0%	\$ 13,500	\$ 6,700	50%	\$ 13,500
Other Sources	\$ 56,257	\$ 13,235	24%	\$ 23,277	\$ 17,682	76%	\$ 23,277
Use of Money & Property	\$ 332,221	\$ 42,679	13%	\$ 410,341	\$ 108,940	27%	\$ 410,341
Fund Transfers	\$ 1,340,881	\$ 301,183	22%	\$ 1,581,481	\$ 48,548	3%	\$ 1,581,481
Total Revenues	14,678,170	2,385,903	16%	15,021,259	2,252,185	15%	15,021,259
Expenditures							
City Council	123,044	37,221	30%	147,607	31,782	22%	\$ 147,607
City Manager	330,668	91,944	28%	412,063	110,048	27%	\$ 412,063
City Attorney	335,249	21,717		454,845	28,490	6%	\$ 454,845
Contract Services	654,522	167,141	26%	561,102	55,921	10%	\$ 561,102
City Clerk/HR/Elections	368,042	105,704	29%	418,733	113,156	27%	\$ 418,733
Deputy City Manager	-	-	0%	-	-	0%	\$ -
Accounting & Treasury	606,732	152,649	25%	658,547	204,909	31%	\$ 658,547
Police Department	3,121,943	920,995	30%	3,522,330	994,656	28%	\$ 3,522,330
Support Services	237,312	73,476	31%	281,098	85,116	30%	\$ 281,098
Fire Department	2,705,520	821,329	30%	2,594,446	813,276	31%	\$ 2,594,446
Emergency Operations Center	7,190	523	7%	12,547	851	7%	\$ 12,547
Community Development	919,817	242,986	26%	1,077,290	284,837	26%	\$ 1,077,290
Public Works	448,925	123,278	27%	811,941	187,714	23%	\$ 811,941
Consolidated Maintenance	965,205	246,135	26%	944,750	271,331	29%	\$ 944,750
Vehicle, Parks, Facilities	132,062	37,725	29%	137,686	40,076	29%	\$ 137,686
Streets, Street Trees, Storm Drains/Creeks	745,550	203,651	27%	822,521	204,811	25%	\$ 822,521
Street lighting	68,095	9,540	14%	123,000	8,965	7%	\$ 123,000
Curbside Recycling	26,406	-	0%	27,012	-	0%	\$ 27,012
Recreation Services - Administration	302,258	79,953	26%	419,110	98,161	23%	\$ 419,110
Recreation Services - Dance 39+	11,278	3,502	31%	10,000	-	0%	\$ 10,000
Recreation Services - Sports	441,372	161,970	37%	376,800	174,845	46%	\$ 376,800
Recreation Services - Youth Services	293,857	120,825	41%	264,781	118,766	45%	\$ 264,781
Recreation Services - Teen Programs	34,456	7,302	21%	56,062	8,663	15%	\$ 56,062
Recreation Services - Community Pool	114,070	16,548	15%	149,809	46,244	31%	\$ 149,809
Electricity	67,829	2,548	4%	70,691	2,287	3%	\$ 70,691
Undistributed				181,034	-	0%	\$ 181,034
Total Expenditures	\$ 13,061,402	\$ 3,648,661	28%	\$ 14,535,805	\$ 3,884,905	27%	\$ 14,535,805
Transfers In/Out	855,149	\$ 127,464	\$ 0	\$ 480,970	\$ 120,243	25%	480,970
Total Operating Expenditures	\$ 13,916,551	\$ 3,776,125	27%	\$ 15,016,775	\$ 4,005,148	27%	\$ 15,016,775
Net Surplus or (Use) of Reserves	\$ 761,619	\$ (1,390,222)		\$ 4,484	\$ (1,752,963)		\$ 4,484

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

Other Funds

Other Funds can consist of internal service type funds that are used to account for various types of insurance coverage for the City, and to manage the City's information technology needs. In addition, the City has other funds that have been set-up to accumulate monies for various projects or capital and equipment needs, such as the facility maintenance fund. The report covers the Morro Bay Tourism Business Improvement District, the Measure Q fund which are discussed in more detail below:

Morro Bay Tourism Business Improvement District

On April 27, 2009, Ordinance No. 546 was enacted, establishing Chapter 3.60 of the Morro Bay Municipal Code, which is entitled Tourism Business Improvement District (MBTBID) Law. Lodging establishments self-assess an additional transient occupancy tax on rooms rented, which is paid to the City, then returned to the Tourism Bureau for promoting tourism in Morro Bay. For the first year, the MBTBID assessment rate was 3%; ensuing years were set at 2%, per the Ordinance.

On September 13, 2010, Staff introduced Ordinance No. 562, which increased the MBTBID assessment rate back to 3%. The Ordinance was passed on September 27th and became effective October 28, 2010.

Annually in May, the MBTBID's annual report and budget are presented to the City Council, and a public hearing is set, which allows affected businesses the opportunity to protest the MBBID assessment. A Resolution is brought forward to confirm the results of the public hearing, renew the activities of the MBTBID for the upcoming fiscal year, and approve the levy and collection of the 3% assessments from the hoteliers.

In 2013, the MBTBID formed a 501c(6) corporation, Morro Bay Tourism Bureau, to carry out the marketing activities of the MBTBID, as well as manage the Visitors Center.

As part of the Management Partners' 2015 Organizational Study, the recommendation to *develop a proposal for integrating Tourism Bureau activities with City operations* was explored by staff. City staff held a public workshop on September 22, 2015, to discuss this with stakeholders, presented the concept to the MBTBID board at a special meeting on 12/10/15, and ultimately presented the results of the City's outreach and recommendations to the City Council on January 12, 2016, with two management scenarios. The Council adopted Resolution No. 03-16, discontinuing the City's contract with the Morro Bay Tourism Bureau, and merging operations and marketing (via Mental Marketing) efforts into the City, beginning June 2016.

For the first quarter of FY 2019/20 Revenues and expenditures are trending well with no budget adjustments recommended at this time.

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

TBID

	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY 17/18</u>	<u>FY 18/19</u>	<u>FY 19/20</u>
1st Quarter Actual Revenues	\$ 206,217	\$ 309,571	\$ 345,301	\$ 236,851	\$ 224,712
Fiscal Year Total Actual Revenues	\$ 841,295	\$ 935,834	\$ 935,691	\$ 1,082,464	
Fiscal Year Budgeted Revenues					\$ 889,644
1st Quarter Percent of Total	24.51%	33.08%	36.90%	21.88%	25.26%
1st Quarter Actual Expenditures	\$ (2,109)	\$ 206,741	\$ 292,124	\$ 262,070	\$ 262,245
Fiscal Year Total Actual Expenditures	\$ 660,205	\$ 917,560	\$ 917,930	\$ 1,342,177	
Fiscal Year Budgeted Expenditures					\$ 889,081
1st Quarter Percent of Total	-0.32%	22.53%	31.82%	19.53%	29.50%
Recommended Budget Revision Revenues					No Change
Recommended Budget Revision Expenditures					No Change
<i>*Revenues include transfers in and Assessment collections</i>					

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

Measure Q

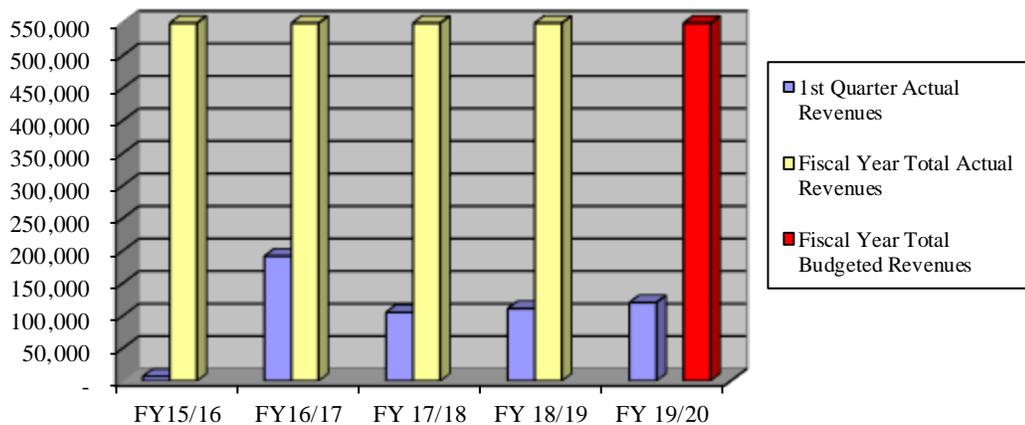
With the November 7, 2006 election, the citizens of Morro Bay voted in a ½ cent district sales tax, commonly known as “Measure Q.” This is a general tax and has no sunset date. The ballot measure stated: *The Morro Bay Vital Public Services Restoration and Protection Measure. To preserve Morro Bay’s safety and character by funding essential services including upgrading firefighter/paramedic equipment, fire stations, police, street and pothole repairs, improving storm drains to protect the bay from pollution and other general city services, shall an ordinance be adopted increasing the City sales tax by one-half cent, subject to independent annual financial audits, and establishing an independent citizens’ advisory committee to review annual expenditures?”*

Ordinance 519 was enacted on August 14, 2006, to establish Chapter 3.22, City of Morro Bay Transactions and Use Tax. The City Council divides the annual revenue estimate between the departments, based on the language in the Measure, campaign polls, and departmental requests.

Measure Q revenues are trending well as indicated in the chart below, therefore no revenue budget adjustments are recommended at this time:

Measure Q

**Quarterly and Annual Revenues
5-Year History**



	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY17/18</u>	<u>FY18/19</u>	<u>FY19/20</u>
1st Quarter Actual Revenues	6,728	191,948	105,412	111,338	120,402
Fiscal Year Total Actual Revenues	\$ 983,602	\$ 1,118,270	\$ 1,062,895	\$ 1,226,552	
Fiscal Year Total Budgeted Revenues					\$ 1,096,000
1st Quarter Percent of Total	0.68%	17.16%	9.92%	9.08%	10.99%

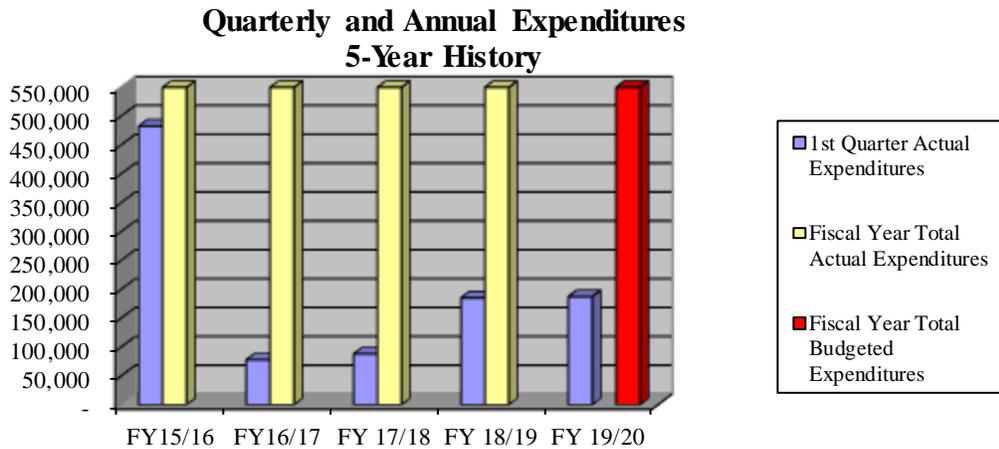
Recommended Budget Revision

No Change

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

Measure Q Expenditures are generally trending well and are consistent with prior year actuals. Work on the City's pavement management plan had not begun as of September 30, 2019 and therefore the expenditures provided do not reflect a transfer of Measure Q funds to the pavement management plan. There are no recommended budget adjustments at this time.

Measure Q



	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY 17/18</u>	<u>FY 18/19</u>	<u>FY 19/20</u>
1st Quarter Actual Expenditures	482,838	77,934	88,167	185,403	187,571
Fiscal Year Total Actual Expenditures	\$ 582,073	\$ 1,544,827	\$ 952,398	\$ 1,067,640	
Fiscal Year Total Budgeted Expenditures					\$ 1,096,000
	0	82.95%	5.04%	9.26%	17.37%

Recommended Budget Revision **No Change**

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

Enterprise Funds

The Enterprise Funds are Proprietary Funds used to report the same functions presented as business-type activities. The Harbor Enterprise Fund accounts for revenues received from harbor leases, rentals, moorings, and other sources, which are expended for maintenance, operation, patrolling, and improvements of the harbor. The Water Enterprise Fund accounts for revenues received primarily from water service charges, which are expended for maintenance, operations, and improvements to the water system while the sewer enterprise fund accounts for revenues received primarily from sewer service charges, which are expended for maintenance, operations and improvements to the sanitary sewer system.

A summary of each operating fund is found below, including overall revenues and expenditures and a breakdown of revenues by source:

WATER FUND - 311			
	<u>FY 17/18</u>	<u>FY 18/19</u>	<u>FY 19/20</u>
1st Quarter Actual Revenues	\$ 1,295,669	\$ 1,393,985	\$ 1,809,444
Fiscal Year Total Actual Revenues	\$ 5,533,392	\$ 5,747,726	
Fiscal Year Total Budgeted Revenues			\$ 7,852,700
1st Quarter Percent of Total	23.42%	24.25%	23.04%
1st Quarter Actual Expenditures	\$ 1,695,135	\$ 4,789,362	\$ 2,033,539
Fiscal Year Total Actual Expenditures	\$ 3,963,563	\$ 7,019,772	
Fiscal Year Total Budgeted Expenditures			\$ 5,741,179
1st Quarter Percent of Total	42.77%	68.23%	35.42%
Recommended Budget Revision Revenues			No Change
Recommended Budget Revision Expenditures			No Change

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

WATER FUND REVENUES

	<u>FY 17/18</u>	<u>FY 18/19</u>	<u>FY 19/20</u>
1st Quarter Water Service Revenues	\$ 1,264,371	\$ 1,377,295	\$ 1,346,679
Fiscal Year Total Actual Revenues	\$ 5,381,723	\$ 5,501,111	
Fiscal Year Total Budgeted Revenues			\$ 6,086,000
1st Quarter Percent of Total	23.49%	25.04%	22.13%
<hr/>			
1st Quarter Water WRF Surcharge Revenues	\$ -	\$ -	\$ 421,595
Fiscal Year Total Actual Revenues	\$ -	\$ -	
Fiscal Year Total Budgeted Revenues			\$ 1,654,000
1st Quarter Percent of Total	0.00%	0.00%	25.49%
<hr/>			
1st Quarter Other Water Revenues	\$ 31,298	\$ 56,689	\$ 41,170
Fiscal Year Total Actual Revenues	\$ 151,669	\$ 246,615	
Fiscal Year Total Budgeted Revenues			\$ 112,700
1st Quarter Percent of Total	20.64%	22.99%	36.53%

SEWER FUND - 321

	<u>FY 17/18</u>	<u>FY 18/19</u>	<u>FY 19/20</u>
1st Quarter Actual Revenues	\$ 1,369,788	\$ 1,538,040	\$ 2,196,682
Fiscal Year Total Actual Revenues	\$ 6,379,673	\$ 6,940,807	
Fiscal Year Total Budgeted Revenues			\$ 9,487,000
1st Quarter Percent of Total	21.47%	22.16%	23.15%
<hr/>			
1st Quarter Actual Expenditures	\$ 1,605,231	\$ 4,403,757	\$ 251,405
Fiscal Year Total Actual Expenditures	\$ 3,625,190	\$ 6,241,755	
Fiscal Year Total Budgeted Expenditures			\$ 9,487,000
1st Quarter Percent of Total	44.28%	70.55%	2.65%
<hr/>			
Recommended Budget Revision Revenues			No Change
Recommended Budget Revision Expenditures			No Change

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

SEWER FUND REVENUES

	<u>FY 17/18</u>	<u>FY 18/19</u>	<u>FY 19/20</u>
1st Quarter Sewer Service Revenues	\$ 1,361,303	\$ 1,528,297	\$ 1,599,897
Fiscal Year Total Actual Revenues	\$ 6,326,718	\$ 6,891,724	
Fiscal Year Total Budgeted Revenues			\$ 7,246,000
1st Quarter Percent of Total	21.52%	22.18%	22.08%
1st Quarter Sewer WRF Surcharge Revenues	\$ -	\$ -	\$ 577,701
Fiscal Year Total Actual Revenues	\$ -	\$ -	
Fiscal Year Total Budgeted Revenues			\$ 2,173,000
1st Quarter Percent of Total	0.00%	0.00%	26.59%
1st Quarter Other Sewer Revenues	\$ 8,485	\$ 9,743	\$ 19,083
Fiscal Year Total Actual Revenues	\$ 52,955	\$ 49,083	
Fiscal Year Total Budgeted Revenues			\$ 68,000
1st Quarter Percent of Total	16.02%	19.85%	28.06%

Harbor Operating Fund - 331

	<u>FY 16/17</u>	<u>FY 17/18</u>	<u>FY 18/19</u>	<u>FY 19/20</u>
1st Quarter Actual Revenues	\$ 523,181	\$ 460,208	\$ 520,919	\$ 279,936
Fiscal Year Total Actual Revenues	\$ 1,940,152	\$ 2,129,177	\$ 2,095,846	
Fiscal Year Total Budgeted Revenues				\$ 2,011,000
1st Quarter Percent of Total	26.97%	21.61%	24.85%	13.92%
1st Quarter Actual Expenditures*	\$ 566,348	\$ 462,768	\$ 643,355	\$ 527,091
Fiscal Year Total Actual Expenditures	\$ 2,251,459	\$ 1,916,165	\$ 1,959,475	
Fiscal Year Total Budgeted Expenditures				\$ 2,001,245
1st Quarter Percent of Total	25.15%	24.15%	32.83%	26.34%
Recommended Budget Revision Revenues				No Change
Recommended Budget Revision Expenditures				No Change

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

Water Reclamation Facility Capital Project

The Water Reclamation Facility (WRF) project has been on-going for many years. As of FY 2017/18 staff established a separate capital project to account for the transactions associated with this project. Prior to that the costs had been captured through various sewer related accounts.

Below is a snapshot of expenditures, by category for the WRF project for the first three months of FY 2019/20, including all prior year project costs. The summary below does not include legal costs associated with potential litigation expenses. Please note that the summary below only captures invoices paid as of September 30, 2019 and therefore will not align with the monthly reports provided by the City's Project Manager as those reports capture invoices in process.

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

WWTP RELOCATION & TRMT ALTERNATIVE (WRF): March 2013 through September 30, 2019						
SOURCE OF FUNDS	Prior Yrs Actuals 3/2013 - 6/30/18	2018/19 Estimated Actuals	2019/20 City Budget & Carryfwd *	2019/20 1st Qtr Actuals	% of City Budget	Total Project
GRANTS & AWARDS	-	-	75,000	-		-
SEWER ENTERPRISE ACCUM FUND	4,980,872	3,778,780	6,938,426			8,759,652
WATER ENTERPRISE ACCUM FUND	559,342	1,543,445	6,335,850			2,102,787
WIFIA PROPOSED FINANCING			14,216,141			-
CLEAN WATER STATE REV FUND LOAN	-	217,441	6,082,559	-		217,441
STATE REV LOAN/COPS PROPOSED FINANCING						-
TOTAL SOURCE OF FUNDS	5,540,214	5,539,666	33,647,976	-		11,079,880
USE OF FUNDS	Prior Yrs Actuals	2018/19 Estimated Actual	2019/20 City Budget & Carryfwd *	2019/20 1st Qtr Actuals	% of City Budget	Total Project
SEWER ENTERPRISE ACCUM FUND						
4999 Labor Cost Applied (Salary)	388,798	103,564	140,000	16,338	12%	508,699
Fringe Benefits		24,719	71,500	4,065	6%	28,784
Salaries and Benefits	388,798	128,283	211,500	20,402	10%	537,483
5114 Lab Testing Supplies		-	92,700	-	0%	-
5199 Supplies & Equipment	9,687	96,297	5,000	10		105,994
6101 Legal Services - General	2,583	85,854	115,000	15,889	14%	104,325
6220 Postage (Included in 6710)	-	-	-	-		-
6301 Electricity	-	2,500	-	-		2,500
6510 Meetings & Confr	-	200	-	700		900
6513 Meals & Lodging	-	293	-	-		293
6514 Travel Expense	12,101	5,863	-	715		18,679
6640 Maintenance Contracts	91,193	-	44,776	-	0%	91,193
6710 Notices & Publications	77,818	4,398	-	3,898		86,114
Services/Supplies/Equipment	193,382	195,405	257,476	21,211	8%	409,998
6104 Engineering Services	81,567	201,252	287,500	14,906	5%	297,724
6105 Consultation Services	3,126,564	45,216	92,500	-	0%	3,171,780
6106 Contractual Services	-	19,785	-	-		19,785
6152 Outside Lab Testing	35,483	10,947	-	12,948		59,378
6161 Licenses & Permits	-	1,232	-	20		1,252
6195 Rate Study	18,356	-	-	-		18,356
Prog Mgmt & DB Procure	925,350	1,044,107	3,460,000	5,261	0%	1,974,718
6196 Construction Management	-	-	-	-		-
Construction Inspection	-	-	-	-		-
6197 Grant Support	94,880	92,676	120,000	3,355	3%	190,911
6198 Government Relations	57,017	61,380	56,500	13,597	24%	131,994
Construction Soft Costs	4,339,217	1,476,593	4,016,500	50,087	1%	5,865,897
7101 Land Acquisition	30,500	1,000	100,000	5,000	5%	36,500
7103 Design/Build - On-site Imprv Design/Bldg Phase	-	3,163,060	3,459,000	741,955	21%	3,905,015
7104 Desgin-Lift Station/Force Main	275,162	469,340	441,500	117,181	27%	861,683
7105 Planning & Permitting	313,155	78,451	571,500	3,481	1%	395,087
7106 Design-Inj Wells & Recyled Water Pipeline	-	6,570	82,500	-	0%	6,570
7107 Design/Build - On-site Imprv Build Phase	-	-	23,034,000	-	0%	-
NEW Injection Well Construction	-	-	-	-		-
7109 Liftstation/FM Construction	-	-	1,424,000	-	0%	-
7110 Pilot Well Construction	-	-	50,000	-	0%	-
Construction Costs	618,817	3,718,422	29,162,500	867,616	3%	5,204,856
WRF Litigation*	-	20,963	-	1,532		22,495
TOTAL EXPENDITURES	5,540,214	5,539,666	33,647,976	960,849	3%	12,040,729

* Tracked as a separate project as these are unbudgeted costs that can not be anticipated.

QUARTERLY BUDGET REPORT – 1ST QUARTER FY 2019/20

FY 2019/20 Recommended Budget Adjustments

Budget adjustments are recommended for the following revenues and expenditures as of the second quarter as described below:

<i>OTHER FUNDS</i>				
<i>Other Funds Revenues</i>				
<i>Economic Development</i>				
907				
907	1111	3227	SB 1090 Settlement	733,085
907	1111	3990	Other Misc. Revenue	200,000
907				933,085
<i>TOTAL OTHER FUNDS EXPENDITURES</i>				<i>\$ 933,085</i>

SUMMARY OF KEY RECOMMENDED BUDGET ADJUSTMENTS

Other Funds

Revenue:

- Economic Development Fund: A revenue augmentation of \$733,085 is recommended to account for Senate Bill (SB) 1090 Settlement funds received from the County of San Luis Obispo due to the closure of the Diablo Nuclear Energy Plant.
- Economic Development Fund: A revenue augmentation of \$200,000 is recommended to account for community benefit cannabis funds.

CONCLUSION

The financial results from the FY 2019/20 first quarter data, confirms that the City is trending well and on track for the year. As the fiscal year progresses, staff will continue to closely monitor revenue and expenditure activity and work to identify opportunities to enhance revenue to support current and future operating and capital needs.

Heather Goodwin

From: Jennifer Callaway
Sent: Monday, November 18, 2019 3:01 PM
To: CFAC
Cc: Scott Collins; Dana Swanson; Rob Livick; Steve Knuckles; Jody Cox
Subject: Additional questions regarding Agenda Packet Items B1, B2 and B3

Hello Committee Members – Please see the additional questions and staff responses below related to agenda items B1, B2 and B3.

Thank you – see you all tomorrow!

Jen

Items B1 and B2:

1. Interest earnings from LAIF should have been about \$95,000 for QE 9/30/19, so it appears that you don't accrue interest earnings. What revenues and expenditures are accrued? Is everything booked on cash basis during the year? For example, in which month would the expenditures for the first A/P check run in October be booked? What were the sources for the \$37,744 in earnings?

Answer: Interest earnings of \$37,744 primarily consist of interest from Zion Bank and State Farm Bank. The LAIF interest amount of \$96,079.34 and OPUS interest earnings of \$10,276.28 were accounted for at the end of October and not accrued back to the first quarter. Everything is done on a cash basis in the year. The A/P check run in October has a GL date of October 3rd.

2. In trying to match the data, I am confused. I first looked at my "budget book". And then to the City Budget on line.

Examples. Licenses and Permits \$502,599 vs \$109,859

Answer: Licenses and Permits totaling \$502,599 in the quarterly report includes business licenses of \$373,700. There is an additional \$19,040 of property tax H-Subvent that was appropriated into the wrong account during uploading of the budget – we have fixed this when reviewing the first quarter so the budget is now adopted correctly however I forgot to fix it in my quarterly update model.

Business Tax (License) \$373,700 vs \$380,265

Answer: Business Tax of \$373,700 is the business license tax

\$380,265 includes the transient vendor tax as well – I am not sure why these were categorized into different groupings in the past but happy to reclassify both of them into the same category, perhaps just business license tax.

Sal & Benefits. \$11,231,019 vs \$11,049,983

Answer: The difference in the First quarter report adopted budget includes the adjustment of \$181,034 approved by council in October as part of the Memorandum of Understanding with the labor unions. The Council approved a budget adjustment of \$181,034 on 10/22/19 (<http://morrobayca.gov/ArchiveCenter/ViewFile/Item/5168> link provided for reference, refer to item C-3).

Also, the summary on page 15 does not seem to reconcile either - example Licenses and Permits on 15 is \$128,899.

Answer: This is because of the \$19,040 that was placed under the wrong account code when uploading the budget. As indicated above we have fixed this in our finance system, I just forgot to fix in the quarterly update model. Will do so before transmitting to Council in December.

I acknowledge these are fairly trivial differences, but would like to understand what I am likely not understanding - such as these are partial categories?

3. Discrepancies are found in the WRF Budget as well. Small example, \$21,000 was added to the 19/20 Budget for the Rate Study. I understand this may be trying to reflect the assumption of moving this from 18/19 to 19/20.

Answer – Yes, this is a discrepancy. There was \$21,000 in the budget for FY 18/19 in the rate study category that went unspent. When combining the columns for the quarterly report I inadvertently included this amount. Will adjust for the final report distributed to council. The other line items that are off are Lab Testing Supplies which should include about \$7,300 of carryforward funds, Miscellaneous operating supplies which should include \$5,000 of funds, and land acquisition which should include \$299,000 of carryforward funds. Your point is well taken below, and we will include adjustments for these during the second quarter if they will be needed, with six months of project data available for second quarter we will have a better understanding of this. I will be sure to adjust the budget figures to reflect what was adopted by council for the final version of this report.

In my world, the budget is the budget. Forecasts can and will most assuredly change. And in this example, they will change significantly since the assumed NTP date had been August 8, 2019 and we are now at November 18, 2019 with only the hope we can start soon, but at a minimum, it will be a delay of 4 months. Also, why are you excluding legal costs - the implication is there are recorded costs not captured.

Answer: Legal costs for the project are included in the data provided. The only legal costs not included are those related to litigation or threats of litigation – as of today that amount totals \$1,569.50. These costs are tracked under a separate project so we can clearly differentiate between the expected legal costs associated with the project that are included in the overall project budget and those that would not have been included in the project budget due to threats of litigation, etc.

4. I am not familiar with the pension issue, but does the California Budget initiative which is devoting some funding to buying down pensions going to impact this concern for Morro Bay?

Answer: The state's paydown affects the Unfunded Accrued Liability for the State's obligation, does not impact Morro Bay. Although, to the extent the state is able to make incremental paydowns the burden is less for them and it makes it more unlikely to obtain any state relief or assistance on the local government side.

5. Recommended Budget adjustments. Are these for a one-year concern or multiple years? More specifically, is the Diablo Canyon to offset multiple years? If so, how should this windfall be treated? I would say we don't use it in one year IF it was to address shortfalls down the road.

Answer: The adjustments are to recognize the revenue only, there is no adjustment for expenditure of the funds. Council will have to determine the best use of these funds and appropriate at a future time. The Diablo Closure funds are to be used for economic development and thus were placed into that fund. There is a bit more money expected to be received in the next couple of years for a grand total of just under \$1 million. The City is required to report out on the use of those funds annual (at least this is my understanding at this point). Per Council Resolution 19-19 and under the Council adopted Revenue Policy, one-time revenues such as these are only to be used for non-recurring expenditures.

6. Budget Performance Report - Can I assume that the WRF report sums Funds 921 and 922? This is only for my information - not an issue.

Answer: The WRF report is for the WRF Capital project which is held in fund 922.

p.19-How much of the Salaries & Benefits (w/o UAL) expense is attributable to Fire mutual aid in 2018-19?

Answer: Approximately \$250,000.

What was the amount of offsetting revenue in 2018-19?

Answer: City has received approximately \$200,000 for FY 2018/19. We received the remainder of funds for the Montecito fire that occurred in January after close of the books in October of this year.

p. 14 (21)-Benefits-Are they really less than Q1 L.Y. or is this a timing issue?

Answer: While some of this is a timing issue from when the pay periods ended and the dates these expenses hit the GL (as I did not adjust for these timing differences), another major component is that the police department was carrying multiple vacancies throughout the first quarter. The commander position was open for a bit more than a month, there were two sergeant positions open but being filled with acting pay by current staff (acting pay is 5% increase so substantially less) and three officer positions.

p.22 (29)-Harbor Revenue-What is the reason for the significant decrease in revenue compared to prior years?

Answer: Some of this is a timing issue .. since I ran the 1st quarter budget performance report, an additional \$112,000 (primarily in lease revenue) was accrued back to the first quarter. This is still less than the prior year and based on a review of the data, it appears that Harbor Lease revenue, North T and South T pier and mooring rentals are lower – I suspect it is still a matter of timing but we will work with the Harbor Director and watch these carefully going into mid-year.

p.24 (31)-WRF accounts 7103 &7106- It might be helpful for others who might look at this page if you could you add the descriptions that appear for these accounts in the Budget Performance Report?

**Answer: Sure, I did not realize that they got cut off, for reference the account descriptions are as follows:
7103 – Water Reclamation Facility (WRF) On-Site Improv Design Build.
7106 – Design Phase – Injection well & Recycled Water Pipeline.**

Could you also provide a better description for 7107?

Answer: 7107 is Design- build On Site Improvement WRF – we will clarify the description in our finance system as this is intended to be the construction or build phase of the project.

Item B3:

1. Do the figures reflect all year-end adjustments? If not, which adjustments are not included?

Answer: There are two entries not posted yet, OPEB and Pension. Unless the auditor's come back with any correcting entries but we are not expecting any at this time.

2. Please comment on amounts remaining in Dept 1111 undistributed.

Answer: Interest Income is the amount of interest revenue that was ultimately allocated to the fund. This always stays in the undistributed department for the funds. Gain on investment is a book entry only to adjust to fair market value the gains/losses on investments per GASB 31.

3. Why are interfund transfers into the Gen Fd less than budget and less than last year?

Answer: Primarily due to lower than expected general legal expenditures for the enterprise funds (about \$115,000 less in the water fund than budgeted and \$68,000 less than budgeted from the sewer fund) and \$57,000 less in gas tax money as we received less gas tax funds than budgeted.

4. Re: Dept 5205 Pub Wks, why was \$50,483 added to the budget when the final expenditures were so far under budget?

Answer: This was done at 1st quarter of FY 2018/19 as part of the salary realignment and reorganization, before we would have had a good sense of how much savings would exist within the department.

5. Re: Dept 7250 Electricity, expenditures are still higher than the original budget. Does the City have an updated performance report for the photovoltaic project?

Answer: Our annual report for energy consumption is done in March so w do not have an updated report, however we have been informed by the representative from PG&E that we will likely never save enough in energy savings to cover 100% of the debt service.

6. What is the \$114,552 transfer out of the Gen Fd that was not budgeted?

Answer: This was an adjustment approved at third quarter for transfer of IT Service fees collected in the general fund to the IT Technology fund. When doing year-end close, we elected to reclassify the revenues rather than do a transfer in and out so we could have a better audit trail in the future as to what the fees were collected for.

Am I reading this correctly ---- the General Fund had a pre-audited surplus of \$914.5? There used to be a policy that any surplus in the G.F. was automatically transferred to the emergency reserves. Is that still the case?

Answer – the GF has a pre-audited surplus of \$764,043.17. The \$914.4 that you are referencing is the difference between the amended budget and YE Actual results.

Other Post Employee Benefits 4913—Was there a reason this expense was not budgeted for all the Departments/Funds?

Answer – this amount has never been budgeted in the past. FY 2019/20 is the first year the City has budgeted for these expenditures, a process improvement made this year.

p. 3 (37) Fire Revenue-What was the reason for the \$71.1K negative adjustment?

Answer: This is the amount of fire mutual aid that was attributed to equipment usage. The amount was approved in in the second quarter to be allocated to the equipment replacement fund for future fire equipment needs. It was inadvertently all recorded in the general fund and in reviewing year-end we made this correction to transfer to the equipment fund.

p.5 (39) Transfers -3820 & 3860 Why is there a big positive variance?

Answer: Please see explanations provided in 3 above.

p.15 (49) Public Works 6105 Consulting—What was the reason for the \$144,104 variance?

Answer: \$117,000 of the budgeted amount was for Engineering services in lieu of a senior engineer and supplemental support engineering services. In the first quarter an engineer was hired and a reorganization/reclassification was provided in the first quarter budget adjustment to account for this.

p.25 (59) Transfers Out of \$114,552---Transfers to???

Answer: Please see response to six above.

Jennifer Callaway
Finance Director
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442

(805) 772-6217
www.morrobayca.gov
facebook.com/CityofMorroBay

Heather Goodwin

From: Jennifer Callaway
Sent: Monday, November 18, 2019 10:03 AM
To: CFAC
Cc: Scott Collins; Dana Swanson
Subject: Questions on item B-1 CFAC Agenda Packet

Hello Committee Members,

Please see questions and responses below on item B-1 of the CFAC Packet –

1. Total city operating expenses on page 14 show \$15,016,775 as FY19/20 adopted budget and \$13,916,551 as the FY 18/19 actuals, an 8% increase. The Budget summary sheet for FY 19/20 shows these expenditures as \$14,835,736 which is what was shown in the proposed 19/20 budget. Why were they changed in the adopted budget (which I have never seen and have been unable to download), and why are they higher in 19/20? Is it just CALPERS, but we know about that when the proposed budget was developed?

Answer: The Council approved a budget adjustment of \$181,034 on 10/22/19 (<http://morrobayca.gov/ArchiveCenter/ViewFile/Item/5168> link provided for reference, refer to item C-3). Budget adjustments can be done with individual staff items as presented to Council or with quarterly updates – they are typically done under both mechanisms in cities. This explains the variance above. You will note that while the budget reflects this adjustment the actuals for the payouts are not reflected as those did not happen until November.

2. Page 7 states property tax is the second largest revenue category. Yet, it is the largest category unless one wants to consider "other taxes" as a category, but other taxes include sales tax, franchise fees, property tax transfers, and TOT. This is deceivin, and I believe we should let our citizens know that the largest category of revenue for Morro Bay is property tax. It may make many realize that population growth may be the most realistic way to improve Morro Bay's financial future.

Answer: Page three is very clear that "other taxes" as a category is the largest revenue source and includes those items mentioned above and this is why we provide a separate analysis of sales tax, TOT and Franchise Fees. I understand our point with respect to property tax and am open to suggestions for future quarterly reports – if the committee would prefer to not report out on "other taxes" as a category I can certainly make this change as there is no intention to deceive with this – these reports are intended to be transparent and as clear and easy to understand for citizen's, if they are not then again, I am happy to hear suggestions for improvement.

Thank you – hope you all had a nice weekend and see you tomorrow!
Jen

Jennifer Callaway
Finance Director

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595 Harbor Street
Morro Bay, CA 93442

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RESOLUTION NO. 98-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
APPROVING AMENDMENTS TO THE CITY'S FISCAL YEAR 19/20 BUDGET
TO AUTHORIZE VARIOUS ADDITIONAL REVENUES**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, first-quarter adjustments were approved during the December 10, 2019 Council meeting; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California,

1. The operating budgets of the City are amended by the additional revenues, as shown on the attached Exhibit A, that were approved at the December 10, 2019 Council Meeting.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10th day of December 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

Fund	Prog	Acct	Description	Adjustment
907	1111	3227	SB 1090 Settlement	733,084.58
907	1111	3990	Other Misc. Revenue	200,000.00
Total Other Funds				933,084.58

Grand Total: Revenues 933,084.58

Fund	Prog	Acct	Description	Adjustment
0				
Total Other Funds				-

Grand Total: Expenditures -



AGENDA NO: A-11

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: December 2, 2019

FROM: Jennifer Callaway, Finance Director

SUBJECT: First Quarter Investment Report (period ending September 30, 2019) for Fiscal Year 2019/20

RECOMMENDATION

Staff recommends the City Council receive the attached First Quarter Investment Report (period ending September 30, 2019) for Fiscal Year 2019/20.

FISCAL IMPACT

There is no fiscal impact associated with this recommendation.

DISCUSSION

Attached for your consideration is the First Quarter Investment Report for FY 2019/20.

As of September 30, 2019, the City's weighted portfolio yield of 2.211% was below the Local Agency Investment Fund (LAIF) yield of 2.45%.

Staff has consciously decided to keep significant cash in the City's LAIF account in order to ensure cash flow for the pending construction of the Water Reclamation Facility (WRF) project. Once final funding of the project is determined, staff will further analyze cash needs and then determine if longer-term CD purchases should be made. As of publication of this report, the City has submitted \$6.6 million dollars' worth of invoices for reimbursement under the City's State Revolving Fund (SRF) planning loan for the WRF project. The City's total SRF Planning Loan totaled \$10.3 million and staff is in progress of submitted the remaining \$3.7 million in reimbursement requests.

During the quarter, yields have generally been declining, potentially symbolizing a slowing of the economy. As of September 30, 2019, the City recorded \$37,744.64 in interest earnings.

This report was reviewed and received by the Citizen's Finance Advisory Committee on November 19, 2019 and approved by consensus for receipt by the City Council.

CONCLUSION

Staff recommends that the City Council receive the First Quarter Investment Report (period ending September 30, 2019) for Fiscal Year 2019/20.

ATTACHMENT

1. First Quarter Investment Report for FY 2019/20 (period ending September 30, 2019)

Prepared By: JC

Dept Review: _____

City Manager Review: _____

City Attorney Review: CFN

CITY OF MORRO BAY
QUARTERLY PORTFOLIO PERFORMANCE
9/30/2019

INVESTMENT OR CUSIP NUMBER	INSTITUTION	PURCHASE PRICE	MARKET VALUE	COUPON INTEREST RATE	PURCHASE DATE	MATURITY DATE	DAYS TO MATURITY
LAIF	LOCAL AGENCY INVESTMENT FUND	\$ 15,596,923	\$ 15,596,923	2.45%	DAILY	DAILY	1
MONEY MARKET ACCOUNT:							
MM	MECHANICS BANK - MONEY MARKET	715,117	715,117	0.20%	DAILY	DAILY	1
SWEEP	MECHANICS BANK - SWEEP	2,294,950	2,294,950	0.05%	DAILY	DAILY	1
MM	OPUS BANK	5,210,550	5,210,550	2.60%	DAILY	DAILY	1
Government Agency							
3134G8PD5	FHLM Corp	500,003	497,548	1.350%	3/30/2016	9/30/2019	
CERTIFICATES OF DEPOSIT:							
1404202A7	ZION BANK - CAPITAL ONE BANK	250,005	252,772	2.400%	4/12/2017	4/12/2022	925
949763XU5	Wells Fargo	249,000	249,000	2.800%	2/27/2019	2/28/2022	882
38148PGK7	ZION BANK - GOLDMAN SACHS BANK	250,003	245,243	1.550%	8/3/2016	8/3/2021	673
3090683803	STATE FARM BANK	250,435	250,435	3.050%	10/21/2013	10/24/2023	1,485
1731202F5	Citibank	246,000	246,000	3.200%	1/25/2019	1/25/2024	1,578
61690UDL1	Morgan Stanley N/A	246,000	246,000	3.100%	1/24/2019	1/24/2024	1,577
61760AUU1	Morgan Stanley Private Bank	246,000	246,000	3.000%	1/24/2019	1/24/2023	1,212
02007GHD8	Ally Bank UT	246,000	246,000	2.900%	1/24/2019	1/24/2022	847
		<u>\$ 26,300,985</u>	<u>\$ 26,296,536</u>				
				RECORDED INTEREST AS OF 30-Jun-19	% OF LIQUID PORTFOLIO HOLDINGS	WEIGHTED AVERAGE RATE OF EARNINGS	WEIGHTED AVERAGE MATURITY
				<u>\$ 455,823.75</u>	<u>90.558%</u>	<u>2.211%</u>	<u>87</u>

Portfolio holdings as of the first quarter ended September 30, 2019, are in compliance with the current Investment Policy. With 90.558%

of the portfolio held in liquid instruments, the City's portfolio is well above the 65% to 70% target liquidity rate approved by the City Council in March 2018.



AGENDA NO: A-12

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and Council Members

DATE: December 4, 2019

FROM: Jennifer Little, Tourism Manager

SUBJECT: Extension of Mental Marketing Contract for Tourism Promotion Services by One Year

RECOMMENDATION

The Tourism Business Improvement District (“TBID”) Advisory Board and City staff recommend the City Council direct staff to bring back to Council a contract amendment to extend the City’s contract with Mental Marketing for an additional year, so the extended term would end in June 2021 (rather than June 2020), and initiate a Request for Proposal (“RFP”) process in February 2021 (rather than February 2020).

ALTERNATIVES

City Council could direct staff to initiate an RFP process for the contract and bring back vendor recommendations to the TBID Board and Council prior to expiration of the current contract with Mental Marketing in June 2020.

BACKGROUND

Operating for 13 years, Mental Marketing is a full-service branding, marketing and media communications agency with related experience delivering successful brand insights, managing advertising and marketing strategy, public relations, events and digital content for a wide variety of clients. Mental Marketing has been the City’s tourism promotion consultant (also known as Agency of Record) since 2016, and was recommended by the TBID Board and approved by City Council for a two-year contract beginning in July 2018 and concluding in June 2020.

The Morro Bay Tourism account relationship with Mental Marketing is closely managed by experienced, local agency principals who oversee a network of specialists to deliver services efficiently. Mental Marketing’s “Infinite Solutions Team” is composed of experts in the core marketing disciplines required to resourcefully manage all the marketing activities Morro Bay requires: dedicated account managers, media directors, art directors, publicists, social media gurus, copy writers, photographers, videographers, translators and analysts.

DESTINATION MARKETING

Mental Marketing has effective strategies that staff believes lift brand awareness, visitor engagement, transient occupancy tax and other key performance indicators. Their experience in hospitality, destination, nonprofit and corporate brand marketing offers the breadth of skills needed to help Morro Bay engage visitors at every step.

Working with Morro Bay Tourism, Mental Marketing has delivered, staff estimates, millions of dollars of earned media coverage from influential travel and lifestyle media outlets from *Condé Nast Traveler* to *LA Times Magazine*, and everything in between. This third-party endorsement approach

Prepared By: <u>SM/JL</u>	Dept Review: <u>JL</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>CFN</u>

successfully enhances image, grows awareness, demand and visitation from California drive markets, and domestic and international fly markets. From Mental Marketing's vast experience working with hospitality and destination clients, they know the most important deliverables are rooms booked and raising RevPAR, and their team has delivered on those goals. Their team has created and implemented tourism marketing campaigns for organizations and cities with numerous challenges and, through their efforts, generated significant gains in consumer awareness, engagement, response, shoulder-season bookings, and Transient Occupancy Tax (TOT).

In the current contract Mental marketing moved their consultant commission to 12%, reducing it by 3%, and putting those funds direct to Morro Bay Tourism's bottom line for additional advertisement spending. This is a minimum of 3% lower than what any other consultant offered at the last RFP review and only one other consultant offered a commission below 17%.

MORRO BAY KEY MILESTONES/SUCSESSES (SERVICE PROVIDED BY MENTAL MARKETING)

PUBLIC RELATIONS CONTRACT FY2014-15/15-16 (with Morro Bay Tourism Bureau) STARTED BUILDING BRAND AWARENESS & MEDIA DEMAND

- Developed Strategic PR narrative:
 - Value oriented coastal family destination
 - Multigenerational destination
 - Destination wedding/honeymoon/romantic location
 - Culture, adventure, dining and lodging for any budget
 - MB leader in small fleet commercial fishing community
 - Morro Bay story about 70 lb octopus went viral!!
- Mental Marketing developed the first visiting journalist/influencer program in MB, hosting hundreds of travel media
- Strengthened relationships with Visit CA and SLO CAL

ADVERTISING & PUBLIC RELATIONS CONTRACT FY2016-17/17-18 INTEGRATED PR & MARKETING/ADVERTISING EFFORTS

- Focused on integrating PR, social and advertising efforts for a more consistent marketing approach
- Executed effective crisis management programs addressing fires, mud slides, rain and multiple road closures
- Fine-tuned focus on higher income audiences
- Drove shoulder season & mid-week bookings to grow TOT
- Created compression to bolster RevPAR and ADR
- Pushed new passport programs & events through direct response
- Continued robust visiting journalist program
- New logo & tagline approved by city council (logo by John O'Brien, tagline MM)

ADVERTISING & PR CONTRACT FY2018-19/19-20 BUILDING AND GROWING STRONG FOUNDATION

- #VacatonRules brand campaign launch (Brand campaign developed by MM)
 - International ads promoted the newly re-opened CA Highway 1
 - Consistent brand look and messaging for first time
 - Ad campaign response and social media referrals to MBT site consistently up in double & triple digits YOY
 - In this new contract, Mental Marketing discounted media markup from 15% to 12% putting more funds back into media budget
- Began implementing Morro Bay Tourism Strategic Plan
 - TBID and Council approved spring 2019

- Mental presented Strategic Plan marketing approach to TBID board
- Fine-tuned messaging approach focused on key differentiators
- Messaging strategy included # program
 - Hashtag program supported AMGEN promotions
 - Launched #morrobaycation
 - At launch: 15 posts on Instagram in June 2019
 - Today: 991 posts on Instagram – 650% increase in 5 months
- Started community outreach program led by Jennifer Little
 - Shared new messaging & brand approach
- Implemented ADARA tracking
 - Tracked 1.7 days as length of stay benchmark
 - Fine-tuned comp set, demo and geo targeting
 - Tracking revenue generated by MBT ads and MBT site
- PR Successes: Consistent growth in media demand for hosted visits since 2014
 - As a result, our team chooses from the best influencers and journalists that leverage the hosting dollar for best results
 - Expedia Travel included a few video shots of Morro Bay in its TV commercial this past spring
 - Over the past 18 months we've pushed three stories that went viral, generating billions of impressions
 - Inclusion in PR/SOCIAL MEDIA influencer outreach
 - Create separate media lists for VR media
 - Target Niche media with a focus on VRs
 - Host media/influencers at VRs
 - Pitch story ideas about what Morro Bay offers for VR
 - ANNUAL Press Releases that showcase VR
 - Tourism Partnerships Inclusion
 - Visit CA and International Pitches
 - Central Coast Tourism Council Pitches
 - SLO CAL Press Trips
- Social Media Successes: Consistent YOY platform growth from July 1, 2016 – Sept 31, 2019
 - Facebook +68%
 - Instagram +314%

DISCUSSION

An RFP is required before a new two-year contract can be put into place; however, the City can elect to extend the contract for one more year. If the City Council elects to start the RFP process for a new agency contract, staff will need to focus on this within the next 30 days. Reviewing new agencies in the midst of adding vacation rentals (VR) is not viable due to staff limitations. Part of initiating a new agency review is to evaluate and change the brand which means a new agency would not take possession of those changes until July 1, 2020, six months into our new VR program.

With the above discussion of Mental Marketing's performance and concern about managing an RFP process in the midst of adding VR's into the TBID, staff is recommending that the City Council forgo the RFP process in favor of extending the City's contract with Mental Marketing for one year. There is no immediate fiscal impact associated with this recommendation. Staff will bring back to City Council recommended budgets and marketing plans for FY2020-21 with all City Staff department budgets in May 2020.

CONCLUSION

Staff recommends the City Council direct staff to bring back a contract amendment to extend the City's contract with Mental Marketing for an additional year, for the new contract term to end in June 2021, and initiate an RFP process in February 2021.

ATTACHMENTS

1. Mental Marketing Agreement July 2018-June 2020
2. Mental Marketing Agreement Amendment No. 1 July 2018-June 2020

CITY OF MORRO BAY

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made, by and between, the City of Morro Bay, a municipal corporation (“City”) and Mental Marketing Inc., a California corporation, (“Consultant”). In consideration of the mutual covenants and conditions set forth herein the parties agree as follows:

1. TERM

This Agreement shall be deemed to have commenced on July 1, 2018, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2020, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform the tasks described as Consultant Services in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of their ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement. Consultant shall have a 6-month review by the Morro Bay Tourism Business Improvement District Board.

4. CITY MANAGEMENT

City’s Tourism Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to Consultant. City’s City Manager shall be authorized to act on City’s behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change Consultant’s compensation, subject to Section 5 hereof.

5. PAYMENT

(a) City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, and based upon actual time spent on the above tasks. That amount shall not exceed Eight Hundred Ninety-eight Thousand Dollars and No

Cents (\$898,000.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed Fifty Thousand Dollars (\$50,000). Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. In addition, Media Placement invoices will be submitted with an Insertion Order and reconciled upon media invoices reviewed for actual media spend. Media invoice will include an audit of all media placed and used with reconciliation audit. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days after receipt of each invoice as to all non-disputed fees. If City disputes any of Consultant's fees, then it shall give written notice to Consultant within fifteen (15) days after receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Consultant at least sixty-days' (60-days') prior written notice. Upon receipt of said notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City suspends or terminates a portion of this Agreement, then such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, City shall pay to Consultant the actual value of the work performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, Consultant will submit an invoice to City pursuant to Section 5.

7. DEFAULT OF CONSULTANT

(a) Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date Consultant is notified of default and can terminate this Agreement immediately by written notice to Consultant. If such failure by Consultant to make progress in the performance for work hereunder arises out of causes beyond Consultant's control, and without fault or negligence of Consultant, then it shall not be considered a default.

(b) If the City Manager of his/her delegate determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, then he/she shall cause to be served upon Consultant a written notice of the default. Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times and upon reasonable written notice to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement upon reasonable written notice. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, and full payment by City for services performed pursuant to, this Agreement, all final work product such as documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of Consultant. With respect to computer files, Consultant shall make available to City, as a service in addition to those set forth herein, at Consultant's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

(c) Upon completion of services performed pursuant to this Agreement, all work product already owned by Consultant shall remain the sole property of Consultant.

(d) All content supplied by City shall be vetted and approved for use by Consultant by City before supplying said content to Consultant.

9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent same are caused by any

negligent act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement. City agrees to hold harmless and indemnify Consultant from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse or reuse by others of the computer files or any other document provided by Consultant under this Agreement

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

10. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached to and part of this agreement.

11. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the

Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times observe and comply with applicable legal requirements in effect at the time the drawings and specifications are prepared. City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to any and all remedies at law or inequity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City if Consultant, or any of its officers, employees, agents, or subconsultants are served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery

request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within City. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate with City by providing the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442
Attention: Tourism Manager

To Consultant: Mental Marketing, Inc.
9185 Arvine Ct.
Atascadero, CA 93422
Attention: William Stansfield, Jr.

17. ASSIGNMENT

Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of City.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

19. GOVERNING LAW

City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over City.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. CONTENTS OF PROPOSAL

Consultant is bound by the contents of the proposal submitted by Consultant, Exhibit A hereto.

22. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MORRO BAY

By: Jennifer Caclaway
~~Scott Collins~~, Jennifer Caclaway
Acting City Manager

CONSULTANT

By: William Stansfield, Jr.
William Stansfield, Jr.,
President, COO

Attest:

Alexis M. Kudzma, Deputy City Clerk
for Dana Swanson, City Clerk

Approved As To Form:

Joseph W. Pannone by JWK
Joseph W. Pannone, City Attorney

Exhibit A
2018/20 Budget and Consultant Fees

Consultant Services

Subject to a final City Tourism Marketing and Public Relations Plan, as approved by City's City Manager, or his written designee, Consultant will provide City: marketing strategy, advertising campaign creation, creative services, production, media placement strategy and buying, public relations planning, coordination, reporting, public relations outreach, media list database management, press releases creation and distribution, media hosting coordination, press conferences, media performance reporting, social media management, execution and reporting and various project management services.

12-month Fiscal Year 2018/19 Budget

The 'Estimated Total' budget below will be performed within a 12-month cycle on a 'not to exceed' basis as described in this Agreement,. The final approved strategic marketing plan will establish detailed budgets for projects requested and assigned by City.

Agency Fees
Creative \$30,000
Management \$30,000
Public Relations \$70,000
Social media \$30,000
Digital Media Buy \$270,000
Outdoor Board \$9,000
Digital Production \$10,000
Total not to exceed \$449,000

Year two of this contract will not exceed the total of year one, \$449,000, without written approval of City Manager, subject to the provisions of Subdivision 5. (b) of this Agreement..

Calculation of Consultant Fees

Consultant fees are based on blended hourly rate of \$125. All hard costs paid directly to vendors, such as photography, videography and illustrations, by Consultant are marked up 12%. City pre-approved travel expenses are billed at cost. City will incur all direct costs associated with pre-approved journalist visits such as travel, lodging, meals, activities and events. Consultant receives a 12% commission on all 3rd party gross billings. Commissions are part of the total yearly budget. Invoices must be submitted with attached back up for 3rd party billings. Media can be billed on Insertion Orders (IO's) with payment from the City being made within 30 days after the end of the calendar month in which the media has been placed

[See Subdivision 5(c)].

EXHIBIT B

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Agreement, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City/District in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City/District.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy from CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$5,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant’s employees will use personal autos in any way to perform the Scope of Services, then Consultant shall provide evidence of personal auto liability coverage for each such person.

Property Damage Insurance in an amount of not less than \$1,000,000 for damage to the property of each person on account of any one occurrence.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage

provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City/District for injury to employees of Consultant, subContractors or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designated to protect against acts, errors or omissions of the Consultant and “Covered Professional Services” as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$2,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

Exhibit B

Page 2 of 6

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City of Morro Bay and the Cayucos Sanitary District, and their officials employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all Consultants, and subContractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all Consultants and subContractors to do likewise.
3. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any Consultant or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems

Exhibit B

Page 3 of 6

necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City's option.

8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subContractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self-insurance available to City/District.
9. Consultant agrees to ensure that subcontractors, and any other party involved with the Scope of Services who is brought onto or involved in the Scope of Services by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Scope of Services will be submitted to City for review.
10. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any Consultant, subContractor, Architect, Engineer or other entity or person in any way involved in the performance of the Scope of Services to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At the time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
11. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increase benefit to City.
12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
13. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirements in no way

Exhibit B

Page 4 of 6

imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

14. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
15. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
16. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
20. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the Scope of Services reserves the right to charge City/District or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to

Exhibit B

Page 5 of 6

reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

21. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

Exhibit B

Page 6 of 6

AMENDMENT NO. 1 TO AGREEMENT FOR MARKETING SERVICES

This Amendment No. 1 is entered into between the City of Morro Bay, a municipal corporation (“City”) and Mental Marketing, Inc., a California corporation (“Consultant”).

RECITALS

WHEREAS, City and Consultant entered into an agreement that commenced on July 1, 2018 and continues through June 30, 2020 (the “Agreement”);

WHEREAS, the Agreement provided for certain lump sum amounts for certain services to be provided by Consultant;

WHEREAS, City and Consultant desire to amend the Agreement to reflect the additional amounts to be used for specific events which were not included in the services to be provided pursuant to the Agreement; and

WHEREAS, pursuant to the Agreement, the City Manager has authority to approve additional work to be performed by Consultant that would cost no more than an additional \$50,000.00.

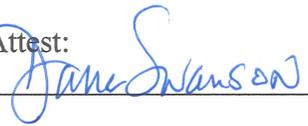
NOW THEREFORE, City and Consultant mutually agree to amend the Amended Agreement as follows:

1. The Agreement is amended so that Consultant shall place additional advertising for the following events up to the following cost, as requested by Tourism Business Improvement District Board:
 - a. Harbor Festival for \$3,000
 - b. Lighted Boat parade Weekend for \$500
 - c. Santa’s House for \$500
 - d. Santa Crawl for \$500
 - e. Leprechaun Crawl for \$500
2. Unless otherwise expressly stated herein, the terms and conditions for the Agreement remain in full force and effect.
3. The effective date of this Amendment No. 1 shall be deemed to be September 1, 2018.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed by their duly authorized representatives.

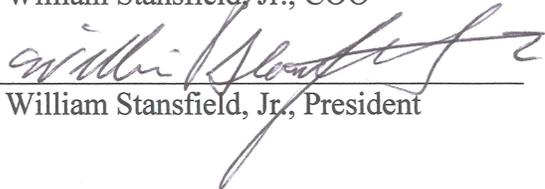
City of Morro Bay
a municipal corporation

By: 
Scott Collins, City Manager

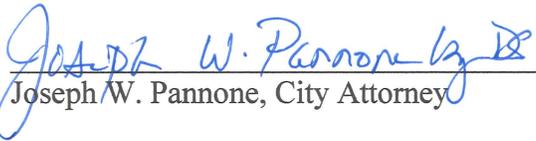
Attest: 
Dana Swanson, City Clerk

Consultant

By: 
William Stansfield, Jr., COO

By: 
William Stansfield, Jr., President

APPROVED AS TO FORM


Joseph W. Pannone, City Attorney



AGENDA NO: A-13

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 2, 2019

FROM: Scot Graham, Community Development Director

SUBJECT: Adoption of Resolution No. 99-19 Approving a 1-Year Lease Agreement with Ciano Real Estate, Inc. for property located at 781 Market Street.

RECOMMENDATION

Staff recommends the Council adopt Resolution No. 99-19, approving a 1-year Lease Agreement for the City property located at 781 Market Street (APN: 066-321-027).

ALTERNATIVES

The City Council could choose not to approve the lease agreement and direct staff to either alter the agreement in a manner agreed upon by a majority of Council or the Council may choose to not lease the space to Ciano Real Estate, Inc.

FISCAL IMPACT

With approval of the contract the City would receive \$2,000.00 a month rent for the twelve-month term of the lease, for a total of \$24,000.00.

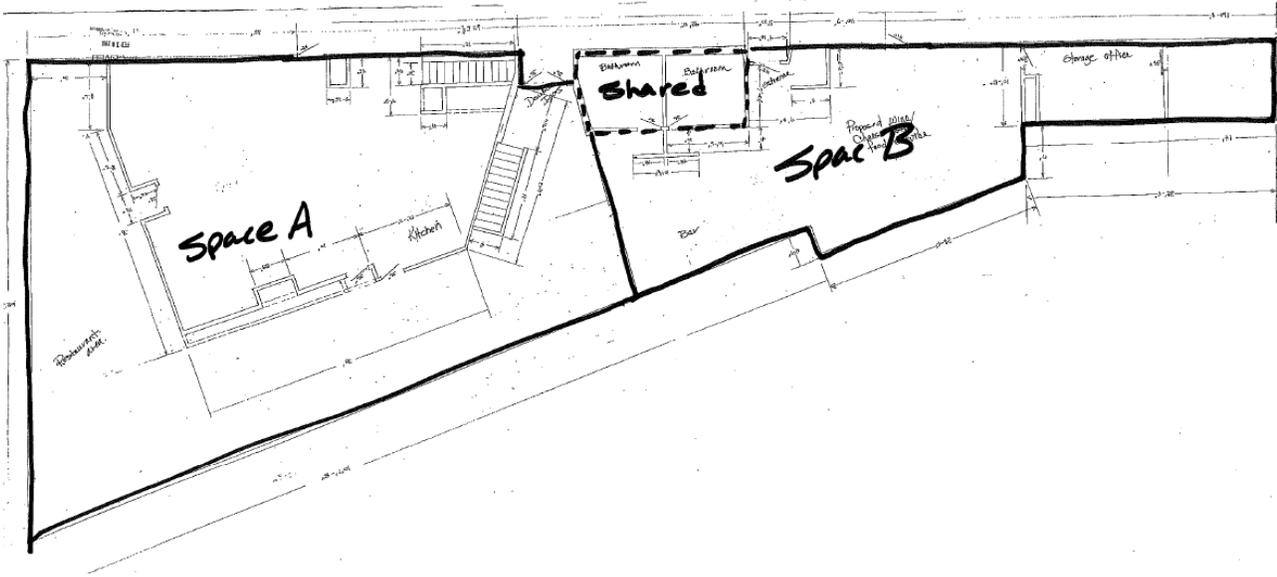
BACKGROUND

The 781 Market Street property is owned by the City and formerly housed Distasio's Restaurant and wine bar. The Distasio's lease terminated on February 15, 2018, leaving the building vacant. The Council adopted Resolution No. 50-18 on June 26, 2018, authorizing staff to execute a 1-year lease agreement with Ciano Real Estate Inc., for a rental rate of \$1,000 per month. The lease agreement expired in June of 2019 and the tenant has continued to occupy a portion of the building on a month-to-month basis. The second tenant space in the 781 Market Street property is occupied by the Morro Bay Skateboard Museum.

As the Council is aware, the City is working on redevelopment of the 781 Market Street property, with the process likely to take 2 to 3 years for purchase and permitting. Given the 2 to 3-year timeline, it makes sense for City to pursue lease of the building on a limited term basis. Leasing the property provides the following benefits: income generation, property is occupied and maintained by lessee's.

The building has two floors, but given the lower floor is inaccessible from an Americans with Disabilities Act (ADA) standpoint (no elevator or ramp), staff does not propose to lease the lower floor. The upper floor currently contains two lease spaces (A & B), totaling approximately 5,220 square feet with approximately 1,413 square feet allocated to the Skateboard Museum (Space B) and 3,807 square feet allocated to Ciano Real Estate (Space A).. See Figure below depicting upper floor building layout.

Prepared By: <u>SG</u>	Dept Review: <u>SG</u>
City Manager Review: _____	City Attorney Review: <u>JWP</u>



DISCUSSION

Frankie Ciano, of Ciano Real Estate, would like to continue to lease Space A for use as a real estate office. The office use would be generally limited to the area previously occupied by restaurant seating. Mr. Ciano is aware of the City's plans to redevelop the property and views the lease space as an opportunity to help grow his business in the short-term (2 – 3 years).

Ciano Real Estate expended approximately \$40,000 on tenant improvements to reconfigure the lease space to accommodate the real estate business. Given the investment that was necessary to make the space usable for a real estate business, combined with the short-term nature of the lease (year to year), the initial one-year term was approved at \$1000.00 per month. Staff has had discussions with Mr. Ciano regarding rents for future years and there is mutual agreement to increase the rent to \$2,000.00 per month.

CONCLUSION

Ciano Real Estate desires to enter into a 1-year lease agreement with the City of Morro Bay for lease of Space A in the existing City owned 781 Market Building. Having tenants occupy the building while the City pursues sale/lease and redevelopment of the property will serve to generate income for the City and will ensure the property is maintained and not left to deteriorate while the City pursues redevelopment opportunities. Staff, therefore, recommends Council adopt Resolution No. 99-19, approving a new 1-year Lease Agreement with Ciano Real Estate for lease of Space A within the 781 Market Street building for a lease rate of \$2,000.00 per month.

ATTACHMENTS:

1. Resolution No. 99-19
2. Ciano Real Estate Lease Agreement

RESOLUTION NO. 99-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A 1-YEAR LEASE AGREEMENT FOR
LEASE SPACE A AT 781 MARKET STREET BETWEEN THE CITY OF
MORRO BAY AND
CIANO REAL ESTATE INC.**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay (City) is the lessor of the property at 781 Market Street, in the City of Morro; and

WHEREAS, Ciano Real Estate Inc. (Lessee) is proposing to continue operating a real estate office in Space A of the 781 Market Street Building; and

WHEREAS, City and Lessee have agreed to a new 1-year lease agreement, for a portion of the located at 781 Market Street identified as Space A.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, as follows:

1. The attached new Lease Agreement for of Space A in the 781 Market Street Building Lease is hereby approved.
2. The Mayor is hereby authorized to execute said Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10th day of December, 2019 on the following vote:

AYES:
NOES:
ABSENT:

John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

COMMERCIAL LEASE AGREEMENT

By and Between

**CITY OF MORRO BAY,
a municipal corporation**

“Landlord”

and

**Ciano Real Estate, Inc.,
a California corporation**

“Tenant”

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Exhibit A Description and Depiction of Premises

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (“**Lease**”) is made effective this 11th day of December, 2019, by and between the CITY OF MORRO BAY, a municipal corporation (“**Landlord**”), and Ciano Real Estate, Inc., a California corporation (“**Tenant**”). Landlord and Tenant are sometimes individually referred to as a “**Party**” and jointly as the “**Parties**.”

RECITALS:

A. Landlord owns, certain real property located in the City of Morro Bay, County of San Luis Obispo, as follows: (i) that certain real property, commonly identified as 781 Market Street, Morro Bay (APN 066-321-027), improved as a restaurant building containing two separate lease space areas and shared bathroom facilities identified as “Space A” and “Space B” on the Attached Exhibit A, with adjacent landscape areas.

The portion of the restaurant building identified as Space A, along with shared use of the bathrooms, as described and depicted on the attached Exhibit A, is the subject of this Commercial Lease Agreement, and is also referred to as the “**Premises**.”

B. The Premises are located in Landlord’s downtown (“**Downtown Area**”).

C. Tenant is a corporation, currently operating a real estate business “Ciano Real Estate Inc.

D. The Parties desire to enter into a written lease agreement and to confirm the rights and obligations of both Parties therein. Pursuant to the terms of this Lease, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises, for Tenant’s sole exclusive use.

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises of the Parties set forth in this Lease, Landlord and Tenant hereby agree as follows:

1. LEASE OF PREMISES; CONDITION OF PREMISES.

- 1.1. **Lease.** Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Premises (as defined in the Recitals incorporated herein) solely for the uses specified in Section 4.
- 1.2. **Condition of Premises.** Tenant acknowledges it has and shall accept the Premises from Landlord in its “AS IS” condition without representation or warranty. Tenant has inspected the premises and is aware of its condition. Pursuant to California Civil Code Section 1938, Tenant is advised that the Premises have not undergone an inspection by a Certified Access Specialist, and, therefore, Landlord is not aware if the Premises comply with the applicable construction-related accessibility standards pursuant to Civil Code Section 55.53.

2. EFFECTIVE DATE; TERM.

- 2.1. **Effective Date.** This Lease shall be deemed effective as of December 11, 2019 (“**Effective Date**”). All other Tenant’s rights and obligations under this Lease shall commence as of the Effective Date.
- 2.2. **Term.** The term of this Lease shall commence on the Effective Date for a fixed term of one year, and terminate without notice on December 10, 2020 (“**Term**”), unless otherwise amended by the Parties pursuant to Sections 2.4 and 30.15.
- 2.3. **Right to Terminate.** Tenant shall have the right to terminate this Lease at any time within the Term upon providing Landlord at least sixty (60) days’ written notice to Landlord.
- 2.4. **Exclusive Right to Negotiate Extension.** If Tenant has not been in default of any of its obligations under this Lease during the previous six months of the original Term (as defined in Section 2.2), then Tenant shall have the right (but not the obligation) to enter into a ninety-day period of exclusive negotiation with Landlord to extend this Lease upon mutually acceptable terms (including, but not limited to, rent payments) for an additional period up to one year (“**ENA Right**”). Tenant must exercise the ENA Right by sending a written notice to Landlord specifying its exercise of the ENA Right, which notice must be delivered to Landlord not less than 90 days prior to the expiration of the original Term (“**ENA Notice**”). Within fifteen business days after receipt of the ENA Notice, Tenant and Landlord will meet to begin negotiations for an amendment to this Lease to extend the Term. If prior to the end of the Term the Parties agree to an extension and other modifications, then such terms shall be effective only if this Lease is amended in accordance with Section 30.15. If the Parties do not agree to that amendment, then this Lease shall terminate without further notice at the end of the Term.

3. RENT & PERFORMANCE STANDARD.

- 3.1. **Monthly Rent.** Tenant agrees to pay Two Thousand Dollars (\$2,000) on a monthly basis, in advance, due no later than the 10th day of month for which rent is being paid (“**Rent**”). The first payment shall be due December 13, 2019.
- 3.2. **Performance Standards.** As material consideration for this Lease, Tenant covenants to comply with the following requirement (the “**Performance Standard**”): diligently maintain and repair the Premises, in compliance with Section 7.1.
- 3.3. **Payment of Rent.** All Rent and all other monetary obligations to be paid by Tenant to Landlord shall be in lawful money of the United States of America at the address specified in Section 30.13, or such other address as Landlord shall notify Tenant in writing.
- 3.4. **Late Payment.** Any payment of any sum to be paid by Tenant, not paid within ten days after its due date, shall be subject to a ten percent late charge.
- 3.5. **Security Deposit.** Tenant is not required to provide, and has not provided, a security deposit to Landlord.

4. USES.

4.1. Authorized Uses; Minimum Program Requirements & Reporting Obligations.

4.1.1. Authorized Uses. Tenant shall use the Premises solely as a commercial real estate office. As material consideration for this Lease, Tenant agrees to use the Premises and conduct all its business operations on the Premises under the designation of a real estate office, currently named “Ciano Real Estate.” No other name shall be used with respect to the Premises without the prior written consent of Landlord, which may be granted or withheld in its sole discretion.

4.2. Prohibited Uses. Tenant shall not use, or permit the Premises, or any part thereof, to be used for any purpose or purposes other than those express uses specified in Section 4.1.1.

Tenant shall not sell or permit to be displayed, performed, sold, kept, or used in or about the Premises any conduct which may be prohibited by standard forms of fire insurance policies.

Tenant shall not violate any and all requirements, pertaining to the use of the Premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering the buildings within the Premises and appurtenances.

Tenant shall not allow any animals on the Premises except service dogs as defined in federal and state law.

Tenant shall not permit smoking or vaping on any portion of the Premises.

Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Premises or any adjacent Premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other solvency proceeding nor display any “going out of business” or similar sign.

Tenant shall not engage in any activity in, on or about the Premises that violates any Environmental Law, and shall promptly, at Tenant’s sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly, by Tenant. The term “Environmental Law” shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. Sections 9601, et seq.; (ii) the Resource Conservation and Recovery Act of

1976 (“RCRA”), 42 U.S.C. Sections 6901, et seq.; (iii) California Health and Safety Code Sections 25100, et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317, et seq.; (viii) California Water Code Section 13000, et seq.; and (ix) California Civil Code Section 3479, et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term “Hazardous Material” includes, without limitation, any material or substance which is (i) defined or listed as a “hazardous waste”, “extremely hazardous waste”, “restrictive hazardous waste”, “or “hazardous substance” or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the Parties hereto to construe the terms “Hazardous Materials” and “Environmental Laws” in their broadest sense. Tenant shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq. Tenant shall provide prompt written notice to Landlord of the existence of Hazardous Materials on the Premises and all notices of violation of the Environmental Laws received by Tenant. Notwithstanding the foregoing, Tenant is not responsible for the remediation or removal of any Hazardous Materials which Tenant did not directly or indirectly cause to be placed at the Premises.

4.3. Abandonment. Tenant shall not vacate or abandon the Premises at any time during the Term of this Lease. Upon termination of this Lease for any reason, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord, shall become the property of Landlord.

5. REAL ESTATE TAXES. Tenant shall pay any and all real property taxes applicable to Tenant’s possessory interest in the Premises. All such payments shall be made at least ten days prior to the due date of the applicable installment. Tenant shall promptly (at least five days prior to the due date) furnish Landlord with satisfactory evidence that such taxes have been paid. If any such taxes to be paid by Tenant shall cover any period of time after the expiration or earlier termination of the Term hereof, Tenant’s share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year that this Lease is in effect, and Tenant may apply to the County for reimbursement of any overpayments after such proration. Notwithstanding anything above to the contrary, to the extent any assessment is levied against the Premises payable in installments, Tenant shall pay all installments coming due and payable during the Term of this Lease.

Tenant acknowledges that although Landlord is a municipal entity exempt from real property taxes, Tenant’s possessory interest under this Lease may be subject to real property taxation.

Upon request, Landlord agrees to work with Tenant to assist in providing information to the County Tax Assessor to reduce the valuation of Tenant’s possessory interest in the Premises. Landlord provides no assurance to Tenant that it will be successful in such efforts and that Tenant may be required to pay real property taxes.

6. **PERSONAL PROPERTY TAXES.** During the Term, Tenant shall pay prior to delinquency all taxes assessed against the levied upon fixtures, furnishings, equipment and all other personal property owned by Tenant (excluding Landlord's personal property) located in the Premises, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from Landlord's personal property. In the event any or all of Tenant's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with Premises, Tenant shall pay its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

7. **MAINTENANCE AND REPAIRS.**

7.1. **Maintenance and Repair by Tenant.** Except the specific maintenance obligations of Landlord as set forth in Section 7.2, Tenant shall at all times during the Term, and at Tenant's sole cost and expense, keep, maintain and repair the Premises in good and sanitary order, condition, and repair. Such maintenance obligations shall include, but not be limited to, any equipment installed by Tenant, furnishings (such as seating, carpeting and drapes, mirrors, and interior repainting) and landscaping.

Tenant shall also hire a cleaning service/custodian, who shall keep the Premises in good and sanitary order on a daily basis.

Tenant shall maintain a written record to evidence the regular performance of maintenance and upkeep of the facility consistent with the maintenance standards.

Upon termination of this Lease, the Premises shall be surrendered in a good, clean and sanitary condition except for reasonable use and wear. Tenant agrees to surrender the Premises in its original condition, together with all additional improvements or alternations which have been approved by Landlord and installed by Tenant pursuant to Section 8.1. If Landlord wants to reserve the right to require Tenant to remove any such additional improvements upon the expiration or earlier termination of this Lease, Landlord must reserve such right in its notice of approval. If Tenant is required to remove any improvements from the Premises upon termination of this Lease, Tenant shall do so at Tenant's sole cost and expense, and Tenant will repair any damage to the Premises caused by such removal. Tenant shall promptly notify Landlord in writing of any condition in the Premises that require repairs by Landlord ("**Repair Notice**") which shall be made by Landlord as set forth in Section 7.2.

Tenant acknowledges that Tenant's maintenance obligations under this Section are material consideration to Landlord for this Lease and, therefore, this Section 7.1 shall be construed liberally for the protection and preservation of the Premises.

7.2. **Limited Maintenance and Repair by Landlord.** Landlord shall only be responsible to maintain in good repair and in compliance with all applicable laws, ordinances and regulations, at Landlord's sole cost and expense, **only** (i) the physical structure of the Premises, such as the structural elements, roof, plumbing, water heating system,

electrical systems, HVAC equipment and exterior painting, and (ii) subject to the financial limitations set forth below.

Notwithstanding the foregoing, Landlord shall not be required to make repairs necessitated by reason of (i) the negligence or willful misconduct of Tenant, or any of Tenant's staff, volunteers, students, contractors, invitees, subtenants, patrons or customers; (ii) by reason of the failure of Tenant to perform or observe and promptly report to Landlord any conditions the repair of which are Landlord's responsibility; or (iii) by reason of the failure of Tenant to perform or observe the conditions or agreements in this Lease, or caused by unauthorized alterations, additions or improvements made by Tenant or anyone claiming under Tenant (collectively the "**Tenant Caused Damages**"). Tenant shall be solely responsible, at its sole cost and expense to repair any Tenant Caused Damages.

Upon receipt of a Repair Notice, Landlord shall have a reasonable period of time (not to exceed five business days) to commence said repairs. Upon commencement of repairs, Landlord shall use reasonable efforts to diligently complete same. Tenant and Landlord shall jointly conduct an annual inspection of the Premises every March to aid Landlord in determining if any repairs by Landlord may be necessary.

Any renovation work performed by Landlord to the Premises shall not unreasonably interfere with Tenant's operations.

Notwithstanding the foregoing, Landlord's repair obligations are **specifically limited** in that Landlord shall not be required to make repairs the cost of which exceeds the Rent actually received by Landlord from Tenant as set forth below. During the Term, Landlord shall maintain a cumulative on-going record of all Rent received by Landlord ("**Landlord Repair Fund**"). Any repairs and maintenance costs incurred by Landlord under this Section 7.2 shall reduce the Landlord Repair Fund. If at any time when a repair or maintenance item which is Landlord's responsibility under this Section 7.2, Landlord shall only be obligated to make such repair to the extent that the current balance of the Landlord Repair Fund is sufficient to pay the cost of such repair. However, if the repair item is critical for Tenant's operation of the Premises, then Landlord shall promptly make such repair but the cost of such shall reduce the Landlord Repair Fund. If Landlord elects, in its sole discretion, to make repairs notwithstanding the foregoing limitations, such election shall not be deemed a waiver of this limitation with respect to future repairs and the cost of such repairs shall reduce the Landlord Repair Fund.

8. ALTERATIONS

8.1 To Premises. Tenant shall not make any alterations to the Premises, or any part thereof, without the prior written consent of Landlord. If Tenant wishes to make additional improvements to the Premises, Tenant shall notify Landlord in writing specifying in reasonable detail the proposed alterations and the cost thereof. Within fifteen days after receiving such notice from Tenant, Landlord shall send written notice to Tenant indicating whether Landlord approves or disapproves of the contemplated improvements. The City Manager may act on behalf of Landlord for approvals or disapprovals under this Section. Landlord's approval shall not be unreasonably withheld and any disapproval shall be in writing and shall explain the reasons for the denial. However, as a condition to granting its approval to any of the improvements, Landlord may require Tenant to provide Landlord with reasonably satisfactory evidence of Tenant's financial ability to pay for the costs of the improvements and may require a completion bond be provided to Landlord or other security reasonably acceptable to Landlord. Any such alterations shall comply with all applicable laws and regulations. All improvements (excluding minor improvements as determined by Landlord) which are approved by Landlord shall be under the supervision of a licensed architect or structural engineer (at Tenant's cost) and made in accordance with plans and specifications approved in writing by Landlord prior to the commencement of such work. All work shall be done in a good and workmanlike manner, diligently prosecuted to completion and completed in compliance with Section 12. All such improvements shall immediately be deemed a part of the Premises and may not be removed by Tenant. Prior to commencing any work of improvement hereunder, Tenant shall notify Landlord so that Landlord can post and record an appropriate Notice of Non-Responsibility.

9. **COMPLIANCE WITH LAWS.** Except as to the specific obligations of Landlord under Section 7.2, Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the general plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force or which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between Landlord and Tenant.

10. INSURANCE.

10.1. **Landlord to Provide Property Insurance.** Landlord shall maintain, at Landlord's sole cost and expense, fire, and excess coverage insurance throughout the term of this Lease, on all buildings and improvements located on the Premises (and fixtures thereto), in an amount equal to one hundred percent of the replacement value of the Premises, together with such other insurance, coverages and endorsements as Landlord may determine in its sole discretion. Tenant hereby waives any right of recovery from Landlord, its officers and employees, and Landlord hereby waives any right of loss or damage (including consequential loss) resulting from any of the perils insured against as a result of said insurance.

10.2. Tenant's Insurance Obligations.

10.2.1. Liability Insurance. During the entire term of this Lease, Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Premises, written on a per occurrence basis in an amount not less than either (i) a combined single limit of Five Million Dollars (\$5,000,000) for bodily injury, death, and property damage or (ii) bodily injury limits of Five Hundred Thousand Dollars (\$500,000) per person, One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) products and completed operations and property damage limits of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate.

10.2.2. Worker's Compensation Insurance. Tenant shall, at Tenant's sole cost and expense, maintain a policy of worker's compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both Tenant and Landlord against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of conducting Tenant's business in the Premises.

10.2.3. Business Automobile Coverage Insurance. Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent, with combined single limits of liability not less than One Million Dollars (\$1,000,000) per accident. If Tenant owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Tenant or Tenant's employees will use personal autos in any way for the operation of any business on the Premises, then Tenant shall provide evidence of personal auto liability coverage for each such person.

10.2.4. General Provisions. All of the policies of insurance required to be procured by Tenant pursuant to this Section 10.2 shall be primary insurance and shall name Landlord, its employees and agents as additional insureds. All policies shall waive all rights of subrogation and provide that said insurance may not be amended or canceled without providing thirty-days' prior written notice by registered mail to Landlord. Within ten business days after execution of this Lease by the last Party to sign, and at least thirty days prior to the expiration of any insurance policy, Tenant shall provide Landlord with certificates of insurance and full copies of the insurance policies evidencing the mandatory insurance coverages written by insurance companies acceptable to Landlord, licensed to do business in

California and rated A:VII or better by Best's Insurance Guide. Landlord may require an increase in the coverage and/or the types of coverage from time to time upon written notice to Tenant. Each of the Parties, on behalf of their respective insurance companies insuring such property of either Landlord or Tenant against such loss, waive any right of subrogation that it may have against the other.

11. INDEMNIFICATION. Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and its managers, officers, directors, members, employees, agents, contractors, partners and lenders, from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises by Tenant, the conduct of Tenant's business, any act, omission or neglect of Tenant, its officers, directors, members, employees, agents or contractors, and out of any breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease, except for matters which are the result of Landlord's gross negligence, intentional wrongful acts, or in default of this Lease. The foregoing shall include, but not be limited to, all costs of the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord) litigated and/or reduced to judgment. In case any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. In addition, Landlord may require Tenant to pay Landlord's attorneys' fees and costs in defending against or participating in such claim, action or proceeding if Landlord shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Tenant or its counsel.

Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, earthquake, flood, terrorism, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other any other cause, whether the said injury or damage results from conditions arising upon the Premises or from other source or places except if such injury or damage is the result of the gross negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents.

12. NO LIENS. Tenant shall keep the Premises, free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant or alleged to have been incurred by Tenant. If Tenant shall fail to pay any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, and shall not have obtained the release of said lien from the property subject to such lien, Landlord may (but shall not be so required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, together with interest at the rate prescribed in Section 30.6, on the amount of the mechanic's lien claim.

13. SIGNS. Tenant shall not place or permit to be placed any signs upon the exterior or in the windows of the Premises without Landlord's prior written consent. Any sign installed without such approval shall be immediately removed by Tenant and, if said sign is not removed by Tenant within three days of written notice from Landlord to Tenant, then Landlord may remove and destroy said sign without Tenant's approval and without any liability to Tenant. Tenant shall not modify or alter any of the signs without the prior written approval of the City Manager for Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall reply to any proposed alteration within fourteen days from submission. Any revision shall comply with the Morro Bay Municipal Code requirements related to signage prior to any revisions actually being made to the signs. Tenant shall maintain the signs in good condition and repair at all times during the entire term at its sole cost and expense.

14. UTILITIES.

14.1. Tenant's Responsibilities. Tenant shall pay, before delinquency, all charges for water, gas, heat, electricity, power, sewer, telephone service, solid waste collection and all other services and utilities used in, upon, or about the Premises by Tenant or any of its subtenants, licensees, or concessionaires during the entire term of this Lease. Tenant shall pay such fees, assessments or charges as may be levied for the operation, maintenance and service of such facilities and shall comply with reasonable rules and regulations established from time to time for use thereof. Tenant shall insure that trash and debris produced by the activities on Premises do not accumulate on the Premises.

15. ENTRY AND INSPECTION. Tenant shall permit Landlord and its employees and agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs, alterations or additions or performing the improvements to any portion of said building(s), including the erection and maintenance of such scaffolding, canopy, and fences as may be required, or for the purpose of posting notices of non-responsibility for alterations, additions or repairs, or for the purpose of placing upon the Premises any usual or ordinary signs for public safety as determined by Landlord. Landlord shall be permitted to do any of the above without any rebate of Rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. Landlord shall make reasonable efforts to coordinate times for any repairs deemed necessary with Tenant to reduce to the extent practicable any interference with Tenant's use of the Premises. Tenant shall permit Landlord, at any time within ninety (90) days prior to the expiration of the Term, to place upon the Premises any usual or ordinary "For Lease" or "For Sale" signs, and during such ninety-day period, Landlord or its agents may, during normal business hours, enter upon said Premises and exhibit the same to prospective tenants or purchasers.

16. DAMAGE AND DESTRUCTION.

16.1. Notice to Landlord. Tenant shall give prompt notice to Landlord in case of any fire or other damage to the Premises.

- 16.2. Partial Casualty to Premises.** If the Premises shall be damaged by any casualty including, but not limited to, civil unrest, vandalism, a fire, flood or earthquake, such that (i) the cost of replacement or repair of the Restaurant is less than or equal to fifty percent of the total replacement cost thereof; or (ii) the cost of replacement or repair of damage to the Restaurant, and any other structures comprising the Premises, when aggregated together is less than or equal to fifty percent of the total replacement cost thereof, then Landlord shall promptly repair and restore the same to substantially the condition thereof immediately prior to said damage or destruction. If insurance proceeds are forthcoming, Landlord shall not be obligated to commence the restoration and/or repair until Landlord has received said insurance proceeds. Landlord shall take all reasonable steps necessary so as to obtain such insurance proceeds promptly so as to prevent delay in restoring and/or repairing the Premises to its prior condition.
- 16.3. Substantial Damage to Premises.** If the Premises shall be damaged or destroyed by any casualty (or the other matters described above), such that (i) the cost of replacement or repair of the Premises exceeds one years rent; or (ii) the cost of replacement or repair of damage to the Premises, and any of the other structures comprising the Premises, when aggregated together exceeds on years rent total, then Landlord may elect to either replace or repair the damage as aforesaid, cancel this Lease by written notice of cancellation given to Tenant within ninety days after the date of the casualty, or allow Tenant to cause repairs to be made to City standards. This Lease shall cease and terminate twenty days following Tenant's receipt of Landlord's cancellation notice, and Tenant shall vacate and surrender the Premises to Landlord in accordance with the terms of this Lease.
- 16.4. Reconstruction.** In the event of any reconstruction of the Premises under this Section 16, Landlord shall be obligated to reconstruct the Premises only to the extent of the condition of the Premises prior to the damage.
- 16.5. Rent Abatement.** In the event that any casualty to the Premises is such that operations are impossible or impractical during the reconstruction as determined by Tenant, Tenant shall be entitled to abatement of the Rent for actual number of business days closed based on a pro-rata ratio of the total days in the month.
- 16.6. Termination.** Upon any termination of this Lease under any of the provisions of this Section 16, the Parties shall be released thereby without further obligations to the other Party coincident with the surrender of possession of the Premises to Landlord, except for obligations which have theretofore accrued and be then unpaid, and except for Tenant's obligations under Section 11.
- 16.7. Determination of Percentage of Damage or Destruction.** If either Landlord or Tenant contends that the percentage of the damage or destruction referred to above exceeds one year's rent total and the other Party disagrees, the determination of the percentage shall be made in writing by a senior officer of the insurance company that is to make insurance proceeds available for replacement or repair. If said insurance company elects not to render such a determination in a timely manner, or no

determination is rendered for any other reason, then, in such event, upon fifteen-days' prior written notice to Tenant, Landlord's determination shall be deemed the agreed upon determination of the damage or destruction.

17. ASSIGNMENT AND SUBLETTING.

17.1. Assignment and Subletting. Tenant shall not sublet the Premises or assign this Lease without the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent to an assignment or sublease to a proposed assignee or subtenant. In no event shall Landlord be required to approve of any assignment or sublease which would result in a violation of any other agreements to which Landlord is a party and/or for which all of the following criteria are not met:

- a. The proposed assignee or subtenant has submitted to Landlord financial statements showing that the proposed assignee's or subtenant's financial condition, including net worth and liquidity, is equal to or greater than Tenant's financial condition;
- b. The proposed assignee or subtenant is morally and financially responsible; and
- c. Tenant is not in default in the payment of Rent or the performance of any obligations under this Lease.

Any such assignment shall be subject to all of the terms and conditions of this Lease, including, but not limited to, the use restrictions, and the proposed assignee or subtenant shall assume the obligations of Tenant under this Lease in writing in form satisfactory to Landlord. The proposed assignee or subtenant shall simultaneously provide to Landlord an estoppel certificate in the form described in Section 21. Consent by Landlord to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. Any assignment or subletting without the prior written consent of Landlord shall be void, shall constitute a material breach of this Lease, and shall, at the option of Landlord, terminate this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of Tenant by operation of law.

Landlord shall be under no obligation to consider a request for its consent to an assignment or sublease until Tenant shall have submitted in writing to Landlord a request for Landlord's consent to such assignment or sublease, a history of the proposed assignee's or subtenant's business experience and financial viability and such other information as required by Landlord to verify that the criteria set forth herein are met.

18. DEFAULT AND REMEDIES; TERMINATION.

18.1. Default by Tenant. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- (i) Failure to pay any Rent or other monetary payment required hereunder to Landlord within five days after receiving notice from Landlord of Tenant's failure to pay any such obligation when due under this Lease.
- (ii) Failure to perform any provision of this Lease (other than the payment of money), if the failure to perform is not cured within thirty days after receiving written notice of the default from Landlord. If the default cannot be reasonably cured within thirty days, Tenant shall not be in default of this Lease if Tenant commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default.
- (iii) Failure of Tenant to meet or comply with the Performance Standard.
- (iv) Vacation or abandonment of the Premises by Tenant.
- (v) Making a general assignment for the benefit of creditors.
- (vi) Filing of a voluntary petition in bankruptcy or the adjudication of Tenant as a bankrupt.
- (vii) Appointment of a receiver to take possession of all or substantially all the assets of Tenant located at the Premises or of Tenant's leasehold interest in the Premises.
- (viii) Filing by any creditor of Tenant of an involuntary petition in bankruptcy which is not dismissed within sixty (60) days after filing.
- (ix) Attachment, execution or other judicial seizure of all or substantially all of the assets of Tenant or Tenant's leasehold where such an attachment, execution or seizure is not discharged within sixty (60) days.

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, without further notice or demand, rectify or cure such default, and any sums expended by Landlord for such purposes shall be paid by Tenant to Landlord upon demand and as additional Rent hereunder. In the event of any such default or breach by Tenant, Landlord shall have the right to continue the lease in full force and effect and enforce all of its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease or Landlord shall have the right at any time thereafter to elect to terminate the Lease and Tenant's right to possession thereunder. Upon such termination, Landlord shall have the right to recover from Tenant:

- (a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;
- (b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of

award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; and

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided.

The “worth at the time of award” of the amounts referred to in subparagraphs (a), b), and (c) above shall be computed by allowing interest (or by discounting in the case of subparagraph (c)) at three percent over the prime rate, but in no event greater than the maximum rate permitted by law.

“Rent” shall include all sums payable pursuant to this Lease on a regular basis; including reimbursement of real estate taxes and any similar amounts. The payment shall be computed on the basis of the average monthly amount thereof accruing during any preceding twelve-month period selected by Landlord, except that if it becomes necessary to compute such Rent before such a twelve-month period has occurred, then such Rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

Such efforts as Landlord may make to mitigate the damages caused by Tenant’s breach of this Lease shall not constitute a waiver of Landlord’s right to recover damages against Tenant hereunder.

Notwithstanding any of the foregoing, the breach of this Lease by Tenant, or an abandonment of the Premises by Tenant, shall not constitute a termination of this Lease, or of Tenant’s right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover rent, and all other payments to be made by Tenant hereunder, as they become due. Failure of Landlord to terminate this Lease shall not prevent Landlord from later terminating this Lease or constitute a waiver of Landlord’s right to do so.

18.2. No Waiver. Acceptance of any payment under this Lease shall not be deemed a waiver of any default or a waiver of any of Landlord’s remedies.

18.3. Landlord’s Default. Except as may be elsewhere expressly provided in this Lease, Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord’s obligation is such that more than thirty days are required for performance then Landlord shall not be deemed in default if Landlord commences performance within the thirty (30) day period and thereafter diligently prosecutes the same to completion.

18.4. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity, except Tenant i) cannot seek money damages or pursue an action in law; and

ii) is instead limited to bringing a proceeding in the nature of specific performance, injunctive relief or mandamus, or any other action in equity.

18.5. Termination.

18.5.1. The Parties acknowledge that this Lease shall be terminated immediately at the occurrence of any of the following events:

- a. By expiration of the Lease;
- b. By mutual agreement of both Parties; or
- c. In the case of casualty as provided for in Section 16.6.

18.5.2. The Parties acknowledge that this Lease may be terminated by Landlord upon five-days' written notice if Tenant fails to meet the Performance Standard.

18.5.3. Except as set forth in Section 2.3, termination of this Lease shall not extinguish Tenant's obligations to pay Rent or its other obligations including indemnification of Landlord.

19. SURRENDER OF PREMISES. The voluntary or other surrender of the Premises by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or licensees, or may, at the option of Landlord, operate as an assignment to it of any or all of such subleases or licenses.

20. FORCE MAJEURE. If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section 20 shall excuse Tenant from the prompt payment of any Rent.

21. ESTOPPEL CERTIFICATE. Tenant shall, at any time and from time to time upon not less than twenty-days prior notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and is in full force and effect, and the dates to which the Rent has been paid, and stating whether or not to the best knowledge that Landlord is in default under this Lease, and, if in default, specifying in reasonable detail each such default, and such other matters as Landlord may reasonably request, it being intended that any such statement delivered by Tenant may be relied upon by Landlord or any prospective purchaser of the fee or any prospective mortgagee or encumbrancer thereof.

If Landlord desires to refinance or transfer the Premises, then Tenant agrees to deliver to Landlord or any lender or transferee designated by Landlord such financial information

concerning Tenant as may be reasonably required by such lender or transferee and is reasonably available to Tenant. All such financial information shall be received by Landlord in confidence.

22. SUBORDINATION. The rights of Tenant shall be and are subject and subordinate at all times to the lien of any mortgage now or hereafter in force against the Premises, and Tenant shall promptly execute and deliver such further instruments subordinating this Lease to the lien of any such mortgage as shall be requested by Landlord.

23. CONDEMNATION. In the event a condemnation or transfer in lieu thereof results in a taking of any substantial and/or material portion of the Premises, Landlord or Tenant may, upon written notice given to the other Party within thirty days after such taking or transfer in lieu thereof, terminate this Lease. In connection therewith, Landlord and Tenant acknowledge that:

- a. Landlord (acting as the City of Morro Bay) possesses the power to take the Premises through eminent domain proceedings; and
- b. The business to be conducted by Tenant upon the Premises is not a viable business without financial assistance from Landlord, therefore if Tenant must vacate the Premises, it will be extremely impractical, if not impossible, for Tenant to operate its business elsewhere.

Therefore, upon such termination Tenant shall have the right to claim and recover from Landlord and/or the condemning authority only the amount equal to the value of any improvements installed by Tenant. Tenant shall **not** receive any value related to the leasehold value of the property which shall be paid solely to Landlord.

24. USE OF LANDLORD'S NAME. Tenant shall not use Landlord's name for advertising or promotion without Landlord's prior written consent which may be granted or withheld in its sole discretion.

25. TRADE FIXTURES. Tenant has the right to use the Landlord's personal property located on the Premises but Tenant shall, at its own cost and expense, install and equip the Premises with all furniture, fixtures, trade fixtures, equipment and personal property reasonably required for the operation of Tenant's business. Any and all fixtures and appurtenances installed by Tenant shall conform with the requirements of all applicable laws and regulations. All furniture, equipment, and trade fixtures installed by Tenant shall remain the property of Tenant during the Term of this Lease but Tenant shall not be remove any trade fixtures during the Term hereof without Landlord's prior written consent, which may be provided by the City Manager on behalf of the Landlord, and which consent may be withheld or granted in Landlord's sole discretion. On termination of this Lease, Tenant may, provided Tenant is not in default of this Lease, remove at its own expense all trade fixtures, equipment and its personal property. At termination of this Lease, if Tenant has left any merchandise, furniture, equipment, signs, trade fixtures or other personal property in the Premises, Landlord may give Tenant written notice to remove such property. In the event such property is not removed within fifteen days after the date of said notice, Landlord may

dispose of said property in any manner whatsoever and Tenant hereby waives any claim or right to said property or any proceeds derived from the sale thereof. Any damage to the Premises resulting from the installation or removal of any of said trade fixtures or equipment shall be repaired by Tenant at Tenant's sole cost and expense.

26. QUIET ENJOYMENT. As long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises during the Term.

27. HOLDOVER. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over after the expiration of the term of this Lease, with the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty-days' written notice, and at a monthly rent equal to two hundred percent of the rent set forth in Section 3.1 and upon terms and conditions as existed during the last month of the Term.

28. NOTICE AND WAIVER REGARDING RELOCATION, GOODWILL, PROPERTY INTEREST AND CONDEMNATION

28.1. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Lease term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any circumstances, in no event shall Tenant be entitled or shall Landlord, including its employees, agents and assignees, be required to provide any relocation benefits, compensation for loss of goodwill, or assistance under any applicable federal, state, or local laws or regulations including without limitation, the Uniform Relocation Assistance Laws, California Government Code Section 7260 et seq. Further, Tenant being fully informed of any and all of its rights and obligations and all laws and regulations (including without limitation, the Uniform Relocation Assistance Laws, California Government Code Section 7260 et seq.) in connection therewith fully waives, releases and rejects any and all relocation assistance and benefits relating to or in any respect connected with Tenant vacating the Premises.

28.2. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any other circumstances, in no event shall Tenant be entitled or shall Landlord be required to provide any compensation or consideration to Tenant for the leasehold interest of Tenant, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses, whether based on condemnation, inverse condemnation or any other reason. Upon vacation of the Premises or termination of the Lease, Tenant knowingly waives and surrenders any claims or rights to the leasehold interest, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses.

29. MISCELLANEOUS.

- 29.1. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the Superior Court of the State of California for the County of San Luis Obispo.
- 29.2. **Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
- 29.3. **Successors in Interest.** The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto, and each and all, including the Party making the assignment, shall be jointly and severally liable hereunder.
- 29.4. **No Oral Agreements.** This Lease covers in full each and every agreement of every kind or nature whatsoever between the Parties hereto concerning this Lease, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein, and there are no oral agreements. Tenant acknowledges that no representations or warranties of any kind or nature not specifically set forth herein have been made by Landlord or its employees, agents or representatives.
- 29.5. **Interest.** Any sum due to Landlord under this Lease shall bear simple interest from and after its due date at a rate equal to ten percent (10%) per month until paid to Landlord, but not in excess of the maximum rate permitted by law.
- 29.6. **Authority.** Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.
- 29.7. **Time.** Time is of the essence of this Lease.
- 29.8. **Consistency.** Each provision herein shall be interpreted so as to be consistent with every other provision.
- 29.9. **Relationship of Parties.** The relationship of the Parties is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business or otherwise, or a joint venture with Tenant.
- 29.10. **Non-Discrimination.** Tenant herein covenants by and for Tenant, Tenant's successors, heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring,

use, occupancy, tenure or enjoyment of the Premises, nor shall the Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, Tenants, subtenants, subtenants or vendees of the Premises.

29.11. Non-Collusion. No official, officer, or employee of Landlord has any financial interest, direct or indirect, in this Lease, nor shall any official, officer, or employee of Landlord participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or non interest pursuant to California Government Code Sections 1091 and 1091.5. Tenant represents and warrants that (i) it has not paid or given, and will not pay or give, to any third party including, but not limited to, Tenant or any of its officials, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining this Lease; and (ii) it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Landlord, as a result or consequence of obtaining this Lease. Tenant is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Lease void and of no force or effect.

29.12. Notices. Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either Party to this Lease to or on the other, such notice or demand shall be given or served in writing and shall not be deemed to have been duly given or served unless in writing, and personally served or forwarded by certified mail, postage prepaid, addressed as specified below. Either Party may change the address set forth below by written notice by certified mail to the other. Any notice or demand given by certified mail shall be effective one (1) day subsequent to mailing.

Landlord: City of Morro Bay
Attn: City Manager
595 Harbor Street
Morro Bay, CA 94585

With a copy to: Aleshire & Wynder, LLP
Attn: Christopher F. Neumeyer, City Attorney
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612

Tenant: Ciano Real Estate, Inc.
Attn: Frankie Ciano
781 Market Street.
Morro Bay, California 93442

- 29.13. **Not an Offer.** The submission of this Lease and any ancillary documents to Tenant shall not constitute an offer to lease, and Landlord shall have no obligation of any kind, express or implied, to lease the Premises to Tenant until Landlord has approved, executed and returned to Tenant a fully signed copy of this Lease.
- 29.14. **Amendments.** This Lease may be modified or amended only in writing executed by both Parties and approved by Landlord in accordance with applicable law.
- 29.15. **Exhibits.** Exhibit A is attached hereto and incorporated herein by reference.
- 29.16. **Acknowledgement of Content.** Each Party acknowledges that they have read and fully understand the contents of this Lease and have had an opportunity to consult with an attorney regarding the same. This Lease represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the Parties have duly executed this Lease on the day and year first above written in Morro Bay, California.

LANDLORD:

CITY OF MORRO BAY,
a municipal corporation

By: _____
Scott Collins, City Manager

_____, 2018

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

TENANT:

CIANO REAL ESTATE, INC., a
California corporation

By: _____
Frankie Ciano, owner

_____, 2018

By: _____

Tis _____

_____, 2018

(Attach Notary Acknowledgements for
Tenant)

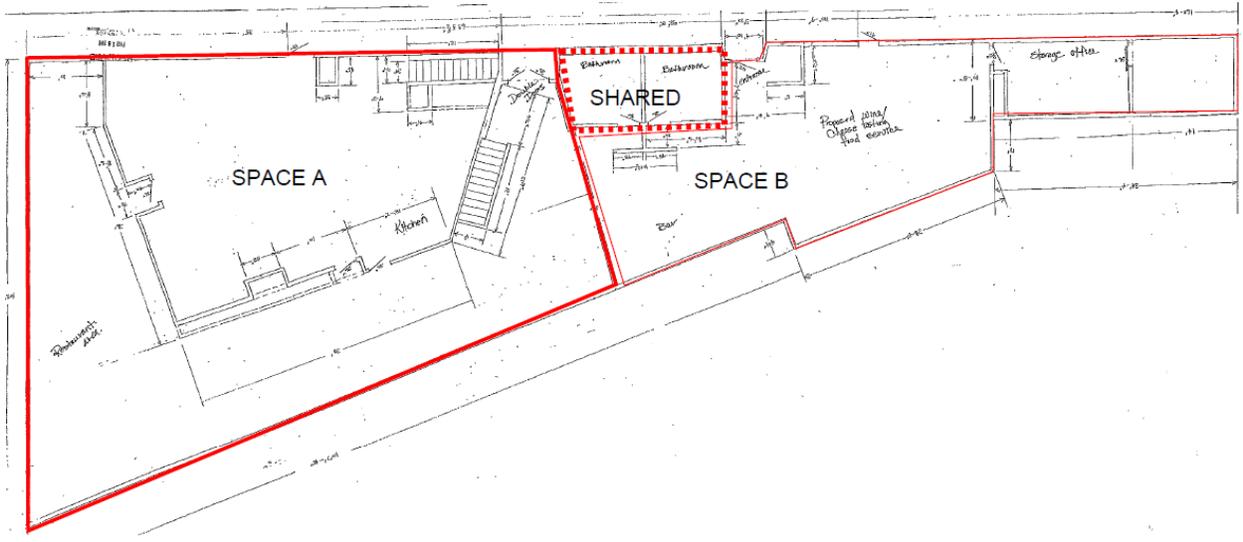
By: _____
Christopher F. Neumeyer, City Attorney

EXHIBIT A

DESCRIPTION AND DEPICTION OF PREMISES

The Premises consist of Space A and shared use of the bathrooms as depicted on the figure below.

(APN: 066-321-027)





AGENDA NO: A-14

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: November 20, 2019

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 100-19 Approving Amendment #1 to the Commercial Building Lease Agreement with Three Stacks and a Rock Brewing Company at Lease Site 69-70/69W-70W, Located at 595 Embarcadero Road

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 100-19 approving Amendment #1 to the Commercial Building Lease Agreement with Three Stacks and a Rock Brewing Company, LLC for portions of the building at Lease Site 69-70/69W-70W, to extend the tenant’s building remodel construction deadline.

ALTERNATIVES

The City Council can direct staff other than is being recommended.

FISCAL IMPACTS

Delay of the monthly revenue to the Harbor Department budget of \$1,916.67/month (\$23,000/year) until May 31, 2020 while the tenant is undergoing significant tenant improvement and building improvement construction efforts.

BACKGROUND, DISCUSSION

On August 13, 2019, the City Council approved a building lease agreement with Three Stacks and a Rock Brewing Company (“Three Stacks”) at the old Morro Bay Aquarium lease site. Three Stacks will occupy only the downstairs spaces of the former aquarium building, and make significant tenant improvements to those spaces to accommodate the owners’ vision of their operation, as well as significant and much-needed building improvements. In addition, the City committed to making several improvements to prepare the building for occupation.

The current lease agreement stipulates the tenant’s improvements will be completed and the building occupied by December 1, 2019, which is also when payment of rent would commence.

Since the time the lease agreement was approved, significant unknown structural and other issues were discovered with the building, which have caused several months of delays in both Three Stacks and the City commencing the agreed-upon work.

Because of that, it is necessary to move the December 1, 2019 deadline out to May 31, 2020. That will be accomplished in Amendment #1 to this lease agreement.

CONCLUSION

Prepared By: <u>EE</u>	Dept Review: <u>EE</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>JWP</u>

Staff recommends the City Council adopt Resolution No. 100-19 approving Amendment #1 to the Commercial Building Lease Agreement with Three Stacks and a Rock Brewing Company, LLC for portions of the building at Lease Site 69-70/69W-70W, to extend the tenant's building remodel construction deadline.

ATTACHMENTS

1. Resolution No. 100-19.
2. Amendment #1 to the Building Lease Agreement with Three Stacks and a Rock Brewing Co.

RESOLUTION NO. 100-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AMENDMENT #1 TO THE BUILDING LEASE AGREEMENT
FOR LEASE SITE 69-70/69W-70W BETWEEN THE CITY OF MORRO BAY
AND THREE STACKS AND A ROCK BREWING COMPANY, LLC
LOCATED AT 595 EMBARCADERO**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tideland leases and properties; and

WHEREAS, on August 13, 2019 the City approved a new short-term Building Lease Agreement with Three Stacks and a Rock Brewing Company ("Three Stacks") for portions of the building at the Lease Site; and

WHEREAS, Three Stacks and the City are completing significant improvements to enable Three Stacks to occupy and operate from the building on Lease Site 69-70/69W-70W; and

WHEREAS, due to significant structural and other issues with the building recently discovered, it is now necessary to extend the December 1, 2019 deadline for completion of the work necessary for Three Stacks' occupancy to May 31, 2020; and

WHEREAS, the City and Three Stacks have agreed upon an extension to the lease agreement deadline to complete the necessary improvements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, as follows:

1. The attached Amendment #1 to the Building Lease Agreement for Lease Site 69-70/69W-70W is hereby approved.
2. The Mayor is hereby authorized to execute said Amendment.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10th day of December, 2019 on the following vote:

AYES:
NOES:
ABSENT:

John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

**AMENDMENT #1 TO THE BUILDING LEASE AGREEMENT
FOR LEASE SITE 69-70/69W-70W,
LOCATED AT 595 EMBARCADERO**

This Amendment ("Amendment #1") is made and entered into as of this ____ day of _____, 2019, by and among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and Three Stacks and a Rock Brewing Company, LLC, a California limited liability company, hereinafter called "Tenant." (Collectively, City and Tenant are sometimes referred to herein as the "Parties.")

WHEREAS, this Amendment #1 is to that certain Building Lease (the "Lease"), which was approved by the City Council on August 13, 2019, and once executed, deemed effective August 8, 2019; and

WHEREAS, while Tenant and City were pursuing their respective building improvement obligations under the Lease, certain structural and other issues were discovered, necessitating a change in the timeline in which the improvements are to be completed because more time is required to complete them.

NOW THEREFORE, Parties agree, as follows:

1. Section 2.2 is replaced in its entirety as follows:

2.2 Initial Term. The term of this Lease shall commence upon Tenant receiving a Certificate of Occupancy or Final Inspection, as applicable, for the improvements satisfactorily completed pursuant to Section 3.3 of this Lease, but in no case later than May 31, 2020 (the "Commencement Date"), for a fixed term of twelve full calendar months after the Commencement Date (the "Initial Term"), and terminate without notice at the end of the Initial Term, unless otherwise amended by the Parties pursuant to Sections 2.4 and 29.14.

2. The first sentences in Sections 3.3.1 and 3.4.1 are amended as-follows:

On or before May 31, 2020~~December 1, 2019~~:

3. Except as expressly stated herein, all provisions of the Lease shall remain in full force and effect.
4. The effective date of this Amendment #1 is the date first written above.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #1 as of the date written above.

CITY OF MORRO BAY

Three Stacks and a Rock Brewing
Brewing Company, LLC
A California limited liability company

By: _____
John Heading, Mayor

By: _____
Charles Nettnin, Managing Member

(Attach Notary Acknowledgements for
Tenant)

APPROVED AS TO FORM:

Chris F. Neumeyer, City Attorney

ATTEST:

Dana Swanson, City Clerk

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AGENDA NO: A-15

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: November 21, 2019

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 101-19 Approving a New Master Lease Agreement with Glad's Landing LLC (William Martony) for Lease Site 34W, Located at 225 Main Street

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 101-19 approving a 22.5-year Master Lease Agreement with Glad's Landing LLC (William Martony) for the water-only Lease Site 34W, located at 225 Main Street.

ALTERNATIVES

The City Council can elect to not approve the lease agreement as-proposed or to desire changes, and direct staff accordingly.

FISCAL IMPACT

Under our most recent area appraised values, at the standard 8% of appraised value the annual rent for this site would be \$4,420. Under the current lease for this site, the annual rent is considerably higher than this due to an unusual CPI calculator in that particular lease.

This site has not historically produced percent rents because of its very small size (only four moderately-sized slips) and limited revenue-generating capacity. That is unlikely to change under this new lease, even with a lesser minimum annual rent.

BACKGROUND

Per Council direction, a request for proposals (RFP) for this site was let in late April, 2019, and proposals due July 12, 2019. Only one proposal was received in response to the RFP; from William Martony, the owner of the private property at 225 Main Street, abutting this lease site.

On Monday, August 11, 2019, per the RFP a Selection Panel to review the Martony proposal was convened, which concluded the proposal was responsive to the RFP. On August 14, 2019, results of the panel's review were brought to the City Council for confirmation of moving forward with the Martony proposal, and for initial lease negotiating parameters. Since then, and including a second closed session of the Council for direction on October 22, 2019, staff have engaged with Martony's representative and agreed-upon the lease under consideration for approval tonight, which is consistent with the direction received from the City Council.

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

DISCUSSION

Staff is proposing the attached new Master Lease Agreement with Mr. Martony, operating as Glad's Landing LLC, containing the following highlights:

1. Section 1.01 Term. A 22.5-year term commencing upon execution of the lease agreement, which is anticipated to occur in early January due to noticing requirements for termination of the current tenant..
2. Section 2.01 Annual Minimum Rent. Starting annual minimum rent of \$4,420/year, which is based on 8% of current area lease site appraisal rates applied to the site's square footage.
3. Section 2.02 Annual CPI Adjustment to Minimum Rent. Standard annual CPI adjustments based on the Department of Labor's indices.
4. Section 2.03 Calculation of New Minimum Rent. Standard five-year property reappraisal and annual minimum rent-setting based on that appraisal.
5. Section 2.04 Percentage Rent. Standard 10% rent for slips/docks and related revenues in any amount exceeding the annual minimum rent.
6. Section 3.01 Permitted Uses. Permitted uses include vessel tie-up and marina management, as allowed by the site's various permit entitlements.
7. Section 13.01 Improvements. Requirement the tenant complete the minimum improvements as-described, which include repairing and/or replacing at least two existing pilings, repairing and/or replacing the existing gangway and floating docks, as-required by analysis from a qualified engineer and providing adequate fire-suppression facilities to the docks and slips as-determined by the City's Fire Marshall. These improvement requirements include deadlines by which the tenant must apply for permits and commence and complete construction.

In addition, Section 13.01 contractually ensures that slip renters have access to a restroom facility at the adjacent private property owned by the tenant.

8. Section 13.02 Option for Additional Term of Years: Tenant has the right to add an additional 20 years to the lease term provided the tenant submits a plan for major capital improvements to the site that is approved by the City.
9. Section 1303 Future Construction of Harborwalk: Provision for the City to build a public lateral access Harborwalk through the lease site should the City find funding and get the project permitted.

The remaining terms and conditions are essentially "standard" in their general scope and character.

Please note, the Resolution will not become effective nor the lease executed until Glad's Landing LLC is registered with the California Secretary of State to do business in California.

CONCLUSION

Approval of this new Master Lease Agreement will ensure the continued operation of this small, but important, vessel marina. In addition, it will reconnect the lease and adjacent private property

ownership to the same (although not the same exact property owners) person, which should help simplify the management and operation of the marina. Staff, therefore, recommend adoption of Resolution No. 101-19 approving a 22.5-year Master Lease Agreement with Glad's Landing LLC (William Martony) for the water-only Lease Site 34W, located at 225 Main Street.

ATTACHMENTS

1. Resolution No. 101-19
2. New Master Lease Agreement for Lease Site 34W

RESOLUTION NO. 101-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A 22.5-YEAR MASTER LEASE AGREEMENT FOR
LEASE SITE 34W BETWEEN THE CITY OF MORRO BAY AND
GLAD'S LANDING LLC, LOCATED AT 225 MAIN STREET**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tidelands leases and properties; and

WHEREAS, Glad's Landing LLC (William Martony) submitted a proposal to own and operate Lease Site 34W following a Request for Proposals (RFP) process to manage the site; and

WHEREAS, Glad's Landing LLC's proposal was the only proposal received, deemed responsive to the RFP and included maintenance, repair and operation of the improvements on the Lease Site; and

WHEREAS, in accordance with the City's Master Lease Policy, the City and Glad's Landing LLC have agreed to a new 22.5-year lease agreement for Lease Site 34W located at 225 Main Street.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, as follows:

1. The attached new Master Lease Agreement for Lease Site 34W is hereby approved.
2. The Mayor is hereby authorized to execute said Master Lease Agreement.
3. This Resolution shall not become effective until the date Glad's Landing LLC is validly registered with the California Secretary of State and authorized to do business in California, as verified by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10th day of December, 2019 on the following vote:

AYES:
NOES:
ABSENT:

John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

L E A S E

by and between

the CITY OF MORRO BAY

("CITY")

and

GLAD'S LANDING LLC

("TENANT")

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L E A S E

This LEASE is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation of the State of California herein called CITY, and Glad's Landing LLC, herein called TENANT.

WITNESSETH

WHEREAS, the State of California granted certain tide and submerged lands located within the CITY limits of CITY to the County of San Luis Obispo and to its successors, being Chapter 1076, Statutes of 1947, as amended by Chapter 413, Statutes of 1955, Chapter 1874, Statutes of 1957, and Chapter 70, Statutes of 1960, first extraordinary session; which Statutes may be amended from time to time by the Legislature of the State of California; all of which Statutes are expressly recognized and agreed to be in full force and effect by the parties hereto; and

WHEREAS, the parties hereto recognize and agree that on July 17, 1964, the CITY of Morro Bay, Lessor herein, succeeded to all of the right, title and interest of the County of San Luis Obispo in and to all of the tide and submerged lands conveyed to said County by the State of California pursuant to the above mentioned acts; and

WHEREAS, judgment has been entered on October 14, 1968, in the case of CITY of Morro Bay, Plaintiff, versus County of San Luis Obispo, and State of California, Defendants, by the Superior Court of the State of California in and for the County of San Luis Obispo, #30417, adjudging and decreeing, among other things, that the title to said tide and submerged lands so conveyed by the State of California to the County of San Luis Obispo in trust, as set forth above, passed automatically to the CITY of Morro Bay upon the date of its incorporation as a CITY on the 17th day of July, 1964; and

WHEREAS, TENANT accepts the within Lease with full knowledge that there is no warranty of title in and to the within described premises by CITY to TENANT; and

WHEREAS, in order to develop and improve Morro Bay Harbor and to assist in carrying out the provisions of the tideland grant as aforesaid, and in order to provide facilities for the accommodation of those using Morro Bay Harbor, CITY desires to lease to TENANT the within described property upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants to be performed and the rental to be paid by TENANT to CITY, CITY leases to TENANT, and TENANT leases from CITY, all of

the following premises (herein collectively referred to as the "Premises") in the CITY of Morro Bay, County of San Luis Obispo, State of California, described as follows:

Lease Site 34W

This property is delineated on Parcel Map of the CITY of Morro Bay No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California. A copy of said Map is attached hereto as Exhibit A and made a part hereof by reference.

Article 1 FIXED TERM

Section 1.01 Term.

The term of this Lease shall be a period of 22.5 years, commencing upon being executed by both Parties on the date first written below (the "Commencement Date"). The term of this Lease shall terminate without notice on the twenty second and one-half year anniversary of the Commencement Date, unless sooner terminated or the Option to Extend Lease is exercised as herein provided.

Section 1.02 No Extensions.

Except as provided in Section 13.01, the term of this Lease shall not be extended. This Lease shall not be renewed. Requests for continued use of the Premises after this Lease expires, however occurring, shall be treated as an application for a new lease and shall require appropriate application to the CITY with all required supporting information and documents, CITY Council approval and the execution of a new CITY lease, containing the then most current terms, covenants, conditions and rent.

Section 1.03 Hold Over.

If TENANT holds the demised Premises after the expiration of the term of this Lease with the consent of the CITY, express or implied, then such holding over (in the absence of a written agreement between CITY and TENANT with respect thereto) shall be deemed to create a tenancy from month to month, terminable on 30-days' written notice from either party to the other, at a monthly rental equal to two hundred percent (200%) of the average total Rent per month for the twelve (12) months immediately preceding the expiration of the Lease, and otherwise subject to each and every term, covenant and condition of this Lease.

Section 1.04 Intentionally Omitted

Article 2 RENT

Section 2.01 Annual Minimum Rent.

TENANT agrees to pay to CITY a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$ \$4,420 (four thousand four hundred twenty dollars) per year (the "Minimum Rent"), payable in advance in equal semiannual installments on January 1 and July 1 each year during the term of the Lease. If the Commencement Date is other than January 1 or July 1, then TENANT shall pay, on the Commencement Date, the proportionate amount of the Minimum Rent payable for the period from the Commencement Date until the next payment date of January 1 or July 1, as the case may be. If the term of the Lease expires on a date other than December 31 or June 30, then TENANT'S final installment of Minimum Rent shall be proportionate to the time remaining in the term. All Rent, including the Minimum Rent and the Percentage Rent, shall be paid in lawful money of the United States of America, without offset or deduction and shall be paid to CITY at City Hall located at 595 Harbor Street, Morro Bay, California, or at such other place or places CITY may from time to time designate by written notice delivered to TENANT.

Section 2.02 CPI Adjustment to Annual Minimum Rent.

(1) The parties agree, as of every July 1 following the Commencement Date (each, a "CPI Adjustment Date"), except as outlined in section 2.03 hereof, the annual Minimum Rent shall be adjusted in direct proportion to any upward or downward movement in the Consumer Price Index for January 1, 2020 (Base Index). The percentage adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles – Long Beach – Anaheim, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index")

(2) The Annual Minimum Rent shall be adjusted as of each CPI Adjustment Date, and will remain in effect as adjusted until the next CPI Adjustment Date. As an illustration only, if the Base Index (Jan. 1, 1999 CPI) is 166.1 and the monthly average CPI for 2000 is 171.6, then the percentage increase is equal to 3.31%. Therefore, the Minimum Rent would be increased by 3.31% as of July 1, 2001, and would continue at that rate through June 30, 2002.

(3) If the United States Department of Labor, Bureau of Labor Statistics, shall cease to compile and make public the Index as now constituted and issued, but shall substitute another index in its place, then said substituted index shall be used for the purpose of adjusting the Minimum Rent for the Premises. If the Index is changed so that the base year differs from that in effect on the Lease Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

Section 2.03 Calculation of New Minimum Rent.

At the end of the initial five (5) years and of each five-year period thereafter, a new Minimum Rent shall be calculated for the following five (5) year period (each, a "Subsequent Rental Period") as follows:

A. The Minimum Rent shall be subject to adjustment by appraisal as of the fifth anniversary of the Commencement Date and every five years thereafter (each, an "Appraisal Adjustment Date"). CITY, at its own cost and expense, shall retain an independent qualified appraiser for determination of the fair market value of said premises. Not more than nine (9) months prior to each Appraisal Adjustment Date, CITY shall provide written notice to TENANT of the pending appraisal and the appraiser selected by the CITY to determine the fair market value of the Premises, excluding fixtures and improvements unless such are expressly included in the description of the leasehold hereinabove. If TENANT does not reject CITY's appraiser in writing and within thirty (30) days after CITY's notice of its determination, then the Minimum Rent for the Subsequent Rental Period shall be in the amount determined by CITY as outlined in this Section 2.03. If TENANT rejects CITY's appraiser within thirty (30) days following CITY's notice to TENANT, then within fifteen (15) days after such 30-day period, each party, at its own cost, shall select an independent professionally designated appraiser who is a member of the American Institute of Real Estate Appraisers, or the Society of Real Estate Appraisers with a designation of MAI (Member of American Institute), SRPA (Senior Real Estate Analysis), to appraise the fair market value of the Premises. CITY may rely on its original appraisal, or select a new appraiser, at its cost. If a party does not appoint an appraiser within fifteen (15) days after the other party has given notice of the name of its appraiser, then the single appraiser appointed shall be the sole appraiser. Each appraiser shall conduct an independent appraisal within thirty (30) days after appointment. If the parties are unable to agree on the Minimum Rent for the Subsequent Rental Period within thirty (30) days after receiving the appraisal(s), then each party shall select one member of a three-member committee. The two so selected members shall select the third member, and this committee shall by majority vote select one or the other of the

appraisals. The Minimum Rent as-determined based on the selected appraisal shall be final and binding and all costs associated with the three-member committee shall be paid equally by CITY and TENANT.

B. If the appraisal process is not concluded on or before the Appraisal Adjustment Date, then the Minimum Rent shall be adjusted retroactively to such Appraisal Adjustment Date as set out hereinbelow when said appraisal process is completed.

C. The total Rent payable, including both the Minimum Rent and the Percentage Rent for each year within the applicable previous five-year period, shall be averaged to produce the average annual total Rent payable for such previous period.

D. The new Minimum Rent for the five-year period commencing on each Appraisal Adjustment Date shall be eight percent (8%) of the fair market value of the Premises (as established in paragraph A. above.) The new Minimum Rent shall be divided by two to determine the semiannual payments and shall be paid by TENANT to CITY on the first of each January and July thereafter, or paid monthly at the option of TENANT. This new Minimum Rent shall be adjusted each following year in proportion to any increase in the Consumer Price Index as set out in Section 2.02 of this Lease. The Base Index shall be adjusted upon each Calculation of new Minimum Rent as set out in this section so that the Base Index for CPI adjustment shall be the Consumer Price Index for January 1 of the year of the calculation of new Minimum Rent.

Section 2.04 Percentage Rent.

A. In addition to the Minimum Rent, TENANT agrees to pay to CITY at the time and in the manner hereinafter specified, as additional Rent for the use and occupancy of the Premises, a sum equal to ten percent (10%) of TENANT'S Gross Sales, hereinafter defined, to the extent that percentage of Gross Sales in any year exceeds the amount of the Minimum Rent due that year pursuant to this Lease (the "Percentage Rent") as illustrated by the exemplar annual calculation sheet attached as Exhibit C.

B. The term "Gross Sales," as used herein, shall mean (subject to the exceptions and authorized deductions as hereinafter set forth), the total selling price and the total gross amount received by TENANT from all rentals/license fees, merchandise sold and services rendered in, on or from the Premises by TENANT, its sublessees, licensees, or concessionaires, both for cash and on credit including, but not limited to, rentals of dockage space, leasing and servicing operations and ticket sales, and if on credit whether or not payment be actually made therefore, all charges for services, alterations or repairs made in or upon the Premises; the gross amount received by TENANT for merchandise sold pursuant to orders received in the Premises if any,

though filled elsewhere; and the gross amount received by TENANT from any and all other sources of income derived from the business conducted upon the Premises.

C. Notwithstanding the other provisions of Section 2.04, the term "Gross Sales" shall not include the following items, and such items may be deducted from Gross Sales to the extent they have been included therein or have been included in a prior computation of Gross Sales or for which a Percentage Rent has been paid under this Lease to CITY:

(1) Credits, offsets for other than something of value exchanged for the merchandise or services, and refunds made to customers for merchandise returned or exchanged or services cancelled;

(2) Security Deposits, if returned to the customer;

(3) Insurance proceeds, other than insurance coverage, if any, for lost rental income;

(4) Amounts received from subtenants/licensees as reimbursement for damages, late fees or interest charged for late payments, bad check fees or charges, or refunds in ordinary course of business.

(5) Any sales or excise taxes otherwise includable in Gross Sales as defined in this Section because such taxes are part of the total selling price of merchandise or services rendered in, from, or on the Premises, where TENANT must account for and remit the taxes to the government entity or entities by which they are imposed;

(6)

(7) With respect to credit card sales, fees retained or withheld by the issuer and/or merchant bank pursuant to TENANT'S credit card or credit vendor acceptance agreement, and

(8) Rental payments to TENANT from sublessees whose total gross sales are included in gross sales computations.

D. TENANT shall keep or cause to be kept full, complete, and accurate records, and books of account in accordance with accepted accounting practices showing the total amount of Gross Sales, as defined herein, made each calendar month in, on or from the Premises. TENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY in advance of their location at all times. Furthermore, TENANT shall at the time of sale and in the presence of the customer cause the full selling price of each piece of merchandise, each rental received and each service rendered in, on or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are sealed in accordance with standard commercial practices. Said records, books of account and cash register tapes, including any sales tax reports that TENANT may be required to furnish any government or governmental

agency shall at all reasonable times be open to the inspection of CITY, CITY'S auditor, or other authorized representative or agent of CITY. TENANT consents to the release of sales tax information to CITY and on demand will furnish to CITY a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of the CITY in determining Gross Sales for TENANT. TENANT consents and authorizes CITY to request such information directly from the State Board of Equalization or other state agency with which sales tax information is filed.

E. By July 31 of each year, TENANT shall furnish CITY with a statement, to be certified by TENANT as current, true and accurate, which shall set forth the Gross Sales of each department, sublessee, licensee and concession operating in, on or from the Premises for the previous twelve (12) calendar months, ending June 30, just concluded, and the authorized deductions, if any, therefrom; and with it TENANT shall pay to CITY the amount of the Percentage Rent which is due to CITY as shown thereby. If TENANT shall at any time cause an audit of sales of TENANT'S business to be made by a public accountant, then TENANT shall furnish CITY with a copy of said audit without cost or expense to CITY. CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a public accountant of CITY'S own selection. TENANT shall, upon receiving written notice of CITY'S desire for such an audit deliver and make available all such books, records and cash register tapes to the public or certified public accountant selected by CITY. Furthermore, TENANT shall promptly on demand reimburse CITY for the full cost and expense of said audit, should the audit disclose that the questioned statement or statements understated Gross Sales by five percent (5%) or more but less than ten percent (10%). If that an audit performed at CITY'S request discloses TENANT understated Gross Sales by less than 5%, then the cost of such audit shall be paid by CITY. In the event any audit or other review of records discloses that the amounts reported as Gross Sales was understated by TENANT by ten percent (10%) or more, CITY shall not only be entitled to recover from TENANT all costs of audit and review, but shall also be entitled to recover from TENANT a penalty equal to two times the Percentage Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses that Gross Sales were understated by any amount, TENANT shall immediately pay the additional Percentage Rent therein shown to be payable by TENANT to CITY, together with interest at the Default Rate thereon, from the date the Percentage Rent was payable until the date paid.

F. Unless, pursuant to Paragraph E., above, CITY has audited TENANT within the immediately previous 12-month period, CITY shall be entitled at any time within five (5) years after the receipt of any such Percentage Rent payment, to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any such statement or

statements, TENANT shall for said period of five (5) years after submission to CITY of any such statement keep all of TENANT'S records, including sales tax returns, all cash register tapes and other data which in any way bear upon or are required to establish in detail TENANT'S Gross Sales and any authorized deductions therefrom as shown by any such statements and shall upon request make the same available to CITY for examination.

Section 2.05 Reimbursements.

If TENANT fails to perform any term or covenant of this Lease, then CITY may, but is not obligated to, perform such term or covenant, and TENANT shall reimburse CITY therefore as additional Rent hereunder. As an illustration and not as a limitation, if TENANT fails to procure the insurance required by this Lease, then CITY may, but is not obligated to, obtain such insurance, with the cost of the premiums being due to CITY upon demand as additional Rent.

Section 2.06 Penalty and Interest.

(1) If any Rent is not received within ten (10) days following the date on which the Rent first became due, then TENANT shall pay a late penalty of ten percent (10%) of the amount of the Rent in addition to the Rent.

(2) In addition to the penalty, TENANT shall pay interest at the rate of one percent (1%) per month or fraction thereof or the maximum amount permitted by law as of the date this Lease is signed, whichever is greater (the "Default Rate"), on the amount of the Rent, exclusive of the penalty, from the date on which Rent first became delinquent until paid. The term "Rent" includes any sums advanced by the CITY and any unpaid amounts due from TENANT to the CITY.

Article 3 USE OF PREMISES

Section 3.01 Permitted Uses.

The Premises shall, during the term of this Lease, be used for the purpose of operating and conducting thereon and therein the uses permitted by applicable and valid City water lease development entitlements, and for no other purpose. On the Commencement Date, such uses include vessel slips, and managing a marina. Nothing in this section precludes such other or additional uses as may, during the pendency of this Lease, be permitted by CITY, in writing and through all necessary land use entitlements.

Section 3.02 Unauthorized Use.

TENANT agrees to allow only those uses authorized in Section 3.01, hereinabove and any unauthorized use thereof shall constitute a breach of this Lease and shall, at the option of CITY, terminate this Lease.

Section 3.03 Operation of Business - Hours of Operation.

Failure to actively and diligently conduct the business authorized herein constitutes a breach of the agreement and shall, at the option of CITY, terminate this lease.

(1) TENANT shall during the term of this Lease conduct business of the nature specified in Section 3.01 of this Lease on the Premises in an efficient and diligent manner and keep the Premises available for the conduct of business continuously and without interruption use by licensees. This provision shall not apply if the Premises shall be closed and the business of TENANT is not usable due to damage or destruction and temporarily shut down for a period not to exceed fourteen (14) calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down as authorized or required by the CITY Manager or on account of strikes, walkouts, or causes beyond the control of TENANT or for not more than three (3) days out of respect to the memory of an officer, employee, or close relative of any officer or employee of TENANT.

(2) TENANT shall operate TENANT'S business on the Premises with due diligence and efficiency and in like manner as comparable businesses operated in the CITY or the coastal area of San Luis Obispo County, so as to produce the maximum amount of Gross Sales and gross receipts from services which may be produced from TENANT'S business; and, if applicable, TENANT at all times shall carry on Premises, a stock or merchandise of such size, character, and quality as is reasonable, designed to produce the maximum return to TENANT, when the sale of merchandise is a permitted use under this Lease.

Section 3.04 Competition.

During the term of this Lease, TENANT shall not directly nor indirectly acquire or establish any similar or competing business within a radius of five (5) miles from the location of the Premises, provided, however, that TENANT may, with prior written approval from CITY, own or operate more than one business, whether or not competing and similar along the Embarcadero upon CITY lease sites. The purpose of this section is to prevent and prohibit TENANT from reducing revenue to CITY by diverting business from the operation at the

Premises to another similar business owned by TENANT within the CITY but not upon a CITY lease site from which CITY is paid rent based on Gross Sales.

Section 3.05 Hazardous Materials.

(1) TENANT shall not transport, use, store, maintain, generate, dispose, release, treat or discharge any "Hazardous Material" (as defined below) upon or about the Premises (such activities being hereafter referred to as "Hazardous Materials Activities"), nor permit TENANT'S employees, agents, or contractors to engage in Hazardous Materials Activities upon or about the Premises, except in amounts consistent with and as allowed by applicable Legal Requirements. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body. All Hazardous Materials Activities at the Premises shall be conducted strictly in accordance with all Legal Requirements. If TENANT shall transport any Hazardous Materials from the Premises, which transport is restricted to licensed contractors, then such transportation shall be done only by a contractor duly licensed to haul hazardous waste and shall use only a duly licensed disposal site approved by TENANT'S liability insurer.

(2) TENANT shall promptly notify CITY of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against TENANT or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises, and (iii) any matters where TENANT is required by Legal Requirements to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. CITY shall have the right (but not the obligation) to inspect the Premises, to take such remedial action on the Premises, as CITY may deem appropriate, and to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law.

(3) If any Hazardous Material is released, discharged or disposed of by TENANT or its employees, agents or contractors, on or about the Premises in violation of the foregoing provisions, TENANT shall immediately notify CITY. CITY may elect either to take such remedial action as CITY deems appropriate, in which event TENANT shall reimburse CITY for all costs thereof within ten (10) days after demand, or direct TENANT to perform such

remediation. If CITY directs TENANT to perform the remediation, TENANT shall immediately take such remedial action, as CITY shall direct. TENANT shall, properly and in compliance with applicable laws clean up and remove the Hazardous Material from the Premises and any other affected property at TENANT'S expense. Subject to an extension of time reasonably necessary for TENANT to obtain all required permits, if CITY directs TENANT to perform remediation hereunder and if TENANT shall fail to comply with the provisions of this Section within five (5) days after written notice by CITY, or such shorter time as may be required by Legal Requirements or in order to minimize any hazard to persons or property, then CITY may (but shall not be obligated to) arrange for such compliance directly or as TENANT'S agent through contractors or other parties selected by CITY at TENANT'S expense (without limiting CITY'S other remedies under this Lease or Legal Requirements).

Section 3.06 Tidelands Trust.

TENANT shall use and occupy the Premises in strict compliance with the Tidelands Trust purposes under which the Premises or any portion thereof are held by CITY pursuant to the grants from the State of California as set forth in this Lease.

Section 3.07 Compliance with Law.

TENANT shall, at no cost to CITY, comply with all of the requirements of all local, municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all local, municipal and county ordinances and state and federal statutes, rules, regulations and orders now in force or which may hereafter be in force, including those regulating Hazardous Materials, (collectively, "Legal Requirements") provided that TENANT shall not be required to comply with any Legal Requirement imposed by the CITY that would substantially deprive TENANT of a material benefit under this lease unless such Legal Requirement has been imposed or required by a county, state or federal authority. The judgment of any court of competent jurisdiction, or the admission of TENANT in any action or proceeding against TENANT, whether CITY be a party thereto or not, that TENANT has violated any such Legal Requirement in the use of the Premises shall be conclusive of that fact as between CITY and TENANT.

Section 3.08 Waste or Nuisance.

TENANT shall not commit or permit the commission by others of any waste on the Premises; TENANT shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by law on the Premises; and TENANT shall not use or permit, the use

of the Premises for any unlawful purpose; provided, that CITY agrees TENANT shall not be required to violate any right of a licensee or renter in complying with this paragraph.

Section 3.09 Use by CITY.

(1) Subject to TENANT's and its renters or licensees' rights hereunder to possession of the Premises, CITY may grant licenses to, or otherwise authorize, other persons and entities permitting uses of the Morro Bay Harbor.

(2) CITY also retains and reserves for itself, its successors and assigns, all oil, gas, petroleum and other mineral or hydrocarbon substances in and under the lands leased hereby together with right to prospect and extract all such substances, subject to CITY reasonably protecting TENANT'S rights of quiet use of the Premises.

Article 4 CONSTRUCTION, ALTERATION AND REPAIRS

Section 4.01 Construction Approval.

(1) TENANT shall not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or facility appurtenant thereto if the cost thereof shall exceed ten thousand dollars (\$10,000), without the prior written consent of CITY. The consent to be obtained pursuant to this Section 4.01(1) shall be requested from the Harbor Director, or the City's designee, for CITY. If the Harbor Director or any future successor to the duties of the City's Harbor Director, or the City's designee, gives such consent to proceed, it is understood that such consent is given by CITY only in its capacity as the landlord under this Lease and not as the permit-issuing authority. TENANT remains obligated to obtain any needed building permits and comply with all applicable planning processes.

(2) Where required by the Morro Bay Municipal Code, California Coastal Act, Corps of Engineers or any other state or federal agency having authority over the proposed project, then all Conditional Use Permits, Concept Plans, Precise Plans, Coastal Development Plans, and any other required plans or permits shall be applied for and approved prior to any construction, alteration or repairs.

Section 4.02 Construction Bond.

(1) Prior to the commencement of any construction the cost of which is greater than the amount of one hundred thousand dollars (\$100,000), TENANT shall file with the Morro Bay CITY Clerk a final detailed Civil Engineer's, Registered Architect's or Licensed and Bonded

General Contractor's estimate of the cost of construction and installation of improvements on the Premises. Said estimate must be submitted to the CITY Engineer for approval. TENANT shall file with the Morro Bay CITY Clerk a faithful performance bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the faithful performance of TENANT or its contractor in the completion of said construction.

(2) TENANT shall also file with the Morro Bay CITY Clerk a labor and materials bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of said construction.

(3) In lieu of the above referenced bonds, TENANT may post cash deposits or may make other mutually satisfactory arrangements to guarantee the completion of construction projects. In the event the contractor bonds the project, CITY may be named as additional indemnitee to comply with these requirements.

Section 4.03 Mechanics' Liens.

At all times during the term of this Lease, TENANT shall keep the Premises and all buildings, installations and other improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. TENANT further agrees to at all times, save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with any improvement, repairs, or alterations on the Premises, and the cost of defending against such claims, including reasonable attorneys' fees. Should TENANT fail to pay and discharge or cause the Premises to be released from such liens or claim of liens within ten (10) days after the filing of such lien or levy, TENANT shall upon written notification be required to immediately deposit with CITY a bond conditioned for payment in full of all claims on which said lien or levy has been filed. Such bond shall be acknowledged by TENANT as principal and by a company or corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. The beneficiary of any security instrument which instrument is on record with CITY, shall have the right to file such a bond on behalf of TENANT. CITY shall have right to post and keep posted on the Premises notices of non-responsibility and any other notices that may be provided by law or which CITY may deem proper for the protection of CITY and Premises from such liens. TENANT shall give CITY

notice at least twenty (20) days prior to commencement of any work on the Premises to afford CITY the opportunity to post such notices.

Section 4.04 Ownership of Improvements.

The parties agree CITY has the option and right to require TENANT to remove all buildings, structures, installations, improvements of any kind or other property belonging to or placed upon the Premises by TENANT at the termination of this Lease, however occurring, providing CITY gives notice, in writing, no later than thirty (30) days prior to the termination of the Lease, of its decision to require that such improvements be removed. The parties agree that if the CITY exercises its option, then at the termination of this Lease, however occurring, TENANT shall have sixty (60) days thereafter to remove all buildings, structures, facilities, installations, improvements and other property belonging to TENANT from the Premises. If CITY exercises such option and TENANT fails to remove all such improvements and other property within sixty (60) days after the termination of this Lease, then CITY shall have the right to have any or all such improvements and other property removed at the expense of TENANT. If CITY does not exercise its option to remove (or require the removal of) the improvements and other property, then title to such improvements and other property shall vest in CITY and TENANT shall not remove same.

Article 5 LEASEHOLD MORTGAGES

Tenant shall not mortgage, securitize or hypothecate the leasehold interest in whole or any part without the prior written approval of CITY as evidenced by a resolution of the City Council.

Article 6 REPAIRS, MAINTENANCE AND RESTORATION

Section 6.01 Maintenance by TENANT.

At all times during the term of this Lease, TENANT shall, at TENANT'S own cost and expense, keep and maintain all improvements now or hereafter on the Premises in good order and repair and in a safe and clean condition. Furthermore, TENANT shall, at TENANT'S own cost and expense, maintain at all times during the term of this Lease the whole of the Premises in a clean, sanitary, neat and orderly condition. CITY may, at the sole option of CITY, clean and clear the Premises, at TENANT'S cost and expense, in the event TENANT fails to clean and clear the Premises in accordance with this Section to the satisfaction of CITY after 15-days' written notice to TENANT from CITY of CITY'S intent to exercise this option.

Section 6.02 Seawalls and Revetment.

At all times during the term of this Lease, after diligently pursuing and receiving all necessary governmental permits, TENANT shall at TENANT'S own cost and expense repair, maintain, replace and rebuild as necessary, the improvements, pilings, bulkheads, seawalls, revetment, posts and any structures or other improvements located in the water portion of the Premises. Further, TENANT shall at TENANT'S own cost and expense conduct maintenance surveys at reasonable intervals to locate and determine needed repairs.

Section 6.03 Legal Requirements.

At all times during the term of this Lease, TENANT, at no cost to CITY, shall:

- (1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07 above) now or hereafter made or issued;
- (2) Observe and comply with all Legal Requirements now or hereafter made or issued respecting the Premises or the improvements or facilities located thereon;
- (3) Obtain all required permits pursuant to the Morro Bay Municipal Code or State law prior to the initiation of any repair or maintenance activity; and
- (4) Indemnify and hold CITY and the property of CITY, including the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims and actions resulting from TENANT'S failure to comply with and perform the requirements of this section.

Section 6.04 Failure to Repair.

If TENANT's failure to repair results in a hazardous or unsafe condition, then CITY shall have the right and option but not the obligation to close and prohibit access to the unsafe portion of the Premises until such repairs are completed and accomplished and the Premises rendered safe for public use. In addition, if TENANT fails to diligently pursue permitting and/or repair any hazardous or unsafe condition within ten (10) days after written notice thereof from CITY, CITY shall have the right, but not the obligation, to perform such repair at TENANT'S expense. TENANT shall reimburse CITY for any such repair undertaken by CITY, promptly upon CITY'S demand, as additional Rent. Failure by CITY to enforce any of the provisions of this Article shall not constitute a waiver of these provisions and CITY may at any time enforce all of the provisions of this Article, requiring all necessary repairs, rebuilding or replacement.

Section 6.05 Inspection by CITY.

CITY or CITY'S agents, representatives, or employees may enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY'S interest in the Premises under this Lease or to perform CITY'S duties under this Lease.

Section 6.06 TENANT'S Duty to Restore Premises.

(1) Except as provided in Section 6.07 below, and subject to 6.02 above, if at any time during this Lease, any improvements now or hereafter on the Premises are destroyed in whole or in part by the elements, or any other cause not the fault of TENANT or CITY, this Lease shall continue in full force and effect and TENANT, at TENANT'S own cost and expense, shall repair and restore the damaged or destroyed improvement(s) according to the original plan thereof or according to such modified plans therefore as shall be approved in writing by CITY. The work of permitting, repair and restoration shall be commenced by TENANT within one hundred eighty (180) days after the damage or destruction occurs shall be pursued with due diligence, and shall be completed not later than one year after the work is commenced, unless the parties hereto mutually agree, in writing, to an extension. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for construction work on the Premises set forth in Article 4 of this Lease. Any failure by TENANT either to commence or to complete repair and restoration as required by this Section 6.06 shall be a material default under this Lease.

(2) Any and all TENANT'S approved insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises shall be paid to TENANT and applied by TENANT toward the cost of repairing and restoring the damaged or destroyed improvements in the manner required by this Section 6.06, or, if this Lease is terminated, then applied as provided in Section 6.07. Except as set forth in Section 6.08 below, TENANT'S obligation to restore pursuant to this Section shall exist whether or not funds are available from insurance proceeds.

Section 6.07 Termination of Lease for Destruction.

(1) Notwithstanding the provisions of Section 6.06 of this Lease, TENANT shall have the option of terminating this Lease as provided in this Section 6.07 if:

(a) During the last fifteen (15) years of the term of this Lease, any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not

the fault of TENANT or CITY, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding thirty-five percent (35%) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage; or

(b) During the last ten (10) years of the term of this Lease, any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT or CITY, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding fifteen percent (15%) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage.

(2) TENANT may exercise its right to terminate pursuant to this Section 6.07 by providing written notice to CITY within one hundred eighty (180) days following damage or destruction as described herein. Such termination shall be effective on the last day of the calendar month following the month in which TENANT provides its notice.

(3) If TENANT fails to commence or complete repair and restoration as required by Section 6.06, CITY shall have all rights and remedies with respect to TENANT's default, including but not limited to termination of this Lease pursuant to Article 11.

(4) If this Lease is terminated as a result of damage or destruction, then any insurance proceeds received with respect to the improvements shall be applied or distributed in the following order:

(a) first, to the demolition of the improvements and removal of all demolition debris; then

(b) to any accrued and unpaid Rent as of the effective date of the termination; then

(c) to each Lender under a Leasehold Encumbrance, in order of lien priority, an amount not to exceed the amount due under such Leasehold Encumbrance; then

(d) to CITY, an amount equal to the present value, as of the date of termination, of the total Minimum Rent for the remainder of the Term; then

(e) the remaining proceeds, if any, to TENANT.

Section 6.08 Destruction Due to Risk Not Covered by Insurance.

Notwithstanding anything to the contrary in Section 6.06 of this Lease, TENANT shall have the right to terminate this Lease at any time if the improvements on the Premises are

damaged or destroyed by a casualty for which TENANT is not required under this Lease to carry insurance and the cost to repair or restore such improvements exceeds fifty percent (50%) of the fair market value of all the improvements on the Premises immediately prior to the damage or destruction.

Article 7 INDEMNITY AND INSURANCE

Section 7.01 Indemnity Agreement.

Except as set forth elsewhere in this Lease:

(1) TENANT shall indemnify, defend and hold harmless CITY, and the property of CITY (including the Premises and any improvements now or hereafter on the Premises), and the CITY'S officers, officials, employees and volunteers from any and all liability, claims, loss, damages, and expenses, including reasonable attorney's fees and litigation expenses, resulting from TENANT'S occupation and use of the Premises or any negligent act or omission of the TENANT or any of its subtenants, employees, contractors or anyone for whom TENANT may be liable, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or by any person who is an employee or agent of TENANT, from any cause whatever while such person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

(b) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or any person who is an employee or agent of TENANT, caused or allegedly caused by either (i) the condition of the Premises or any improvement placed on the Premises by TENANT, or (ii) any act or omission on the Premises by TENANT or any person in, on, or about the Premises with or without the permission and consent of TENANT;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of TENANT or any person or entity acting for or on behalf of TENANT;

(d) TENANT'S failure to perform any provision of this Lease or to comply with any Legal Requirement imposed on TENANT or the Premises.

(2) TENANT'S obligations pursuant to this Section to indemnify and hold harmless do not extend to any liability, claim, loss, damage or expense arising from CITY'S active negligence or willful misconduct.

Section 7.02 Liability Insurance.

During the term of this Lease, TENANT shall maintain at its cost Commercial General Liability insurance with coverages at least as broad as ISO Forms labeled "City of Morro Bay Insurance requirements for Lessees", Certificate of Insurance – City of Morro Bay", and "Additional Insureds – Managers or Lessors of Premises" attached hereto as Exhibit B and made a part hereof as may be updated or changed from time to time at the sole discretion of CITY, insuring against claims for bodily injury (including death), property damage, contractual liability, personal injury and advertising injury occurring on the Premises or from operations located in any part of the Premises. Such insurance shall afford protection in amounts no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage, provided that if insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be twice the occurrence limit stated in this Section. All liability insurance carried by TENANT hereunder shall name CITY, its officers, officials, employees and volunteers as additional insureds, and shall be primary insurance with respect to such additional insureds. TENANT shall include all its subtenants as insureds under TENANT's liability policies or shall furnish separate certificates and endorsements for each subtenant. All coverages for subtenants shall comply with all requirements of this Article Seven.

Section 7.03 Worker's Compensation.

To the extent TENANT is legally required to do so, TENANT shall maintain at TENANT'S own expense and keep in full force and effect during the term of this Lease, Worker's Compensation Insurance as provided by law. Said insurance shall contain a waiver of subrogation rights against CITY. TENANT shall also maintain employer's liability insurance with minimum coverage of \$1,000,000 per accident for bodily injury or disease.

Section 7.04 Property Insurance.

TENANT shall, at its cost, at all times during the term of this Lease keep all improvements and other structures on the Premises, as well as any and all additions,

improvements and betterments thereto, insured for one hundred percent (100%) of their full replacement cost with no co-insurance provision against loss or destruction by the perils covered by "all risk" (excluding earthquake) property damage insurance policies. Any loss payable under such insurance shall be payable to TENANT, CITY, and any Lender under a Leasehold Encumbrance pursuant to Article 5 of this Lease, as their interests may appear, and such proceeds shall be used and applied in the manner required by Article 6 of this Lease.

Section 7.05 Additional Coverage.

TENANT shall also maintain, at its expense, the insurance described in this Section 7.05.

(1) If TENANT has (or is required by any Legal Requirement to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then TENANT shall maintain liquor liability coverage in appropriate amounts. TENANT shall require any subtenant who has (or is required by any Legal Requirement to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(2) TENANT shall, at TENANT's own expense, obtain and maintain any additional insurance coverages that CITY may reasonably require. As illustration only and not as a limitation, in appropriate circumstances such additional insurance may include increased general liability limits, business interruption coverage, business automobile liability, boiler and machinery insurance and/or builder's risk insurance. However, TENANT shall not be required to maintain additional coverages that are in excess of those typically maintained by similarly situated tenants in the Morro Bay area.

Section 7.06 General Requirements.

Except as specifically provided to the contrary, all the insurance required pursuant to this Article Seven shall be subject to the requirements of this Section 7.06.

(1) Maintenance of proper insurance coverage is a material element of this Lease and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by CITY as a material breach of contract. TENANT shall forward CITY specifications and forms to TENANT'S insurance agent for compliance.

(2) CITY may at any time require TENANT to increase the minimum coverage limits for insurance required by this Lease, but every such increase shall be reasonable under the circumstances.

(3) All policies shall be issued by insurance companies authorized to issue such insurance in California, with an A.M. Best's rating of no less than A:VII.

(4) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees and volunteers; or the TENANT shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(5) Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be cancelled or reduced, except after thirty-30-days' prior written notice by certified mail, return receipt requested, has been given to CITY.

(6) TENANT shall furnish CITY with certificates and amendatory endorsements effecting the coverage required by this Lease. The endorsements shall be on forms provided by CITY or on other than CITY's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by CITY before use of the Premises, and promptly following any renewal or replacement. CITY reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

(7) TENANT's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of TENANT's insurance and shall not contribute with it.

Section 7.07 No Subrogation.

TENANT agrees, in the event of loss due to any of the perils for which it has agreed to provide insurance, TENANT shall look solely to its insurance for recovery. TENANT hereby grants to the CITY, on behalf of any insurer providing insurance to either TENANT or CITY with respect to TENANT'S occupancy of the Premises, a waiver of any rights to subrogation which any such insurer of said TENANT may acquire against CITY by virtue of the payment of any loss under such insurance. Each insurance policy required under this Lease including those insuring TENANT against claims, expense, or liability for injury to persons or property shall provide that the insurer shall not acquire by subrogation any right to recovery which TENANT has expressly waived in writing prior to the occurrence of the loss.

Section 7.08 TENANT'S Waiver.

TENANT hereby waives any right of recovery against CITY for each claim, expense, liability, or business interruption, or other loss, except where caused by CITY'S active negligence or willful misconduct. TENANT agrees that to the extent that TENANT fails to

acquire insurance, TENANT shall not have any claim against CITY for any loss that results from a risk or peril that would have been included in such insurance.

Section 7.09 Insurance Not a Limit.

The insurance requirements of this Article Seven are independent of, and do not limit or modify, TENANT'S indemnification and other obligations pursuant to this Lease.

Article 8 TAXES AND FEES

Section 8.01 TENANT to Pay Taxes.

TENANT shall pay, before delinquency, all taxes and assessments levied upon or assessed to TENANT on the Premises by reason of this Lease or of any equipment, appliances, improvement, or other development of any nature whatsoever, erected, installed, or maintained by TENANT or by reason of the business or other activity of TENANT upon or in connection with the Premises. TENANT shall pay all possessory interest taxes applicable to the Premises.

Section 8.02 TENANT to Pay License and Permit Fees.

TENANT shall pay any fees imposed by law for licenses or permits for any business or activities including construction by TENANT upon the Premises.

Section 8.03 Utilities.

TENANT shall pay, or cause to be paid, and hold CITY and the property of CITY, including the Premises, free and harmless from all charges for the furnishing of gas, water, electricity, telephone service, and for other public utilities to the Premises during the term of this Lease and for the removal of garbage and rubbish from the Premises during the term of this Lease.

Article 9 CONDEMNATION

Section 9.01 Total Condemnation.

If title and possession to all of the Premises is permanently taken for any public or quasi-public use under any statute, or by the right of eminent domain, then this Lease shall terminate on the date that possession of the Premises is taken, and both CITY and TENANT shall thereafter be released from all obligations, including Rent, all of which shall be prorated to the date of termination, except those specified in Section 9.02 of this Lease.

Section 9.02 Condemnation Award.

Any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain shall be allocated between CITY and TENANT as follows:

(1) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Premises shall be paid to and be the sole property of CITY free and clear of any claim of TENANT or any person claiming rights to the Premises through or under TENANT.

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business shall be paid to and be the sole property of TENANT.

(3) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where only a portion of the Premises is taken by eminent domain, and TENANT is not entitled to or does not terminate this Lease, shall be applied in the manner specified in Section 9.04 toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Premises.

(4) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall be allocated between CITY and TENANT as follows:

(a) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, not expired shall belong to and be the sole property of TENANT.

(b) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, expired shall belong to and be the sole property of CITY.

(c) The term "time of taking" as used in this Section shall mean 12:01 a.m. of the date that the agency or entity exercising the eminent domain power, takes, title, or the date that it takes physical possession of the portion of the Premises, whichever shall first occur.

(5) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of CITY.

Section 9.03 Termination for Partial Taking.

Should, during the term of this Lease, title and possession of only a portion of the Premises be taken for any public or quasi-public use under any statute, or by right of eminent domain, TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on CITY within ninety (90) days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease shall terminate on the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on CITY. On termination of this Lease pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease shall also terminate and the Premises shall be delivered to CITY free and clear of all such subleases and subtenancies, provided, however, that CITY may, at CITY'S option, by mailing written notice to a subtenant allow any subtenant to attorn to CITY and continue such subtenant's occupancy on the Premises as a TENANT of CITY. On termination of this Lease pursuant to this section, however, both CITY and TENANT shall be released from all obligations under this Lease, except those specified in Section 9.02 of this Lease.

Section 9.04 Rent Abatement for Partial Taking.

Should, during the term of this Lease, title and possession of only a portion of the Premises be taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease shall terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease shall, as of that time be reduced in the same proportion of the Premises taken by eminent domain bears to the full value of the Premises at that time; provided however, that TENANT shall make a good faith effort to replace any improvements or facilities with equivalent new facilities on the remaining portion of the Premises and do all other acts at TENANT'S own cost and expense required by the eminent domain taking to make the remaining portion of the Premises fit for the use specified in this Lease.

Section 9.05 Conveyance in Lieu of Eminent Domain.

A voluntary conveyance by CITY, with the consent of TENANT, of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of the Premises under the power of eminent domain subject to the provisions of this Article.

Section 9.06 Temporary Taking.

If the possession of the Premises or any portion thereof should be taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the term of this Lease, then this Lease shall not terminate (except as provided in this Section 9.06) and TENANT shall continue to perform all its obligations hereunder, except only to the extent that TENANT is prevented from performing such obligations by reason of such taking. TENANT shall be entitled to receive the entire amount of compensation or damages awarded because of such temporary taking. If a temporary taking extends for more than thirty-six (36) months, then TENANT shall have the right to terminate this Lease, and TENANT shall be entitled to receive, out of the compensation or damages awarded because of such temporary taking, the amount that is attributable to the period of time up until the effective date of TENANT'S termination of this Lease.

Article 10 ASSIGNMENT AND SUBLEASING

Section 10.01 No Assignment Without CITY'S Consent.

Except as provided in this Article 10, TENANT shall not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of CITY evidenced by resolution first had and obtained. Any assignment or transfer by TENANT without the prior written consent of CITY, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of CITY, terminate this Lease. A consent by CITY to one assignment shall not be deemed to be a consent to any subsequent assignment of this Lease by TENANT. CITY shall not unreasonably nor arbitrarily withhold its approval to the assignment or transfer of this Lease to an assignee who is financially reliable and qualified to conduct the business for which this Lease was granted. It is mutually agreed that the TENANT'S qualifications are a part of the consideration

for granting of this Lease and said party does hereby agree to maintain active control and supervision of the operation conducted on the Premises.

Section 10.02 Change of Ownership as Assignment.

For purposes of this Article 10, the following transactions will be deemed to be assignments or transfers:

(1) If TENANT is a partnership or limited liability company:

(a) Except as provided in Section 10.2(3), a change in ownership effected voluntarily, involuntarily, or by operation of law, within a twelve-month (12-month) period, of twenty-five percent (25%) or more of the partners or members or twenty-five percent (25%) or more of the partnership or membership interests; or

(b) The dissolution of the partnership or limited liability company without its immediate reconstitution.

(2) If TENANT is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

(a) The sale or other transfer, within a twelve-month (12-month) period, of more than an aggregate of twenty-five percent (25%) of the voting shares of TENANT (other than to immediate family members by reason of gift or death); or b

(b) The dissolution, merger, consolidation, or other reorganization of TENANT.

(3) Since TENANT is a limited liability company with a single member, this Section 10.02 shall not apply upon death of that individual who was the sole member on the Commencement Date, but rather the provisions of Section 10.04, "Probate Transfer of Assignment" shall apply.

Section 10.03 Application for Assignment.

A condition of an assignment shall be that TENANT shall file with the CITY an application to assign the leasehold prepared by the prospective assignee. Concurrently with filing the application, TENANT shall pay a reasonable fee associated with the cost of processing said application, in cash or certified or cashier's check to enable CITY adequately to investigate the proposed assignee's qualifications as a permitted assignee. CITY shall not be required to account for the use of the sum paid. If the proposed assignee's net worth on the date of assignment is not sufficient to reasonably guarantee successful operation of the Premises in

compliance with all applicable CITY, County, State and federal requirements, CITY may withhold approval of the assignment or condition it upon TENANT'S guarantee of such assignee's obligations hereunder for such period as CITY deems advisable. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with general accepted accounting principles as approved by CITY'S auditor, or other authorized representative or agent.

Section 10.04 Probate Transfer of Assignment.

If TENANT is an individual, nothing herein contained will prevent the transfer of this Lease by will, or by operation of law under the intestacy provisions of the California Probate Code as it may be amended from time to time. Probate sale of the leasehold interest will not be permitted without the consent of the CITY, evidenced by resolution, first had and obtained.

Section 10.05 No Sublease Without CITY'S Consent.

TENANT shall not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY's Harbor Director, or any future successor to the duties of the City's Harbor Director. A consent to one subletting, occupation, licensing or use shall not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY'S written consent shall be void, and shall at CITY'S option, terminate this Lease. CITY shall not unreasonably nor arbitrarily withhold its consent to sublet to one who is qualified and financially reliable. CITY'S consent to any occupation, use, or licensing shall be in CITY'S sole and absolute discretion. Notwithstanding any provisions herein to the contrary, the terms "assignment," "subletting," "occupation," or "use," shall not be construed or interpreted to mean or include the temporary, short term renting or leasing of individual boat slips, motel, hotel, or apartment accommodations on the Premises.

Section 10.06 Subtenant Subject to Lease Terms.

Any and all subleases shall be expressly made subject to all the terms, covenants, and conditions of this Lease. In no event shall the term of any sublease extend beyond the term of this Lease. Subject to Section 10.09, termination of this Lease prior to the expiration of this Lease term shall also terminate any and all subleases. A breach of the terms of this Lease by a subtenant shall constitute a breach on the part of TENANT and shall subject both the subtenant and TENANT to all the remedies provided to CITY herein and by law. Failure by any subtenant

to report Gross Sales or to pay Percentage Rent due from subtenant shall constitute a breach of this lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this lease.

Section 10.07 Consent Form Agreement.

Prior to any consent by CITY to any sublease hereof, TENANT shall cause to be executed between TENANT and any subtenant an agreement making the CITY a third party beneficiary, in a form acceptable to CITY, whereby the subtenant agrees to be bound by all of the terms, covenants and conditions of this Lease. Further, it is agreed by TENANT that any default by the subtenant of any of the terms, covenants and conditions of this Lease shall be deemed to be violations by TENANT of this Lease and that all remedies of CITY for such violation, including termination of this Lease, shall immediately be enforceable by CITY against TENANT. TENANT shall apply any and all monies received from any subtenant first to the payment of obligations of the subtenant to CITY.

Section 10.08 TENANT and Guarantor Remain Liable.

Prior to approval by CITY to any sublease hereof, TENANT shall agree to be primarily and jointly and severally liable to CITY for all obligations due CITY by any subtenant, including the payment of rents, and TENANT shall agree that CITY may proceed directly against TENANT for any obligation owing CITY by the subtenant. If this Lease is guaranteed, neither the sublease nor CITY'S approval thereof shall release the guarantor from its obligations pursuant to the guaranty.

Section 10.09 Nondisturbance.

On the terms set forth below, CITY may enter into agreements with subtenants providing that in the event of any termination of this Lease prior to the expiration date, CITY will not terminate or otherwise disturb the rights of the subtenant under such sublease, but will instead honor such sublease as if such agreement had been entered into directly between Landlord and such subtenant, conditioned upon such subtenant's agreement to attorn to Landlord and full performance of all obligations under the sublease in question ("Non-Disturbance Agreement"). CITY agrees to execute a Non-Disturbance Agreement in connection with a particular sublease provided that Tenant provides CITY with a copy of the sublease, and the Non-Disturbance Agreement is customary in form and substance and otherwise reasonably acceptable to CITY.

Article 11 DEFAULT AND TERMINATION

Section 11.01 Abandonment by TENANT.

Should TENANT breach this Lease and abandon all or any part of the Premises prior to the scheduled expiration of the term of this Lease, CITY may continue this Lease in effect by not terminating TENANT'S right to possession of the Premises, in which event CITY shall be entitled to enforce all CITY'S rights and remedies under this Lease including the right to recover the Rent specified in this Lease as it becomes due under this Lease.

Section 11.02 Termination for Breach by TENANT.

All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to TENANT. Should TENANT fail to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within thirty (30) days after written notice thereof is served on TENANT, then CITY may terminate this Lease immediately, and in the event of such termination, TENANT shall have no further rights hereunder and TENANT shall thereupon forthwith remove from the Premises and shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

Section 11.03 Termination for Failure to Pay Rent.

If any payment of Rent is not made as herein provided and such failure to pay is not cured within three (3) days after written notice thereof is served on the TENANT, CITY shall have the option to immediately terminate this Lease; and in the event of such termination, TENANT shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

Section 11.04 Lender May Cure Default.

CITY shall afford the Lender under any Leasehold Encumbrance of record with CITY the right to cure any default by TENANT of the covenants, conditions, or agreements hereof, as provided in Article 5 of this Lease.

Section 11.05 Intentionally Omitted

Section 11.06 Damages for Breach.

If TENANT defaults in the performance of any covenant, condition or agreement contained in this Lease and the default be incurable or not be cured within the time period set forth hereinabove, then CITY may terminate this Lease and:

(1) Bring an action to recover from TENANT:

(a) The worth at the time of award of the unpaid rent which had been earned at the time of termination of the Lease;

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that TENANT proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that TENANT proves could be reasonably avoided; and

(d) Any other amount necessary to compensate CITY for all detriment proximately caused by TENANT'S failure to perform its obligations under this Lease; and

(2) Bring an action, in addition to or in lieu of the action described in subparagraph (1) of this Section, to re-enter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

Section 11.07 Cumulative Remedies.

The remedies available to CITY in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

Section 11.08 Waiver of Breach.

The waiver by CITY of any breach by TENANT of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by TENANT either of the same or a different provision of this Lease.

Section 11.09 Surrender of Premises.

On expiration or sooner termination of this Lease, TENANT shall surrender the Premises, and, subject to Section 4.04, all improvements in or on the Premises, and all facilities in any way appertaining to the Premises, to CITY in good, safe, and clean condition, reasonable wear and tear excepted.

Article 12 MISCELLANEOUS

Section 12.01 Intentionally Omitted

Section 12.02 Notices.

Any and all notice or demands by or from CITY to TENANT, or TENANT to CITY, shall be in writing. They shall be served either personally, or by registered or certified mail. Any notice or demand to CITY may be given to:

Harbor Director
1275 Embarcadero
Morro Bay, California 93442

with a copy to:

City Manager of the City of Morro Bay
City Hall
595 Harbor Street
Morro Bay, CA 93442

Any notice or demand to TENANT may be given at:

Glad's Landing LLC
c/o William Martony
P.O. Box 294
Cayucos, CA 93430

Such addresses may be changed by written notice by either party to the other party.

Section 12.03 Governing Law and Jurisdiction.

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision concerning this Lease arises. CITY and TENANT consent to exclusive personal and subject

matter jurisdiction in the Superior Court of the State of California in and for the county where the Premises are located, and each party waives any claim that such court is not a convenient forum. Each party hereby specifically waives the provisions of California Code of Civil Procedure Section 394, and any successor statute thereto.

Section 12.04 Binding on Successors.

Subject to the provisions herein relating to assignment and subletting each and all of the terms, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the successors and assigns of any and all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

Section 12.05 Partial Invalidity.

If any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, then the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Section 12.06 Sole and Only Agreement.

Subject to the provisions of the second paragraph of Section 1.04, (i) this Lease, including all exhibits incorporated by reference, constitutes the sole and only agreement between CITY and TENANT respecting the Premises and the leasing of the Premises to TENANT and (ii) any other agreements or representations respecting the Premises and their leasing to TENANT by CITY, which are not expressly set forth in this Lease, are null and void. The terms herein specified correctly set forth the obligations of CITY and TENANT as of the date of this Lease. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by both parties.

Section 12.07 Modification.

This Lease shall not be modified except pursuant to a written agreement executed by the MAYOR and CITY CLERK pursuant to prior CITY Council approval. Notwithstanding CITY Council approval, no agreement shall become effective until such agreement is in fact executed by the MAYOR and CITY CLERK. TENANT understands this Lease may not be modified by oral statements by any person representing the CITY including the MAYOR and CITY CLERK. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this paragraph and are approved in writing pursuant to formal City Council

action and a subsequent written modification signed by the MAYOR and CITY CLERK. If the title of any person authorized to act for CITY under this Lease shall be changed during the term of this Lease, then the person who succeeds to substantially the same responsibilities with respect to CITY shall have the authority to act for CITY under this Lease.

Section 12.08 Time of Essence.

Time is expressly declared to be the essence of this Lease.

Section 12.09 Memorandum of Lease for Recording.

CITY and TENANT shall, at the request of either at any time during the term of this Lease, execute a memorandum or "short form" of this Lease, which shall describe the parties, set forth a description of the Premises, specify the term of this Lease, and incorporate this Lease by reference.

Article 13 SPECIAL PROVISIONS PECULIAR TO THIS LEASE SITE

The following provisions apply to this Lease site only:

Section 13.01 Improvements.

(1) CITY and TENANT agree TENANT will construct, repair or replace improvements on the Premises as follows (hereinafter referred to as the Project):

- Repair or replace no fewer than two (2) existing pilings;
- Repair or replace the existing gangway, as-required by analysis from a qualified engineer;
- Repair or replace the existing floating docks, as-required by analysis from a qualified engineer;
- Provide adequate fire suppression facilities to the improvements on the Premises as-determined by the CITY's Fire Marshall;
- Repair or clean and maintain dock areas as needed.

In addition, TENANT agrees to the following regarding the private property improvements located at 225 Main Street adjacent to the Premises:

- Provide and maintain at least one unisex restroom facility in the "boathouse" for non-exclusive use of Premises' slip holders and lawful users and guests of 225

Main Street. Such restroom shall not be deemed a Premises improvement but shall remain the ownership of the owner of that adjacent private property.

(2) TENANT acknowledges the Project may require, but may not be limited to, obtaining a Conditional Use Permit from CITY, a Coastal Development Permit or Waiver from the California Coastal Commission, and a Building Permit from CITY. It is TENANT'S obligation to fully investigate the issues and costs in obtaining those permits. Failure to obtain any and all required permits and approvals for said construction shall not relieve TENANT of complying with this LEASE, including this Section. Failure to complete the Project and to comply with all conditions of the CUP, as evidenced by a final building permit inspection as required by CITY in its governmental capacity, in addition to providing proof of expenses by providing copies of invoices by the proscribed timeline shall be a material default of the Lease and subject to any remedies outlined in Article 11 herein, including termination of the Lease.

(3) TENANT further acknowledges the Project may require repair or replacement of all of docks, and other current improvements on the Premises to the standards of the City Engineer and TENANT agrees to meet those standards through review and revision of the final Building Plans prior to issuance of a Building Permit for the construction of improvements on the Premises.

(4) TENANT further agrees to:

(a) Apply for Building Permits for the Project no later than six calendar months from the Commencement Date.

(b) Commence construction of the Project no later than twelve calendar months from the Commencement Date, or such other date as may be necessitated by delays in obtaining Coastal Commission and/or CITY permission to proceed, weather or any other condition outside TENANT's control.

(c) Completion of all components of the Project no later than twenty-four calendar months from the Commencement Date, or such other date as may be necessitated by delays in obtaining Coastal Commission and/or CITY permission to proceed, weather or any other condition outside TENANT's control.

(5) During construction of the Project, TENANT shall take all measures to:

(a) Minimize environmental impacts and manage construction debris to ensure it is properly disposed of;

(b) Avoid any pollution of the atmosphere or littering of land or water by or originating in or about the Premises or caused by TENANT'S construction activities;

(c) Keep the noise level on the Premises to a reasonable minimum to the greatest extent feasible, so that persons in the neighborhood will be able to comfortably enjoy business and facilities in the area;

(d) Prevent any Hazardous Material pollutants, including but not limited to petroleum products, from entering Morro Bay waters;

(e) Prohibit storage of materials or equipment on public property and avoid parking or traffic delays or impairment without prior consent of CITY;

(f) Avoid negative impacts on surrounding businesses and residences;

(g) Keep the Project site in a sightly, orderly, and safe manner at all times.

Section 13.02 Option to Extend Lease.

(1) TENANT shall have the right to extend the term of this Lease for an additional twenty (20) years ("Option to Extend") contingent upon receipt of CITY'S approval of a TENANT plan ("Tenant Plan") for substantial future capital expenditures to, add/upgrade/replace improvements to the Premises, including the docks, pilings, and other work as necessary to maintain the service life of the improvements as-needed.

Tenant Plan shall consist of such things as:

A. Repair or replace pilings, finger docks, floats and/or gangway as needed as of the date of exercise of the Option to Extend, and

B. Other improvements approved by the Harbor Director and/or City Council

TENANT shall deliver written notice to CITY of TENANT'S intent to exercise the Option to Extend at least eighteen (18) months prior to expiration of this Lease, and obtain CITY'S approval of the Tenant Plan prior to expiration of this Lease and;

(2) TENANT'S exercise of the Option to Extend shall be further contingent upon TENANT not being in default under any term or condition of this Lease at the time of TENANT'S exercise of the option and the time of commencement of the option. Time is of the essence.

Section 13.03 Future Construction of Harborwalk.

(1) TENANT will allow CITY to build a public access Harborwalk through the Premises to connect with a walkway on adjacent Lease Sites to provide reasonable public access to the tidelands as required by State law, provided:

(a) CITY will take all reasonable steps so no part of the Harborwalk is less than approximately 20-feet from the high water line at adjacent private property at 225 Main Street: provided that the exact location of the Harborwalk on the Premises shall be reasonably agreed upon by TENANT and CITY prior to its installation to help ensure the Harborwalk will not materially affect the Premises, TENANT'S improvements to or operation of the Premises and real property at 225 Main Street; and provided, further, that the Parties shall work in good faith to reach agreement. In addition, CITY acknowledges an owner of property abutting a shoreline has littoral rights and recognizes adjacent private property owner at 225 Main Street may enforce any such rights it may have.

(b) Costs for all planning, permitting, and construction of the Harborwalk will be borne solely by CITY with no obligation of TENANT, including relocation/reconstruction of any improvements on the Premises required to accommodate the Harborwalk.

(c) In no event shall access through 225 Main Street property be a condition of construction or use of the Harborwalk.

(d) Costs for all ongoing maintenance and repair of the Harborwalk shall be borne solely by CITY, unless said maintenance or repair was caused by action of TENANT or any of its licensees or renters.

(e) As part of the Harborwalk's design and construction, accommodation will be made to preclude public access (other than TENANT'S licensees or renters, or CITY'S officials, employees and agents) from the Harborwalk to the docks and walkways installed by TENANT on the Premises and to the adjacent private property at 225 Main Street.

(f) Once completed, the square footage taken by the footprint of the Harborwalk will be removed from the appraised value of the Premises.

(g) CITY shall indemnify, defend and hold harmless TENANT, and the property of TENANT, and the TENANT'S members, officers, agents and employees from any and all liability, claims, loss, damages, and expenses, including reasonable attorney's fees and litigation expenses, resulting from construction, maintenance, or use of the Harborwalk or any negligent act or omission of CITY or any anyone for whom CITY may be liable regarding the Harborwalk, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(1) The death or injury of any person, or by reason of the damage to or destruction of any property, including property owned by CITY or by any person who is an officer, official, employee or volunteer of CITY, from any cause whatever while such person or property is in or on the Harborwalk or in any way connected with the Harborwalk or with any of the improvements or personal property on the Harborwalk;

(2) The death or injury of any person, or by reason of the damage to or destruction of any property, including property owned by CITY or any person who is an officer, official, employee or volunteer of CITY, caused or allegedly caused by either (i) the condition of the Harborwalk or any improvement placed on the Harborwalk by CITY, or (ii) any act or omission on the Harborwalk by CITY or any person in, on, or about the Harborwalk with or without the permission and consent of CITY;

(3) Any work performed on the Harborwalk or materials furnished to the Harborwalk at the instance or request of CITY or any person or entity acting for or on behalf of CITY related to the Harborwalk;

(4) CITY'S failure to perform any provision of this Lease related to the Harborwalk or to comply with any Legal Requirement imposed on CITY regarding the Harborwalk.

CITY'S obligations pursuant to this Section to indemnify and hold harmless do not extend to any liability, claim, loss, damage or expense arising from TENANT'S active negligence or willful misconduct.

EXECUTED on _____, 20____, at _____ County, California.

CITY OF MORRO BAY

Glad's Landing, LLC
a Limited Liability Company

John Headding, Mayor

By: _____
William Martony, Managing Member

ATTEST:

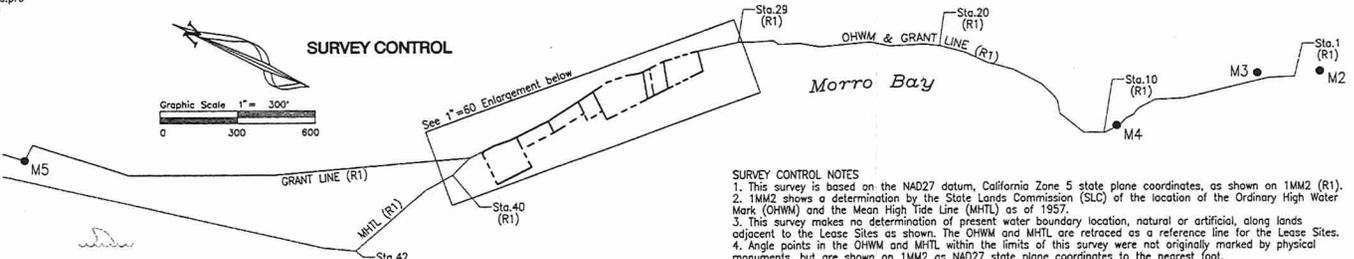
Dana Swanson, City Clerk

EXHIBIT A
COPY OF PARCEL MAP

34W

1508-rs.pro
FB 116

LS 110



FOUND MONUMENTS

M1 - found USC&OS brass disk "WHITE RESET 1960" in rock structure atop White's Point, NGS PID FV0403. While this monument is not shown on R1, its grid coordinates are derived from conversion of superseded NAD27 latitude & longitude on NGS data sheet to provide datum control consistent with R1.

M2 - found PL "E" (R1), Mon.43 (R2) - decayed concrete cylinder remnants, at sand level, fair condition, center well-defined.

M3 - found Mon.45 (R2) - remains of concrete, very decayed, 0.3 below sand, bad condition, center poorly defined.

M4 - found PL "D" (R1) - Beacotes & Parks brass disk stamped RE 6125, grouted to rock - very good condition, center mark clear.

M5 - found "IP & cap" Sylvester RCE 29743 (R3), noted as "Pd 3/4" rod per 4 RS 10, 4 LS 10 sets a 3/4" rod. (R1) shows a 3/4" iron rod at PL "A"

SURVEY CONTROL NOTES

1. This survey is based on the NAD27 datum, California Zone 5 state plane coordinates, as shown on 1MM2 (R1).
2. 1MM2 shows a determination by the State Lands Commission (SLC) of the location of the Ordinary High Water Mark (OHWM) and the Mean High Tide Line (MHTL) as of 1957.
3. This survey makes no determination of present water boundary location, natural or artificial, along lands adjacent to the Lease Sites as shown. The OHWM and MHTL are retraced as a reference line for the Lease Sites.
4. Angle points in the OHWM and MHTL within the limits of this survey were not originally marked by physical monuments, but are shown on 1MM2 as NAD27 state plane coordinates to the nearest foot.
5. The positions for found monuments M2 through M5 and for set monuments S29 through S40 were established using RTK GNSS methods, deemed suitable for retracement and for reestablishing positions of SLC stations on the NAD27 datum.
6. This survey recovered and used M1, "WHITE RESET" as the base station for RTK GNSS measurements.
7. The FOUND MONUMENT COORDINATE LIST shows a comparison between record and field measured positions at monuments M2 through M5, in order to demonstrate adequate recovery of both the monuments and the NAD27 datum for this survey.

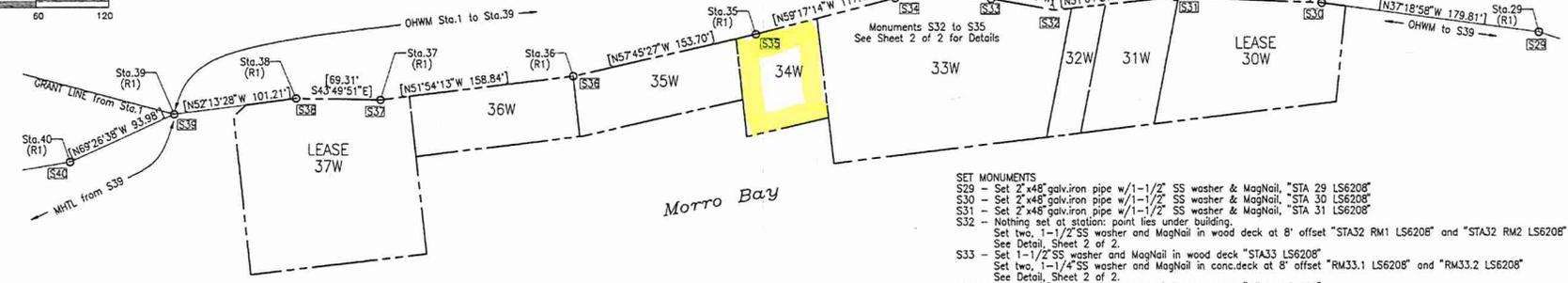
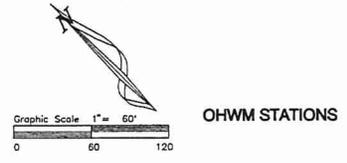
SET MONUMENT COORDINATE LIST

Mon.	N Rec	E Rec	Description
S29	687215.00	1151577.00	OHWM-Sta.29
S30	687358.00	1151468.00	OHWM-Sta.30
S31	687445.00	1151397.00	OHWM-Sta.31
S32	687509.00	1151305.00	OHWM-Sta.32
S33	687552.00	1151279.00	OHWM-Sta.33
S34	687608.00	1151224.00	OHWM-Sta.34
S35	687698.00	1151123.00	OHWM-Sta.35
S36	687750.00	1150993.00	OHWM-Sta.36
S37	687848.00	1150868.00	OHWM-Sta.37
S38	687898.00	1150820.00	OHWM-Sta.38
S39	687960.00	1150740.00	OHWM&MHTL-Sta.39
S40	687993.00	1150652.00	MHTL-Sta.40

M1 WHITE RESET

FOUND MONUMENT COORDINATE LIST

Mon.	N Rec	E Rec	N Meas	E Meas	ΔN	ΔE
M1	684172.11	1152309.47	684172.11	1152309.47	0.00'	0.00'
M2	685137.69	1152419.19	685137.69	1152419.20	+0.00'	+0.01'
M3	685353.69	1152310.30	685354.30	1152310.73	+0.61'	+0.43'
M4	685758.37	1151898.63	685758.33	1151898.66	-0.04'	+0.03'
M5	689518.90	1150007.04	689518.98	1150007.09	+0.08'	+0.05'



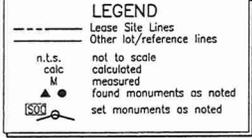
SET MONUMENTS

- S29 - Set 2"x48" galv.iron pipe w/1-1/2" SS washer & MagNail, "STA 29 LS6208"
 - S30 - Set 2"x48" galv.iron pipe w/1-1/2" SS washer & MagNail, "STA 30 LS6208"
 - S31 - Set 2"x48" galv.iron pipe w/1-1/2" SS washer & MagNail, "STA 31 LS6208"
 - S32 - Nothing set at station; point lies under building.
Set two, 1-1/2" SS washer and MagNail in wood deck at 8' offset "STA32 RM1 LS6208" and "STA32 RM2 LS6208"
See Detail, Sheet 2 of 2.
 - S33 - Set 1-1/2" SS washer and MagNail in wood deck "STA33 LS6208"
Set two, 1-1/4" SS washer and MagNail in conc.deck at 8' offset "RM33.1 LS6208" and "RM33.2 LS6208"
See Detail, Sheet 2 of 2.
 - S34 - Set 1-1/2" SS washer and MagNail in wood deck "STA34 LS6208"
Set two, 1-1/4" SS washer and MagNail in conc.deck at 3' offset "RM34.1 LS6208" and "RM34.2 LS6208"
See Detail, Sheet 2 of 2.
 - S35 - Set 1-1/2" SS washer and MagNail in wood deck "STA35 LS6208"
Set two, 1-1/4" SS washer and MagNail in conc.deck at 2' offset "RM35.1 LS6208" and "RM35.2 LS6208"
See Detail, Sheet 2 of 2.
 - S36 - Set 1-1/2" SS washer and MagNail in iron anchor loop at angle point on conc.bulkhead "STA36 LS6208"
 - S37 - Set 1-1/2" SS washer and MagNail in conc.bulkhead "STA37 LS6208"
 - S38 - Set 1-1/2" SS washer and MagNail in conc.boyard deck "STA38 LS6208"
 - S39 - Set 1-1/2" SS washer and MagNail in conc.driveway "STA39 LS6208"
 - S40 - Set 1-1/2" SS washer and MagNail in conc.bulkhead "STA40 LS6208"
- SS = Stainless Steel " " = stamping

LEASE SITE NOTES

1. Dimensions for OHWM & MHTL shown thus: [bearing dist] are derived from inverses between coordinates shown on 1MM2 (R1).
2. Dimensions for Lease Sites 30W through 37W, excluding 34W, shown thus: (bearing dist) are derived from information on the 1974 "OFFICIAL LEASE SITES MAP" (Lease Maps) by Goring, Taylor & Assoc., on file in the office of the City Engineer of Morro Bay.
3. Dimensions shown thus: } bearing dist } are derived from information in the Lease Agreement for Lease site 34W on file in the office of the City Engineer of Morro Bay.
4. The Lease Sites are protected along the OHWM, MHTL and GRANT LINE from 1 MM2 (R1) per Lease Maps.
5. No monuments were set by this survey at Lease Site corners along OHWM.

LEGEND



- REFERENCES**
- R1 - 1 Miscellaneous Maps 2 (State Lands Commission, 1957)
 - R2 - 17 LS 41 (Calif. Parks & Rec. 1970)
 - R3 - 48 LS 29 (Sylvester, 1984)

PURPOSE OF SURVEY

The purpose of this survey is to establish the locations of Lease Sites 30W to 37 in the City of Morro Bay, relative to OHWM per 1 MM 2.

BASIS OF BEARINGS

The basis of bearings for this survey is the NAD27 California Coordinate System Zone 5 grid. The mapping angle at Sta.30 is +1°37'20". Distances shown are grid. To obtain ground distance, multiply distances by 1.00002160.

SURVEYOR'S STATEMENT

This map correctly represents a survey made by me in conformance with the requirements of the Professional Land Surveyors Act, at the request of the City of Morro Bay Harbor Dept. in April, 2015.

Robert J. Reese
Robert J. Reese, LS 6208
license exp. 03.31.2016

COUNTY SURVEYOR'S STATEMENT

This map has been examined in accordance with section 8766 of the Professional Land Surveyors Act this 14th day of July, 2015.

Doug Rion
Doug Rion, LS 8546
license exp. 12.31.2016

COUNTY RECORDER'S STATEMENT

Filed this 10th day of July, 2015,

at 9:02 A.M., in BOOK 110 of LICENSED SURVEYS

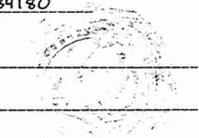
at PAGE 98-99 at the request of Robert J. Reese.

Document No. 2015-034180

Fee \$ 10.-

Tommy Gong
Tommy Gong
County Recorder

Taney
Taney
Deputy



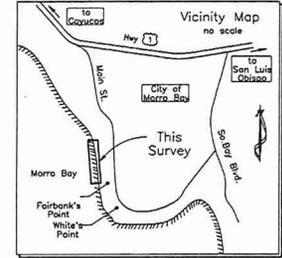
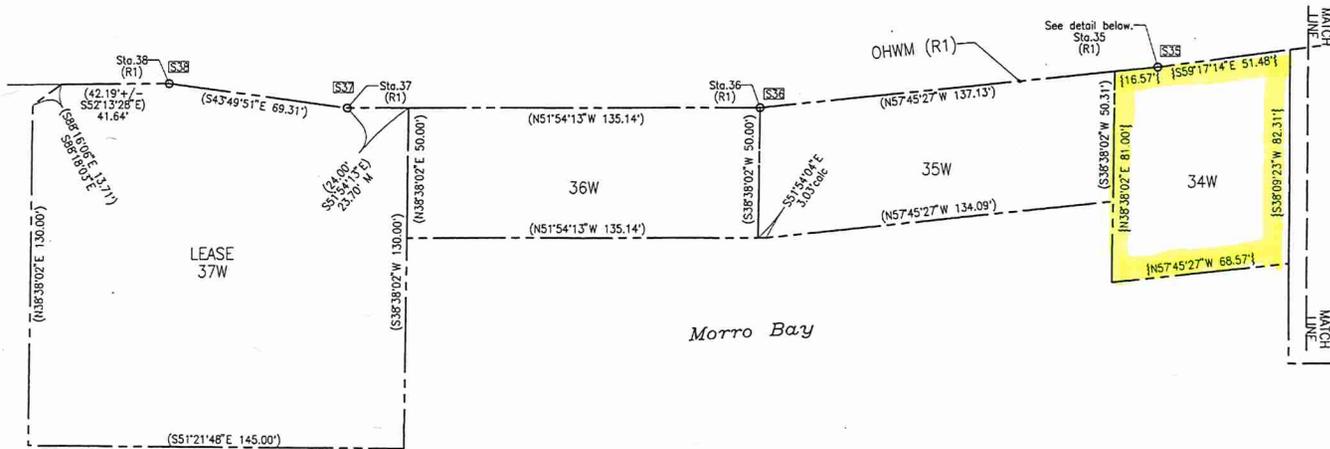
Record of Survey
Lease Sites 30W to 37W
in the
City of Morro Bay
County of San Luis Obispo
California

April, 2015



1508-rs.pro
FB 116

L.S. 110

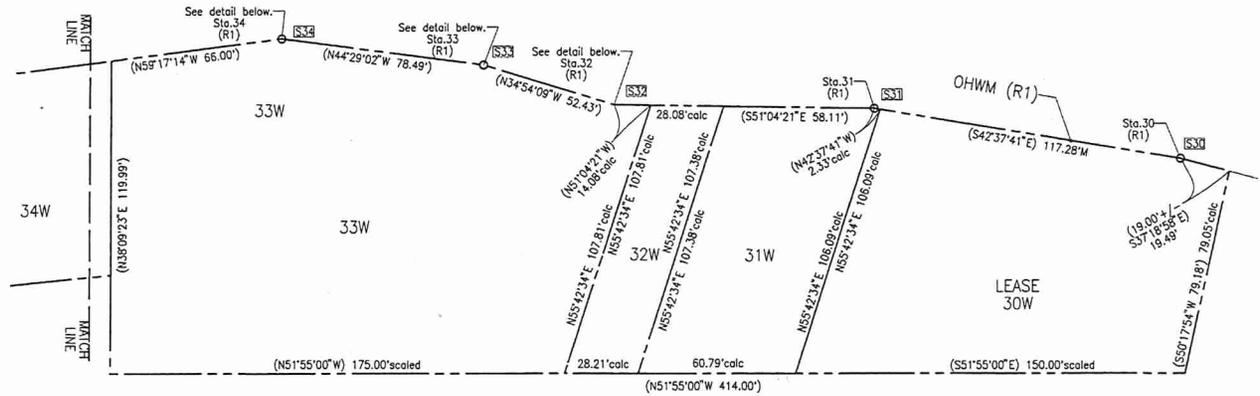


LEASE SITES
RELATIVE TO OHWM



LEGEND

- Lease Site Lines
- Other lot/reference lines
- n.t.s. not to scale
- calc calculated
- M measured
- found monuments as noted
- ▲ set monuments as noted



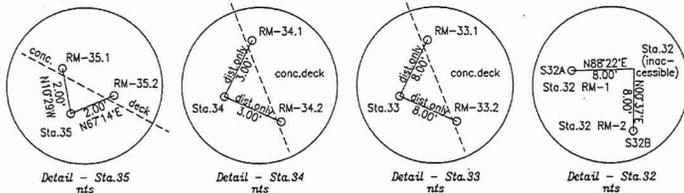
Morro Bay

Record of Survey
Lease Sites 30W to 37W
in the
City of Morro Bay
County of San Luis Obispo
California

April, 2015

LEASE SITE NOTES

1. Dimensions for OHWM & MHTL shown thus: [bearing dist] are derived from inverses between coordinates shown on 1"=42 (R1).
2. Dimensions for Lease Sites 30W through 37W, excluding 34W, shown thus: (bearing dist) are derived from information on the 1974 "OFFICIAL LEASE SITES MAP" (Lease Maps) by Garing, Taylor & Assoc., on file in the office of the City Engineer of Morro Bay.
3. Dimensions shown thus: † bearing dist † are derived from information in the Lease Agreement for Lease site 34W on file in the office of the City Engineer of Morro Bay.
4. The Lease Sites are projected along the OHWM, MHTL and GRANT LINE from 1 MM2 (R1) per Lease Maps.
5. No monuments were set by this survey at Lease Site corners along OHWM.



Reese Water & Land SURVEYING SERVICES
1970 Partridge Drive
San Luis Obispo CA 93405
805.543.5375

Exhibit B

CITY OF MORRO BAY

595 Harbor St.
Morro Bay, CA 93442
(805) 772-6200
FAX (805) 772-7329

INSURANCE REQUIREMENTS FOR LESSEES

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.
4. Insurance Services Office Form Number C A 0001 covering Automobile Liability, code 1 (any auto).

Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **twice** the required occurrence limit.
2. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Exhibit B

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

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

Sub-lessee

Lessee shall include all sub-lessees as insureds under its policies or shall furnish separate certificates and endorsements for each sub-lessee. All coverages for sub-lessees shall be subject to all the requirements stated herein.



AGENDA NO: A-16

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: November 21, 2019

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 102-19 Approving a New Master Lease Agreement with Todd Baston and Tamara Gray-Baston for Lease Site 63-64/63W-64W, Located at 561 Embarcadero Road (Gray's Inn and Gallery)

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 102-19 approving a 25-year Master Lease Agreement with Todd Baston and Tamara Gray-Baston for Lease Site 63-64/63W-64W, the Gray's Inn and Gallery located at 561 Embarcadero Road.

ALTERNATIVES

The City Council can elect to not approve the lease agreement as-proposed or to desire changes, and direct staff accordingly.

FISCAL IMPACT

Under this new agreement, the annual rent will increase approximately \$7,000 per year over the current Pipkin lease in effect, to a new starting annual rent of \$25,000 per year. Although this new lease agreement also has percent gross of sales payment requirements, which the current Pipkin lease does not, it is unlikely any significant percent gross rent to the City will be realized due to the limited revenue-generating capacity of this relatively small site.

BACKGROUND

After purchasing the lease site in 2013, Todd and Tamara Baston proposed a modest redevelopment of the site consisting of adding the Harborwalk public lateral access, including vertical access from the street, ADA accessibility to the gallery, enhancing the view corridor by removing a storage shed, creating an ADA parking space from the existing parking spaces on-site, increasing the street-side sidewalk to a full eight-foot width and other miscellaneous items. The City Council at the time approved their proposal, and in April, 2014 approved a Consent of Landowner for the Bastons to move forward.

In the intervening time period, the Bastons proceeded through the Planning Commission and City Council for both Concept and Precise plan approvals, including getting their Coastal Commission permit approvals and obtained their building permits. They began construction earlier this year, and to date have largely completed the improvements.

In addition, once Concept Plan approval for the project was obtained, staff began negotiations with the Bastons to memorialize the project as requirements in a new, long-term lease. To-date, staff have brought updates to the Council in closed session for direction on several occasions, and have

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

negotiated a new, 25-year lease with the Bastons based on that Council direction.

DISCUSSION

Staff is proposing the attached new Master Lease Agreement containing the following highlights:

1. Section 1.01 Term. A 25-year term commencing December 10, 2019.
2. Section 2.01 Annual Minimum Rent. Starting annual minimum rent of \$25,000/year, which is based on 8% of current lease site appraisal rates applied to the site's square footage.
3. Section 2.02 Annual CPI Adjustment to Minimum Rent. Standard annual CPI adjustments based on the Department of Labor's indices.
4. Section 2.03 Calculation of New Annual Minimum Rent: Standard five-year property reappraisal and annual minimum rent-setting based on that appraisal.
5. Section 2.04 Percentage Rent. Standard percent rents of 10% for hotel occupancy and slips and 5% for retail sales.
6. Section 3.01 Permitted Uses. Permitted uses to include transient occupancy (hotel units), slips for vessel tie-up and retail sales, as allowed by the site's various permit entitlements.
7. Section 13.02 Completion of Improvements. Requirement the tenant invest a minimum of \$550,000 completing the improvements as-described in the "background" section of this staff report.

The remaining terms and conditions are essentially "standard" in their general scope character.

CONCLUSION

The Bastons have in good faith nearly completed their Council-approved improvement project, and are ready to execute a new long-term Master Lease Agreement. Their project consists almost entirely of public benefits, and will not result in any direct additional lease site revenue potential, so it is, essentially, a pure-cost project with no direct return on investment. In addition, the Bastons have brought the site to a higher level of service and revenue, which ultimately reflects better on the waterfront and City. Staff, therefore, recommend adoption of Resolution No. 102-19. approving this new Master Lease Agreement with the Bastons to memorialize their commitment to the site.

ATTACHMENTS

1. Resolution No. 102-19
2. New Master Lease Agreement for Lease Site 63-64/63W-64W

RESOLUTION NO. 102-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A 25-YEAR MASTER LEASE AGREEMENT FOR
LEASE SITE 63-64/63W-64W BETWEEN THE CITY OF MORRO BAY AND
TODD BASTON AND TAMARA GRAY-BASTON
LOCATED AT 561 EMBARCADERO**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tidelands leases and properties; and

WHEREAS, Todd Baston and Tamara Gray-Baston ("Tenants") have been the lessee of Lease Site 63-64/63W-64W since 2013, and are tenants in good standing; and

WHEREAS, Tenants were granted Consent of Landowner approval for the proposed lease site redevelopment project consisting of providing vertical and lateral Harborwalk access, ADA-accessibility to the site's art gallery and on-site parking spaces, enhancing the site's view corridor and increasing the street-side sidewalk width; and

WHEREAS, Tenants obtained all necessary approvals from the Planning Commission and City Council for their proposed redevelopment project and have largely completed the improvements; and

WHEREAS, in accordance with the City's Master Lease Policy, the City and Tenants have agreed to a new 25-year lease agreement for Lease Site 34W located at 561 Embarcadero.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, as follows:

1. The attached new Master Lease Agreement for Lease Site 34W is hereby approved.
2. The Mayor is hereby authorized to execute said Master Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10th day of December, 2019 on the following vote:

AYES:
NOES:
ABSENT:

John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

L E A S E

by and between

the CITY OF MORRO BAY

("CITY")

and

TODD BASTON & TAMARA GRAY-BASTON

("TENANT")

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L E A S E

This Lease is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation of the State of California herein called CITY, and TODD BASTON and TAMARA GRAY-BASTON, doing business as GRAY'S INN AND GALLERY, herein called TENANT (sometimes referred to, individually, as the Party or collectively, as the "Parties").

WITNESSETH

WHEREAS, the State of California granted certain tide and submerged lands located within the CITY limits of CITY to the County of San Luis Obispo and to its successors, being Chapter 1076, Statutes of 1947, as amended by Chapter 413, Statutes of 1955, Chapter 1874, Statutes of 1957, and Chapter 70, Statutes of 1960, first extraordinary session; which Statutes may be amended from time to time by the Legislature of the State of California; all of which Statutes are expressly recognized and agreed to be in full force and effect by the Parties hereto; and

WHEREAS, the Parties hereto recognize and agree on July 17, 1964, CITY succeeded to all of the right, title and interest of the County of San Luis Obispo in and to all of the tide and submerged lands conveyed to said County by the State of California pursuant to the above-mentioned acts; and

WHEREAS, judgment has been entered on October 14, 1968, in the case of CITY, Plaintiff, versus County of San Luis Obispo, and State of California, Defendants, by the Superior Court of the State of California in and for the County of San Luis Obispo, #30417, adjudging and decreeing, among other things, the title to said tide and submerged lands so conveyed by the State of California to the County of San Luis Obispo in trust, as set forth above, passed automatically to CITY upon the date of its incorporation as a CITY on the 17th day of July, 1964; and

WHEREAS, TENANT accepts this Lease with full knowledge that there is no warranty of title in and to the within described premises by CITY to TENANT; and

WHEREAS, in order to develop and improve Morro Bay Harbor and to assist in carrying out the provisions of the tideland grant as aforesaid, and in order to provide facilities for the accommodation of those using Morro Bay Harbor, CITY desires to lease to TENANT the within described property upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants to be performed and the rental to be paid by TENANT to CITY, CITY leases to TENANT, and TENANT leases from CITY, all of the following premises (herein collectively referred to as the "Premises") in CITY, County of San Luis Obispo, State of California, described as follows: Lease Site 63-64/63W-64W (the "Premises").

The Premises is delineated on Parcel Map of CITY No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California. A copy of the Map is attached hereto as Exhibit A and made a part hereof by reference.

Article 1 FIXED TERM

Section 1.01 Term.

The term of this Lease shall be a period of 25 years, commencing December 1, 2019 (the "Commencement Date") and terminating, without notice, on November 30, 2044, unless sooner terminated as herein provided (the "Term").

Section 1.02 No Extensions.

The Term shall not be extended, nor shall this Lease be renewed, except as provided by Section 13.03. Other than as permitted by Section 13.03, any requests for continued use of the Premises after the Term, including as may be extended pursuant to Section 13.03, shall be treated as an application for a new lease and shall require appropriate application to CITY with all required supporting information and documents, CITY'S City Council approval and the execution of a new CITY lease, containing the then most current terms, covenants, conditions and rent schedules.

Section 1.03 Hold Over.

If TENANT holds the Premises after the expiration of the Term with the consent of CITY, express or implied, then such holding over (in the absence of a written agreement between CITY and TENANT with respect thereto) shall be deemed to create a tenancy from month-to-month, terminable on thirty-days' (30-days') written notice from either party to the other, at a monthly rental equal to two hundred percent (200%) of the average total Rent per month for the twelve (12) months immediately preceding the expiration of this Lease, and otherwise subject to each and every term, covenant and condition of this Lease.

Article 2 RENT

Section 2.01 Annual Minimum Rent.

TENANT agrees to pay to CITY a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$25,00.00 per year (the "Annual Minimum Rent"), payable each year in advance in monthly installments on the 1st of each month during the term of this Lease, starting December 1, 2019. All Rent, including the Annual Minimum Rent and the Percentage Rent, shall be paid in lawful money of the United States of America, without offset or deduction and shall be paid to CITY at City Hall located at 595 Harbor Street, Morro Bay, California, or at such other place or places CITY may from time to time designate by written notice delivered to TENANT.

Section 2.02 CPI Adjustment to Annual Minimum Rent.

(1) The Parties agree, commencing July 1, 2020, as of every July 1 following the Commencement Date (each, a "CPI Adjustment Date"), except as outlined in section 2.03 hereof, the Annual Minimum Rent shall be adjusted in direct proportion to any upward or downward movement in the Consumer Price Index for January 1, 2018 which is hereby agreed to be 261.235 (Base Index). The percentage adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles – Long Beach - Anaheim, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index")

(2) The Annual Minimum Rent shall be adjusted as of each CPI Adjustment Date and will remain in effect as adjusted until the next CPI Adjustment Date. As an illustration only, if the Base Index (Jan. 1, 1999 CPI) is 166.1 and the monthly average CPI for 2000 is 171.6, then the percentage increase is equal to 3.31%. Therefore, the Annual Minimum Rent would be increased by 3.31% as of July 1, 2001 and would continue at that rate through June 30, 2002.

(3) If the United States Department of Labor, Bureau of Labor Statistics, shall cease to compile and make public the Index as now constituted and issued, but shall substitute another index in its place, then said substituted index shall be used for the purpose of adjusting the Annual Minimum Rent for the Premises. If the Index is changed so that the base year differs from that in effect on the Commencement Date, then the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

Section 2.03

Calculation of New Annual Minimum Rent.

Starting with calculation of the New Annual Minimum Rent for the 2024/2025 Fiscal Year, and then at the end of each five-year period thereafter, a new Annual Minimum Rent shall be calculated for the following five-year period (each, a "Subsequent Rental Period") as follows:

(1) The Annual Minimum Rent shall be subject to adjustment by appraisal for the 2020/2021 Fiscal Year, and then every five years thereafter (each, an "Appraisal Adjustment Date"). CITY, at its own cost and expense, shall retain an independent qualified appraiser for determination of the fair market value of said premises. Not more than nine (9) months prior to each Appraisal Adjustment Date, CITY shall provide written notice to TENANT of the pending appraisal and the appraiser selected by CITY to determine the fair market value of the Premises, excluding fixtures and improvements unless such are expressly included in the description of the leasehold hereinabove. If TENANT does not reject CITY's appraiser in writing and within thirty (30) days after CITY's notice of its determination, then the Annual Minimum Rent for the Subsequent Rental Period shall be in the amount determined by CITY as outlined in this Section 2.03. If TENANT rejects CITY's appraiser within thirty (30) days following CITY's notice to TENANT, then within fifteen (15) days after such thirty-day period, each party, at its own cost, shall select an independent professionally designated appraiser who is a member of the American Institute of Real Estate Appraisers, or the Society of Real Estate Appraisers with a designation of MAI (Member of American Institute), SRPA (Senior Real Estate Analysis), to appraise the fair market value of the Premises. CITY may rely on its original appraisal, or select a new appraiser, at its cost. If a party does not appoint an appraiser within fifteen (15) days after the other party has given notice of the name of its appraiser, then the single appraiser appointed shall be the sole appraiser. Each appraiser shall conduct an independent appraisal within thirty (30) days after appointment. If the Parties are unable to agree on the Annual Minimum Rent for the Subsequent Rental Period within thirty (30) days after receiving the appraisal(s), then each Party shall select one member of a three-member committee. The two so selected members shall select the third member, and that committee shall by majority vote select one or the other of the appraisals. The Annual Minimum Rent determined on the basis of the selected appraisal shall be final and binding and all costs associated with the three-member committee shall be paid equally by CITY and TENANT.

(2) In the event the appraisal process is not concluded on or before the Appraisal Adjustment Date, the Annual Minimum Rent shall be adjusted retroactively to such Appraisal Adjustment Date as set out hereinbelow when said appraisal process is completed.

(3) The total Rent payable, including both the Annual Minimum Rent and the Percentage Rent for each year within the applicable previous five-year period, shall be averaged to produce the average annual total Rent payable for such previous period.

(4) The new Annual Minimum Rent for the five-year period commencing on each Appraisal Adjustment Date shall be the greater amount of seventy-five percent (75%) of the average of the total yearly Rent payable during the previous five-year period (as set out in subparagraph 2.03 (3), above) or eight percent (8%) of the fair market value of the Premises (as established in subparagraph 2.03 (1), above.) The new Annual Minimum Rent shall be divided by two to determine the semiannual payments and shall be paid by TENANT to CITY on the first of each January and July thereafter. This new Annual Minimum Rent shall be adjusted each following year in proportion to any increase in the Consumer Price Index as set out in Section 2.02 of this Lease. The base index shall be adjusted upon each Calculation of new Annual Minimum Rent as set out in this section so that the Base index for CPI adjustment shall be the Consumer Price Index for January 1 of the year of the calculation of new Annual Minimum Rent.

Section 2.04 Percentage Rent.

(1) In addition to the Annual Minimum Rent, TENANT agrees to pay to CITY, at the time and in the manner hereinafter specified as additional Rent for the use and occupancy of the Premises, a percentage of TENANT'S Gross Sales, as detailed in Exhibit B, attached hereto, less the amount of the Minimum Rent paid for the reporting period pursuant to this Lease (the "Percentage Rent").

(2) The term "Gross Sales," as used herein, shall mean (subject to the exceptions and authorized deductions as hereinafter set forth): (i) the total selling price and the total gross amount received by TENANT from all rentals, merchandise sold and services rendered in, on or from the Premises by TENANT, its sublessees, licensees, or concessionaires, both for cash and on credit including, but not limited to, rentals of dockage space, leasing and servicing operations and ticket sales, and if on credit whether or not payment be actually made therefore, all charges for services, alterations or repairs made in or upon the Premises, (ii) the gross amount received by TENANT for merchandise sold pursuant to orders received in the Premises, though filled elsewhere and (iii) the gross amount received by TENANT from any and all other sources of income derived from the business conducted upon the Premises.

(3) Notwithstanding the other provisions of this Section 2.04, the term "Gross Sales" shall not include the following items, and such items may be deducted from Gross Sales to the extent they have been included therein or have been included in a prior computation of Gross Sales or for which a Percentage Rent has been paid under this Lease to CITY:

- a) Credits and refunds made to customers for merchandise returned or exchanged,
- b) Any sales or excise taxes otherwise includable in Gross Sales as defined in this Section because such taxes are part of the total selling price of merchandise or services rendered in, from, or on the Premises, where TENANT must account for and remit the taxes to the government entity or entities by which they are imposed,
- c) With respect to credit card sales, fees retained or withheld by the issuer or merchant bank pursuant to TENANT'S credit card acceptance agreement, and
- d) Rental payments to TENANT from sublessees whose total gross sales are included in gross sales computations.

(4) TENANT shall keep or cause to be kept full, complete, and accurate records, and books of account in accordance with accepted accounting practices showing the total amount of Gross Sales, as defined herein, made each calendar month in, on or from the Premises. TENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY in advance of their location at all times. Furthermore, TENANT shall at the time of sale and in the presence of the customer cause the full selling price of each piece of merchandise, each rental received, and each service rendered in, on or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are sealed in accordance with standard commercial practices. Those records, books of account and cash register tapes, including any sales tax reports that TENANT may be required to furnish any government or governmental agency, shall at all reasonable times be open to the inspection of CITY, CITY'S auditor, or other authorized representative or agent of CITY. TENANT consents to the release of sales tax information to CITY and on demand will furnish to CITY a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of CITY in determining Gross Sales for TENANT. TENANT consents and authorizes CITY to request such information directly from the State Board of Equalization or other state agency with which sales tax information is filed.

(5) By July 31 of each year, commencing with 2020, TENANT shall furnish CITY with a statement, to be certified by TENANT as current, true and accurate, which shall set forth the Gross Sales of each department, sublease, licensee and concession operating, on or from the Premises for the previous twelve (12) calendar months, ending June 30, just concluded, and the authorized deductions, if any, therefrom; and with it TENANT shall pay to CITY the amount of the Percentage Rent which is due to CITY as shown thereby. If TENANT shall at any time cause an audit of sales of TENANT'S business to be made by a public accountant, then TENANT shall furnish CITY with a copy of said audit without cost or expense to CITY. CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a public accountant of CITY'S own selection. TENANT shall, upon receiving written notice

of CITY'S desire for such an audit deliver and make available all such books, records and cash register tapes to the public or certified public accountant selected by CITY. Furthermore, TENANT shall promptly on demand reimburse CITY for the full cost and expense of said audit, if the audit discloses the questioned statement or statements understated Gross Sales by five percent (5%) or more but less than ten percent (10%). In the event an audit performed at CITY'S request discloses TENANT understated Gross Sales by less than five percent (5%), the cost of such audit shall be paid by CITY. In the event any audit or other review of records discloses that the amounts reported as Gross Sales was understated by TENANT by ten percent (10%) or more, CITY shall not only be entitled to recover from TENANT all costs of audit and review but shall also be entitled to recover from TENANT a penalty equal to two times the Percentage Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses Gross Sales were understated by any amount, TENANT shall immediately pay the additional Percentage Rent therein shown to be payable by TENANT to CITY, together with interest at the Default Rate thereon, from the date the Percentage Rent was payable until the date paid.

(6) CITY shall be entitled at any time within five (5) years after the receipt of any such Percentage Rent payment, to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any such statement or statements, TENANT shall, for that period of five (5) years after submission to CITY of any such statement, keep all of TENANT'S records, including sales tax returns, all cash register tapes and other data which in any way bear upon or are required to establish in detail TENANT'S Gross Sales and shall upon request make the same available to CITY for examination.

Section 2.05 Reimbursements.

If TENANT fails to perform any term or covenant of this Lease, then CITY may, but is not obligated to, perform such term or covenant, and TENANT shall reimburse CITY for the costs incurred by CITY for such performance as additional Rent hereunder. As an illustration and not as a limitation, if TENANT fails to procure the insurance required by this Lease, then CITY may, but is not obligated to, obtain such insurance, with the cost of the premiums, plus 5%, being due to CITY upon demand as additional Rent.

Section 2.06 Penalty and Interest.

(1) If any Rent is not received within ten (10) days following the date on which the Rent first became due, then TENANT shall pay a late penalty of ten percent (10%) of the amount of the Rent in addition to the Rent.

(2) In addition to the penalty, TENANT shall pay interest at the rate of one percent (1%) per month or fraction thereof or the maximum amount permitted by law as of the date this Lease is signed, whichever is greater (the "Default Rate"), on the amount of the Rent, exclusive of the penalty, from the date on which Rent first became delinquent until paid. The term "Rent" includes any sums advanced by CITY and any unpaid amounts due from TENANT to CITY.

Article 3 USE OF PREMISES

Section 3.01 Permitted Uses.

The Premises shall, during the term of this Lease, be used only for the purpose of operating and conducting thereon and therein motel units and floating docks for use in connection therewith, motel apartments and retail sales subject to any approvals required under CITY's Conditional Permit UPO-448 and parking exception ADO-109.

Section 3.02 Unauthorized Use.

TENANT agrees to conduct and allow at the Premises only those uses authorized in Sections 3.01 and the improvements described in 13.02. Any unauthorized use of or improvements to the Premises shall constitute a breach of this Lease and shall, at the option of CITY, terminate this Lease.

Section 3.03 Operation of Business - Hours of Operation.

Failure to actively and diligently conduct the business authorized herein constitutes a breach of this Lease and shall, at the option of CITY, terminate this Lease.

(1) TENANT shall during the term of this Lease conduct business of the nature specified in Section 3.01 of this Lease on the Premises in an efficient and diligent manner and keep the Premises open for the conduct of business continuously and without interruption for at least six hours each day of the year, except one day each week and legal holidays. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down for a period not to exceed fourteen (14) calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down as authorized or required by CITY'S City Manager or on account of strikes, walkouts, or causes beyond the control of TENANT or for not more than three (3) days out of respect to the memory of either TENANT, or an employee of TENANT or close relative of TENANT or one of TENANT'S employees.

(2) TENANT shall operate TENANT'S business on the Premises with due diligence and efficiency and in like manner as comparable businesses operated in CITY or the coastal area of San Luis Obispo County, so as to produce the maximum amount of Gross Sales and gross receipts from services which may be produced from TENANT'S business; and TENANT at all times shall carry on Premises, a stock or merchandise of such size, character, and quality as is reasonable, designed to produce the maximum return to TENANT, when the sale of merchandise is a permitted use under this Lease.

Section 3.04 Competition.

During the term of this Lease, TENANT shall not directly nor indirectly acquire or establish any similar or competing business within a radius of two (2) miles from the location of the Premises; provided, however, that TENANT may, own or operate more than one business, whether or not competing and similar along the Embarcadero upon CITY lease sites. The purpose of this section is to prevent and prohibit TENANT from reducing revenue to CITY by diverting business from the operation at the Premises to another business owned by TENANT located within the area included in that radius, but not upon a CITY lease site from which CITY is paid rent based on Gross Sales.

Section 3.05 Hazardous Materials.

(1) TENANT shall not transport, use, store, maintain, generate, dispose, release, treat or discharge any "Hazardous Material" (as defined below) upon or about the Premises (such activities being hereafter referred to as "Hazardous Materials Activities"), nor permit TENANT'S employees, agents, or contractors to engage in Hazardous Materials Activities upon or about the Premises, except as allowed by applicable law. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body. All Hazardous Materials Activities at the Premises shall be conducted strictly in accordance with all applicable laws and regulations. If TENANT shall transport any hazardous waste from the Premises, then such transportation shall be done only by a contractor duly licensed to haul hazardous waste and shall use only a duly licensed disposal site approved by TENANT'S liability insurer.

(2) TENANT shall promptly notify CITY of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other

property, (ii) any demands or claims made or threatened by any party against TENANT or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises, and (iii) any matters where TENANT is required by applicable law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. CITY shall have the right (but not the obligation) to inspect the Premises, to take such remedial action on the Premises, as CITY may deem appropriate, and to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law.

(3) If any Hazardous Material is released, discharged or disposed of by TENANT or its employees, agents or contractors, on or about the Premises in violation of the foregoing provisions, then TENANT shall immediately notify CITY. CITY may elect either to take such remedial action as CITY deems appropriate, in which event TENANT shall reimburse CITY for all costs thereof within ten (10) days after demand, or direct TENANT to perform such remediation. If CITY directs TENANT to perform the remediation, then TENANT shall immediately take such remedial action, as CITY shall direct. TENANT shall, properly and in compliance with applicable laws clean up and remove the Hazardous Material from the Premises and any other affected property at TENANT'S expense. If CITY directs TENANT to perform remediation hereunder and if TENANT fails to comply with the provisions of this Section within five (5) days after written notice by CITY, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, then CITY may (but shall not be obligated to) arrange for such compliance directly or as TENANT'S agent through contractors or other parties selected by CITY at TENANT'S expense (without limiting CITY'S other remedies under this Lease or applicable law).

Section 3.06 Tidelands Trust.

TENANT shall use and occupy the Premises in strict compliance with the Tidelands Trust purposes under which the Premises or any portion thereof are held by CITY pursuant to the grants from the State of California as set forth in this Lease.

Section 3.07 Compliance with Law.

TENANT shall, at no cost to CITY, comply with all of the requirements of all local, municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all local, municipal and county ordinances, rules, regulations and orders and state and federal statutes, rules, regulations and orders now in force or which may hereafter be in force (collectively, "Legal Requirements"); provided, that TENANT shall not be required to comply with any Legal

Requirements imposed by CITY that would substantially deprive TENANT of a material benefit under this Lease, unless the Legal Requirements have been imposed or required by a county, state or federal authority. The judgment of any court of competent jurisdiction, or the admission of TENANT in any action or proceeding against TENANT, whether CITY be a party thereto or not, indicating TENANT has violated any of the Legal Requirements in the use of the Premises shall be conclusive of that fact as between CITY and TENANT. CITY, upon three-days' (3-days') written notice, may terminate this Lease if TENANT fails to comply with this section.

Section 3.08 Waste or Nuisance.

TENANT shall not commit or permit the commission by others of any waste on the Premises; TENANT shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by law on the Premises; and TENANT shall not use or permit the use of the Premises for any unlawful purpose.

Section 3.09 Use by CITY.

(1) Subject to TENANT's rights hereunder to possession of the Premises, CITY may grant licenses to, or otherwise authorize, other persons and entities permitting uses of the Morro Bay Harbor.

(2) CITY also retains and reserves for itself, its successors and assigns, all oil, gas, petroleum and other mineral or hydrocarbon substances in and under the lands leased hereby together with right to prospect and extract all such substances.

Article 4 CONSTRUCTION, ALTERATION AND REPAIRS

Section 4.01 Construction Approval.

(1) TENANT shall not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or facility appurtenant thereto if the cost thereof shall exceed Ten Thousand Dollars (\$10,000), without the prior written consent of CITY. The consent to be obtained pursuant to this Section 4.01(1) shall be requested from CITY'S Harbor Director, or CITY'S designee. If the Harbor Director or any future successor to the duties of the Harbor Director, or CITY'S designee, gives such consent to proceed, then it is understood such consent is given by CITY only in its capacity as the landlord under this Lease and not as the permit-issuing authority. TENANT remains obligated to obtain any needed building permits and comply with all applicable planning processes.

(2) Where required by the Morro Bay Municipal Code, California Coastal Act, Corps of Engineers or any other state or federal agency having authority over the proposed project, then all Conditional Use Permits, Concept Plans, Precise Plans, Coastal Development Plans, and any other required plans or permits shall be applied for and approved prior to any construction, alteration or repairs.

Section 4.02 Construction Bond.

(1) Prior to the commencement of any construction the cost of which is greater than the amount of One Hundred Thousand Dollars (\$100,000), TENANT shall file with CITY' s City Clerk a final detailed Civil Engineer's, Registered Architect's or Licensed and Bonded General Contractor's estimate of the cost of construction and installation of improvements on the Premises. Said estimate must be submitted to CITY'S City Engineer for approval. TENANT shall file with CITY'S City Clerk a faithful performance bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY, but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the faithful performance of TENANT or its contractor in the completion of said construction.

(2) TENANT shall also file with CITY'S City Clerk a labor and materials bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of said construction.

(3) In lieu of the above referenced bonds, TENANT may post cash deposits or may make other mutually satisfactory arrangements to guarantee the completion of construction projects. In the event the contractor performing the work for the improvements provides bonds to guarantee that work is satisfactorily preformed, those bonds may name CITY as additional indemnitee to comply with these requirements.

Section 4.03 Mechanics' Liens.

At all times during the term of this Lease, TENANT shall keep the Premises and all buildings, installations and other improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. TENANT further agrees to at all times, save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with any improvement, repairs, or alterations on the Premises, and the cost of defending against such claims, including reasonable attorneys' fees. If TENANT fails to pay and discharge or cause the Premises to be released from such liens or claim of liens within ten (10) days after the

filing of such lien or levy, then TENANT shall upon written notification be required to immediately deposit with CITY a bond conditioned for payment in full of all claims on which said lien or levy has been filed. Such bond shall be acknowledged by TENANT as principal and by a company or corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. The beneficiary of any security instrument which instrument is on record with CITY, shall have the right to file such a bond on behalf of TENANT. CITY shall have right to post and keep posted on the Premises notices of non-responsibility and any other notices that may be provided by law or which CITY may deem proper for the protection of CITY and Premises from such liens. TENANT shall give CITY notice at least twenty (20) days prior to commencement of any work on the Premises to afford CITY the opportunity to post such notices.

Section 4.04 Ownership of Improvements.

The Parties agree CITY has the option and right to require TENANT to remove all buildings, structures, installations, improvements of any kind or other property belonging to or placed upon the Premises by TENANT at the termination of this Lease, however occurring, providing CITY gives notice, in writing, no later than thirty (30) days prior to the termination of this Lease, of its decision to require such improvements be removed. The Parties agree if CITY exercises its option, then at the termination of this Lease, however occurring, TENANT shall have sixty (60) days thereafter to remove all buildings, structures, facilities, installations, improvements and other property belonging to TENANT from the Premises. If CITY exercises such option and TENANT fails to remove all such improvements and other property within sixty (60) days after the termination of this Lease, then CITY shall have the right to have any or all such improvements and other property removed at the expense of TENANT. If CITY does not exercise its option to remove (or require the removal of) the improvements and other property, then title to such improvements and other property shall vest in CITY and TENANT shall not remove same.

Article 5 LEASEHOLD MORTGAGES

Tenant shall not mortgage, securitize or hypothecate the leasehold interest in whole or any part without the prior written approval of CITY as evidenced by a resolution of CITY'S City Council.

Article 6 REPAIRS, MAINTENANCE AND RESTORATION

Section 6.01 Maintenance by TENANT.

At all times during the term of this Lease, TENANT shall, at TENANT'S own cost and expense, keep and maintain all improvements now or hereafter on the Premises in good order and repair and in a safe and clean condition. Furthermore, TENANT shall, at TENANT'S own cost and expense, maintain at all times during the term of this Lease the whole of the Premises in a clean, sanitary, neat and orderly condition. CITY may, at the sole option of CITY, clean and clear the Premises, at TENANT'S cost and expense, in the event TENANT fails to clean and clear the Premises in accordance with this Section to the satisfaction of CITY after fifteen-days' written notice to TENANT from CITY of CITY'S intent to exercise this option.

Section 6.02 Seawalls and Revetment.

TENANT understands and agrees by entering into this Lease TENANT is taking and accepting the improvements, pilings, bulkheads, seawalls, revetment, piers, posts and any structures or other improvements located in the water portion of the Premises (the "Seaside Improvements") in their AS-IS condition and without any express or implied warranty of condition or usability CITY. With that understanding, at all times during the term of this Lease, TENANT shall, at TENANT'S own cost and expense, repair, maintain, replace and rebuild ("Repairs") as necessary, the Seaside Improvements. Further, TENANT, at TENANT'S own cost and expense, shall, as often as reasonably needed to properly meet the obligations set forth in this Section 6.02, conduct maintenance surveys to locate and determine needed Repairs and as soon as possible, thereafter, commence and complete Repairs deemed necessary by each survey. CITY, at TENANT'S costs, may, but is not required to, have one or more of those surveys conducted if TENANT fails to obtain a survey within thirty days after CITY provides a written demand that a survey be completed, if CITY, in its discretion, decides to transmit that demand. No default of this Lease will result due to the failure to obtain a survey with or without a written demand. However, if a survey is obtained, then a material breach of this Lease will result if Seaside Improvements are not completed as recommended by a survey.

Section 6.03 Legal Requirements.

At all times during the term of this Lease, TENANT, at no cost to CITY, shall:

(1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07, above) now or hereafter made or issued;

(2) Observe and comply with all Legal Requirements now or hereafter made or issued respecting the Premises or the improvements or facilities located thereon;

(3) Obtain all required permits pursuant to the Morro Bay Municipal Code or State law prior to the initiation of any repair or maintenance activity; and

(4) Indemnify, defend and hold harmless CITY and each of its officers and employees and the property of CITY, including the Premises, from any and all liability, loss, damages, fines, penalties, claims and actions resulting from TENANT'S failure to comply with and perform the requirements of this section.

Section 6.04 Failure to Repair.

In the event failure to repair results in a hazardous or unsafe condition, CITY shall have the right and option, but not the obligation, to close and prohibit access to the unsafe portion of the Premises until such repairs are completed and accomplished and the Premises rendered safe for public use. In addition, if TENANT fails to repair any hazardous or unsafe condition within ten (10) days after written notice thereof from CITY, then CITY shall have the right, but not the obligation, to perform such repair at TENANT'S expense. TENANT shall reimburse CITY for any such repair undertaken by CITY, promptly upon CITY'S demand, as additional Rent. Failure by CITY to enforce any of the provisions of this Article shall not constitute a waiver of those provisions and CITY may at any time enforce all of the provisions of this Article, requiring all necessary repairs, rebuilding or replacement.

Section 6.05 Inspection by CITY.

CITY or CITY'S agents, representatives, or employees may enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY'S interest in the Premises under this Lease or to perform CITY'S duties under this Lease.

Section 6.06 TENANT'S Duty to Restore Premises.

(1) Except as provided in Section 6.07, below, if at any time during this Lease, any improvements now or hereafter on the Premises are destroyed in whole or in part by the elements, or any other cause not the fault of TENANT or CITY, then this Lease shall continue in full force and effect and TENANT, at TENANT'S own cost and expense, shall repair and restore the damaged or destroyed improvement(s) according to the original plan thereof or according to such modified plans therefore as shall be approved in writing by CITY. The work of permitting, repair and restoration shall be commenced by TENANT within one hundred eighty (180) days

after the damage or destruction occurs shall be pursued with due diligence and shall be completed not later than one year after the work is commenced, unless the Parties mutually agree, in writing, to an extension. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for construction work on the Premises set forth in Article 4 of this Lease. Any failure by TENANT either to commence or to complete repair and restoration as required by this Section 6.06 shall be a material default under this Lease.

(2) Any and all insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises shall be paid to TENANT and applied by TENANT toward the cost of repairing and restoring the damaged or destroyed improvements in the manner required by this Section 6.06, or, if this Lease is terminated, then applied as provided in Section 6.07. Except as set forth in Section 6.08 below, TENANT'S obligation to restore pursuant to this Section shall exist whether or not funds are available from insurance proceeds.

Section 6.07 Termination of Lease for Destruction.

(1) Notwithstanding the provisions of Section 6.06 of this Lease, TENANT shall have the option of terminating this Lease as provided in this Section 6.07 if:

(a) During the Term of this Lease, any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT or CITY, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding thirty-five percent (35%) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage; or

(b) During the last ten (10) years of the term of this Lease, any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT or CITY, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding fifteen percent (15%) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage.

(2) TENANT may exercise its right to terminate pursuant to this Section 6.07 by providing written notice to CITY within one hundred eighty (180) days following damage or destruction as described herein. Such termination shall be effective on the last day of the calendar month following the month in which TENANT provides its notice.

(3) If TENANT fails to commence or complete repair and restoration as required by Section 6.06, then CITY shall have all rights and remedies with respect to TENANT's default, including, but not limited to, termination of this Lease pursuant to Article 11.

(4) If this Lease is terminated as a result of damage or destruction, then any insurance proceeds received with respect to the improvements shall be applied or distributed in the following order:

(a) first, to the demolition of the improvements and removal of all demolition debris; then

(b) to any accrued and unpaid Rent as of the effective date of the termination; then

(c) to each Lender under a Leasehold Encumbrance, in order of lien priority, an amount not to exceed the amount due under such Leasehold Encumbrance; then

(d) to CITY, an amount equal to the present value, as of the date of termination, of the total Annual Minimum Rent for the remainder of the Term; then

(e) the remaining proceeds, if any, to TENANT.

Section 6.08 Destruction Due to Risk Not Covered by Insurance.

Notwithstanding anything to the contrary in Section 6.06 of this Lease, TENANT shall have the right to terminate this Lease at any time if the improvements on the Premises are damaged or destroyed by a casualty for which TENANT is not required under this Lease to carry insurance and the cost to repair or restore such improvements exceeds fifty percent (50%) of the fair market value of all the improvements on the Premises immediately prior to the damage or destruction.

Article 7 INDEMNITY AND INSURANCE

Section 7.01 Indemnity Agreement.

(1) TENANT shall indemnify, defend and hold harmless CITY, and the property of CITY (including the Premises and any improvements now or hereafter on the Premises), and each of CITY'S officers, officials, employees and volunteers from any and all liability, claims, loss, damages, and expenses, including reasonable attorney's fees and litigation expenses ("Damages"), resulting from any act or omission relating to this Lease of TENANT or any of its officers, employees, agents, representatives, subtenants, contractors, subcontractors or anyone for whom TENANT may be liable, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property,

including property owned by TENANT or by any person who is an employee or agent of TENANT, from any cause whatever while such person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

(b) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or any person who is an employee or agent of TENANT, caused or allegedly caused by either (i) the condition of the Premises or any improvement placed on the Premises by TENANT, or (ii) any act or omission on the Premises by TENANT or any person in, on, or about the Premises with or without the permission and consent of TENANT;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of TENANT or any person or entity acting for or on behalf of TENANT; or

(d) TENANT'S failure to perform any provision of this Lease or to comply with any Legal Requirement imposed on TENANT or the Premises.

(2) TENANT'S obligations pursuant to this Section to indemnify and hold harmless apply only to the extent TENANT or any of its officers, employees, agents, representatives, subtenants, contractors or subcontractors or anyone for whom TENANT may be liable caused Damages.

Section 7.02 Liability Insurance.

During the term of this Lease, TENANT shall maintain at its cost Commercial General Liability insurance with coverages at least as broad as ISO Forms labeled “City of Morro Bay Insurance requirements for Lessees,” Certificate of Insurance – City of Morro Bay”, and “Additional Insureds – Managers or Lessors of Premises” attached hereto as Exhibit C and made a part hereof as may be updated or changed from time to time at the sole discretion of the CITY, insuring against claims for bodily injury (including death), property damage, contractual liability, personal injury and advertising injury occurring on the Premises or from operations located in any part of the Premises. Such insurance shall afford protection in amounts no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage, provided that if insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be twice the occurrence limit stated in this Section. All liability insurance carried by TENANT hereunder shall name CITY, its officers, officials, employees and volunteers as additional

insureds, and shall be primary insurance with respect to such additional insureds. TENANT shall include all its subtenants as insureds under TENANT's liability policies or shall furnish separate certificates and endorsements for each subtenant. All coverages for subtenants shall comply with all requirements of this Article Seven.

Section 7.03 Worker's Compensation.

TENANT shall maintain at TENANT'S own expense and keep in full force and effect during the term of this Lease, Worker's Compensation Insurance as provided by law. Said insurance shall contain a waiver of subrogation rights against CITY. TENANT shall also maintain employer's liability insurance with minimum coverage of \$1,000,000 per accident for bodily injury or disease.

Section 7.04 Property Insurance.

TENANT shall, at its cost, at all times during the term of this Lease keep all improvements and other structures on the Premises, as well as any and all additions, improvements and betterments thereto, insured for one hundred percent (100%) of their full replacement cost with no co-insurance provision against loss or destruction by the perils covered by "all risk" (excluding earthquake) property damage insurance policies. Any loss payable under such insurance shall be payable to TENANT, CITY, and any Lender under a Leasehold Encumbrance pursuant to Article 5 of this Lease, as their interests may appear, and such proceeds shall be used and applied in the manner required by Article 6 of this Lease.

Section 7.05 Additional Coverage.

TENANT shall also maintain, at its expense, the insurance described in this Section 7.05.

(1) If TENANT has (or is required by any Legal Requirement to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then TENANT shall maintain liquor liability coverage in appropriate amounts. TENANT shall require any subtenant who has (or is required by any Legal Requirement to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(2) TENANT shall maintain "all risk" (excluding earthquake) property damage insurance covering TENANT's personal property located at the Premises, in amounts not less than the full replacement value of such personal property. CITY shall have no interest in the proceeds of such insurance.

(3) TENANT shall, at TENANT's own expense, obtain and maintain any additional insurance coverages that CITY may reasonably require. As illustration only and not as a

limitation, in appropriate circumstances such additional insurance may include increased general liability limits, business interruption coverage, business automobile liability, boiler and machinery insurance and/or builder's risk insurance. However, TENANT shall not be required to maintain additional coverages that are in excess of those typically maintained by similarly situated tenants in the Morro Bay area.

Section 7.06 General Requirements.

Except as specifically provided to the contrary, all the insurance required pursuant to this Article Seven shall be subject to the requirements of this Section 7.06.

(1) Maintenance of proper insurance coverage is a material element of this Lease and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the CITY as a material breach of contract. TENANT shall forward CITY'S specifications and forms to TENANT'S insurance agent for compliance.

(2) CITY may at any time require TENANT to increase the minimum coverage limits for insurance required by this Lease, but every such increase shall be reasonable under the circumstances.

(3) All policies shall be issued by insurance companies authorized to issue such insurance in California, with an A.M. Best's rating of no less than A:VII.

(4) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees and volunteers; or the TENANT shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(5) Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be cancelled or reduced, except after thirty-days' prior written notice by certified mail, return receipt requested, has been given to CITY.

(6) TENANT shall furnish CITY with certificates and amendatory endorsements effecting the coverage required by this Lease. The endorsements shall be on forms provided by CITY or on other than CITY's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by CITY before use of the Premises, and promptly following any renewal or replacement. CITY reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

(7) TENANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of TENANT'S insurance and shall not contribute with it.

Section 7.07 No Subrogation.

TENANT agrees, in the event of loss due to any of the perils for which it has agreed to provide insurance, TENANT shall look solely to its insurance for recovery. TENANT hereby grants to CITY, on behalf of any insurer providing insurance to either TENANT or CITY with respect to TENANT'S occupancy of the Premises, a waiver of any rights to subrogation which any such insurer of said TENANT may acquire against CITY by virtue of the payment of any loss under such insurance. Each insurance policy required under this Lease including those insuring TENANT against claims, expense, or liability for injury to persons or property shall provide that the insurer shall not acquire by subrogation any right to recovery which TENANT has expressly waived in writing prior to the occurrence of the loss.

Section 7.08 TENANT'S Waiver.

TENANT hereby waives any right of recovery against CITY for each claim, expense, liability, or business interruption, or other loss, except where caused by CITY'S active negligence or willful misconduct. TENANT agrees, to the extent TENANT fails to acquire insurance, TENANT shall not have any claim against CITY for any loss that results from a risk or peril that would have been included in such insurance.

Section 7.09 Insurance Not a Limit.

The insurance requirements of this Article 7 are independent of, and do not limit or modify, TENANT'S indemnification, defense and other obligations pursuant to this Lease.

Article 8 TAXES AND FEES

Section 8.01 TENANT to Pay Taxes.

TENANT shall pay, before delinquency, all taxes and assessments levied upon or assessed to TENANT on the Premises by reason of this Lease or of any equipment, appliances, improvement, or other development of any nature whatsoever, erected, installed, or maintained by TENANT or by reason of the business or other activity of TENANT upon or in connection with the Premises. TENANT shall be solely responsible to pay all possessory interest taxes applicable to the Premises.

Section 8.02 TENANT to Pay License and Permit Fees.

TENANT shall pay any fees imposed by law for licenses or permits for any business or activities including construction by TENANT upon the Premises.

Section 8.03 Utilities.

TENANT shall pay, or cause to be paid, and hold harmless CITY and the property of CITY, including the Premises, from all charges for the furnishing of gas, water, electricity, telephone service, and for other public utilities to the Premises during the term of this Lease and for the removal of garbage and rubbish from the Premises during the term of this Lease.

Article 9 CONDEMNATION

Section 9.01 Total Condemnation.

If title and possession to all of the Premises is permanently taken for any public or quasi-public use under any statute, or by the right of eminent domain, then this Lease shall terminate on the date that possession of the Premises is taken, and both CITY and TENANT shall thereafter be released from all obligations, including Rent, all of which shall be prorated to the date of termination, except those specified in Section 9.02 of this Lease.

Section 9.02 Condemnation Award.

Any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain shall be allocated between CITY and TENANT as follows:

(1) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Premises shall be paid to and be the sole property of CITY free and clear of any claim of TENANT or any person claiming rights to the Premises through or under TENANT.

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business shall be paid to and be the sole property of TENANT.

(3) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where only a portion of the Premises is taken by eminent domain, and TENANT is not entitled to or does not terminate this Lease, shall be applied in the manner specified in Section 9.04 toward the

replacement of such improvements with equivalent new improvements on the remaining portions of the Premises.

(4) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall be allocated between CITY and TENANT as follows:

(a) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, not expired shall belong to and be the sole property of TENANT.

(b) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, expired shall belong to and be the sole property of CITY.

(c) The term "time of taking" as used in this Section shall mean 12:01 a.m. of the date that the agency or entity exercising the eminent domain power, takes, title, or the date that it takes physical possession of the portion of the Premises, whichever shall first occur.

(5) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of CITY.

Section 9.03 Termination for Partial Taking.

If, during the term of this Lease, title and possession of only a portion of the Premises is taken for any public or quasi-public use under any statute, or by right of eminent domain, then TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on CITY within ninety (90) days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease shall terminate on the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on CITY. On termination of this Lease pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease shall also terminate and the Premises shall be delivered to CITY free and clear of all such subleases and subtenancies; provided, however, that CITY may, at CITY'S option, by mailing written notice to a subtenant allow any subtenant to attorn to CITY and continue such subtenant's occupancy on the Premises as a TENANT of CITY. On termination of this Lease pursuant to this section, however, both CITY and TENANT

shall be released from all obligations under this Lease, except those specified in Section 9.02 of this Lease.

Section 9.04 Rent Abatement for Partial Taking.

If, during the term of this Lease, title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease shall terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease shall, as of that time be reduced in the same proportion of the Premises taken by eminent domain bears to the full value of the Premises at that time; provided, however, that TENANT shall make a good faith effort to replace any improvements or facilities with equivalent new facilities on the remaining portion of the Premises and do all other acts at TENANT'S own cost and expense required by the eminent domain taking to make the remaining portion of the Premises fit for the use specified in this Lease.

Section 9.05 Conveyance in Lieu of Eminent Domain.

A voluntary conveyance by CITY, with the consent of TENANT, of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of the Premises under the power of eminent domain subject to the provisions of this Article.

Section 9.06 Temporary Taking.

If the possession of the Premises or any portion thereof should be taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the term of this Lease, then this Lease shall not terminate (except as provided in this Section 9.06) and TENANT shall continue to perform all its obligations hereunder, except only to the extent that TENANT is prevented from performing such obligations by reason of such taking. TENANT shall be entitled to receive the entire amount of compensation or damages awarded because of such temporary taking. If a temporary taking extends for more than thirty-six (36) months, then TENANT shall have the right to terminate this Lease, and TENANT shall be entitled to receive, out of the compensation or damages awarded because of such temporary taking, the amount that is attributable to the period of time up until the effective date of TENANT'S termination of this Lease.

Article 10 ASSIGNMENT AND SUBLEASING

Section 10.01 No Assignment Without CITY'S Consent.

Except as provided in this Article 10, TENANT shall not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of CITY evidenced by resolution first had and obtained. Any assignment or transfer by TENANT without the prior written consent of CITY, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of CITY, terminate this Lease. A consent by CITY to one assignment shall not be deemed to be a consent to any subsequent assignment of this Lease by TENANT. CITY shall not unreasonably nor arbitrarily withhold its approval to the assignment or transfer of this Lease to an assignee who is financially reliable and qualified to conduct the business for which this Lease was granted. It is mutually agreed TENANT'S qualifications are a part of the consideration for granting of this Lease and TENANT does hereby agree to maintain active control and supervision of the operation conducted on the Premises.

Section 10.02 Reserved.

Section 10.03 Application for Assignment.

A condition of an assignment shall be TENANT shall file with CITY an application to assign the leasehold prepared by the prospective assignee. Concurrently with filing the application, TENANT shall pay a reasonable fee associated with the cost of processing said application, in cash or certified or cashier's check to enable CITY adequately to investigate the proposed assignee's qualifications as a permitted assignee. CITY shall not be required to account for the use of the sum paid. If the proposed assignee's net worth on the date of assignment is not sufficient to reasonably guarantee successful operation of the Premises in compliance with all applicable CITY, County, State and federal requirements, then CITY may withhold approval of the assignment or condition it upon TENANT'S guarantee of such assignee's obligations hereunder for such period as CITY deems advisable. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with general accepted accounting principles as approved by CITY'S auditor, or other authorized representative or agent.

Section 10.04 Probate Transfer of Assignment.

Nothing herein contained will prevent the transfer of this Lease by will, or by operation of law under the intestacy provisions of the California Probate Code as it may be amended from time to time. Probate sale of the leasehold interest will not be permitted without the consent of CITY, evidenced by resolution, first had and obtained.

Section 10.05 No Sublease Without CITY'S Consent.

TENANT shall not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY'S Harbor Director, or any future successor to the duties of CITY'S Harbor Director. A consent to one subletting, occupation, licensing or use shall not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY'S written consent shall be void, and shall at CITY'S option, terminate this Lease. CITY shall not unreasonably nor arbitrarily withhold its consent to sublet to one who is qualified and financially reliable. CITY'S consent to any occupation, use, or licensing shall be in CITY'S sole and absolute discretion. Notwithstanding any provisions herein to the contrary, the terms "assignment," "subletting," "occupation," or "use," shall not be construed or interpreted to mean or include the temporary, short-term renting or leasing of boat slips, motel, hotel, or apartment accommodations on the Premises.

Section 10.06 Subtenant Subject to Lease Terms.

Any and all subleases shall be expressly made subject to all the terms, covenants, and conditions of this Lease. In no event shall the term of any sublease extend beyond the term of this Lease. Subject to Section 10.09, termination of this Lease prior to the expiration of this Lease term shall also terminate any and all subleases. A breach of the terms of this Lease by a subtenant shall constitute a breach on the part of TENANT and shall subject both the subtenant and TENANT to all the remedies provided to CITY herein and by law. Failure by any subtenant to report Gross Sales or to pay Percentage Rent due from subtenant shall constitute a breach of this lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this lease.

Section 10.07 Consent Form Agreement.

Prior to any consent by CITY to any sublease hereof, TENANT shall cause to be executed between TENANT and any subtenant an agreement making CITY a third-party beneficiary, in a form acceptable to CITY, whereby the subtenant agrees to be bound by all of

the terms, covenants and conditions of this Lease. Further, it is agreed by TENANT any default by the subtenant of any of the terms, covenants and conditions of this Lease shall be deemed to be violations by TENANT of this Lease and that all remedies of CITY for such violation, including termination of this Lease, shall immediately be enforceable by CITY against TENANT. TENANT shall apply any and all monies received from any subtenant first to the payment of obligations of the subtenant to CITY.

Section 10.08 TENANT and Guarantor Remain Liable.

Prior to approval by CITY to any sublease hereof, TENANT shall agree to be primarily and jointly and severally liable to CITY for all obligations due CITY by any subtenant, including the payment of rents, and TENANT shall agree CITY may proceed directly against TENANT for any obligation owing CITY by the subtenant. If this Lease is guaranteed, then neither the sublease nor CITY'S approval thereof shall release the guarantor from its obligations pursuant to the guaranty.

Section 10.09 Nondisturbance.

On the terms set forth below, CITY may enter into agreements with subtenants providing that in the event of any termination of this Lease prior to the expiration date, CITY will not terminate or otherwise disturb the rights of the subtenant under such sublease, but will instead honor such sublease as if such agreement had been entered into directly between Landlord and such subtenant, conditioned upon such subtenant's agreement to attorn to Landlord and full performance of all obligations under the sublease in question ("Non-Disturbance Agreement"). CITY agrees to execute a Non-Disturbance Agreement in connection with a particular sublease provided that Tenant provides CITY with a copy of the sublease, and the Non-Disturbance Agreement is customary in form and substance and otherwise reasonably acceptable to CITY.

Article 11 DEFAULT AND TERMINATION

Section 11.01 Abandonment by TENANT.

If TENANT breaches this Lease and abandons all or any part of the Premises prior to the scheduled expiration of the term of this Lease, then CITY may continue this Lease in effect by not terminating TENANT'S right to possession of the Premises, in which event CITY shall be entitled to enforce all CITY'S rights and remedies under this Lease including the right to recover the Rent specified in this Lease as it becomes due under this Lease.

Section 11.02 Termination for Breach by TENANT.

All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to TENANT. If TENANT fails to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within thirty (30) days after written notice thereof is served on TENANT, then CITY may terminate this Lease immediately, and in the event of such termination, TENANT shall have no further rights hereunder and TENANT shall thereupon forthwith remove from the Premises and shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

Section 11.03 Termination for Failure to Pay Rent.

If any payment of Rent is not made as herein provided and such failure to pay is not cured within three (3) days after written notice thereof is served on the TENANT, then CITY shall have the option to immediately terminate this Lease; and in the event of such termination, TENANT shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

Section 11.04 Lender May Cure Default.

CITY shall afford the Lender under any Leasehold Encumbrance of record with CITY, as provided in Article 5 of this Lease, the right to cure any default by TENANT of the covenants, conditions, or agreements hereof.

Section 11.05 Damages for Breach.

If TENANT defaults in the performance of any covenant, condition or agreement contained in this Lease and the default be incurable or not be cured within the time period set forth hereinabove, then CITY may terminate this Lease and:

(1) Bring an action to recover from TENANT:

(a) The worth at the time of award of the unpaid rent which had been earned at the time of termination of this Lease;

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of this Lease until the time of award exceeds the amount of rental loss that TENANT proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss TENANT proves could be reasonably avoided; and

(d) Any other amount necessary to compensate CITY for all detriment proximately caused by TENANT'S failure to perform its obligations under this Lease; and

(2) Bring an action, in addition to or in lieu of the action described in subparagraph (1) of this Section, to re-enter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

Section 11.06 Cumulative Remedies.

The remedies available to CITY in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

Section 11.07 Waiver of Breach.

The waiver by CITY of any breach by TENANT of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by TENANT either of the same or a different provision of this Lease.

Section 11.08 Surrender of Premises.

On expiration or sooner termination of this Lease, TENANT shall surrender the Premises, and, subject to Section 4.04, all improvements in or on the Premises, and all facilities in any way appertaining to the Premises, to CITY in good, safe, and clean condition, reasonable wear and tear excepted.

Article 12 MISCELLANEOUS

Section 12.01 Notices.

Any and all notice or demands by or from CITY to TENANT, or TENANT to CITY, shall be in writing. They shall be served either personally, or by registered or certified mail. Any notice or demand to CITY may be given to:

Harbor Director
1275 Embarcadero
Morro Bay, CA 93442

with a copy to:

City Manager of the City of Morro Bay
City Hall
595 Harbor Street
Morro Bay, CA 93442

Any notice or demand to TENANT may be given at:

Todd Baston & Tamara Gray-Baston
Gray's Inn and Gallery
561 Embarcadero
Morro Bay, CA 93442

Such addresses may be changed by written notice by either party to the other party.

Section 12.02 Governing Law and Jurisdiction.

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision concerning this Lease arises. CITY and TENANT consent to exclusive personal and subject matter jurisdiction in the Superior Court of the State of California in and for the county where the Premises are located, and each party waives any claim that such court is not a convenient forum. Each party hereby specifically waives the provisions of California Code of Civil Procedure Section 394, and any successor statute thereto.

Section 12.03 Binding on Successors.

Subject to the provisions herein relating to assignment and subletting each and all of the terms, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the successors and assigns of any and all of the Parties; and all of the Parties shall be jointly and severally liable hereunder.

Section 12.04 Partial Invalidity.

If any provision of this Lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, then the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Section 12.05 Sole and Only Agreement.

This Lease, including all exhibits incorporated by reference, constitutes the sole and only agreement between CITY and TENANT respecting the Premises and the leasing of the Premises

to TENANT. Any other agreements or representations respecting the Premises and their leasing to TENANT by CITY, which are not expressly set forth in this Lease, are null and void. The lease terms herein specified correctly set forth the obligations of CITY and TENANT as of the date of this Lease. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by both parties.

Section 12.06 Modification.

This Lease shall not be modified except pursuant to a written agreement executed by CITY'S Mayor and City Clerk pursuant to prior CITY's City Council approval. Notwithstanding CITY'S City Council approval, no agreement shall become effective until such agreement is in fact executed by CITY'S Mayor and City Clerk. TENANT understands this Lease may not be modified by oral statements by any person representing CITY, including CITY'S Mayor and City Clerk. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this paragraph and are approved in writing pursuant to formal City Council action and a subsequent written modification signed by CITY'S Mayor and City Clerk. If the title of any person authorized to act for CITY under this Lease shall be changed during the term of this Lease, then the person who succeeds to substantially the same responsibilities with respect to CITY shall have the authority to act for CITY under this Lease.

Section 12.07 Time of Essence.

Time is expressly declared to be the essence of this Lease.

Section 12.08 Memorandum of Lease for Recording.

CITY and TENANT shall, at the request of either at any time during the term of this Lease, execute a memorandum or "short form" of this Lease, which shall describe the Parties, set forth a description of the Premises, specify the Term, and incorporate this Lease by reference.

Section 12.09 Joint and Several Liability

Each of the individuals defined as TENANT are jointly and severally liable for all the obligations of TENANT pursuant to this Lease

Article 13 SPECIAL PROVISIONS PECULIAR TO THE PREMISES

The following provisions only apply to the Premises:

Section 13.01 Rescission of Old Lease

CITY and TENANT understand and agree this Lease rescinds and revokes any and all previous leases between CITY and TENANT, including, but not limited to the one more particularly described as that certain lease originally assigned to TENANT and commencing October 1, 1968 for the Premises, including all amendments made thereto.

Section 13.02 Completion of Improvements

TENANT must complete improvements to the Premises to include the following at a minimum and with a hard construction cost estimation of \$558,000:

1. Addition of the “Harborwalk” lateral access.
2. Addition of vertical access to the Harborwalk, including removal of a small storage shed and improved view corridors.
3. ADA accessibility to the gallery portion of the building, including addition of an ADA-accessible on-site parking space.
4. Widening of the sidewalk to a full eight feet fronting the site.
5. Miscellaneous slip, dock and other site work.

For purposes of this Section 13.02, completion for each of the elements of improvement shall mean when each is entitled to issuance of a certificate of occupancy or final inspection approval, as applicable, from City.

During construction of all improvements contemplated in this Lease, TENANT shall take all measures to:

- A. Avoid any pollution of the atmosphere or littering of land or water by or originating in or about the Premises or caused by TENANT’S construction activities,
- B. Keep the noise level on the Premises to a minimum so persons in the neighborhood will be able to comfortably enjoy business and facilities in the area,
- C. Prevent any pollutants, including but not limited to petroleum products, from entering Morro Bay waters,
- D. Avoid negative impacts on surrounding businesses,

E. Prohibit storage of materials or equipment on public property and avoid parking or traffic delays or impairment without prior consent of CITY and

F. Keep the construction site in a slightly, orderly, and safe manner at all times.

EXECUTED on _____, 2019, at _____,
San Luis Obispo County, California.

CITY OF MORRO BAY

GRAY'S INN AND GALLERY

By: _____
John Headding, Mayor

By: _____
Todd Baston

ATTEST:

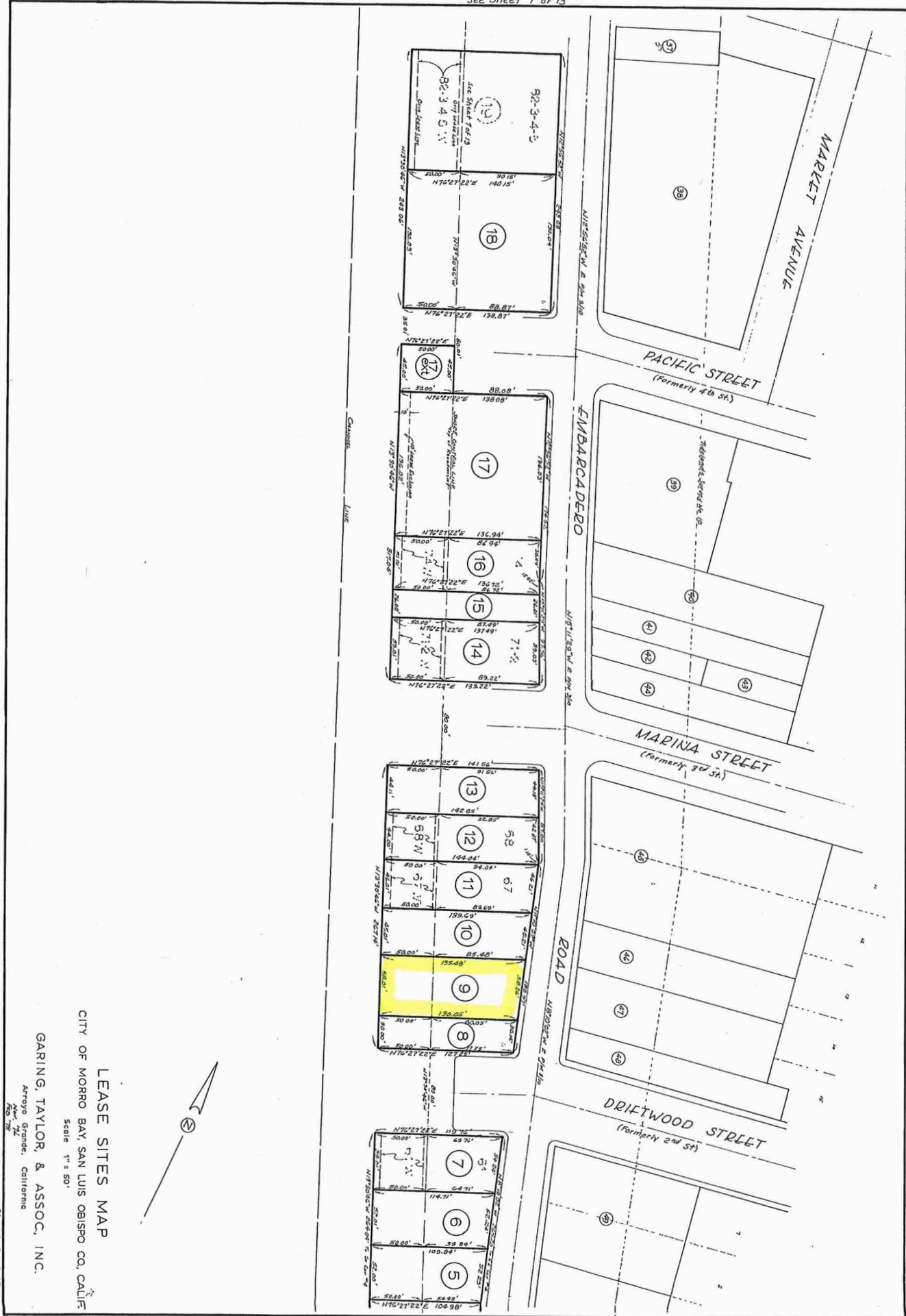
By: _____
Tamara Gray- Baston

Dana Swanson, City Clerk

APPROVED AS TO FORM:

Chris Neumeyer, City Attorney

EXHIBIT A
COPY OF PARCEL MAP



LEASE SITES MAP
 CITY OF MORRO BAY, SAN LUIS OBISPO CO, CALIF

GARING, TAYLOR, & ASSOC., INC.
 Atty. General, California

Scale 1" = 50'



Exhibit B

SCHEDULE A

PERCENTAGE RENT FOR GROUND LEASES

		% GROSS
SALES		
FOOD SERVICE:	Restaurant, Dining Room	3
	Snack Bar, Delicatessen,	5
	Fast Food, Convenience Food	5
	Bar/Lounge, Beer & Wine Sales	5
RETAIL SALES & SERVICE:	Tenant	5
FISH & SEAFOOD:	Retail Sales	0
	Wholesale Sales	0
MOORINGS, TIES & SLIPS:	Pier/Fixed Piles	10
	Pier/Floating	10
BOAT REPAIR & SALES:	Boat & Marine Repair	3
	New Boat Sales	1
	Used Boat Sales	2
FUEL:	Gasoline	\$0.02/gal.
	Diesel	\$0.015/gal.
MOTEL (Transient Occupancy) :		5
ALL OTHER USES:		5

Percentage Rental is to be based on the gross amount received from any and all sources of income derived from the lease site.

Exhibit C

CITY OF MORRO BAY

595 Harbor St.
Morro Bay, CA 93442
(805) 772-6200
FAX (805) 772-7329

INSURANCE REQUIREMENTS FOR LESSEES

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.
4. Insurance Services Office Form Number C A 0001 covering Automobile Liability, code 1 (any auto).

Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **twice** the required occurrence limit.
2. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

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

Sub-lessee

Lessee shall include all sub-lessees as insureds under its policies or shall furnish separate certificates and endorsements for each sub-lessee. All coverages for sub-lessees shall be subject to all the requirements stated herein.

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
RECOGNIZING THE 60TH ANNIVERSARY OF INCORPORATION
OF THE CITY OF GROVER BEACH AND
COMMEMORATING THE CITY'S ANNIVERSARY CELEBRATION**

**CITY COUNCIL
City of Morro Bay, California**

WHEREAS, D.W. Grover first recognized the potential of the area now known as Grover Beach in 1887, filed plans with the County of San Luis Obispo to found what would one day become the City of Grover Beach; and

WHEREAS, the residents of the City of Grover Beach voted to incorporate as a California municipality on December 21st, 1959; and

WHEREAS, the City of Grover Beach is a special community, located on California's Central Coast; with a unique heritage, strong sense of civic pride and numerous actively involved citizens and businesses; and

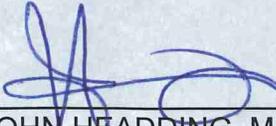
WHEREAS, the community of Grover Beach will be celebrating its 60th Anniversary on December 8, 2019, by hosting a GB60 Jubilee Celebration with food, a reenactment of the first council meeting as well as guest speakers; and

WHEREAS, such community celebrations and events in the upcoming year to celebrate our 60 years include an Arbor Day "Take a Selfie with your Tree" promoting planting 60 new trees in Grover Beach, a Beach Bonfire, an "All-States" Picnic and Cake Walk, as well as a Time Capsule burying, and a City Flag Re-Design.

NOW, THEREFORE, BE IT RESOLVED that I, Mayor John Headding, on behalf of the City of Morro Bay hereby recognize the achievements and history of the City of Grover Beach and direct that this proclamation be presented to the residents of the City of Grover Beach in congratulations as they celebrate on this Anniversary of the incorporation of the City.



IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 8th day of December 2019.



JOHN HEADDING, Mayor
City of Morro Bay, California



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

December 4, 2019

Grover Beach City Hall
Attn: City Council
154 S. Eighth Street
Grover Beach, CA 93443

Re: 60th Anniversary Celebration

Dear Honorable Mayor Lee and Council Members,

On behalf of the City of Morro Bay, I am pleased to send our congratulations on the 60th Anniversary of the incorporation of the City of Grover Beach.

This anniversary is an important milestone and the GB60 Jubilee Celebration and events you've planned for the upcoming year provide an opportunity for all community members to join in the celebration.

Once again, it is an honor to send this proclamation on behalf of the Morro Bay community and I wish you a joyous celebration!

Sincerely,

John Headding
Mayor
City of Morro Bay



AGENDA NO.: B-1
MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** November 19, 2019

FROM: Rob Livick, PE/PLS, Public Works Director/City Engineer

SUBJECT: Adoption of Resolution No. 103-19, a Resolution for the Abandonment (Vacation) of portions of utility easement(s) on 196 Panay Street (Jay Friesen, applicant). Permit No. ABN19-001.

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 103-19, a resolution abandoning (vacating) portions of the existing utility easement(s) at 196 Panay Street.

ALTERNATIVES

Do not adopt a resolution abandoning (vacating) portions of the utility easement(s) 196 Panay Street and suspend all staff actions regarding said proposed abandonment.

FISCAL IMPACT

There is no fiscal impact as a result of this action. The abandonment of the portions of the utility easement(s) at 196 Panay Street removes approximately 1,408 square of utility easement that could result in increased property tax on the property.

BACKGROUND/DISCUSSION

The applicant has requested, based on a condition in their Coastal Development Permit (CDP), the City abandon approximately 1,408 square feet of the existing utility easement(s) which range in width from 2.5 feet to 10 feet that currently reside within the subject property. Currently only a portion of the existing utility easement at the southwesterly part of the property is occupied by an existing City sewer main. This sewer main will remain and shall be within a portion of the existing utility easement that will be reserved for this purpose. The applicant has provided letters from the primary franchise utility companies indicating no respective utility presence is currently within these areas to be abandoned. The proposed abandonments will allow the applicant to construct an addition to the existing single-family residence and to also construct a new detached Accessory Dwelling Unit (ADU). The CDP for the ADU was approved by the Planning Commission on September 17, 2019.

The State of California Streets and Highways Code §8300 *et seq.*, Public Streets, Highways, and Service Easements Vacation Law contains procedures under which a local agency can vacate or abandon its Rights-of-Ways. The Code requires that if the proposed abandonment of a street, highway, or public service easement is within an area for which a General Plan is adopted by a local agency, the legislative body of the public entity shall consider the General Plan prior to vacating the street, highway, or public service easement.

Prepared By: he Dept Review: RL
City Manager Review: City Attorney Review: CFN

This abandonment was presented and recommended for approval at the October 1, 2019 Planning Commission Meeting. The Planning Commission determined that this abandonment is consistent with the General Plan. No conditions were recommended at this meeting and the Planning Commission Resolution No. 25-19 was adopted recommending this action.

The City Council at their November 12, 2019 meeting adopted Resolution No. 93-19, a resolution of intention to abandon (vacate) portions of the utility easements at 196 Panay Street, and set a public hearing for December 10, 2019.

This action was noticed pursuant to the California Streets and Highways Code, including posting of the site and advertisement twice in the Tribune. Additionally, while not required by law, all property owners of record within 500 feet of the subject site were notified of the public hearing and invited to voice any concerns.

CONCLUSION

The proposal can be found consistent with the California Streets and Highways Code and the City's General Plan. The proposal is exempt under the general rule pursuant to State CEQA guidelines, and the required findings can be made to recommend abandonment to the City Council for approval. Staff, therefore, recommends adoption of Resolution No. 103-19, a resolution abandoning (vacating) portions of the existing utility easement(s) at 196 Panay Street.

ATTACHMENTS

1. Resolution No. 103-19 with Exhibits A-D

RESOLUTION NO. 103-19

**RESOLUTION OF THE CITY COUNCIL OF
CITY OF MORRO BAY, CALIFORNIA
FINDING AND DETERMINING THAT PORTIONS OF PUBLIC SERVICES
EASEMENTS IS UNNECESSARY FOR PRESENT OR PROSPECTIVE PUBLIC
PURPOSES AND ORDERING THEIR ABANDONMENT**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, pursuant to California Streets and Highways Code §8300 et seq, ('the Code") an interested person, may request the abandonment (vacation) of a public services easement; and

WHEREAS, property owner at 196 Panay Street, Morro Bay, California APN's 065-106-046 and 065-106-147 described as follows:

That portion Block 9D of Atascadero Beach, in the City of Morro Bay, County of San Luis Obispo, State of California, according to the map filed in Book 2, page 4 of Maps, described in those certain Voluntary Mergers filed as Instrument No. 2007-073790 and 2007-073791, in the office of the County Recorder of said County;

has requested abandonment of portions of existing utility easement(s) located on their property in order to receive the full enjoyment of said property; and

WHEREAS, at its discretion the City Council may, pursuant to code, abandon all or part of a public service easement within the City; and

WHEREAS, the Planning Commission of the City of Morro Bay conducted a hearing on October 1, 2019 and found the proposed abandonment consistent with the City's General Plan conformance; and

WHEREAS, the Planning Commission recommended approval to City Council.

WHEREAS, the City Council adopted Resolution 93-19, the Resolution of Intention for the partial abandonment of utility easements and set the required public hearing date for December 10, 2019, and included the following direction for public notification:

1. The City Clerk caused the publication of a notice of the hearing on the proposed abandonment for at least two successive weeks prior to the hearing in a newspaper of general circulation for the City of Morro Bay.
2. The City Clerk caused the posting of notices of the proposed abandonment along the line of the easements proposed to be abandoned in accordance with the code.

3. All property owners of record within 500 feet of the subject site were notified by the City Clerk of the public hearing and invited to voice any concerns.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay as follows:

SECTION 1. In accordance with a public hearing duly held on December 10, 2019, pursuant to Section 8300 et seq. of the Code and a finding of General Plan consistency, this Council finds and determines approximately 1,408 square feet of public utility easement described and shown on Exhibits "A" thru "D", are not necessary for present or future public purposes.

SECTION 2. The Council hereby orders the abandonment of said public utility easements.

SECTION 3. The City Clerk shall cause a certified copy of this Resolution of Abandonment, duly attested under the seal of the City, to be recorded in the Office of the San Luis Obispo County Recorder.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10th day of December 2019 following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk's Office
CITY OF MORRO BAY
595 Harbor Street
Morro Bay, CA 93442

This document is recorded for the benefit of the City of Morro Bay, A Municipal Corporation, and is exempt from fee per Government Code Sections 27383.

RESOLUTION NO. 103-19

**RESOLUTION OF THE CITY COUNCIL OF CITY OF MORRO BAY,
CALIFORNIA FINDING AND DETERMINING THAT PORTIONS OF PUBLIC
SERVICES EASEMENTS IS UNNECESSARY FOR PRESENT OR
PROSPECTIVE PUBLIC PURPOSES AND ORDERING THEIR
ABANDONMENT**

EXHIBIT A
LEGAL DESCRIPTION
EASEMENT VACATION

That portion Block 9D of Atascadero Beach, in the City of Morro Bay, County of San Luis Obispo, State of California, according to the map filed in Book 2, page 4 of Maps, described in those certain Voluntary Mergers filed as Instrument No. 2007-073790 and 2007-073791, in the office of the County Recorder of said county, more particularly described as follows:

That portion of the easements for installation and maintenance of utilities and drainage facilities reserved over the rear five feet of each lot in Block 9D according to the "Declaration of Protective Covenants Affecting Portions of Atascadero Beach, County of San Luis Obispo, State of California, made by Morro Beach Company" recorded January 16, 1953 in Volume 693, page 403 of Official records of said county.

Excepting therefrom that portion of said easement lying southwesterly of the northeasterly nineteen (19) feet of Lots 12 and 21 of said Block 9D.

The above described property is shown graphically on Exhibit "B" attached hereto and incorporated herein.

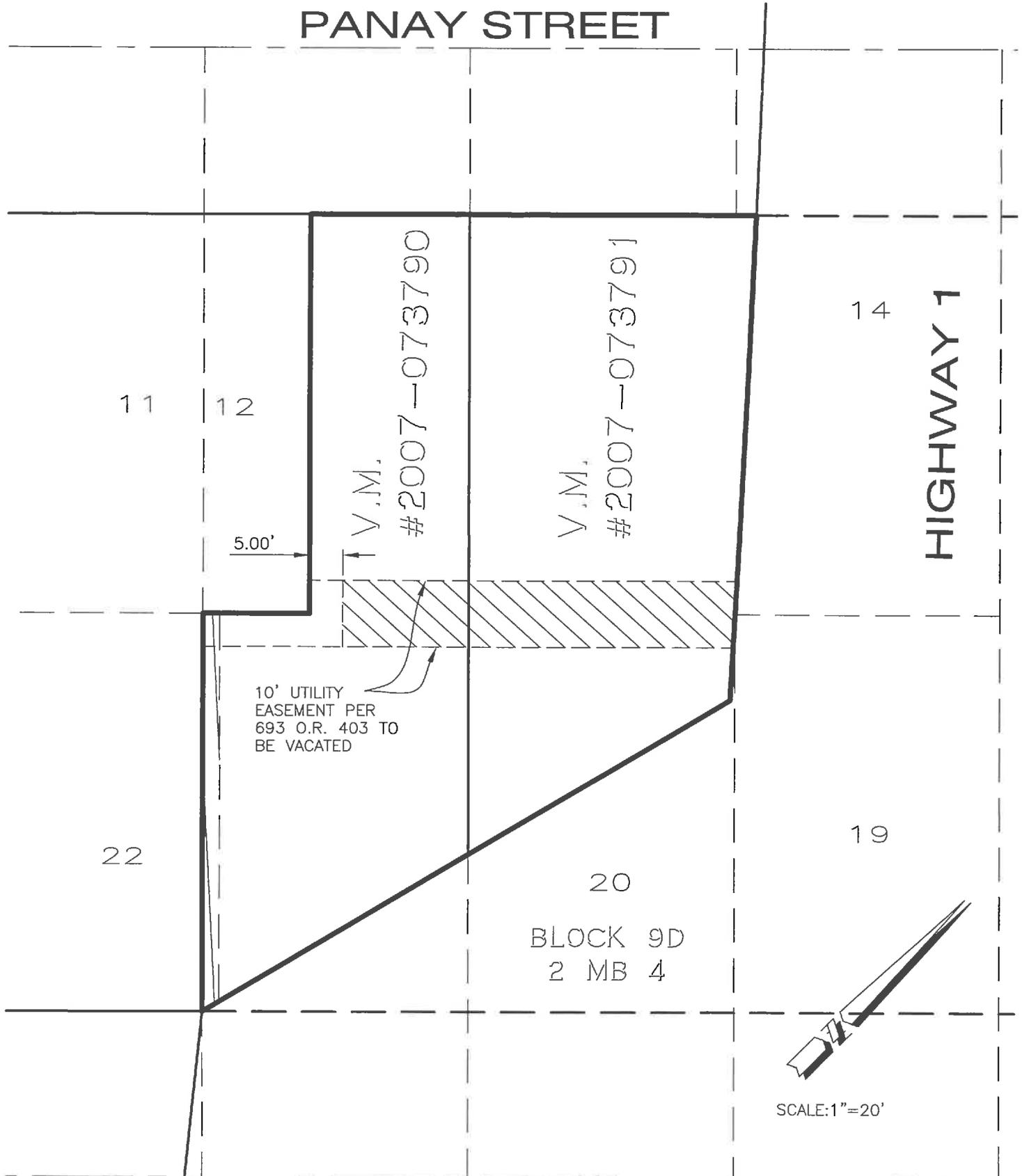
* * *

 11-21-2019

Michael B. Stanton, PLS 5702 Date



EXHIBIT "B" EASEMENT VACATION PANAY STREET



ORCAS STREET



MICHAEL B. STANTON, PLS 5702
 3559 SOUTH HIGHERA STREET
 SAN LUIS OBISPO, CA 93401
 805-594-1960

LEGEND
 = AREA OF EASEMENT VACATION

EXHIBIT C
LEGAL DESCRIPTION
EASEMENT VACATION

That portion Block 9D of Atascadero Beach, in the City of Morro Bay, County of San Luis Obispo, State of California, according to the map filed in Book 2, page 4 of Maps, described in those certain Voluntary Mergers filed as Instrument No. 2007-073790 and 2007-073791, in the office of the County Recorder of said county, more particularly described as follows:

That portion of the easements for construction, installation, maintenance and repair of sewers, manholes, water pipes, hydrants, gas pipes, electroliers, electric pole and conduit lines, and work incidental or appurtenant thereto and of work incidental to other public utilities dedicated over the two and one-half feet in each side of the side and rear lot lines for each lot in Block 9D according to the Dedication of Streets, Highways and Rights of Way recorded May 2, 192 in Volume 029, page 463 of Official records of said county.

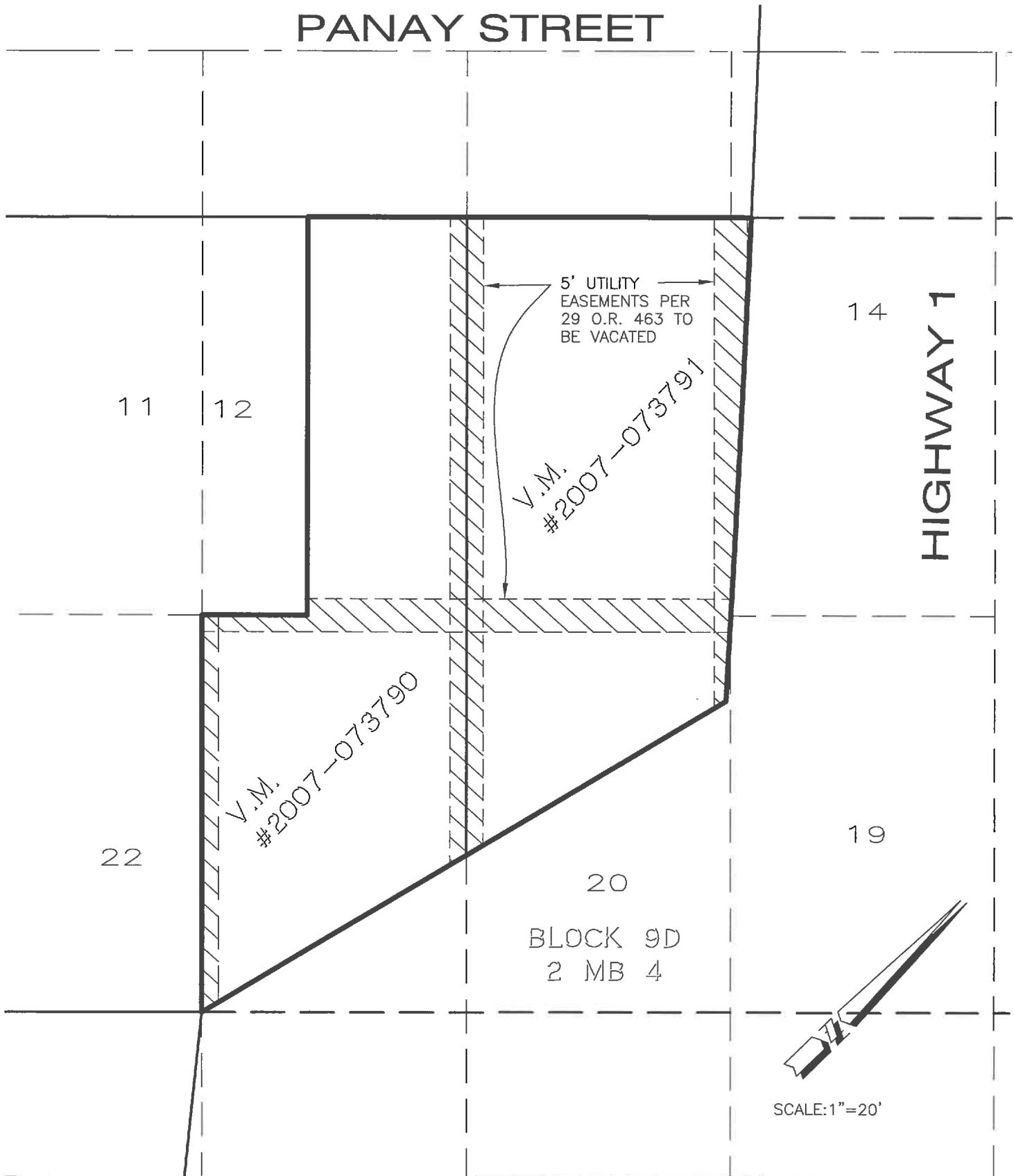
The above described property is shown graphically on Exhibit "D" attached hereto and incorporated herein.

* * *


Michael B. Stanton, PLS 5702 Date 11-21-2019



EXHIBIT "D" EASEMENT VACATION PANAY STREET



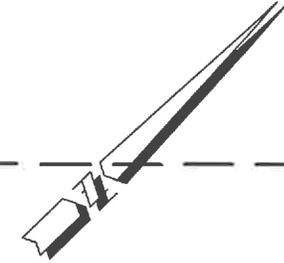
5' UTILITY
EASEMENTS PER
29 O.R. 463 TO
BE VACATED

V.M.
#2007-073791

V.M.
#2007-073790

HIGHWAY 1

BLOCK 9D
2 MB 4



SCALE: 1"=20'

ORCAS STREET



MICHAEL B. STANTON, PLS 5702
3559 SOUTH HIGUERA STREET
SAN LUIS OBISPO, CA 93401
805-594-1960

LEGEND
 = AREA OF EASEMENT VACATION

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AGENDA NO: C-1

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: November 26, 2019

FROM: Scott Collins, City Manager
Dana Swanson, City Clerk

SUBJECT: Discussion and Adoption of Resolutions Approving City Council Policies & Procedures and Advisory Bodies Handbook and By-Laws, Consideration of Vacation Rental Representation on the Tourism Business Improvement District (“TBID”) Advisory Board, and Discussion / Direction regarding Special Purpose Advisory Bodies

RECOMMENDATION

Staff recommends the City Council:

1. Discuss and adopt Resolution No. 104-19 approving the Council Policies & Procedures, including proposed amendments; and
2. Discuss and adopt Resolution No. 105-19 approving the Advisory Bodies Handbook and By-laws, including changes to qualifications for the TBID Advisory Board to include representation by owners/managers of permitted vacation rental properties.
3. Review mission, purpose and duration of existing Special Advisory Bodies

ALTERNATIVES

1. The Council may direct staff to bring back additional changes for consideration and adoption at a future meeting, or
2. The Council may choose not to pursue review of these policies at this time.

FISCAL IMPACT

There is no fiscal impact associated with this action.

BACKGROUND/DISCUSSION

On February 13, 2019, the City Council declared a future agenda item to discuss Citizens Oversight/Finance Advisory Committee Chair Spagnola’s suggestions made during public comment at the January 8, 2019 Regular Meeting to:

- Reiterate during the selection process the time commitments for the various boards and clearly identify the term of service for each appointment; and
- When there are not a sufficient number of qualified applicants, consider leaving those positions open; alternatively, when there is an abundance of qualified candidates, consider appointing alternates for a short period of time (3-6 months) to backfill unanticipated vacancies, if needed, and avoid the need for a follow-up recruitment.

At subsequent meetings, the City Council directed staff to expand the future item to include the following:

Prepared By: DS

City Manager Review: _____

City Attorney Review: _____

- a broad look at advisory body roles and provide clarifying language, as appropriate.
- consideration of a policy that allowed Council Members to submit letters of support on legislative items of interest.

On August 27, 2019, the Council considered the proposed policy changes as noted above and appointed Mayor Headding and Council Member McPherson to a subcommittee to review the items noted during that discussion as well as other inconsistencies identified during their review. The Council subcommittee recommendations include the following and are provided as redline edits in Attachments 1 and 2 for Council review, discussion and adoption.

Council Policies & Procedures

1. Section 1.1.2 (page 13) – language added to guard against adding future agenda items that are not part of the City Council approved two-year City Goal’s and Action Item plan.
2. Section 1.3.7.2.1 (page 20) – clarifies those wishing to speak during public comment may decline to provide their name if so desired.
3. Section 2.1 (page 29) – directs the Citizens Finance Advisory Committee to review Council compensation every four years, beginning in 2020, to provide the Council a recommendation on whether any changes should be made to that compensation.
4. Section 3.1.5 (page 35) – clarifies existing language regarding the Mayor’s power and duties related to written communications supporting League of California Cities and other agency requests for letters of support on policy issues previously agreed on by the Council.
5. Section 3.10 (page 38) – language added to limit official communications by the Council as a body in support or opposition to issues impacting the city specifically or local governments generally.
6. Section 6.3.2.2 (paged 52) – revised to state the Council will meet with each of its advisory bodies or the chair of each advisory body as determined necessary.
7. Section 6.6.3 (pages 54-55) – Advisory Body recruitment process revised to incorporate recommendations noted above.

Advisory Bodies Handbook and By-Laws

1. Advisory Body Application/Selection Process (page 5) – revised for consistency with Council Policies & Procedures Section 6.6.3.
2. Advisory Body Work Plans (page 9) – revised for consistency with Council Policies & Procedures Section 1.1.2.
3. Advisory Body Sub-Committees (page 9) – language added stating staff should be consulted before considering the creation of an advisory body sub-committee to determine the impact on staff time.
4. Advisory Body/Staff Relationship (page 10) – revised to state advisory body member requests should be channeled through the chairperson, be specific and limited in scope so staff can respond without altering other priorities and with minimal delay to other assignments and that questions regarding agendized items should be made in advance of the meeting.
5. Advisory Body/City Council Relationship (page 10) – language added to establish formal process for advisory body recommendations to the City Council.
6. Meeting Absences (page 14) – language modified so that requests for approved absences can be approved at a regular meeting of the advisory body and the City Council shall be notified when a member is determined to have not met the attendance requirements of the advisory body. Harbor Advisory Board By-laws Purpose & Authority (page 21) – add item E. “Provide a channel of communication from the individuals, businesses, and groups who live or have businesses on the harbor to the City Council.”
7. Tourism Business Improvement District (“TBID”) Advisory Board By-Laws (page 33) revised to include short-term vacation rentals.

8. Planning Commission By-Laws (page 37) – revised to state upon request of the City Council, a joint meeting with the Planning Commission and the City Council may be held to discuss matters requiring joint deliberation.
9. Citizens Oversight Committee acting in the capacity of a Citizens Finance Advisory Committee Purpose and Authority (page 41) – various edits clarifying the authority and duties of the committee.
10. Absence from Meetings language for all advisory bodies revised to clarify absences are counted on calendar year rather than a 12-month rolling basis.
11. Procedures for all advisory bodies revised to state that in instances where there is no business coming before the advisory body in a given month, the Chair and assigned staff person may agree to cancel a regular meeting. Additionally, questions regarding agenda items should be made in advance of the meeting.

Vacation Rental representative on TBID Advisory Board

In addition to the above, at the November 12, 2019 Regular Meeting, the Council by consensus asked staff to bring back information on how to incorporate the voice of vacation rental (VRs) owners into the TBID Board, as VRs are being brought in to the TBID in early 2020. The Board currently consists of five members from the lodging industry (3 at-large members, one member representing hotels with 22 or less rooms and one member representing 50 or less rooms), and two community “at large” members, who must be residents and registered voters of the City during the term of the appointment. The current member and appointed terms are as follows:

	<u>Appointed</u>	<u>Expires</u>	
Charles Yates	02-01-16	01-31-20	Hotelier (Member-at-Large)
Steve Allen	03-14-17	01-31-21	Hotelier (Member-at-Large)
Chris KostECKA	06-13-18	01-31-20	22 or less rooms
Isaac Su	01-24-19	01-31-21	50 or less rooms
Amish Patel	02-01-19	01-31-23	Hotelier (Member-at-Large)
Joan Solu	02-01-19	01-31-23	Member-at-large
Nancy Dickenson	02-01-19	01-31-23	Member-at-large

The Council subcommittee recommends the Council consider the temporary appointment of an 8th member representing a permitted vacation rental property (either owner or property manager), until January 31, 2023 or when a community member-at-large seat becomes available, whichever occurs first. At that time, one community member at-large seat would become the VRs representative and there would only be one community member at-large seat.

Special Purpose Advisory Bodies

The City currently has two limited term, special purpose advisory bodies -- the General Plan Advisory Committee (“GPAC”) and the Water Reclamation Facility Citizens Advisory Committee (“WRFAC”).

The GPAC was formed for the purpose of providing input and guidance throughout the General Plan/Local Coastal Plan (GP/LCP) update process to ensure the interests and values of all segments of the community were well represented. The work of the GPAC was completed in 2018 and their last meeting was held July 19, 2018. Future action related to the GP/LCP will be taken up by the Planning Commission and City Council. The Council subcommittee recommends the Council formally thank the GPAC members for their excellent work and terminate the committee.

The Water Reclamation Facility (WRF) technical review committee (currently known as the

WRFAC) was formed in 2014 (see 2014 Recruitment Notice and Resolutions 34-14 and 53-14 provided as Attachments 4 and 5). The committee was tasked then with advising the community and Council on WRF issues such as location, treatment technology and reclamation opportunities. On January 8, 2019, the Council revised the Citizens Finance Advisory Committee (CFAC) roles and responsibilities to include review of the financial aspects of the WRF program (see Attachment 5). The Council subcommittee recommends Council consider establishing an end date for WRFAC due to the fact that a significant amount of the original Council-directed work has been completed. The remaining duties and responsibilities could be accomplished by moving these responsibilities to the PWAB. Additionally, there are two PWAB vacancies which could be filled by WRFAC members for continuity purposes.

Advisory Body Meeting Frequency

Along with reviewing the proposed modifications by the ad-hoc committee (as outlined above), staff recommends the Council consider and discuss the appropriate meeting frequency of the advisory bodies based on the associated workload. On average, City staff spend a combined 20-30+ hours per meeting (conferring with advisory body chair, preparing the agenda and reports/materials, posting the agenda and reports, participating in the meetings, preparing meeting minutes and performing follow-up actions related to advisory body recommendations). This is a good opportunity to consider the appropriate number of meetings for each advisory body to perform their various roles and responsibilities and complete work plans. Also a factor to consider is whether City staff time and resources are more appropriately directed towards many of the other projects they have been tasked with by City Council as well as regular duties.

Regular meetings of the City Council and standing advisory boards are as follows:

- City Council – 2nd and 4th Tuesday of the month beginning at 5:30pm, except for scheduled breaks the 4th Tuesday of July, November and December.
- Planning Commission – 1st and 3rd Tuesday of the month beginning at 6:00pm with occasional cancellations coordinated in advance based Commissioner vacation plans and / or lack of business items.
- Citizens Oversight/Finance Advisory Committee (“CFAC”) – 3rd Tuesday of the month beginning at 3:30pm. **Note: The Committee formally requested meeting times be changed to 3:00pm**
- Harbor Advisory Board – 1st Thursday of each month beginning at 5:30, except for July and January meetings which have historically been canceled to avoid holiday conflicts with 4th of July and New Years’ Day. **Note: The Board voted to change the start time from 6:00 to 5:30 beginning in April 2019, consistent with Council meeting start times.**
- TBID Advisory Board – 3rd Thursday of the month with occasional cancellations due to lack of business items.
- Public Works Advisory Board – 3rd Wednesday of each month beginning at 5:30pm with occasional cancellations during holidays and / or lack of business items.
- Recreation & Parks Commission – 3rd Thursday of every other month on odd numbered months beginning at 6:00pm.

One consideration might be to not hold regular meetings in the latter part of July, November and December, consistent with the Council schedule; however, the work plan schedules and holiday conflicts vary for each. As an example, the CFAC reviews the Comprehensive Annual Financial Report (CAFR) each December and that work cannot be delayed or moved to a different month. If the Council agrees it is appropriate to reduce the number of regular meetings, staff recommends the following approach which takes into consideration work plan requirements and holiday conflicts:

- Planning Commission – leave as is.

- CFAC – Schedule breaks in March, July and August
- Harbor Advisory Board – Schedule breaks in January, July and December
- TBID Advisory Board – Schedule breaks in July, November and December
- PWAB – Schedule breaks in July, November and December
- Recreation & Parks Commission – leave as is.

CONCLUSION

Staff recommends the City Council discuss the proposed amendments to the City Council and Advisory Body policies and adopt Resolutions No. 104-19 and 105-19 amending and re-adopting those policies.

ATTACHMENTS

1. Resolution No. 104-19 amending and readopting the City Council Policies & Procedures with proposed redline amendments
2. Resolution No. 105-19 amending and readopting the Advisory Bodies Handbook and By-Laws with proposed redline amendments
3. Resolutions No. 39-15 and 64-17 regarding the GPAC
4. WRFCAC Recruitment Notice
5. Resolutions No. 34-14 and 53-14 regarding the WRFCAC
6. January 8, 2019 City Council Meeting Minutes (Item C-3)

RESOLUTION NO. 104-19

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE CITY COUNCIL
POLICIES AND PROCEDURES MANUAL**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the Council Policies and Procedures Manual for the City of Morro Bay (the "Manual") is a combination of City Council actions, policies, references, and information regarding the City Council; and

WHEREAS, to ensure all Councilmembers are familiar with and understand the City of Morro Bay's philosophies and policies regarding serving on the City Council, on July 23, 2001, the City Council adopted Resolution 47-01 approving an early version of the Manual; and

WHEREAS, the Manual has been amended several times throughout the years; and

WHEREAS, at its meeting of August 27, 2019, the City Council directed a limited review of Manual and established a subcommittee consisting of Mayor Headding and Council Member McPherson to lead that review.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, that the City Council Policies and Procedures Manual is readopted, as attached hereto as Exhibit A.

PASSED AND ADOPTED by the City Council, City of Morro Bay at a regular meeting thereof held on the 10th day of December 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

City of Morro Bay

Council Policies and Procedures

SCOPE

This manual establishes the procedures for the conduct of all meetings of the City Council of the City of Morro Bay. The purpose of this manual is to provide City Council's meeting will be consistent with the Brown Act (Government Code Sections 54950 *et seq.*), and to establish procedures, which will be convenient for the public, and contribute to the orderly conduct of the City's business. The procedures herein are in addition to, and not in place of, Morro Bay Municipal Code (MBMC) 2.08 and any other applicable ordinances and statutes. In the event of conflict between this manual and applicable ordinances or statutes, the latter shall govern.

**RESOLUTION NO: 46-02
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
AUGUST 12, 2002 APPROVING AND ADOPTING
THE COUNCIL POLICIES AND PROCEDURES MANUAL
AND RESCINDING RESOLUTION NO. 47-01**

**RESOLUTION NO: 54-03
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
NOVEMBER 13, 2003 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
SECTIONS 1.2.2 AND 1.3.7.1.1**

**RESOLUTION NO: 37-04
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
JUNE 24, 2004 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
SECTION 1.3.9.3.5**

**RESOLUTION NO: 42-05
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
NOVEMBER 14, 2005 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
SECTION 4.5**

**RESOLUTION NO: 23-06
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
MAY 22, 2006 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
REGARDING CANCELLATION OF MEETINGS**

**RESOLUTION NO. 24-07
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
MAY 14, 2007 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
REGARDING EX PARTE COMMUNICATIONS**

**RESOLUTION NO. 50-07
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
OCTOBER 8, 2007 ADDING TO AND AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
REGARDING USE OF CITY LETTERHEAD AND
USE OF SPEAKER SLIPS AT CITY COUNCIL MEETINGS**

**RESOLUTION NO. 76-08
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
NOVEMBER 10, 2008 AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
REGARDING THE ORDER OF BUSINESS ON THE
CITY COUNCIL AGENDA, APPOINTMENT OF VICE MAYOR
AND FILLING COUNCIL VACANCIES**

**RESOLUTION NO. 11-10
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
FEBRUARY 22, 2010 ADDING TO AND AMENDING COUNCIL
POLICIES AND PROCEDURES MANUAL
REGARDING EXPENSE REIMBURSEMENT POLICY FOR
ELECTED AND APPOINTED OFFICIALS, CITY LETTERHEAD
AND THE COUNCIL COMPENSATION COMMITTEE**

**RESOLUTION NO. 28-10
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON
JUNE 14, 2010 AMENDING COUNCIL POLICIES AND PROCEDURES
MANUAL REGARDING SECTION 2.2, RETIREMENT,
MEDICAL, DENTAL, VISION, AND LIFE INSURANCE**

**RESOLUTION NO. 46-10
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON SEPTEMBER 27, 2010
AMENDING THE COUNCIL POLICIES AND PROCEDURES
MANUAL IN REGARD TO CALLING CLOSED SESSION MEETINGS;
IN REGARD TO ALL REAL PROPERTY CONTRACTS GOING TO CLOSED
SESSION PRIOR TO OPEN SESSION; IN REGARD TO COUNCIL LIAISONS
TO ADVISORY BOARDS; AND, IN REGARD TO CITY COUNCIL INPUT ON
HIRING AND EVALUATION OF DEPARTMENT HEADS**

**RESOLUTION NO. 11-11
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON JANUARY 25, 2011
ADDING TO AND AMENDING THE COUNCIL POLICIES
AND PROCEDURES MANUAL REGARDING
REGULAR MEETING TIMES AND PLACING ITEMS ON THE AGENDA**

**RESOLUTION 64-12
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON DECEMBER 11, 2012
AMENDING THE COUNCIL POLICIES AND PROCEDURES MANUAL
REGARDING ELECTRONIC MAIL (EMAIL), THE PUBLIC RECORDS ACT
AND THE BROWN ACT**

**RESOLUTION 19-13
ADOPTED BY THE CITY COUNCIL OF
THE CITY OF MORRO BAY ON MARCH 12, 2013
AMENDING THE COUNCIL POLICIES AND PROCEDURES MANUAL
REGARDING STUDY SESSIONS, PLACING AN ITEM ON THE AGENDA,
RECONSIDERATION, ORDER OF BUSINESS AND PUBLIC COMMENT**

**RESOLUTION NO. 53-13
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING SECTION 2.2 OF THE CITY COUNCIL POLICIES AND
PROCEDURES MANUAL REGARDING RETIREMENT, MEDICAL, DENTAL,
VISION, AND LIFE INSURANCE UNSPENT DOLLARS**

**RESOLUTION NO. 36-14
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING VARIOUS SECTIONS OF THE CITY COUNCIL POLICIES AND
PROCEDURES MANUAL REGARDING MAYOR PRO TEM**

**RESOLUTION NO. 58-15
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING VARIOUS SECTIONS OF THE CITY COUNCIL POLICIES AND
PROCEDURES MANUAL**

**RESOLUTION NO. 74-15
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING COUNCIL POLICIES AND PROCEDURES MANUAL
REGARDING MEETING GUIDELINES & PROCEDURES**

**RESOLUTION NO. 30-16
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING COUNCIL POLICIES AND PROCEDURES MANUAL
REGARDING MEETING GUIDELINES & PROCEDURES**

**RESOLUTION NO. 01-17
RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE COUNCIL POLICIES AND PROCEDURES MANUAL
REGARDING ADVISORY BOARD MEMBER QUALIFICATIONS**

**RESOLUTION NO. 45-17
RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE COUNCIL POLICIES AND PROCEDURES
SECTION 1.2.7 REGARDING ORDER OF BUSINESS**

**RESOLUTION 26-18
RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING AND RE-ADOPTING THE COUNCIL
POLICIES AND PROCEDURES**

**RESOLUTION NO. 10-19
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE CITY COUNCIL
POLICIES AND PROCEDURES MANUAL
SO AS TO MODIFY REGULAR COUNCIL MEETING TIMES**

**RESOLUTION NO. 39-19
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE CITY COUNCIL
POLICIES AND PROCEDURES MANUAL
SO AS TO MODIFY REGULAR COUNCIL MEETING TIMES**

RESOLUTION NO. 07-19

RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
PLEDGING TO FOLLOW BEST PRACTICES OF CIVILITY AND CIVIL DISCOURSE
IN ALL OF ITS MEETINGS

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, on November 10, 2015, the City Council adopted Resolution No. 70-15 pledging to follow best practices of civility and civil discourse in all of its meetings, principles developed by the League of Women Voters; and

WHEREAS, on May 8, 2018, the City Council adopted Resolution No. 27-18 restating its commitment to the principles of civility and civil discourse in conducting business with appointed and elected officials, staff and citizens; and

WHEREAS, a healthy democracy respects the people's right to debate issues with passion; and not only tolerates disagreement but welcomes it; and

WHEREAS, honest debate helps refine ideas and create policies that benefit the greater good; and

WHEREAS, we, the Mayor, City Council Members, Commissioners, Appointees, and Staff of the City of Morro Bay, in order to ensure **civility** and **civil discourse** in all of our meetings, reaffirm and pledge our commitment to the following **best practices of civility** and **civil discourse**; and

WHEREAS, we pledge our commitment to **listen first**, making an honest effort to understand views and reasoning of others by listening to understand, not listening to find fault, allowing thoughtful discussion to lead to the best possible outcomes; and

WHEREAS, we pledge our commitment to **respect different opinions**, by inviting and considering different perspectives, allowing space for ideas to be expressed, opposed and clarified in a constructive manner; and

WHEREAS, we pledge our commitment to **show courtesy**, by treating all colleagues, staff and members of the public in a professional and courteous manner whether in person, online, or in written communication, especially when we disagree; and

WHEREAS, we pledge our commitment to **avoid rhetoric and refrain from making slanderous, profane or personal remarks intended to humiliate, malign, or question the motivation** of those whose opinions are different from ours in all our meetings; and

WHEREAS, we pledge our commitment to **speak truthfully** without accusation, and avoid distortion in all our meetings; and

WHEREAS, we pledge our commitment to **debate the policy not the person**, focusing on the issue, and not personalizing the debate or using other tactics that divert attention from the issue; and

WHEREAS, we pledge our commitment **against violence** and **incivility** in all their forms whenever and wherever they occur in all our meetings; and

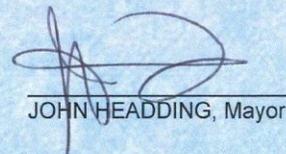
WHEREAS, we commit ourselves to build a civil political community in which each person is respected and spirited public and political debate is aimed at the betterment of the City of Morro Bay and its people and not the disparagement of those with whom we disagree.

NOW, THEREFORE, BE IT RESOLVED, by the City Council, City of Morro Bay, California, that the Mayor, City Council Members, Commissioners, Appointees, and Staff of the City of Morro Bay shall promote the use of and adherence to the principles of **civility** and **civil discourse** in conducting business with appointed and elected officials, staff, and citizens.

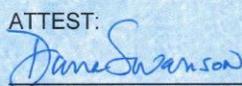
BE IT FURTHER RESOLVED, the City Council directs this resolution pledging best practices of civility and civil discourse be brought forward in January of each year for re-affirmation by the City Council.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 22nd day of January 2019 on the following vote:

AYES: Heading, Addis, Davis, McPherson
NOES: Heller
ABSENT: None



JOHN HEADING, Mayor

ATTEST:

DANA SWANSON, City Clerk

The above is to be readopted at the same time the policies are returned for adoption.

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**CHAPTER ONE
MEETING GUIDELINES & PROCEDURES**

1.1 MEETING SCHEDULE

1.1.1 MEETINGS OF COUNCIL

The Council shall provide by ordinance the time and place of holding meetings and the manner in which special meetings may be called. Public interest and convenience shall be primary considerations when decisions are made as to time, location and frequency.

Except as otherwise provided by law, all meetings of the Council shall be open to the public.

1.1.2 REGULAR MEETINGS

- 1.1.2.1 Regular meetings shall be held the second and fourth Tuesday of each month beginning at 5:30 p.m. In the event that a regular meeting of the Council shall fall on a legal holiday, that regular meeting shall be held at the same place and time on the next succeeding working day. A regular meeting can only be cancelled after polling the majority of the Council in favor of the cancellation.
- 1.1.2.2 Regular meetings shall be held in the Veterans Memorial Building, 209 Surf Street, in the City of Morro Bay.
- 1.1.2.3 Regular meetings shall be between the hours of 5:30 p.m. – 9:30 p.m. It shall be the policy of the City Council to complete meetings by 9:30 p.m., unless a majority of the Council elects to continue past the adjournment hour. If at the hour of 9:30 p.m. the City Council has not extended the time to adjourn the meeting or concluded its business, then the Council will review the balance of the agenda and determine whether to extend the meeting beyond the hour of 9:30 p.m., continue any remaining items, or adjourn the meeting to another date and time.

1.1.3 STUDY SESSIONS (Open to the public)

- 1.1.3.1 The purpose of these meetings shall be for informal discussions between staff, advisory bodies or consultants, the public, and the City Council regarding specific programs, projects or policies. Council may provide direction, but no formal action will be taken during a Study Session. Study Sessions may be conducted in a variety of formats, including Public Workshops.
- 1.1.3.2 Study Sessions will be held at a time and place within the City limits and convenient to Council and advantageous for public participation.

1.1.4 SPECIAL MEETINGS

- 1.1.4.1 Special meetings may be called by the Mayor or three City Council Members. Written notice of each special meeting must be given not less than twenty-four (24) hours before such meeting to each Member of the City Council not joining the call. Special meetings may be cancelled only by consent of a majority of the members of the Council not less than 24 hours before the date of the special meeting. Notice of such cancellation shall be given to all Council Members and written notice shall be posted for the public not less than 24 hours before the meeting.
- 1.1.4.2 Written notice must be given to the City Council and to the media twenty-four hours prior to each meeting, when requested.
- 1.1.4.3 A supplemental telephone call shall be made if necessary to notify each Council Member.
- 1.1.4.4 No business other than that announced shall be discussed.
- 1.1.4.5 Any special meeting held at a place other than the Veterans Memorial Building shall be open to the public. Such meetings shall be held within the City limits. Notice requirements of the Brown Act shall be complied with for any such meetings; regular minutes shall be taken by the City Clerk and shall be available for public inspection.

1.1.5 CLOSED SESSION MEETINGS (closed to the public)

- 1.1.5.1 Closed Session Meetings may be called by the majority of the Council and are regulated pursuant to the Brown Act. The most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the City or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind.
- 1.1.5.2 No Council Member, employee of the City, or anyone else present shall disclose to any person the content or substance of any discussion which takes place in a closed session, unless authorized by a four-fifths vote of the Council.

1.1.6 DESIGNATION AND USE OF COUNCIL CHAMBERS

- 1.1.5.1 The Veterans Memorial Building shall be designated as the City's Council Chambers.
- 1.1.5.2 When a question arises regarding permission for any group to use the Council Chambers, the City Manager shall have authority to make the final decision. The following rules are established as a guide:
 - a. Use of the Council Chamber for regular meetings by City commissions, committees, and other advisory bodies shall take precedence over any other group or agency. To the extent possible, special meetings will be scheduled around other regularly scheduled non-City uses. In the event of a conflict, the City will give priority to rescheduling or relocating any use displaced by a City-related use.
 - b. Council chambers is available for other use on a first-come-first-serve basis, after City, City-affiliated and other regular uses are scheduled.
 - c. With the approval of the City Manager, and within the provisions of existing video production agreements, other local governmental agencies may use the Council Chamber for the purpose of live or video cablecasting public hearings and/or public meetings during regular or non-business hours.

1.2 AGENDA

1.2.1 ESTABLISHING THE COUNCIL AGENDA

The purpose of the agenda is to provide a framework within which Council meetings can be conducted and to effectively implement the approved Council Goals, Financial Plan and Budget, and also work programs, objectives, and business of the City as established by the present or earlier City Councils. Agenda items also include recommendations to the City Council from advisory bodies, land use and zoning actions or appeals, bid and purchasing procedures, and mandates from other levels of government. Staff shall work within the policy context established by the Council and will not arbitrarily place matters on the agenda that are outside the scope of existing work programs of the City, except as approved by the Mayor or a majority of the Council, and to inform and advise the Council of matters necessary to the proper operation and well-being of the City.

- a. Tentative Council Meeting Agenda - Every effort will be made to provide it to the City Council and staff before the close of business on the second Friday prior to the Council meeting.
- b. The full agenda packet for regular meetings of the City Council and all City Advisory Boards will be published a minimum of 120 hours (or five calendar days) prior to the meeting. Agenda packets for special meetings will be published a minimum of 48 hours (or two calendar days) prior to the meeting.

The process for determining the format and order of the agenda is based primarily on the order of business adopted by the City Council (see Section 1.2.7). The process for establishing the order of specific business and public hearing items is a collaborative one determined largely by anticipated public attendance (those matters involving greater audience attendance are usually scheduled ahead of other items). The City Manager shall meet with department heads on a regular basis, individually and as a group to discuss issues and to review upcoming agenda items.

In addition, the City Manager shall review the agenda materials with the Mayor, or in the Mayor's absence, the Mayor Pro Tempore. The final agenda is set subject to the approval of the Mayor (or Mayor Pro Tempore), after consultation with the City Manager.

1.2.2 PLACING AN ITEM ON THE AGENDA (COUNCIL MEMBER)

Any Council Member may request an item be placed on a future agenda by submitting a request, orally or in writing, to consider the matter and by discussing the request during the "Declaration of Future Agenda Items" section of the regular agenda. If a majority of the Council approves including that matter on an upcoming agenda, then staff will prepare a staff report for the next available

agenda, as determined by the City Manager, unless otherwise directed by the Council.

If only one other Council Member supports hearing the item, then an item will be listed on the next available agenda, as determined by the City Manager, unless otherwise directed by the Council. The Council Member who made the request for the agenda item shall be responsible for providing the Council report and the Council will take no action on the substance of the matter at that review, unless there is adequate public notice and information is provided for the Council to make an informed decision. If no other Council Member supports hearing the item, then the item will not be placed on the agenda.

Pursuant to Section 1.2, the Mayor is responsible for establishing the Agenda and may place an item on the agenda without Council support. In such a situation, the Mayor, or Council Member who the Mayor is accommodating, shall be responsible for providing a Mayor or Council Report.

The Council has an approved strategic planning process to set the City's annual goals, objectives and action plans. In order to ensure that City staff has sufficient time and resources to accomplish these established priorities, adding future items to the workplan during the year is discouraged. Exceptions are warranted should unforeseen events occur that threaten the health, safety or financial wellbeing of the City and Council action is required. Should new items be recommended that are not part of the City Goal and Action Item plan nor meet the exception noted, the City Manager has the discretion to request that an action item be removed to allow sufficient time to address the added item.

1.2.3 PLACING AN ITEM ON THE AGENDA (ADVISORY BODIES)

Recommendations made by advisory bodies, as part of their normal scope of duties and responsibilities, shall be timely placed on the City Council agenda by staff, who shall comply with the City's approved Council Agenda Preparation Policy. In the event an advisory body desires to bring a matter of special consideration to the City Council (new ideas or concerns, for example), it may request an item be placed on a future agenda by submitting a written request to the Council approved by a majority of the advisory body members and signed by the Chair. During Declaration of Future Agenda Items, any member of the Council may ask for consideration of the request and upon a majority of Council, a staff report will be prepared and approved by the City Manager or his/her designee.

1.2.4 PLACING AN ITEM ON THE AGENDA (THE PUBLIC)

A member of the public may request an item be placed on a future agenda during the Public Comment period at the beginning of every Council meeting, or via other communication with Council Members. Any Member of the Council may ask for consideration of that request pursuant to those procedures set out in 1.2.2.

1.2.5 EMERGENCY ITEMS

Emergency items may be placed on the agenda only in accordance with the Brown Act. Generally, only those matters affecting public health or safety may be considered emergency in nature. A four-fifth's vote of Council is necessary to add an emergency item.

RECONSIDERATION

Reconsideration of issues previously acted upon is discouraged. However, in extraordinary situations, a request to reconsider an action taken by the City Council may be considered. The request must be presented by a Council Member who voted with the majority at the Council meeting at which the original vote was taken. The vote may be reconsidered during that meeting, but no later than the next Council meeting. Debate is limited to the question of whether there is a majority of the Council interested in reconsidering the matter. If a majority of the Council votes to reconsider an action, then the matter can be heard at that same meeting or placed on the next or future agenda, as directed by the Council. Notwithstanding the foregoing, as a governmental legislative body, the Council reserves the right to consider or reconsider any matter within its jurisdiction that a majority of the Council deems appropriate, particularly if new information becomes available or circumstances change.

1.2.7 ORDER OF BUSINESS shall be as follows:

- 1.2.7.1 Establish Quorum and Call to Order
- 1.2.7.2 Moment of Silence
- 1.2.7.3 Pledge of Allegiance
- 1.2.7.4 Recognition (Certificates of Appreciation or other forms of recognition for residents and staff)
- 1.2.7.5 Closed Session Report
- 1.2.7.6 Mayor and Council Members Reports, Announcements and Presentations*
- 1.2.7.7 City Manager Reports, Announcements and Presentations (City Manager, Director and Advisory Board Reports)
- 1.2.7.8 Presentations (Proclamations and Public Presentations)
- 1.2.7.9 Public Comment (generally for items not on the agenda)
- 1.2.7.10 Consent Agenda
- 1.2.7.11 Public Hearings
- 1.2.7.12 Business Items
- 1.2.7.13 Council Declaration of Future Agenda Items
- 1.2.7.14 Adjournment

*Intended for reporting back to the full Council and the public on items, issues or meetings associated with other Council duties, *e.g.*, assignments to other official bodies, attendance at League of California Cities meetings, etc.

1.2.8 NOTIFICATION AND ADVERTISING

The City will advertise all matters of significant neighborhood or community public interest that appear on a City Council or Planning Commission agenda where advertising is required by law. Said advertisements shall include location maps, project descriptions and posting of property, if required, written in plain English in order to fully inform all interested individuals. Similar information will appear on the City's website.

All advertising shall be accomplished in an economical manner. All affidavits of publication will be available to interested members of the public.

1.3 MEETING PROCEDURES

1.3.1 PRESIDING OFFICER

1.3.1.1 The Mayor is the Presiding Officer and acts as Chair at Council meetings.

1.3.1.2 In the absence or incapacity of the Mayor, the Mayor Pro Tempore will serve as Presiding Officer.

1.3.1.3 In the absence of both the Mayor and Mayor Pro Tempore, a majority of the quorum shall select one of the Council Members present to act as Chair for the meeting.

1.3.1.4 Seating arrangement of the Council:

The Mayor, with the approval of individual Council Members, shall establish seating arrangements for regular Council meetings.

1.3.1.5 Signing of City Documents:

The Mayor, unless unavailable, shall sign all ordinances, resolutions, contracts and other documents which have been adopted by the City Council and require an official signature, except where the City Manager, or other designee, has been authorized by Council to sign documents. In the event the Mayor is unavailable, the Mayor Pro Tempore's signature may be used.

1.3.2 QUORUM

A majority of the Council Members shall constitute a quorum for the transaction of business.

1.3.3 DISCUSSION RULES

1.3.3.1 Procedure Order

For discussion of items on the agenda, the following order is followed:

- a) Presentation of the Staff Report
- b) Council Member Questions
- c) Public Comments
- d) Council Member Discussion/Decision and Motion(s)

1.3.3.2 Obtaining the floor:

1.3.3.2.1 A City Council Member or staff shall first address the Presiding Officer and gain recognition.

1.3.3.2.2 Comments and questions should be limited to the issue before Council.

1.3.3.2.3 Cross-exchange between Council Members and public should be avoided.

1.3.3.3 Questions to Staff:

A Council Member shall, after recognition by the Presiding Officer, address questions to the designated staff member. Council Members are encouraged to provide questions to staff prior to meetings.

1.3.3.4 Interruptions:

1.3.3.4.1 Once recognized, a Council Member shall not be interrupted while speaking except to make a point of order or personal privilege.

1.3.3.4.2 If a Council Member is called to order while speaking, then the individual shall cease speaking until the question of order is determined.

1.3.3.4.3 Upon being recognized by the Mayor, members of staff shall hold the floor until completion of their remarks or until recognition is withdrawn by the Presiding Officer.

1.3.3.5 Limitation on Discussion:

No Council Member shall speak more than once on a particular subject until every other Council Member has had the

opportunity to speak. Council Members are encouraged to discuss items during the decision-making process.

1.3.3.6 Tabling Procedure:

The purpose of the Motion to Lay on the Table also known as a Motion to Table is to enable the City Council, by majority vote and without debate, to lay a pending question aside temporarily when something else of immediate urgency has arisen or when something else needs to be addressed before consideration of the pending question is resumed. The Motion shall not be used to cut off debate and shall only be used when it is necessary to suspend consideration of a main motion in order to deal with another matter that has come up unexpectedly and which must be dealt with before the pending motion can be properly addressed.

1.3.3.7 Right of Protest:

A Council Member is never required to state reasons for dissent.

1.3.3.8 Rules of Procedure:

The Council shall determine its own rules of procedure.

1.3.3.9 Council Minutes:

If a Council Member wishes a stated opinion to be entered in the minutes, then he/she should precede the statement with "for the record," or request the City Clerk to enter it into the record following the statement.

1.3.4 PARLIAMENTARY PROCEDURE

Parliamentary procedure consists of those rules in effect according to City Council policy (State law and Robert's Rules, to the extent applicable to a public legislative body). The following summarizes the most frequently used actions.

1.3.4.1 Council Members and staff shall:

1.3.4.1.1 Work earnestly to preserve appropriate order and decorum during all meetings.

1.3.4.1.2 Side conversations, disruptions, interruptions or delaying efforts are discouraged.

1.3.4.2 Persons demonstrating rude, boisterous, or profane behavior will be called to order by the Presiding Officer. If such

conduct continues, then the Presiding Officer may call a recess, request the removal of such person(s) from the Council Chamber, adjourn the meeting, or take such other appropriate action as permitted by the Brown Act.

1.3.4.3 Only the City Council, staff, Designated Representatives, and those authorized by the Presiding Officer shall be permitted to sit at the Council or staff tables.

1.3.4.4 Enforcement of order:

1.3.4.4.1 The Police Chief or his/her designee shall act as the Sergeant-at-Arms.

1.3.4.4.2 Any Council Member may request the Presiding Officer to enforce the rules of protocol. Upon motion and majority vote, the Presiding Officer shall be required to do so.

1.3.5 BEHAVIOR AND CIVIL DISCOURSE POLICY

The City encourages the willingness to speak up and to listen within a framework of respect and understanding. Toward that end, the Council has adopted Resolution No. 27-18, a Resolution of the City Council of the City of Morro Bay, California, Re-Pledging to Follow Best Practices of Civility and Civil Discourse in All of Its Meetings. Those principles were crafted by the League of Women Voters of San Luis Obispo County, and are memorialized on Page 7 of this document.

1.3.6 VOTING PROCEDURES

1.3.6.1 When present, all Council Members shall vote, unless precluded by a conflict of interest. If a Council Member, who is present at a meeting and not precluded from voting due to a conflict of interest, fails to vote, that failure will be construed as a vote on the prevailing side. If there is a tie vote, not counting the Council Member who failed to vote, then there is no prevailing side.

1.3.6.2 No ordinance, resolution or motion shall be passed or become effective without receiving the affirmative vote of at least three non-abstaining Council Members.

1.3.6.3 A conflict of interest shall be declared whenever appropriate and in compliance with State law and the Council Member will disclose the nature of the conflict of interest, step down and shall not make, participate in making, or influence the decision.

- 1.3.6.4 A vote may not be changed by a Council Member after the vote announcement by the Presiding Officer or City Clerk; provided, that with the consent of the City Council a correction of the vote may be made.
- 1.3.6.5 The City Clerk shall restate the motion prior to the vote or request the Presiding Officer to restate the motion, if required for Council or public clarification.
- 1.3.6.6 Voice voting is the preferred method for recording Council votes.
- 1.3.6.7 A roll call vote may be taken at the discretion of the Presiding Officer. The City Clerk will call the roll for the roll call vote in the following manner: 1) Maker of the motion; 2) Member who has seconded the motion; 3) Additional Council Members in alphabetical order by last name; and, 4) Mayor last. The City Clerk shall state for the record the name of any Council Member who is recused or has abstained.
- 1.3.6.8 General consent votes may be taken at the discretion of the Presiding Officer, if there are no negative votes or objections by Council Members.
- 1.3.6.9 Upon the request of any Council Member, the ayes and noes shall be taken and recorded on any vote.
- 1.3.6.10 The ayes and noes shall be taken upon the passage of all ordinances and resolutions and entered upon the journal of the proceedings of the Council.
- 1.3.6.11 Following the vote, the Presiding Officer shall announce whether the questions have been carried or defeated.
- 1.3.6.12 Tie votes: If a tie vote occurs, then the Council is required to continue the item by majority vote or make motions until an action receives three affirmative votes.
- 1.3.6.13 The Presiding Officer may publicly explain the effect of the vote for the audience or may direct a member of the staff to do so.

1.3.7 PUBLIC COMMENT

Members of the public may address the City Council in a variety of ways. Written comments on agenda items are encouraged. As a courtesy to the Council,

citizens are encouraged to present written comments at least one day prior to the meeting. Comments may be hand-written or e-mailed. This provides the Council with a greater opportunity to review and consider issues and/or concerns expressed in written communications prior to a meeting. Comments received before 12 Noon on the day of the meeting will be distributed to City Council Members at the meeting. Written material distributed at the meeting will be made a part of the public record. If the material is too voluminous for Council to review during the meeting or is new material not previously considered, then Council may at its discretion continue the item to a future meeting. The following are guidelines for providing public comments:

1.3.7.1 During Public Comment period, at the beginning of every meeting, members of the public may address the City Council on items that are not on the printed agenda. For Consent Items, Public Hearing Items, and Business Items, the Presiding Officer will invite comments from the public in support of, or in opposition to each specific Agenda Item following the staff report and any questions from Council to Staff. Those individuals desiring to speak may be asked to fill out a speaker's slip, but a speaker cannot be required to fill out a speaker's slip. They are located on the table at the entrance to the Council Chambers (Veterans Hall).

1.3.7.2 Individuals desiring to speak shall:

1.3.7.2.1 Address the Council from the podium after giving name and City of residence. Speakers may decline to provide their name if so desired. Speakers shall direct their comments to the Council, not the audience.

1.3.7.2.2 Limit comments to three minutes or to the interval specified by the Presiding Officer. To provide an opportunity for all to speak during a meeting, the maximum time permitted for each speaker to speak on a particular matter may be reduced by the Presiding Officer when a large number of speakers wish to address the Council on that matter. The Presiding Officer, with the majority of Council Members, may reopen the public comment period to hear additional public comment. Council Members may ask questions of anyone present without reopening the public comment period. Speakers may speak only once on a given issue and may not cede their time to another speaker.

- 1.3.7.2.3 Each person addressing the City Council shall do so in an orderly manner and the Council respectfully requests that speakers refrain from making repetitious, slanderous or irrelevant remarks, or engaging in any other disorderly conduct which disrupts, disturbs, or otherwise impedes the orderly conduct of the Council meeting. Any person who so disrupts the meeting may, at the discretion of the Presiding Officer or a majority of the City Council present, be subject to ejection from that meeting.
- 1.3.7.2.4 Persons addressing the Council shall address the Council as a whole and shall not engage in a dialogue with individual Council Members, City staff or members of the audience. No questions shall be asked of a Council Member or a member of City staff without first obtaining permission of the Presiding Officer. The Presiding Officer shall determine whether, or in what manner, an answer will be provided. Any person violating this rule while addressing the Council shall be called to order by the Presiding Officer.
- 1.3.7.3 Except as otherwise permitted by the Brown Act, action may not be taken on issues not listed on the agenda. Staff may be asked to follow-up on such items.
- 1.3.7.5 Council Members actions
 - 1.3.7.5.1 Council Members may question the person addressing the Council at the conclusion of the person's comments or upon expiration of the person's time to speak.
 - 1.3.7.5.2 Council Members shall not engage the person addressing the Council in a dialogue with the City Council or City staff but shall confine communication to a question and answer format conducted through the Presiding Officer.
 - 1.3.7.5.3 If a member of the audience has addressed the Council on matters which are not on the agenda, then Council Members shall refrain from extended discussion of the matter. If a Council Member so wishes, then the Council Member may seek to have the City Manager place the matter on the next agenda in accordance with this policy.

- 1.3.7.6 Upon violation of the rules of order and decorum established in Section 1.3.2 – 1.3.7 of this manual, the procedure to enforce the rule shall be as follows:
- 1.3.7.6.1 Warning: The Presiding Officer shall request a person who is violating the rules of decorum cease such conduct. If, after receiving a warning from the Presiding Officer, the person persists in disturbing the meeting, the Mayor shall order the person to leave the City Council meeting. If the person does not leave the meeting, then the Presiding Officer may order any law enforcement officer who is on duty at the City Council meeting as sergeant-at-arms to remove the person from the City Council chambers.
 - 1.3.7.6.2 Removal: Any law enforcement officer who is serving as sergeant-at-arms at the City Council meeting shall carry out the orders and instructions given by the Presiding Officer for the purpose of maintaining order and decorum. Upon instruction of the Presiding Officer, it shall be the duty of the sergeant-at-arms to remove from the City Council meeting any person who is disturbing the proceedings of the City Council.
 - 1.3.7.6.3 Resisting Removal: Any person who resists removal by the sergeant-at-arms may be charged with a violation of the rules of order and decorum, as well as any other applicable ordinance or law.
 - 1.3.7.6.4 Motion to Enforce: If the Presiding Officer fails to enforce the rules of order and decorum set forth in Section 1.3.2 – 1.3.7, then any Member of the City Council may move to require the Presiding Officer to do so, and an affirmative vote of a majority of the City Council shall require the Presiding Officer to do so. An affirmative vote of a majority of the Council may appeal to the entire Council the ruling of the Presiding Officer that a person be removed from the meeting, in which event the decision of the Council majority shall govern and conclusively determine such question. If the Presiding Officer fails to carry out the will of the majority of the City Council, then the majority may designate another Member of the City Council to act as the Presiding

Officer for the limited purpose of enforcing the rules of order and decorum established in Section 1.3.2 - 1.3.7.

- 1.3.7.6.5 Clearing the Room: If a meeting of the City Council is disturbed or disrupted in such a manner as to make infeasible or improbable the restoration of order, then the Presiding Officer or a majority of the City Council may exercise the authority granted in the California Government Code section 54957.9 by ordering the meeting room cleared and continuing in session in the manner authorized by Section 54957.9 of the Government Code.

1.3.8 CONSENT ITEMS

Consent Items are the first items on the agenda. Only items that are routine, relate to implementation of approved budget items or to City operations, or are items to be later set for public hearing are to be placed on the Consent Agenda. Items of significant neighborhood or community public interest should be heard as a Public Hearing or Business Item, and not placed on the Consent Agenda.

- 1.3.8.1 Minor Questions. A Council Member may ask questions on any item without it being pulled from the Consent Agenda. When a Council Member has a minor question for clarification concerning a Consent Item that will not involve extended discussion, the item may be pulled for clarification at the beginning of the meeting and the questions will be addressed along with the rest of the Consent Agenda. There should be no objections at this time. Council Members are encouraged to seek clarifications prior to the meeting (whenever possible).
- 1.3.8.2 No Vote. When a Council Member wishes to pull an item simply to register a dissenting vote, a request should be made the item be pulled for separate vote without discussion. Such items will also be handled at the beginning of the meeting along with the rest of the Consent Agenda.
- 1.3.8.3 Any item may be pulled by a Council Member for discussion. A member of the public may request the Council to pull an item for discussion during the initial public comment period, but the discretion to pull that item will remain with the Council.
- 1.3.8.4 Pulled items shall be heard at the close of the Consent Agenda, unless a majority of the Council chooses another time.

1.3.9 NOTICED PUBLIC HEARINGS

During the pendency of any Public Hearing that is a quasi-judicial proceeding, no Council Member or Planning Commissioner shall engage in an *ex parte* communication with any "Interested Party" who intends to influence the decision of the Council or Commission in a proceeding, unless the Council Member or Commissioner discloses the *ex parte* communication on the Council or Commission's record. "Interested Party" means any individual with an interest in the quasi-judicial proceeding that is greater than the general interest of the public as a whole. The term includes, but is not limited to, parties involved in the proceeding, parties that may be significantly affected by the decision, and nonprofit or public interest organizations and associations with a special interest in the matter regulated. A member of the public at large who expresses a casual or general opinion about a pending proceeding would not necessarily be an "Interested Party."

Matters, which are required to be heard in a noticed Public Hearing, shall be conducted in the following manner:

- 1.3.9.1 Time for Consideration: Matters noticed to be heard by the City Council shall commence in the order provided in the agenda. Public hearings are the first order of business following the Consent Calendar.
- 1.3.9.2 Continuance of Hearing: Any hearing being held or noticed or ordered to be held by the City Council may, by order or notice of continuance, be continued or re-continued to any subsequent meeting.
- 1.3.9.3 Conduct of Hearings: When a matter for Public Hearing comes before the City Council, the Presiding Officer may:
 - 1.3.9.3.1 Call for a report on noticing from the City Clerk.
 - 1.3.9.3.2 Call for a report on written communications received by the City pertaining to the item being heard.
 - 1.3.9.3.3 Request that staff present the staff report and any other relevant evidence. Presentation of the staff report prior to the formal opening of the Public Hearing shall not prevent its consideration as evidence. Any such evidence shall be made a part of the record of the Public Hearing.

The Presiding Officer shall then recognize the applicants, appellants and their representatives in the cause, who shall be

permitted to speak first during the public comment portion of the applicable matter for not more than 10 minutes, or the time allowed by the Presiding Officer, to present evidence related to the matter under consideration. The applicants, appellants and their representatives shall address the Council from the lectern after giving their names and the names of the applicants/appellants they are representing, if different.

The Presiding Officer shall then recognize members of the public. No person may speak without first being recognized by the Presiding Officer. City Council Members who wish to ask questions of the speakers or each other during the Public Hearing may do so. Council Members should be mindful the purpose of the Public Hearing is to obtain testimony, and not to debate the merits of the item under consideration. Council Members should avoid debate and expressions of personal opinion until after the close of the public testimony portion of the Public Hearing. The Presiding Officer shall conduct the hearing in such a manner as to afford due process to all affected persons. For Public Hearings, when 10 or more members of the public desire to speak, the Presiding Officer may request speaker slips to be completed and delivered to the Clerk before the item is considered. Comments shall then be allowed first by those submitting a slip and in the order received by the Presiding Officer. Comments from the public shall be limited to three minutes per speaker for Public Hearings, unless the City Council affirmatively decides otherwise. For Public Hearings that have the potential to be appealed to the California Coastal Commission, members of the public who desire to receive notice of any further proceedings shall write their name and address on the interested parties list at the back of the room.

The Presiding Officer shall then close the public testimony portion of the Public Hearing. After the public testimony portion of the Public Hearing is closed, no member of the public shall be permitted to address the Council or the staff, except at the discretion of the Presiding Officer or the majority of the Council. Council Members may still, however, ask questions of staff or members of the public. Upon conclusion of Council deliberations and immediately prior to a motion, the Presiding Officer shall formally close the public hearing, which can be accomplished by the Presiding Officer declaring the matter is being brought back to the Council for discussion or other manner to clearly indicate the hearing portion of the matter has concluded. Upon formal closing of the public

hearing, no additional public testimony shall be solicited or received without reopening the hearing.

- 1.3.9.4 Evidence. All persons interested in the matter being heard by the City Council shall be entitled to submit written evidence or remarks, as well as other graphic evidence. All such evidence presented shall be retained by the City Clerk or appropriate City department, as part of the official record of the proceeding. Prior to declaring the public hearing open, the Presiding Officer may establish a time limit for the entire public hearing and establish time limits for the presentation of each individual speaker.

1.3.10 BUSINESS ITEMS

Business Items follow Consent Items and Public Hearings (if any) on the agenda. Business Items can include new matters or matters continued from one or more earlier meetings. Opportunity for public comment as discussed in Section 1.3.7, above, will be provided for each Business Item.

1.4 MEETING COVERAGE

The purpose of cablecasting meetings of the Morro Bay City Council is to enhance the awareness and education of the general public regarding the actions and deliberations of the City Council.

- 1.4.1 Coverage of City Council meetings shall be gavel-to-gavel; whether presented to the public live or taped, Council coverage is not to be edited or subjected to editorial comment.
- 1.4.2 All City Council meetings shall be cablecast or taped for broadcast, except for meetings or portions of meetings which are closed to the public, or when the majority of the Council directs otherwise.
- 1.4.3 Cameras used for the gavel-to-gavel coverage shall be operated only by City employees, firms, or persons authorized by the City.
- 1.4.4 Cameras shall be operated so that they are primarily focused on the officially recognized speaker, and on any visually displayed information they may be showing.
- 1.4.5 “Reaction” shots will not be permitted.
- 1.4.6 The City Clerk’s minutes shall remain the official record of Council proceedings. Other recordings are for convenience and occasionally used when a verbatim transcript is required in legal proceedings.

Audio recordings have a 2-year retention and video recordings have a 10-year retention. Meeting minutes are permanent.

- 1.4.7 As soon as reasonably possible following each Council meeting, but not later than the second regular meeting after, the City Clerk shall include a copy of the minutes, thereof, as a Consent Item for the agenda of a regular Council meeting.

**CHAPTER TWO
COUNCIL SALARY, BENEFITS AND REIMBURSEMENTS**

Council salary, financial benefits and reimbursements are established by Council action and in conformance with State law, the MBMC, and duly adopted and effective resolutions. Below is a description of the same but may not include all that are applicable.

2.1 SALARIES FOR MAYOR AND COUNCIL MEMBERS

Compensation for services rendered by the Mayor and Council Member, in an official capacity, shall be provided in accordance with State law and the MBMC. The Citizens Finance Advisory Committee will be asked every ~~4~~8 years, starting with ~~2019~~2020, to provide the Council a recommendation on whether any changes should be made to that compensation.

2.2 RETIREMENT, MEDICAL, DENTAL, VISION, AND LIFE INSURANCE

The Mayor and Council Members are required to participate in P.A.R.S. retirement. The City shall pay a contribution to P.A.R.S. equal to 1% of salary. The City shall pay, in full, the cost of the Mayor's and Council Members' participation in lowest cost medical plan (self-only), dental, vision, and life insurance.

2.3 PROFESSIONAL DEVELOPMENT

The Mayor and each Council Member shall be reimbursed for normal and customary business expenses as follows:

**2.3.1 BUSINESS TRAVEL EXPENSE AND CONFERENCE
REGISTRATION**

The Mayor and each Council Member shall be reimbursed for normal and incidental expenses and for costs of professional development and educational conferences designed to improve understanding of and proficiency in municipal affairs. Such reimbursement shall be for out-of-county expenses only and shall be reimbursed in accordance with accepted City Travel Guidelines.

2.3.1.1 Authorized Expenses. City funds, equipment, supplies (including letter head), titles, and staff time must only be used for authorized City-business. Expenses incurred in connection with the following types of activities generally constitute authorized expenses, as long as the other requirements of this section are met:

- Communicating with representatives of regional, state and national government on City-adopted positions.
- Attending educational seminars designed to improve official's skill and information levels.
- Participating in regional, state and national organizations whose activities affect the City's interests.
- Recognizing service to the City (i.e. thanking a longtime employee with a retirement gift or celebration of nominal value and cost).
- Meetings such as those listed above for which a meeting stipend is expressly authorized under this section.

All other expenditures require prior approval by the City Council, including international and out-of-state travel.

2.3.1.2 Expenses Not Eligible for Reimbursement.

- The personal portion of any trip.
- Political or charitable contributions or events.
- Family expenses, including partner's expenses, when accompanying official on City-related business.
- Entertainment expenses, including theater, movies, sporting events (including gym, massage and/or golf related expenses) or other cultural events.
- Alcohol/personal bar expenses.
- Except as provided in 2.4.2 and .3, personal automobile expenses.
- Personal losses incurred while on City business

2.4 CITY BUSINESS AND MILEAGE REIMBURSEMENT

The Mayor and each Council Member shall be reimbursed as follows:

2.4.1 CITY BUSINESS

For costs incurred in connection with official City business, the Mayor and Council Members shall be reimbursed for in-county expenses, including meals, tickets, periodicals, dues, subscriptions, and similar miscellaneous expenses, if receipts for those expenses are provided.

2.4.2 MILEAGE

For official travel within the County of San Luis Obispo, reimbursement shall be made upon submittal of an official mileage expense form.

2.4.3 TRANSPORTATION

When attending conferences or meetings that are of such distances it is more economical to take commercial air fare, if an official drives his/her car to such meetings, then commercial air fare will be paid and not automobile mileage. Government and group rates must be used when available.

- 2.4.3.1 Airfares that are reasonable and economical shall be eligible for purposes of reimbursement.
- 2.4.3.2 Automobile mileage is reimbursed at IRS rates in effect at the time of travel. Those rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls which are also reimbursable.
- 2.4.3.3 Car Rental rates that are reasonable and economical shall be eligible for purposes of reimbursement.
- 2.4.3.4 Taxi and shuttle fares may be reimbursed, including a 15% gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

2.4.4 LODGING

Lodging expenses will be reimbursed or paid for when travel on official City-business reasonably requires an overnight stay. If such lodging is in connection with a conference, then lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking. Travelers must request government rates, when available. If the group rate is not available, then reimbursement at the IRS rate in effect at the time of travel shall apply.

2.4.5 MEALS

Actual expenses shall be reimbursed subject to the maximum per diem for the mean as set by the IRS rate in effect at the time of travel. (Cal. Gov't. Code 53232.2) and Publication 1542 at www.irs.gov). The City will not pay for alcohol/personal bar expenses.

2.4.6 MISCELLANEOUS EXPENSES

Officials will be reimbursed for actual telephone, fax, and parking expenses incurred for City-business. Telephone bills should identify which calls were made for City-business.

2.4.7 CASH ADVANCE POLICY

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Manager ten working days prior to the need for the advance with the following information:

1. The purpose of the expenditures.
2. The benefits of such expenditures to the residents of the City.
3. The anticipated amount of the expenditures(s) (for example, hotel rates, meal costs, and transportation expenses).
4. The dates of the expenditure.

Any unused advance must be returned to the City within five working days after the official's return, along with an expense report and receipts documenting how the advance was used. In the event the City Manager is uncertain as to whether a request complies with this policy, the official must seek resolution from the City Council.

2.4.8 CREDIT CARD USE POLICY

For travel expenses the preference is for Council Members either to (i) submit a reimbursement request upon return (with the proper forms completed and receipts attached) or (ii) request a payment advance for travel, whenever it is not possible to have expenditures charged directly to the City or utilize the City Clerk/City Manager's credit cards for travel and accommodation arrangements. If an advance is made, then receipts are required for all expenditures, as is return of the unspent portions of the advance. It is understood there may be circumstances where a Council Member cannot prepay for expenditures. In such cases, with approval through the City Manager, a credit card will be ordered in the Council Member's name. The credit card may only be used for authorized expenditures during the authorized travel.

2.4.9 EXPENSE REPORT CONTENT AND SUBMISSION DEADLINES

All cash advance expenditures and expense reimbursement requests must be submitted on an expense report form provided by the City. That form shall include the following advisory:

“All expenses reported on this form must comply with the City’s policies relating to expenses and use of public resources. The information submitted on this form is a public record. Penalties for misusing public resources and violating the City’s policies include loss of reimbursement privileges, restitution, civil and criminal penalties as well as additional income tax liability. “

Expense reports must document that the expense in question met the requirements of this Policy. Officials must submit their expense reports within 10 working days after an expense has been incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation.

Inability to provide such documentation within 10 calendar days after travel may result in the expense being borne by the official.

In the event the official does not attend the trip and non-refundable expenses have been incurred for registration, lodging or travel, the non-attending official shall submit a written explanation of the reasons for non-attendance to the City Manager. The City Manager shall determine if the public funds advanced must be reimbursed to the City. Any decision of the City Manager may be appealed to the City Council.

2.4.10 REPORTS TO CITY COUNCIL

At the next regular City Council meeting, the Mayor and City Council shall briefly report on the meetings attended by that person at City-expense. If multiple officials attended, then a joint report may be made.

2.4.11 COMPLIANCE WITH LAWS; VIOLATION

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All City expenditures are public records subject to disclosure under the Public Reports Act and other applicable laws. Use of public resources or falsifying expense reports is a violation of this Policy and may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for restitution to the City, 3) the City’s reporting the expenses as income to the elected official to state and federal tax authorities, 4) civil penalties of up to \$1,000 per day and three times the value of the resources used, and 5) prosecution for misuse of public resources.

2.5 GENERAL PROCEDURES AND LIMITATIONS

Appropriate budgetary practices and accounting controls shall be established to ensure expenditures and reimbursements are in compliance with approved budget allocations. The Mayor and each Council Member is expected to plan business activities so as to stay within budget. When exceptional circumstances require

additional amounts be allocated to accounts, formal Council action shall be required.

2.5.1 ACCOUNTING

An account shall be established in the name of the Mayor and each Council Member with all expenditures charged to the individuals. Receipts shall be submitted within the fiscal year.

2.5.2 REIMBURSEMENT LIMITATION

The City's adopted Travel Guidelines shall govern all expenditures for non-local professional development and conferences. Those guidelines include all non-local official meals, tuition or fees, transportation to meeting sites, materials and telephone usage.

2.5.3 SPECIAL EXPENSES

For occasions when the Mayor or a Council Member is designated by the City Council to represent the City at special meetings, reimbursement shall be made from the appropriate Travel Expense Account.

2.5.4 HONORARIUM

The Mayor and Council Members are not permitted, by law, to receive an honorarium as a result of his/her participation in a meeting or conference. The Mayor or Council Members may receive income for personal services provided at a meeting or conference, if those services are customarily provided in connection with the practice of her/his *bona fide* business or profession, unless the sole or predominate activity of the business or profession is making speeches. If the Mayor or Council Member receives such income, then the amount of that income shall be deducted from the amount normally provided by the City for that meeting or conference if the City paid for the Mayor or Council Member's attendance at such meeting or conference.

2.5.5 OTHER GUIDELINES

Any other travel-related issue not specifically governed in this resolution shall be adjudicated in accordance with the City of Morro Bay Travel Expense Reimbursement Policy.

CHAPTER THREE COUNCIL POWERS & APPOINTMENTS

3.1 MAYOR - POWER AND DUTIES

- 3.1.1 The Mayor shall preside at all meetings of the City Council and perform such other duties consistent with the office as may be imposed by the Council or by vote of the people. The Mayor shall be entitled to, and must vote when present, but shall possess no veto power.
- 3.1.2 The Mayor shall be recognized as the official head of the City for all ceremonial purposes.
- 3.1.3 The Mayor may order flags flown on City property to be lowered to half-staff in mourning for any member of the community designated to have made significant contributions to the City of Morro Bay, in accordance with recognized customs or practices not inconsistent with State and Federal law.
- 3.1.4 The Mayor is authorized to sign letters of appreciation to persons and organizations. Copies of those signed letters shall be provided to the Council Members, as soon as feasible.
- 3.1.5 The Mayor will, at times, receive written communications from recognized organizations or entities whose fundamental purpose is to support cities, such as the League of California Cities, etc. Those communications may be seeking City support for a position the League specific organization is taking. Because of the often short time limits for submitting responses to those communications, the Mayor is authorized, at no cost to the City to submit the requested communication consistent with the subject entity's recommendation. At the discretion of the Mayor, other written communications supporting previously agreed upon policy issues by the Council, may be sent. A copy of that letter will be provided to the Council at the same time it is transmitted to the addressee. Any Member of the Council can request an agenda item be placed on an upcoming agenda to discuss that communication. The Council can also determine whether to admonish the Mayor for not carrying out the intent of this provision.
- 3.1.6 When the Mayor is a member of another legislative body, he/she may take actions on matters before that other body as she/he determines appropriate, as long as she/he makes it clear his/her position is that of the Mayor and not the entire City or Council, unless, at a duly agendized public meeting, a majority of the Council has provided direction on the position the Mayor is to take on a matter

3.1.7 The Mayor shall exercise such other powers and perform such other duties as may be prescribed by law or ordinance or by resolution of the Council, except as limited by law.

3.2 APPOINTMENT OF MAYOR PRO TEMPORE

The appointment of the Mayor Pro Tempore shall be for a one-year term and shall be made at the first meeting in January. For appointment as Mayor Pro Tempore, a Council Member must be on the Council at least one year. Of those who have been on the Council for at least one year, the Council Member who has not yet held the position shall be appointed Mayor Pro Tempore. If there are two Council Members who have not yet held the position, then the Council Member receiving the highest number of votes in the most recent election shall be appointed Mayor Pro Tempore. If all have held the position, then the Council Member who has held it the least number of times shall be appointed Mayor Pro Tempore. If all Council Members have held it for the same number of years, then the Council Member for whom it has been the longest period of time since holding the position shall be appointed Mayor Pro Tempore.

3.3 FILLING COUNCIL VACANCIES

3.3.1 SPECIAL ELECTION

Measure “R” codified as Ordinance 527 requires the City Council to immediately call a special election to fill any vacant seat on the Council, including the Mayor’s seat. The special election shall be held on the next established election date, as specified in California Elections Code, which is not less than 114 days from the call of the special election. The City Council may appoint an elector who is a registered voter in the City of Morro Bay to fill such vacancy prior to the special election. The appointee shall hold office only until the date of said special election. (Reso. 76-08)

3.3.2 LIMITATION OF COUNCILMEMBER WHO RUNS FOR MAYOR BEFORE COMPLETING REGULAR TERM

A sitting Council Member is disqualified from nomination for election to the office of Mayor in the next election if the remainder of their Council term after the next election cannot be filled by a vote of the electors on or prior to that election date.

3.4 GENERAL POWERS OF THE COUNCIL

Subject to the provisions of law and the delegation of power to any person, officer, Board, or Commission, the Council shall have the power in the name of the City, to do and perform all acts and things appropriate to a municipal corporation and the general welfare of its inhabitants and that are not specifically forbidden by the Constitution and laws of the State of California.

3.5 ADMINISTERING OATHS: SUBPOENAS

Each Member of the Council shall have the power to administer oaths and affirmations in any investigation or proceeding pending before the Council. The Council shall have the power and authority to compel the attendance of witnesses, to examine them under oath and compel the production of evidence before it. Subpoenas may be issued in the name of the City and be attested by the City Clerk. Disobedience of such subpoena or the refusal to testify (upon other than constitutional grounds), shall be deemed contempt and shall be punishable as provided by the general laws of the State.

3.6 LIMITATIONS

No Member of the Council shall be appointed to or serve as a voting Member of any City Board, Committee, or Authority, whether composed of citizen volunteers, City employees, or a combination of both. This is not to be construed as prohibiting Members of the Council from serving on Committees or Subcommittees of the Council itself, or of agencies representing other local, state or federal government.

3.7 METHOD OF ACTION BY COUNCIL

All action by the Council shall be taken only by means of ordinance, resolution, or oral motion duly made and passed.

Ordinances shall become a part of the MBMC and so remain until amended or voided. All municipal laws relating to taxation or to possible criminal action against an offender shall be in the form of ordinances.

Resolutions shall be serially numbered and filed sequentially in the office of the City Clerk.

Oral motions shall be recorded only in the minutes of any regular or special meeting of the Council.

3.8 ORDINANCES

The consideration and adoption of ordinances shall be in accordance with relevant state law. Ordinances not legally required to have a public hearing shall be set for a public hearing if the subject matter is controversial or of a special nature. In addition, a majority of the City Council may direct the consideration of an ordinance will be set for public hearing.

No ordinance, resolution or motion shall be passed or become effective without receiving the affirmative vote of at least three Members of the Council.

3.9 ACCEPTANCE OF GRANTS OR DEEDS

The Mayor and Mayor Pro Tempore of the City of Morro Bay are hereby authorized to accept and consent to the recording of any deed or grant conveying any interest in or easement upon real property to the City of Morro Bay.

3.10 LEGISLATIVE ACTION PROGRAM

The City has a legislative program to strengthen local government, promote City goals, and defend the City against legislative actions by state and federal governments that would weaken local government or take away traditional revenue sources. In order to respond promptly and proactively to fast-paced legislative changes, City staff is authorized to take positions on legislation provided the positions are consistent with the Legislative Actions of the City Council, or resolutions or recommendations of the League of California Cities. The Council limits its official communication as a body of the whole in support or opposition to issues impacting the City specifically or local governments generally.

3.11 AMICUS CURIAE PARTICIPATION

The City is frequently requested to join as *amicus curiae* (friend of court) in cases of statewide significance to cities. Because of the often short time limits for filing *amicus curiae* briefs, the City Attorney may authorize the City's name being added to such briefs, at no cost to the City, if the Legal Advisory Committee of the League of California Cities has urged participation. The City Council will be advised of that action within 7 days after the City Attorney's decision.

3.12 ACTIONS AS A MEMBER OF ANOTHER LEGISLATIVE BODY

When a Council Member is a member of another legislative body, he/she may take actions on matters before that other body as she/he determines appropriate, as long as she/he makes it clear his/her position is that of the individual Council Member and not the entire City or Council, unless, at a duly agendized public meeting, a majority of the Council has provided direction on the position that Member is to take on a matter.

3.13 COUNCIL SUB-COMMITTEES

From time to time it may be desirable for the City Council ~~may vote~~ to appoint a sub-committee of the whole to address a particular issue. That is especially the case if the issue requires additional work or research. Per the Brown Act, sub-committees must consist of less than a quorum of the body and serve for a limited purpose and time. Therefore, the City Council sub-committees may consist of two members. Sub-committees shall report back to the full Council for discussion before any formal action can be taken on the pertinent issue. Establishing a subcommittee requires the body to define the purpose, parameters, and duration of

the sub-committee. The City Clerk will keep the list of sub-committees and defined description as a record with Council liaison assignments for review annually.

CHAPTER FOUR THE BROWN ACT AND EMAIL

4.1 APPLICABILITY AND PENALTIES

The entire City organization conducts its business in compliance with the Ralph M. Brown Act, California Government Code sections 54950 *et seq.* (the “Act”). The intent of the Act is to ensure deliberations and actions of local public agencies are conducted in open and public meetings. The law provides for misdemeanor penalties for any members of a legislative body who violates the Act. In addition, violations are subject to civil action. A current copy of the Act will be provided to all Council Members assuming office, but the provisions that most directly affect the Council are summarized in this Chapter.

4.2 MAJOR PROVISIONS

4.2.1 APPLICABILITY

The Act applies to Council, City staff and all bodies that advise Council.

4.2.2 MEETINGS

Other than closed sessions, all meetings shall be open and public. All meetings shall follow the requirements of the Act.

4.2.3 AGENDAS

Agendas for regular meetings must be posted 72 hours in advance of the meeting and must meet various requirements. Note: Morro Bay has by resolution established a longer period of posting prior to a regular meeting (120 hours or 5 days.)

4.2.4 ACTIONS

No action shall be taken on any item not appearing on the posted agenda. Exceptions:

- 4.2.4.1 An emergency situation exists, (determined by a majority of the Council).
- 4.2.4.2 The need to take action arose subsequent to the agenda being posted (determined by 4/5 of the Council or if less than 4/5 are present, then by unanimous vote) and that action must be taken before the next regular Council meeting or special meeting can be scheduled and properly noticed.

- 4.2.4.3 The item was continued to another meeting that was scheduled and posted within five days after the original agenda.

4.2.5 PUBLIC INPUT

The public has an opportunity to address the Council on any item of interest to the public that is within the jurisdiction of the Council. The City has the right to establish time limits on speakers and the total time allocated for a particular issue.

4.2.6 PUBLIC DISRUPTIONS

A portion or all of the public may be removed if willful disruption makes conducting the meeting "unfeasible;" the press may remain unless they participate in the disruption.

4.2.7 CORRESPONDENCE

All writings distributed for discussion or consideration at a public meeting are public records. If a member of the public desires written materials to be fully considered by the Mayor and City Council, then that member is encouraged to submit that written material regarding agenda items to the City Clerk no later than 12 Noon the day of the meeting so that it may be included with agenda correspondence. Written material distributed at the meeting will be made a part of the public record. If the material is too voluminous for the Mayor and Council to review during the meeting or is new material not previously considered, the Council may, at its discretion, continue the item to a future meeting.

4.2.8 CLOSED SESSIONS MAY BE HELD TO DISCUSS:

- 4.2.8.1 Real Property. The purchase, sale, exchange or lease of real property with the City's negotiator; the real property and the person(s) with whom the City may negotiate must be announced in open session prior to the closed session. All Real Property transactions shall be held in closed session prior to final decision in open session and Council shall be provided with a copy of the draft real property agreement.
- 4.2.8.2 Litigation pending or a significant exposure to litigation, or the decision to initiate litigation; the litigation or title must be identified in open session prior to the closed session unless the Council states that to do so would jeopardize its ability to conclude existing settlement negotiation or effectuate service of process.
- 4.2.8.3 Compensation (salaries and benefits) of employees; to review its position and instruct designated representatives.

4.2.8.4 Personnel: The appointment, employment, evaluation of performance, or dismissal, of a public employee, or to hear a complaint against an employee, unless the employee requests a public hearing.

4.3 SPECIAL MEETINGS

Special Meetings may be called by the Mayor or a majority of the Council, with strict notification requirements delivered to the media and Council 24 hours before the time of the meeting.

4.4 EMERGENCY MEETINGS

Emergency meetings may be called without the normal 24-hour notice and posting requirements if prompt action is required due to the disruption or threatened disruption of public facilities. Only work stoppages, crippling disasters or other activities that severely impair the public health and/or safety qualify for emergency meetings.

4.5 ELECTRONIC MAIL (EMAIL), THE PUBLIC RECORDS ACT AND THE BROWN ACT

City email is no less a part of “official city business” than any other written correspondence, and there is no expectation of privacy for City email messages. Good judgment and common sense should therefore prevail at all times regarding its appropriate use.

City email is subject to the requirements of the Brown Act and is subject to disclosure under the Public Records Act.

The Brown Act does not prohibit the use of email to make individual contacts between Members of the Council, or the public or staff. However, great care should be taken to avoid the use of email to contact a majority of the Council, either individually or serially, “in a connected plan to engage in collective deliberation on public business.”

City emails are generally intended to fulfill the same general function as ordinary daily verbal communications among City Council and City staff and are generally considered “transitory” documents (work-in-progress), and therefore are generally not subject to records retention requirements. For file management and storage purposes, City email messages should only be retained for as long as needed. In most instances this means deleting messages as you have read them, and shortly after you have sent them.

Some email messages, including any attachments thereto, can be considered official city records, because the content relates in a substantive way to the conduct of the public’s business. Emails that qualify as public records need to be retained by the City. However, they are not retained through the City e-mail

system. Those emails should be printed as a hard copy or saved electronically in a folder outside the e-mail system, in accordance with the City's records retention policy. Generally, the sender of the email should be the person responsible for printing and filing it accordingly, but persons responsible for a particular program or project file shall be responsible for retaining all e-mail they send or receive related to that program or project.

It is the responsibility of individual City Council Members, employees and their department heads to determine if email is an official City-record that must be retained in accordance with the City's record retention policy. The City Attorney will assist in making such a determination. Preliminary drafts, notes or interagency or intra-agency memoranda that are not retained by the City in the ordinary course of business are generally not considered to be official City records subject to disclosure. City Council Members and employees are encouraged to delete documents that are not otherwise required to be kept by law or whose preservation is not necessary or convenient to the discharge of your duties or the conduct of the city's business.

Periodically, the City receives requests for inspection or production of documents pursuant to the Public Records Act, as well as demands by subpoena or court order for such documents. In the event such a request or demand is made for e-mail, the City Council Members or employees having control over such e-mail, once they become aware of the request or demand, shall use their best efforts, by any reasonable means available, to temporarily preserve any e-mail that is in existence until it is determined whether such e-mail is subject to preservation, public inspection or disclosure. The City Clerk shall be contacted regarding any such emails within the City Council Member or employee's control.

Council Members are assigned a City electronic messaging account, such as an email account. To the extent feasible, City issued accounts shall be used to conduct City business. Limited use of a private device for public business is permissible but discouraged.

Electronic communications regarding City business may be subject to the City's official records retention policies and the Public Records Act, ***even if those electronic communications are or were created, sent, received or stored on a Council member's personal electronic messaging account or device.*** To the extent a Council Member uses private, non-City electronic messaging accounts or devices, in compliance with State law they will be asked to locate any such electronic communications on those non-City accounts or devices and provide the communications to the City Clerk in the event a Public Records Act request is made seeking the communication(s).

If a Council Member receives an electronic message regarding City business on his/her personal electronic messaging account or device, or circumstances require such person to conduct City business on a personal account or device, then the Council Member is strongly encouraged to either: (a) copy ("cc") any

communication from the Council Member's personal electronic messaging account to his/her City electronic messaging account; or (b) forward the electronic communication to his/her City account as soon as feasible after the original creation or transmission of the electronic communication. That practice facilitates efficient and prompt responses to Public Record Act requests.

4.6 OTHER PROVISIONS

The Act provides many other restrictions and requirements; this chapter is intended merely as a Council summary and overview of the Act, and nothing in this Chapter supersedes the provisions of the Brown Act. Since State law constantly changes, it is important to ensure you have the latest information. Please check with the City Attorney and/or the City Clerk for more information.

CHAPTER FIVE COUNCIL/STAFF RELATIONSHIPS AND CONDUCT

5.1 INTENT

The City Council as a whole retains full power to accept, reject, amend, influence, or otherwise guide and direct staff actions, decisions, recommendations, workloads and schedules, departmental priorities, and the conduct of City business.

This chapter addresses the relationship and conduct between the Mayor and Council Members and staff with the intent of the Mayor and Council to: 1) affirm governing shall be by will of the collective Council, and 2) establish guidelines for Mayor, Council and staff to ensure orderly, consistent and open City government.

5.2 GUIDELINES FOR COUNCIL MEMBERS

The Mayor and Council shall recognize the primary functions of staff are to execute Council policy and actions taken by the Council, and to keep the Mayor and Council informed.

5.2.1 REQUESTS FOR INFORMATION

The Mayor, individual Council Members, as well as the Council as a whole, shall be permitted complete freedom of access to any information requested of staff, and shall receive the full cooperation and candor of staff in being provided with any requested information, when the law allows that access.

The Mayor and Council Members shall make routine requests for information through the appropriate department head, who shall then advise the City Manager of such requests. Complex or comprehensive requests for information shall be made through the City Manager.

5.2.2 DIRECTION TO STAFF

The Mayor and Council Members shall make requests for work to be done by City staff through the City Manager. The Mayor and individual Council Members shall make no attempt to pressure or influence staff decisions, recommendations, workloads, schedules and departmental priorities, except as part of budgetary and goal setting priority sessions and with approval of the Council as a whole.

A Council Sub-committee may be given authority by the full Council to work in conjunction with the City Manager, and his/her designated staff on a particular

project or issue. In those instances, any work products will be brought back to the full Council for consideration and action.

5.3 GUIDELINES FOR STAFF

Staff shall recognize its primary function is to execute Council policy and to keep the Mayor and Council informed. Staff shall present the Mayor and Council with all relevant information, as well as alternatives, in an objective, succinct manner. The City Manager and staff are committed to treating the Mayor and each Council Member equally.

5.3.1 TIMELY RESPONSE

City staff will make every effort to respond in a timely and professional manner to all requests made by the Mayor and individual Council Members for information or assistance; provided, that in the judgment of the City Manager the request is legally permitted (after consultation with the City Attorney) and not of a magnitude, either in terms of workload or policy, which would require that it more appropriately be assigned to staff through the collective direction of the City Council. In terms of making that judgment, the following guidelines should be considered: The request should be specific and limited in scope so staff can respond without altering other priorities and with only minimal delay to other assignments; the request should only impose a "one-time" work requirement, as opposed to an on-going work requirement; and the response to the request should not require a significant allocation of staff resources (generally defined as consisting of more than one staff person, or a single staff person working on the issue in excess of 1-2 hours).

5.3.2 DIRECTION FROM COUNCIL

Staff is obligated to take guidance and direction only from the Council as a whole or from the appropriate management superiors as may be the case. Staff is directed to reject any attempts by the Mayor or individual Council Members to unduly influence or otherwise pressure them into making, changing or otherwise suppressing staff decisions or recommendations, or changing departmental work schedules and priorities. Staff shall report such attempts to influence them in confidence to the City Manager, who may inform the Council as a whole of such attempts.

5.3.3 STAFF SUPPORT TO INDIVIDUAL COUNCIL MEMBERS

An exception to the above guidelines may be staff work required in support of a Council Member designated by the City Council to represent the City in an intergovernmental role (*e.g.*, Membership on Joint Powers Authority), or relative to a special assignment (*e.g.*, a special task force).

As noted, above, when a Council sub-committee has been duly authorized by the full Council, staff members may provide information and assistance to the sub-committee, which will report back to the full Council.

5.3.4 INFORMATION DISTRIBUTION

In the interest of treating all members of the Council equally, in cases where a staff response to the Mayor or an individual Council Member request involves written material, the City Manager will provide copies of the material to all other Council Members.

5.3.5 SIGNIFICANT INFORMATION

Any information, service-related needs, or policy positions perceived as necessary by the Mayor or individual Council Members, which cannot be fulfilled per the above guidelines, should be raised by the Mayor or individual Council Member under the "Declaration of Future Agenda Items" category of a regularly scheduled City Council meeting. If so directed by the collective action of the Council, then staff will proceed to complete the work within Council established deadlines.

5.4 USE OF CITY LETTERHEAD

Staff will not prepare correspondence representing the Mayor or a Councilmember's personal point of view or a dissenting point of view from an official City policy or Council position. If a Councilmember uses her/his title, position, or City letterhead to express a personal opinion, then the letter shall state "I am writing this letter on behalf of myself" and, the official City position must also be stated clearly so the audience understands the difference/relationship between the official City position and the viewpoint of the Mayor or that Councilmember. If a letter is written on behalf of the majority of the City Council, then the letter shall state "I am writing this letter on behalf of the City Council." A copy of any and all correspondence developed by or for the Mayor or a Councilmember on City letterhead shall be provided to the City Manager and the entire City Council.

CHAPTER SIX ADVISORY BOARD PROCEDURES

6.1 COUNTY OR REGIONAL REPRESENTATION

Annually, the Mayor shall make appointments to a variety of County and/or regional committees and boards. One Member of the Council shall serve as a voting representative and one Member shall serve as alternate. (See 6.5 for appointment procedures). To the best of their ability, Voting Delegates shall reflect the majority view of the Council as a whole, rather than their own personal opinions.

6.2 OTHER COUNCIL REPRESENTATION, SUBCOMMITTEES

6.2.1 COUNCIL LIAISON ASSIGNMENTS

The City Council shall assign a Council liaison to each of the following advisory bodies: Recreation & Parks Commission, Harbor Advisory Board, Public Works Advisory Board, the Citizens Finance Advisory Committee, the Planning Commission and Tourism Business Improvement District Advisory Board. Council liaisons will also be appointed to the special purpose advisory bodies.

The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, members should either attend advisory body meetings or watch the meeting broadcasts and maintain communication with the advisory body on a regular basis.

Council Members should be sensitive to the fact they are not participating members of the advisory body, but are there rather to create a linkage between the City Council and the advisory body. In interacting with advisory bodies, Council Members are to reflect the views of the Council as a body. Being an advisory body liaison bestows no special right with respect to advisory body business.

6.3 ROLE OF ADVISORY BODY MEMBERS AT COUNCIL MEETINGS

6.3.1 INTENT

A majority of advisory body members may attend a public Council meeting. However, none of those members may speak regarding any matter within that member's advisory body's subject matter jurisdiction while a majority of members of that advisory body are present. An advisory body may direct one of its members to appear at a public Council meeting to express that advisory body's perspective on a particular matter reviewed by the advisory body or answer questions from the Council.

6.3.2 COUNCIL AGENDA REPORTS

6.3.2.1 Recommendation Differences. For those occasions when the City Manager recommendation differs from an advisory body recommendation, the difference should be clearly noted and the recommendations from the advisory body should be included in the staff report.

6.3.2.2 ~~The Council will endeavor to meet at least once each fiscal year with each of its advisory bodies or the chair of each advisory body.~~ The City Council will meet as determined necessary by the majority of Councilmembers with each of its advisory bodies or the chair of the advisory body.

6.3.3 COUNCIL MEETINGS

6.3.3.1 Advisory bodies will provide written or oral reports to the City Council as requested by the Council and in accordance with the Brown Act.

6.4 ROLE OF CITY STAFF PERSONS

Staff support and assistance may be provided or made available, but advisory bodies do not have supervisory authority over City employees. While they may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and ultimately to the City Manager, who is responsible to the Council. The members are responsible for the constructive participation with the advisory body and the chairperson is responsible for committee compliance with applicable policies and procedures.

Staff support includes preparation of a summary agenda in conjunction with the Chairperson, and preparation of agenda reports providing a brief background of the issue, a list of alternatives, recommendations, and appropriate backup material, if necessary. Members of advisory bodies are volunteers and should be treated with respect and courtesy. Advisory body members should have sufficient information to reach decisions based upon a clear explanation of the issues within their charge. Sometimes members of advisory bodies may request information not related to their area of service. Staff members should, in that case, provide the same level of information and assistance as would be accorded any citizen. If in the judgment of staff, the request goes beyond that standard, then the matter will be turned over to the City Manager. A staff person will be assigned to serve as Secretary, taking minutes as needed.

It is important that advisory bodies wishing to communicate with the City Council do so through adopted or approved Council agenda procedures. Staff members

shall assist the advising body to insure appropriate review and that City and State legislation is complied with.

6.5 APPOINTMENT PROCEDURES

The following procedures shall be the policy of the City Council in regard to appointment of volunteer citizens to the various advisory bodies of the City.

6.5.1 PURPOSE

The purpose of establishing these procedures shall be to insure well-qualified, responsible and willing citizens are given the opportunity to serve the City and participate in the governing of their community. These procedures will apply to all appointments and reappointments to standing advisory bodies. All Advisory Body Members serve at the pleasure of the City Council.

6.6 PROCESS

6.6.1 QUALIFICATIONS

6.6.1.1 The applicant must be a resident and registered voter of the City at the time and during the entire term of appointment, unless excepted by State law or Council-approved special requirements in advisory committee by-laws.

6.6.1.2.1 The applicant must be at least 18 years of age at the time of appointment; provided, that the Council may appoint one area high school student to an advisory body, if allowed by the Advisory Body By-Laws and they meet the other qualification requirements.

6.6.1.2.2 Elected Officials, Officers and Employees of the City of Morro Bay shall not be considered for appointment, unless otherwise approved unanimously by the City Council.

6.6.2 TERMS

6.6.2.1 The term of office for each appointee to an advisory body shall be a maximum of four years unless excepted by State law or Council-approved special requirements in advisory committee by-laws. The terms are staggered so that in no event, will all terms on any committee expire in the same year. Incumbents may apply for subsequent terms of service. Terms of Office will expire on January 31, of the specified year.

- 6.6.2.2 Persons appointed to fill the remainder of a vacated office term may reapply to serve on the same advisory body.
- 6.6.2.3 Mid-term appointment to a vacant seat shall not preclude the appointee from serving additional terms.
- 6.6.2.4 As a general policy, an applicant shall not be appointed to serve on more than one advisory body, except that a member may also serve on one technical or special-purpose committee at the same time. If appointed to another committee, then he/she will be expected to resign from one body upon being appointed to another. The City Council retains the discretion to make exceptions to this policy.

6.6.3 PROCESS

- 6.6.3.1 Applications are obtained and filed with the City Clerk's Office.
- 6.6.3.2 Prior to November 30, of each year, the City Clerk shall advise the City Council of the terms that are due to expire on each advisory board. The City Clerk shall also notify each advisory member whose term is due to expire. Each of these members shall be given the opportunity to apply for reappointment.
- 6.6.3.3 The City Clerk shall then place an advertisement in the local newspaper, inviting citizens to apply for consideration as an appointment to an advisory board, with instructions regarding the application process.
- 6.6.3.4 It is recommended that applicants attend at least one meeting of the advisory body applied for prior to the interview with the City Council.
- 6.6.3.5 The City Council shall, in a noticed public meeting, interview qualified applicants. In making appointments, the Council shall strive for a representative cross-section of both lay and professional knowledge. The Council will act by separate motion on each appointment made. If there are multiple openings for a specific advisory body, the start and end dates for the respective openings will be communicated to applicants.

6.6.3.6.1. In the event there are more qualified applicants than openings for an advisory body, the City Council at its sole discretion may appoint qualified applicant(s) on an alternate or standby status for an interim 3-6-month period. Any such applicant designated

as an alternative advisory body member would not participate in advisory body meetings, but could subsequently be appointed as a regular advisory body member if a vacancy occurs within the stated 3-6-month period.

6.6.3.6.2 In the event there are more qualified applicants than openings for an advisory body, the City Council at its sole discretion may appoint qualified applicant(s) on an alternate or standby status for an interim 3-6-month period. Any such applicant designated as an alternative advisory body member would not participate in advisory body meetings, but could subsequently be appointed as a regular advisory body member if a vacancy occurs within the stated 3-6-month period.

6.6.3.6.3. The applicants applications of those not appointed will be ~~advised and their applications~~ held for up to one year for consideration in the event of a future vacancies.

6.6.3.6.4 Candidates not appearing for interview before the City Council will be considered for appointment only upon a finding of the City Council by motion the absence arose from excusable neglect or personal difficulties.

RESOLUTION NO. 105-19

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING THE ADVISORY BODIES HANDBOOK AND BY-LAWS**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, to ensure all Advisory Board Members are familiar with and understand the City of Morro Bay's philosophies and policies regarding serving on an Advisory Board, and to establish consistency throughout the by-laws for all commissions and advisory boards, the City of Morro Bay adopted the Advisory Boards Handbook and By-Laws on August 12, 2002; and

WHEREAS, the Advisory Boards Handbook and By-Laws for the City of Morro Bay is a composite of the City Council actions, policies, references, and information regarding the City Advisory Boards; and

WHEREAS, the Handbook has been amended several times throughout the years; and

WHEREAS, at its meeting of August 27, 2019, the City Council directed a limited review of the Manual and established a subcommittee consisting of Mayor Headding and Council Member McPherson to lead that review.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, that the Advisory Bodies Handbook and By-laws is readopted, as attached hereto as Exhibit A.

PASSED AND ADOPTED by the City Council, City of Morro Bay at a regular meeting thereof held on the 10th day of December 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

CITY OF MORRO BAY
ADVISORY BODIES
HANDBOOK
AND
BY-LAWS

Date: ~~May 8, 2018~~ December 10, 2019 Draft

Approved by Resolution No. 28-18
Revised by Resolution No. 60-18 on August 14, 2018
~~Revised by Resolution No. xx-xx on~~

Mission Statement

The City of Morro Bay provides essential public services and infrastructure to maintain a clean and healthy place for residents and visitors to live, work and play.

INTRODUCTION

Welcome and thank you for your interest in serving on one of the City's Advisory Bodies. By serving on one of Morro Bay's Advisory Bodies, you can help plan and guide the City's future. It is important that members of the Advisory Bodies understand the functions and responsibilities of being a member. We hope you find serving on the City's advisory body personally satisfying, and in the process gain invaluable knowledge and experience.

The Morro Bay Municipal Code empowers the City Council to form boards and commissions to assist the City Council in legislating and managing the affairs of the City. From time to time citizen advisory committees are appointed to meet a specific topic, project, or need. Their varied roles provide significant opportunities for formulating City policy and for creating public forums for meaningful community participation.

Consistent with the City's Mission Statement, advisory bodies can help the City achieve its mission and purpose, which is to preserve and enhance the citizens of Morro Bay's quality of life. This Handbook shall serve as a guide to assist you in the sometimes-complex, but often rewarding, process of serving on one of the City's Advisory Bodies. These advisory bodies assist the City Council in making better-informed decisions by formulating new ideas, gathering information, receiving public testimony and comments, analyzing complex issues, and making recommendations on specific projects and broad policy.

Advisory Bodies advise the City Council and the City Manager on matters within their area of responsibility and interest; help focus attention on specific issues and problems within their scope of responsibilities, and recommend action and alternatives for Council consideration; act as channels of communication among City government, the general public, and interest groups; and balance community wants with municipal responsibility and resources.

At times, your role may be challenging and complex. Public opinion can be sharply divided, questions may overlap, and sometimes the province of one body may also be the territory of another. Therefore, we have created this handbook to assist you with some of the fundamental aspects of your new responsibility.

Much of the information in this handbook comes from City policy, such as the Morro Bay Municipal Code and the City Council Policies and Procedures Manual. In addition, State Law governs certain responsibilities of advisory body members. The material presented is

intended to: (1) Give interested persons an understanding of why the City's advisory bodies have been established and how they function within the overall governmental framework and, (2) Summarize the roles, relationships and responsibilities of each advisory body member.

Each Advisory Body within the City has its own By-Laws, which are included in this Handbook for your ease of reference. The sections of the Handbook are divided as follows:

1. General Information on Advisory Bodies
2. How Our City Government Works
3. How Advisory Bodies Work
4. The Brown Act
5. Political Reform Act of 1974 (Conflict of Interest)
6. Advisory Body By-Laws

We hope this Handbook will answer many of your questions, get you off to a good start, and contribute to your satisfaction in serving the citizens of the City of Morro Bay.

1. General Information on Advisory Bodies

A. Background

Advisory bodies are authorized by both the Morro Bay Municipal Code and the City Council. They provide an opportunity for interested residents to participate in the governing of their community under guidelines and procedures established by the Council. Advisory bodies can improve the quality of City government by providing the Council with resources to make better-informed decisions. They can serve as the “eyes and ears” of the Council for issues and matters that otherwise might not receive attention. Other benefits include improvement in the lines of communication between the public and the Council, greater opportunities for discussion of public issues, and more citizen involvement in City government. There is considerable variety in the purpose or responsibility of these bodies. Advisory bodies have been created by the City Council to serve the City of Morro Bay’s unique needs.

The authority of an advisory body will depend upon its specific purpose. Each has a specific focus and will make recommendations to the Council on issues related to that specific field. Decisions made by an advisory body may be appealed to the Council. The Council may not always accept the recommendation of an advisory body because of additional information available or a need to balance the recommendation with policy or community priorities.

Generally, advisory bodies are empowered only to make recommendations to the Council or to the City staff, unless specifically authorized by law or Council to do otherwise. There should be two-way communication so that advisory bodies are aware of the long-term goals Council has adopted, and the advisory body is able to present new ideas to the Council. Advisory body members are encouraged to attend and/or watch Council meetings.

Members of the advisory bodies are volunteers who are appointed by the City Council and serve at the pleasure of the City Council. There is no compensation or benefits for members, except for Planning Commission, whose responsibilities are greater and meetings more frequent. All members are expected to attend scheduled advisory body meetings and all meetings shall be conducted in accordance with Robert’s Rules of Order, City Council Policies and Procedures Manual and State Law.

Currently, the City of Morro Bay has six advisory bodies:

- Harbor Advisory Board
- Public Works Advisory Board
- Recreation and Parks Commission
- Tourism Business Improvement District Board
- Planning Commission
- Citizens Oversight Committee/Finance Committee

From time to time, a special advisory body may be created by the Council to provide input on a specific issue or project. The City Council shall establish these bodies have a mission statement and goals for the specific advisory body. These bodies meet for a limited duration and only meet when specific actions need to be taken in support of the Council adopted purpose. with a limited duration and do not necessarily meet on a regular basis. They are terminated by the Council once the work of the special advisory body is completed or the issue is resolved.

B. Application/Selection Process and Membership Qualifications

The City of Morro Bay encourages participation of a wide variety of its citizens through service on an advisory body. Applicants will be sought from all segments of the community, representing various interests and groups.

1) The Application/Selection Process

- All recruitment for advisory body members is open and published in a local newspaper.
- The City accepts applications from interested persons throughout the year.
- Each application is carefully reviewed by the City Council.
- Appointment ~~ofis made to~~ qualified applicants is made by the City Council in a special, publicly held meeting. If there are multiple openings for a specific advisory body, the specific term for the specific openings will be communicated to applicants.
- In the event the City Council determines some or all of the applicants are not qualified to serve on the advisory body for which they are applying, the City Council may elect not to make an appointment and extend the recruitment period.
- In the event there are more qualified applicants than openings for an advisory body, the City Council at its sole discretion may appoint qualified applicant(s) on an alternate or standby status for an interim 3-6-month period. Any such applicant designated as an alternative advisory body member would not participate in advisory body meetings, but could subsequently be appointed as a regular advisory body member if a vacancy occurs within the stated 3-6-month period.
- Members serve at the pleasure of the City Council.
- Incumbents are considered for reappointment at the conclusion of their terms.
- Terms are four years, commencing on February 1st, and the terms are staggered.
- Applications may be obtained from the City Clerk's office at City Hall. Information on vacancies and/or specific recruitment periods may be requested by phoning the City Clerk. An official application form must be completed for each position.
- Fill out a separate form for each advisory body in which you are interested. It is to your advantage to tailor each application to the specific board or commission for which you are applying. Emphasize different aspects of your background to match those needed for a particular advisory body.
- Emphasize your talents. Clearly indicate how your particular talents, skills, training, or experience will benefit the advisory body for which you wish to be considered.

- Become familiar with the appropriate advisory body. Attend meetings, talk with advisory body members, or read documents they have developed to acquaint yourself with their work. Talk with the department head responsible for staffing the specific advisory body in which you are interested.

2) Qualifications for Service

Advisory body members may be required to wear "different hats" at different times. The ability to suitably perform the varied roles requires specialized skills and knowledge. Qualification for service can be divided into four general areas:

◆ **LONG-RANGE INTEREST IN THE COMMUNITY**

The ability to conceive and be concerned with the impact of current decisions on future citizens is paramount. Advisory body members are required to analyze issues, to listen to public comment through formal hearings or informal discussion, to interpret and apply mandates of the General Plan, and to analyze all the pertinent data before arriving at objective decisions which will be in the best interest of the community as a whole.

◆ **FAIRNESS, COMMON SENSE, HONESTY AND GOOD CHARACTER**

Keeping the public interest in mind, an advisory body member will be called upon to use every day good sense in balancing the need of public and private groups. Controversial issues do arise, and the ability to make decisions based on merit rather than personalities is a must. Other traits include imagination, flexibility and the ability to act in a judicial vs. legislative capacity.

◆ **KNOWLEDGE OF THE COMMUNITY MARKETPLACE, PROCESS, OBJECTIVES, AND LAWS**

A first-hand knowledge of economic systems, the general operation of government, and a basic understanding of the legal process is important. This knowledge will be of tremendous value, especially on the Planning Commission where members are required to conduct public hearings, analyze and receive testimony and make meaningful decisions.

◆ **TIME TO SERVE IN APPOINTED CAPACITY**

The amount of time an advisory body member devotes to his/her duties varies with each advisory group. Before making a personal commitment, a prospective applicant should honestly evaluate whether he/she has adequate free time to attend the meetings, to review and be familiar with

meeting materials, and to communicate with the public as well as with department staff.

3) Other Requirements

Members of all advisory bodies are required to file the State of California Statements of Economic Interest (Form 700). Additionally, advisory body members are required to refrain from participation in matters where they have the potential for conflict of interest. (See Section 5 for the City's policy on Conflict of Interest)

Advisory body members are also required to attend periodic trainings, including Ethics Training and Sexual Harassment Training as well as others which may be mandated.

2. How Our City Government Works

The City of Morro Bay is a general law city and became incorporated in 1964; it operates under the laws of the State of California.

The City Council, City Manager, City Clerk and City Attorney are integral to the day-to-day operations of the City. As such, we have included a summary of the City government's main function for your information and reference.

A. City Council

The City Council is elected by a majority vote by the citizens of Morro Bay. The City Council is the governing body of the City and is made up of the Mayor and four council members. The Mayor is elected for a two-year term and the Council Members are elected for staggered four-year terms. Mayoral and City Council elections are held in November of even-numbered years. Regular Council meetings are held according to the established calendar in the Council Chamber at the Vet's Hall. In addition, special meetings and study sessions are held from time to time. The Mayor is the official spokesperson for the Council. The City Council is accountable to the citizens of Morro Bay. The decisions of the City Council are reached by a majority vote.

The City Council formulates policy, approves programs, appropriates funds and establishes local taxes and assessments. The City Council enacts local laws (ordinances) and regulations for governing of the City. The local ordinances adopted by the City Council are compiled in the City's Municipal Code.

B. City Manager

The City Manager is the administrative head of the government of the City. The City Manager is appointed by the City Council, and serves at its pleasure. The City Manager's duties include implementation of policies and procedures initiated by the City Council. The City Manager also is responsible for all City personnel, except as to the City Attorney, and serves as a liaison to each advisory body, unless otherwise noted in the Advisory Body By-Laws. The following positions report to the City Manager: City Clerk, Treasurer/Finance Director, Chief of Police, Fire Chief, Community Development Director, Public Works Director, Harbor Director, Recreation and Parks Manager, and Tourism Manager.

C. City Clerk/Risk Manager

The City Clerk's duties include, but are not limited to: recording, writing and maintaining Council proceedings, conducting municipal elections, publishing ordinances and resolutions and other official City documents, storing and indexing official documents and City records for retrieval, administering Conflict of Interest disclosures, and serving as the custodian of the seal of the City. The City Clerk also serves as the City's Risk Manager, coordinating activities related to coverage documents; processing all claims related to the City's property, liability and workers' compensation insurance; and implementing policies and programs to reduce the City's exposure to risk.

D. City Attorney

The City Attorney is appointed by the City Council. The City Attorney is the legal counsel for the City and advises the City Council and City officials, officers and employees (in their official capacity) in legal matters, attends all Council meetings and some board meetings, represents the City in legal actions and proceedings, and retains, supervises and monitors outside legal counsel. The City Attorney also approves all bonds and contracts made by the City, prepares ordinances and resolutions as required by the Council and prosecutes violations of the Morro Bay Municipal Codes and ordinances.

3. How Advisory Bodies Work

A. Understanding Your Role and Scope of Responsibility

After appointment by the Council and being sworn in as a City officer, the City Clerk will provide new advisory body members with useful information about the City, including this handbook. In addition, the City staff member who supports your advisory body will schedule an orientation appointment with you. That will be your opportunity to learn more about the scope of responsibility of the advisory body to which you have been appointed. Additional trainings may be held periodically.

1) Council Liaison Member(s)

Each year the Council selects two of its members (one regular and one alternative) to be “Liaison Members” to each advisory body. The Council Liaison can be called upon to facilitate the flow of information between the Council and that advisory body. The Liaison Member may also attend advisory body meetings.

2) Preparing for Your Role

It will be helpful to review the City’s Mission Statement, the City’s website, and your advisory body’s by-laws. Meeting with your advisory body chair and getting to know fellow advisory body members, staff and the Council Liaison will also help you to learn more about your role and to understand expectations. Ask about upcoming issues. Also attend training programs and workshops offered to you by the City.

3) Advisory Body Work Plans

To ensure advisory bodies are assisting the Council on key issues of community concern, the Council and each advisory body establish an ~~annual~~ work plan. The work plan is derived from the goals and objectives action items approved by the Council ~~for the coming year~~. The City Council will ask each advisory body for input into the work plan as part of the two-year City Goal and Action Item plan process. Once the Action Item plan is adopted by the Council, the advisory body will be informed of ~~It spells out~~ the specific topics and issues that the advisory body will likely be addressing. Other issues may arise during the year that the Council may ask an advisory body to consider and on which to make recommendations. If the advisory board desires to add an item to its work plan during the year, it must first seek City Council approval. Likewise, if it desires to change its meeting times, dates, or location, it must also seek prior approval from the Council.

4) Advisory Body Sub-Committees

From time to time it may be desirable for the majority of an advisory body to appoint a sub-committee to address a particular issue. That is especially the case if the issue requires additional work or research. Establishing a sub-committee requires the body to define purpose, parameters and duration of the subcommittee. The number of sub-committee members depends on the size of the advisory body. Per the Brown Act, sub-committees must consist of less than a quorum of the body. Therefore, for a five-member body, sub-committees may consist of two members. Seven-member bodies may have sub-committees composed of two or three members. Sub-committees report back to the full body for discussion before any formal action can be taken on the issue. Staff should be consulted before considering the creation of a sub-committee to determine the impact on staff time.

5) Advisory Body/Staff Relationship

The proper channel to contact City staff on items of consideration is through the designated City staff person providing support to your advisory body. Staff support and assistance is provided, but advisory bodies do not have supervisory authority over City

employees. While they may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and ultimately to the City Manager and Council. The advisory body members are responsible for the functions of the advisory body and the Chair is responsible for committee compliance with the policies outlined in this Handbook.

Staff support includes preparation of a summary agenda and preparation of agenda reports providing a brief background of the issue, a list of alternatives, recommendations and appropriate backup materials, as necessary. When possible, advisory body member questions for staff regarding agenda items should be made in advance of the meeting. Advisory body members should be mindful of staff's time in making requests for information. The request should be channeled through the advisory body's chairperson, be specific and be limited in scope so staff can respond without altering other priorities and with minimal delay to other assignments. The request should only impose a "one-time" work requirement and should not require a significant allocation of staff resources (generally defined as consisting of more than one staff person working on the issue in excess of 1-2 hours).

6) Advisory Body/City Council Relationship

Advisory bodies are occasionally requested to make special reports or recommendations to the Council on specific subjects. Any recommendations or reports from an advisory body should be in written form.

An advisory body does not have authority to speak for the City. If the body wishes to recommend a statement be made, then it shall be submitted to and receive approval of the Council. An advisory body shall not sponsor or co-sponsor a public forum, meeting or survey without the prior approval of the Council. Individual advisory body members should avoid making public comments on Council actions or public policies that might appear to represent the official position of their advisory body. When an advisory body wants to make a specific recommendation to the City Council, the formal process of making a motion, seconding the motion, discussing it and a vote by each advisory body member present should occur. Advisory body actions are then conveyed to the Council in the form of official advisory body minutes, by e-mail to the full Council or by resolution through the Council Liaison. The Chair of an advisory body is the spokesperson for the group. A summary of advisory body discussions pertinent to issues before the City Council shall be incorporated into staff reports.

If a member of an advisory body appears before the Council (or another advisory body) in a capacity other than as representative of his/her body, then it should be explained in advance that any statements made are not to be construed as representing the opinions or recommendations of the advisory body. The member should state that he/she is speaking as a member of the public. That member must take care not to make comments at a Council (or other advisory body) meeting about a matter within that member's advisory body's subject matter jurisdiction if a majority of that advisory body are present at that meeting.

7) Resignation

If an advisory body member finds it necessary to resign, then a letter of resignation stating the effective date of the resignation shall be directed to the Council through the City Clerk, with a copy forwarded to the Chair of the advisory body.

8) Removal from Office

As noted, advisory body members serve at the pleasure of the Council and may be removed without cause by Council action in an open public meeting. Violation of City policies or the policies contained in this Advisory Bodies Handbook will result in a warning, reprimand, or removal.

B. Advisory Body Meeting Procedures and Conduct

1) Parliamentary Procedures

All advisory body meetings shall be conducted in accordance with City practices and policies. Robert's Rules of Order, Newly Revised, shall also be used as a guide in conducting meetings. Questions should be directed to the appropriate City staff. A quorum shall be stated in individually adopted advisory body bylaws or procedures.

The order of business of advisory body meetings follows the City Council's procedures:

- a) Establish Quorum and Call to Order
- b) Moment of Silence
- c) Pledge of Allegiance
- d) Committee Members Announcements and Presentations
- e) Public Comment Period – Members of the audience wishing to address the committee on items not on the agenda or items on the agenda if they are unable to stay for the entire meeting
- f) Consent Calendar
- g) Public Hearing (for Planning Commission)
- h) Business Items
- i) Future Agenda Items
- j) Notification of Next Meeting and Adjournment

For discussion of items on the agenda, the following order is followed:

- A. Presentation of the Staff Report
- B. Advisory Member Questions
- C. Public Comments
- D. Advisory Member Discussion
- E. Recommendation(s) as Needed

Consistent with City Council practice for receiving public comments on agenda items, advisory bodies are encouraged to limit public comments to three minutes per speaker to ensure

that everyone who wishes to be heard has the opportunity to do so. The Chair, with the consensus of the advisory body, may allow additional brief testimony from speakers who have already commented on the same agenda item; however, speakers should not be allowed to yield their time to another speaker.

2) Behavior and Civil Discourse Policy

The City of Morro Bay encourages the willingness to speak up and to listen within a framework of respect and understanding. Toward that end, the Council has adopted Resolution No. 27-18, a Resolution of the City Council of the City of Morro Bay, California, Pledging to Follow Best Practices of Civility and Civil Discourse in All of Its Meetings (see following page). That resolution was crafted by the League of Women Voters of San Luis Obispo County.

RESOLUTION NO. 27-18

RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
PLEDGING TO FOLLOW BEST PRACTICES OF CIVILITY AND CIVIL DISCOURSE
IN ALL OF ITS MEETINGS

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, on November 10, 2015, the City Council adopted Resolution No. 70-15 pledging to follow best practices of civility and civil discourse in all of its meetings, principals developed by the League of Women Voters; and

WHEREAS, a healthy democracy respects the people's right to debate issues with passion; and not only tolerates disagreement but welcomes it; and

WHEREAS, Honest debate helps refine ideas and create policies that benefit the greater good;

WHEREAS, we, the Mayor, City Council Members, Commissioners, Appointees, and Staff of the City of Morro Bay, in order to ensure **civility** and **civil discourse** in all of our meetings, reaffirm and pledge our commitment to the following **best practices of civility and civil discourse**; and,

WHEREAS, we pledge our commitment to **listen first**, making an honest effort to understand views and reasoning of others by listening to understand, not listening to find fault, allowing thoughtful discussion to lead to the best possible outcomes; and

WHEREAS, we pledge our commitment to **respect different opinions**, by inviting and considering different perspectives, allowing space for ideas to be expressed, opposed and clarified in a constructive manner; and

WHEREAS, we pledge our commitment to **show courtesy**, by treating all colleagues, staff and members of the public in a professional and courteous manner whether in person, online, or in written communication, especially when we disagree; and

WHEREAS, we pledge our commitment to **avoid rhetoric intended to humiliate, malign, or question the motivation** of those whose opinions are different from ours in all our meetings; and

WHEREAS, we pledge our commitment to **speak truthfully** without accusation, and avoid distortion in all our meetings; and

WHEREAS, we pledge our commitment to **debate the policy not the person**, focusing on the issue, and not personalizing the debate or using other tactics that divert attention from the issue; and

WHEREAS, we pledge our commitment **against violence and incivility** in all their forms whenever and wherever they occur in all our meetings; and

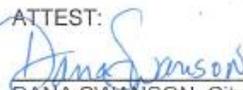
WHEREAS, we commit ourselves to build a civil political community in which each person is respected and spirited public and political debate is aimed at the betterment of the City of Morro Bay and its people and not the disparagement of those with whom we disagree.

NOW, THEREFORE, BE IT RESOLVED, by the City Council, City of Morro Bay, California, that the Mayor, City Council Members, Commissioners, Appointees, and Staff of the City of Morro Bay shall promote the use of and adherence to the principles of **civility** and **civil discourse** in conducting business with appointed and elected officials, staff, and citizens.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8th day of May 2018 on the following vote:

AYES: Irons, Davis, Headding, Makowetski, McPherson
NOES: None
ABSENT: None


JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

The Chair (or presiding officer in the event the Chair is absent) of each advisory body is responsible for ensuring that all of its members as well as members of the general public adhere to these practices. The presiding officer strives to preserve appropriate order and decorum during all meetings. Speakers should be encouraged to address the advisory body and not the audience and discouraged from clapping, shouting or booing.

Persons demonstrating rude, boisterous, or profane behavior will be called to order by the presiding officer (chairperson or vice chairperson). If such conduct continues, then the presiding officer may call a recess, request the removal of such person(s) from the meeting, adjourn the meeting, or take such other appropriate action permitted by the Brown Act.

3) Quorum Requirements

A quorum constitutes the majority or more than half of the total established members of the advisory body. A quorum must be in attendance for any discussion or action to take place. The quorum must be present for the entire meeting and if a member leaves during the meeting that results in the absence of a quorum, the meeting must be adjourned.

If vacancies exist on an advisory body, then those positions still count when determining a quorum. For example, if two positions are vacant on a seven-member body, and two members are absent there is not a quorum and no meeting can be held.

4) Meeting Absences

Because of quorum requirements, when an absence is anticipated, the individual advisory body member is responsible for notifying the Chair and the staff responsible in advance and the absence shall be counted in that member's attendance record. Approval for excused absences shall be the responsibility of the advisory body. Said excuses should be submitted in advance and formally approved at a regular meeting of the advisory body. Attendance requirements are contained in each advisory body's by-laws, but generally speaking missing three consecutive regular meetings or 25% of the regular meetings during any ~~12-month~~ calendar year period, without formal consent of the City Council, shall constitute the resignation of the absent member. The assigned staff person responsible for taking the minutes will be responsible for monitoring advisory board members' attendance and conveying pertinent information to the City Clerk/Deputy City Clerk. City Council shall be notified when a member is determined to have not met the attendance requirements of the advisory body.

5) Chair Responsibilities

The Chair's main role is to provide the advisory body with direction and to set the tone for meetings. The job involves balancing the need to keep the meeting moving while also ensuring all members of the advisory body and the public are involved in the meeting. The Chair is responsible for ensuring the meeting follows parliamentary procedures, as described above.

6) Reconsideration of Issues

City Council Policies & Procedures discourage reconsideration of issues once a decision has been made. Decisions can be revisited if a majority of Council Members chooses to do so. For advisory bodies, once the City Council has made a decision on an issue an advisory board should not attempt to reconsider that issue or make an alternative recommendation to Council.

4. The Brown Act

This is a brief review of the Brown Act, also known as the “open meeting law.” A more detailed Brown Act and Political Reform Act Booklet is available to the advisory body through the City Attorney’s office.

A. Purpose

The general purpose of the Brown Act is to aid in the conduct of the people’s business. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not for the people to know. Therefore, it is the intent of the Brown Act the actions and deliberations of all local agencies be taken openly, including deliberations and collective discussion involving the examination, weighing and reflection on the reasons for or against a choice. It also includes the exchange of facts preliminary to the ultimate decision.

Generally, all meetings of City boards, commissions, committees and groups are to be open and public and all persons are to be permitted to attend any meeting. Under certain *strict* circumstances, closed session meetings are permitted.

A “meeting” is defined as a gathering of a majority (quorum) of the advisory body to discuss items within the body’s subject matter jurisdiction or to conduct other business of the body. It should be noted the Brown Act generally prohibits any action or discussion of items not on the posted agenda. The Brown Act also requires regular meeting agendas allow for two types of public comment: general public comment where the public can comment on any item that is within the subject matter jurisdiction of the body that is not listed on the agenda and public comment that is specific to items on the advisory body’s agenda. In Morro Bay, separate public comment is allowed on each item on the posted agenda prior to deliberation.

Keeping in mind all discussion of issues by an advisory body must be made in a public meeting, one of the most common violations of the Brown Act involves serial meetings. This occurs when any communication among a majority of the members occurs outside of a meeting. A common example of a serial meeting is when one member calls a second member who then calls a third member, and so on to share ideas among a majority of the advisory body. Another common occurrence involves e-mails. For example, a staff member sends out via e-mail a document, and one member recommends a revision and copies fellow advisory body members. It is good practice to send e-mail responses to the sender only.

Brown Act compliance is absolutely required. We encourage you to carefully review the Brown Act Booklet which is available through the City Attorney's Office which describes in detail the Brown Act.

B. Electronic Mail (e-mail), the Public Records Act and the Brown Act

You will be issued a City e-mail once you are appointed to an advisory body. City e-mail is no less a part of "official City business" than any other written correspondence; and there is no expectation of privacy for City email messages. Good judgment and common sense should, therefore, prevail at all times regarding its appropriate use. City e-mail is subject to the requirements of the Brown Act and is subject to disclosure under the Public Records Act.

The Brown Act does not prohibit the use of e-mail to make individual contacts between members of an advisory body, the City Council, or the public or staff. However, great care should be taken to avoid the use of e-mail to contact a majority of the Council or your advisory body, either individually or serially, "in a connected plan to engage in collective deliberation on public business."

City e-mails are generally intended to fulfill the same general function as ordinary daily verbal communications among advisory body members, City Council and City staff and are generally considered "transitory" documents (work-in-progress), and, therefore, are generally not subject to records retention requirements. For file management and storage purposes, City e-mail messages should only be retained for as long as needed. In most instances this means deleting messages as you have read them, and shortly after you have sent them.

Some email messages, including any attachments thereto, can be considered official city records, because the content relates in a substantive way to the conduct of the public's business. Emails that qualify as public records need to be retained by the City. However, they are not retained through the City e-mail system. Those e-mail public records should be printed as a hard copy or saved electronically in a folder outside the e-mail system, in accordance with the City's records retention policy. Generally, the sender of the e-mail should be the person responsible for printing and filing it accordingly, but persons responsible for a particular program or project file shall be responsible for retaining all e-mail they send or receive related to that program or project.

It is the responsibility of individual advisory body members to determine if e-mail is an official City-record that must be retained in accordance with the City's record retention policy. The City Attorney will assist in making such a determination. Preliminary drafts, notes or interagency or intra-agency memoranda that are not retained by the City in the ordinary course of business are generally not considered to be official City records subject to disclosure. Advisory body members are encouraged to delete documents that are not otherwise required to be kept by law or whose preservation is not necessary or convenient to the discharge of your duties or the conduct of the City's business.

Periodically, the City receives requests for inspection or production of documents pursuant to the Public Records Act, as well as demands by subpoena or court order for such documents. In the event such a request or demand is made for e-mail, advisory body members have control over such e-mail, once they become aware of the request or demand, shall use their best efforts, by any reasonable means available, to temporarily preserve any e-mail that is in existence until it is determined whether such e-mail is subject to preservation, public inspection or disclosure. The City Clerk shall be contacted regarding any such emails within the advisory body member's control.

Advisory board members will typically be assigned a City electronic messaging account, such as an email account. To the extent feasible, City issued accounts shall be used to conduct City business. Limited use of a private device for public business is permissible, but not encouraged.

Electronic communications regarding City business may be subject to the City's official records retention policies and the Public Records Act, even if those electronic communications are or were created, sent, received or stored on an advisory board member's personal electronic messaging account or device. To the extent an advisory board member uses private, non-City electronic messaging accounts or devices, in compliance with State law they will be asked to locate any such electronic communications on those non-City accounts or devices and provide the communications to the City Clerk in the event a Public Records Act request is made seeking the communication(s).

If an advisory board member receives an electronic message regarding City business on his/her personal electronic messaging account or device, or circumstances require such person to conduct City business on a personal account or device, then the advisory board member is strongly encouraged to either: (a) copy ("cc") any communication from the advisory board member's personal electronic messaging account or device to his/her City electronic messaging account; or (b) forward the electronic communication to his/her City account as soon as feasible after the original creation or transmission of the electronic communication. That practice facilitates efficient and prompt responses to Public Record Act.

5. Political Reform Act (Conflicts of Interest)

A. Background

The Political Reform Act (Government Code sections 81000, et seq.) was approved by the voters of the State of California and is intended to prevent conflicts of interest by requiring public officials to disclose certain personal financial interests which could foreseeably cause conflicts. In addition, a public official may be required to disqualify himself/herself from making, participating in, or attempting to influence any government decision which will affect any of his/her financial interests, not just those that are required to be disclosed. The City's Brown Act and Political Reform Act Booklet explains in more detail what a conflict of interest is, and when the law requires disqualification. In addition, the Fair Political Practices Commission is available for advice.

Under the Political Reform Act, no public official may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision if he or she knows or has reason to know that he or she has a financial interest. (Government Code Section 87100). A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of his or her economic interests. (Government Code Section 87103; 2 Cal. Code of Regs. Section 18700 (a)).

The term “financial interest” denotes a conclusion that a public official has a financial interest in a decision if it is concluded that it is reasonably foreseeable that the decision will have a material financial effect on his or her economic stake greater than that of other citizens. The term “economic interest” is a label applied to the particular types of stakes recognized by the Act as potential sources of a conflict of interest. There are specific types of economic interest recognized by the Act, as such, we direct you to carefully review the Brown Act and Political Reform Act Booklet which is available from the City Attorney’s Office and/or visit the Fair Political Practices Commission Web page for more detailed information.

B. City Policy Regarding Conflicts of Interest

Because the City of Morro Bay is a small, closely knit community it is imperative the citizens have trust and confidence in City government. Therefore, the City has adopted this public policy to prevent any possibility of conflict that may arise.

Generally stated, any elected or appointed official has a conflict of interest if he or she has a financial interest in a project before the City and/or when compensation is received from anyone seeking approvals from the City. There are some exceptions but, generally, elected or appointed officials are prohibited from voting on projects where a conflict exists. A conflict of interest also occurs when officials live within a certain distance from a project (usually 500 feet). Even if a legal conflict does not exist, it may be inappropriate to participate in a decision for personal reasons to avoid even the appearance of a conflict of interest. As an example, there could be a conflict if your good friend has a matter before your board, and you do not feel it would be appropriate for you to voice an opinion in your "City" capacity. While the latter case is not defined by the Fair Political Practices Commission as a conflict, it could be perceived as a conflict, and then stepping down is appropriate.

It is the policy of the City, in addition to strictly adhering to the Fair Political Practices Commission rules, all elected and appointed officials conduct themselves in a manner that does not raise a reasonable perception or belief that there is a conflict of interest or an abuse of your position. All advisory body members should avoid the appearance of conflict at all costs.

If you step down from the dais and refrain from voting on an issue, then you are not precluded from speaking as an individual. Your presentation, however, must be made from the floor, at the microphone with the rest of the public. You should state for the record you are speaking as an *individual*. Many times in the past, Council Members and advisory body members have stepped down from their official position at the dais when projects are presented

in which there may be the potential for conflict of interest. That provides the opportunity to present your views as an *individual* on any matter before any City body.

6. ADVISORY BODY BY-LAWS

The City Council has approved the rules and regulations (referred to herein as By-Laws) to set forth their purpose, procedures, and specific issues such as their functions, meeting dates, officers, vacancies and budgets.

All advisory body meetings will be conducted in strict compliance with the City Council Policy and Procedures and State Law and with guidance from Robert's Rules of Order, all as described in this Handbook.

Attached hereto are the applicable By-Laws for all of the City of Morro Bay's Advisory Bodies.

CITY OF MORRO BAY HARBOR ADVISORY BOARD BY-LAWS

PURPOSE AND AUTHORITY

The Harbor Advisory Board is established to review, advise, and recommend to the City Council on items pertaining to the City Harbor. These include, but are not limited to:

- A. Use, control, promotion and operation of vessels and watercraft within the harbor, docks, piers, slips, utilities and publicly-owned facilities as a part of the City's Harbor, and water commerce, navigation, or fishery in the Harbor.
- B. Review and recommend rules and regulations pertaining to any of the matters listed in subsection A of this section.
- C. Review and recommend rates, tolls, fees, rents, charges or other payments to be made for use or operation of the Harbor.
- D. The Board shall make reports and recommendations to the various city boards, commissions or the City Council on matters relating to activities within the harbor. When requested to do so, the Board will review items referred by other city boards, commissions or the City Council. Resulting reports and recommendations will be included in presentations before the City Council.
- E. Provide a channel of communication from the individuals, businesses, and groups who live or have businesses on the harbor to the City Council.

APPOINTMENT

The Harbor Advisory Board shall be comprised of seven voting members, four of which must be qualified electors of the City of Morro Bay. Appointments and the filling of vacancies shall be made by the City Council. Harbor Advisory Board members shall serve at the pleasure of the City Council. The City Council will attempt to select members from the following categories:

- Morro Bay Commercial Fishermen's Association
- Waterfront Leaseholders
- Marine Oriented Business
- Recreational Boating
- Representative of South Bay/Los Osos
- Two Members at Large

However, the City Council and Harbor Advisory Board recognize the importance of the Morro Bay Commercial Fisherman's Association (MBCFO) seat, and acknowledge that it is often difficult for commercial fishermen serving on the HAB to meet the attendance requirements due to the nature of their business. As such, up to two (2) Alternate MBCFO members to the Primary member may be appointed by the City Council in the same manner and fashion as regular appointments in order to stand-in for the Primary member in the event of the Primary member's absence.

TERMS OF OFFICE

Members shall serve, without compensation, for a period of four (4) years commencing February 1st in the year specified when members are appointed. Appointments shall be made in such a manner so as no more than three members' terms expire concurrently. Unanticipated vacancies shall be filled for the duration of the unexpired term only.

QUALIFICATIONS

Four of the seven members must be a resident and registered voter of the City during the term of appointment, unless excepted by State Law or Council approved special requirements; must be at least 18 years of age at the time of appointment; and, may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

ABSENCE FROM MEETINGS

Because of quorum requirements, when an absence is anticipated, the individual advisory body member is responsible for notifying the Chair and the staff responsible in advance and the absence shall be counted in that member's attendance record. Approval for excused absences shall be the responsibility of the advisory body. Said excuses should be submitted in advance and formally approved at a regular meeting of the advisory body. Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any ~~12-month~~ calendar year period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. The assigned staff person responsible for taking the minutes will be responsible for monitoring advisory board members' attendance and conveying pertinent information to the City Clerk/Deputy City Clerk. City Council shall be notified when a member is determined to have not met the attendance requirements of the advisory body. ~~Requests for extended excused absences of three consecutive regular meetings or twenty five (25) percent of the regular meetings during any 12 month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.~~

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chair and Vice-Chair who shall hold office for a period of one year. The Chair shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of

the Committee. In the absence of the Chair, duties of the office shall be performed by the Vice-Chair. If both the Chair and Vice-Chair are absent, the remaining quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Harbor Advisory Board.

PROCEDURE

Regular meetings shall be held monthly on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. If the Board desires to change its meeting times, dates, or location, it must also seek prior approval from the Council.

The Chair may close meetings to public comments, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended. In instances where there is no business coming before the Board in a given month, the Chair and assigned staff person may agree to cancel the meeting. Cancellation shall occur at least 120 hours or five days before the scheduled meeting and all members and the public shall be duly notified.

These advisory board meetings will be conducted in strict compliance with the policies and procedures outlined in this Handbook. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Harbor Advisory Board shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow “Robert’s Rules of Order.”

Staff support includes preparation of a summary agenda and preparation of agenda reports providing a brief background of the issue, a list of alternatives, recommendations and appropriate backup materials, as necessary. When possible, advisory body member questions for staff regarding agenda items should be made in advance of the meeting. Advisory body members should be mindful of staff’s time in making requests for information. The request should be channeled through the advisory body’s chairperson, be specific and be limited in scope so staff can respond without altering other priorities and with minimal delay to other assignments. The request should only impose a “one-time” work requirement and should not require a significant allocation of staff resources (generally defined as consisting of more than one staff person working on the issue in excess of 1-2 hours).

Communication between the Harbor Advisory Board Members and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to Harbor Advisory Board business and shall attend the Harbor Advisory Board meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

CITY OF MORRO BAY PUBLIC WORKS ADVISORY BOARD BY-LAWS

PURPOSE AND AUTHORITY

The Public Works Advisory Board is established to review, advise and recommend to the City Council on items pertaining to Water, Wastewater, Streets, Recycling, and Solid Waste, Cable Television, Telecommunications, Trees, Transportation and other issues related to Public Services Department responsibilities.

The Board shall make reports and recommendations to the various city boards, commissions or the City Council on the above matters. When requested to do so, it will review items referred by other city boards, commissions or the City Council. Resulting reports and recommendations will be included in presentations before the City Council.

APPOINTMENT

The Public Works Advisory Board shall be comprised of seven voting members, all of which must be qualified electors of the City of Morro Bay. Appointments and the filling of vacancies shall be made by the City Council. The Public Works Advisory Board members shall serve at the pleasure of the City Council.

TERMS OF OFFICE

Members shall serve, without compensation, for a period of four years commencing February 1st in the year specified when members are appointed. Appointments shall be made in such a manner so as no more than three members' terms expire concurrently. Unanticipated vacancies shall be filled for the duration of the unexpired term only.

QUALIFICATIONS

A member must be a resident and registered voter of the City during the term of appointment, unless excepted by State Law or Council approved special requirements; must be at least 18 years of age at the time of appointment; and, may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

ABSENCE FROM MEETINGS

Because of quorum requirements, when an absence is anticipated, the individual advisory body member is responsible for notifying the Chair and the staff responsible in advance and the absence shall be counted in that member's attendance record. Approval for excused absences shall be the responsibility of the advisory body. Said excuses should be submitted in advance and formally approved at a regular meeting of the advisory body. Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any ~~12-month~~ calendar year period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. The assigned staff person responsible for taking the minutes will be responsible for monitoring advisory board members' attendance and conveying pertinent information to the City Clerk/Deputy City Clerk. City Council shall be notified when a member is determined to have not met the attendance requirements of the advisory body. ~~Requests for extended excused absences of three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.~~

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chairperson and Vice-Chairperson who shall hold office for a period of one year. The Chair shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chair, duties of the office shall be performed by the Vice-Chair. If both the Chair and Vice-Chair are absent, the remaining quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Advisory Board.

PROCEDURE

Regular meetings shall be held every month on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. If the Board desires to change its meeting times, dates, or location, it must also seek prior approval from the Council.

The Chair may close meetings to public comments, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended. In instances where there is no business coming before the Board in a given month, the Chair and assigned staff person may agree to cancel the meeting. Cancellation shall occur at least 120 hours or five days before the scheduled meeting and all members and the public shall be duly notified.

These advisory board meetings will be conducted in strict compliance with the policies and procedures outlined in this Handbook. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Public Works Advisory Board shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow “Robert’s Rules of Order.”

Staff support includes preparation of a summary agenda and preparation of agenda reports providing a brief background of the issue, a list of alternatives, recommendations and appropriate backup materials, as necessary. When possible, advisory body member questions for staff regarding agenda items should be made in advance of the meeting. Advisory body members should be mindful of staff’s time in making requests for information. The request should be channeled through the advisory body’s chairperson, be specific and be limited in scope so staff can respond without altering other priorities and with minimal delay to other assignments. The request should only impose a “one-time” work requirement and should not require a significant allocation of staff resources (generally defined as consisting of more than one staff person working on the issue in excess of 1-2 hours).

Communication between the Public Works Advisory Board members and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to the Public Works Advisory Board business and shall attend the Public Works Advisory Board meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

CITY OF MORRO BAY RECREATION AND PARKS COMMISSION BY-LAWS

PURPOSE AND AUTHORITY

The Recreation and Parks Commission is established to provide the following:

- A. Act in an advisory capacity to the City Council in all matters pertaining to parks and public recreation and to cooperate with other governmental agencies and civic groups in the advancement of sound recreation and parks planning and programming. The Board shall make reports and recommendations to the various city boards, commissions or the City Council on the above matters. When requested to do so, will review items referred by other city boards, commissions or the City Council. Resulting reports and recommendations will be included in presentations before the City Council.
- B. Formulate policies on recreation services, parks and open space for approval by the City Council.
- C. Recommend to the City Council the development of recreational areas, parks, facilities, open spaces, programs, and improved recreation services.
- D. Recommend to the City Council the adoption of rules, regulations and standards concerning recreation and parks in respect to organization, personnel, areas and facilities, program and financial support.
- F. Advise the Recreation and Parks Manager in the preparation of the annual parks maintenance, park improvement and recreation budgets and long-range recreation and parks facilities improvements.
- F. Hold public hearings and meetings to conduct investigations and surveys for the purpose of securing facts and data concerning parks and public recreation.

APPOINTMENT

The Recreation and Parks Commission shall be comprised of five voting members, four of which must be qualified electors of the City of Morro Bay. Appointments and the filling of vacancies shall be made by the City Council. Commissioners shall serve at the pleasure of the City Council.

TERMS OF OFFICE

Members shall serve, without compensation, for a period of four (4) years commencing February 1st in the year specified when members are appointed. Appointments shall be made in such a manner so as no more than three members' terms expire concurrently. Unanticipated vacancies shall be filled for the duration of the unexpired term only.

QUALIFICATIONS

Four of the five members must be a resident and registered voter of the City during the term of appointment, unless excepted by State Law or Council approved special requirements. Unless otherwise approved in accordance with Council Policies and Procedures, section 6.6.1, each member must (i) be at least 18 years of age at the time of appointment and (ii) not be an Elected Official, Officer, or Employee of the City of Morro Bay. (See Council Policies and Procedures, Section 6.6.1.)

ABSENCE FROM MEETINGS

Because of quorum requirements, when an absence is anticipated, the individual advisory body member is responsible for notifying the Chair and the staff responsible in advance and the absence shall be counted in that member's attendance record. Approval for excused absences shall be the responsibility of the advisory body. Said excuses should be submitted in advance and formally approved at a regular meeting of the advisory body. Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any ~~12-month~~ calendar year period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. The assigned staff person responsible for taking the minutes will be responsible for monitoring advisory board members' attendance and conveying pertinent information to the City Clerk/Deputy City Clerk. City Council shall be notified when a member is determined to have not met the attendance requirements of the advisory body. ~~Requests for extended excused absences of three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.~~

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chairperson and Vice-Chair who shall hold office for a period of one year. The Chair shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chair, duties of the office shall be performed by the Vice-Chair. If both the Chair and Vice-Chair are absent, the remaining quorum shall appoint one

member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Commission.

PROCEDURE

Regular meetings shall be held every other month on odd numbered months on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. If the Commission desires to change its meeting times, dates, or location, it must also seek prior approval from the Council.

The Chair may close meetings to public comments, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended. In instances where there is no business coming before the Board in a given month, the Chair and assigned staff person may agree to cancel the meeting. Cancellation shall occur at least 120 hours or five days before the scheduled meeting and all members and the public shall be duly notified.

All Commission meetings will be conducted in strict compliance with the policies and procedures outlined in this Handbook. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Commission shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow “Robert’s Rules of Order.”

Staff support includes preparation of a summary agenda and preparation of agenda reports providing a brief background of the issue, a list of alternatives, recommendations and appropriate backup materials, as necessary. When possible, advisory body member questions for staff regarding agenda items should be made in advance of the meeting. Advisory body members should be mindful of staff’s time in making requests for information. The request should be channeled through the advisory body’s chairperson, be specific and be limited in scope so staff can respond without altering other priorities and with minimal delay to other assignments. The request should only impose a “one-time” work requirement and should not require a significant allocation of staff resources (generally defined as consisting of more than one staff person working on the issue in excess of 1-2 hours).

Communication between the Commission members and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to Commission business and shall attend the Commission meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

CITY OF MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD BY-LAWS

PURPOSE AND AUTHORITY

The Morro Bay Tourism Business Improvement District (MTBID) Advisory Board (the “Board”) advises the City Council on the administration and use of the MTBID assessment funds. The Board recommends projects to the City of Morro Bay to promote tourism to directly benefit the City’s lodging industry.

The primary purpose of the MTBID is to increase occupancy and room nights across all lodging types (motels, hotels, bed and breakfasts, and short-term vacation rentals) that pay the business improvement assessment, along with transient occupancy tax (TOT) within the City while placing particular emphasis on marketing that positively impacts the lodging.

APPOINTMENT

The Board shall be comprised of seven voting members. Appointments and the filling of vacancies shall be made by the City Council. The Board members shall serve at the pleasure of the City Council. Because of the diversity among assessment district members represented by the Board including local, regional and national lodging industry interests, it is neither practical nor advisable to limit Board membership to City residents. Accordingly, membership on the Board shall be exempt from residency requirements otherwise applicable to other City advisory boards. In addition, a member of the Board may not sit on any other City advisory board.

TERMS OF OFFICE

Members of the Board shall serve, without compensation, for a period of four years. Appointments shall be made in such a manner such that no more than three members’ terms expire concurrently. Unanticipated vacancies shall be filled for the duration of the unexpired term only. If a vacancy is within the last 6 months of a term, then it will be held over to the normal interview process.

QUALIFICATIONS

Effective February 1, 2020, tThe Board shall consist of five members from the Morro Bay lodging industry, one vacation rental representative –and two members from the community at large. On January 31, 2023, or when a community member-at-large seat becomes available,

whichever occurs first, the number of community at large seats will be reduced to one and the total number of board members will return to seven.

The five members from the lodging industry shall consist of three members representing hotels “at large” (no specific number of rooms), and two other positions shall give preference to a member representing lodging rooms of less than 22 rooms and one member representing 50 or less rooms (single hotel or cumulative representation), respectively. If no preferential applicant from a small or large hotel – as defined above – applies, then the seat shall be made available to applicants on an “at large” hotelier representative basis.

The vacation rental representative shall either own or manage a permitted vacation rental property within the City.

The community “at large” member(s) shall be residents and registered voters of the City during the term of appointment.

Each member must be at least 18 years of age at the time of appointment and may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

FUNCTIONS AND DUTIES

The functions and duties of the Board shall include, but not be limited to, the following:

1. Plan a comprehensive program to promote tourism to the City of Morro Bay and prepare an annual marketing program consistent with industry goals and objectives.
2. Develop advertising and promotional programs and projects to benefit the lodging industry in Morro Bay
3. Present an annual assessment report to the City Council regarding the implemented promotional programs and projects.
4. Perform any other lawful tasks as directed by the Council.

ABSENCE FROM MEETINGS

Because of quorum requirements, when an absence is anticipated, the individual advisory body member is responsible for notifying the Chair and the staff responsible in advance and the absence shall be counted in that member’s attendance record. Approval for excused absences shall be the responsibility of the advisory body. Said excuses should be submitted in advance and formally approved at a regular meeting of the advisory body. Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any ~~12-month~~ calendar year period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. The assigned staff person responsible for taking the minutes will be responsible for monitoring advisory board

members' attendance and conveying pertinent information to the City Clerk/Deputy City Clerk. City Council shall be notified when a member is determined to have not met the attendance requirements of the advisory body. ~~Requests for extended excused absences of three consecutive regular meetings or twenty five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.~~

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chair and Vice-Chair who shall hold office for a period of one year. The Chair and Vice-Chair of the Board as well as any presiding officers shall be hoteliers. The Chair shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chair, the Vice-Chair shall perform duties of the office. If both the Chair and Vice-Chair are absent, the remaining quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Board.

PROCEDURE

Regular meetings shall be held monthly on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. If the Board desires to change its meeting times, dates, or location, it must also seek prior approval from the Council.

The Chair may close meetings to public comment, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended. In instances where there is no business coming before the Board in a given month, the Chair and assigned staff person may agree to cancel the meeting. Cancellation shall occur at least 120 hours or five days before the scheduled meeting and all members and the public shall be duly notified.

These advisory board meetings will be conducted in strict compliance with the policies and procedures contained in this Handbook. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the advisory board shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow "Robert's Rules of Order."

Staff support includes preparation of a summary agenda and preparation of agenda reports providing a brief background of the issue, a list of alternatives, recommendations and appropriate backup materials, as necessary. When possible, advisory body member questions for staff regarding agenda items should be made in advance of the meeting. Advisory body members should be mindful of staff's time in making requests for information. The request should be

channeled through the advisory body's chairperson, be specific and be limited in scope so staff can respond without altering other priorities and with minimal delay to other assignments. The request should only impose a "one-time" work requirement and should not require a significant allocation of staff resources (generally defined as consisting of more than one staff person working on the issue in excess of 1-2 hours).

Communication between the Board members, and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to the Board business and shall attend the Board meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

CITY OF MORRO BAY PLANNING COMMISSION BY-LAWS

PURPOSE AND AUTHORITY

The Planning Commission is established in accordance with the provisions of Government Code Sections 65100, *et seq.* The functions of the Planning Commission shall be as follows:

- A. To develop and periodically review, a general plan and recommend its adoption or any revisions to the City Council;
- B. To maintain and implement the general plan after its adoption by the City Council;
- C. To develop specific plans as may be necessary to implement the general plan;
- D. To periodically review the capital improvement program of the City for its consistency with the general plan, and forward recommendations to the City Council;
- E. Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan.
- F. Endeavor to promote public interest in, comment on, and understanding of the general plan, and regulations relating to it;
- G. To perform such other functions as the City Council may direct.

The Planning Commission shall:

- A. In addition to the duties and responsibilities set forth by state laws and local ordinances, the Planning Commission shall act in the public interest and serve in an advisory capacity to the City Council on all matters pertaining to the planning function;
- B. Cooperate with other City boards, committees and commissions, governmental agencies and civic groups in the advancement of sound planning, both within and without the City;
- C. Formulate policies on planning services for recommendation to the City Council;
- ~~D. Upon the request of the City Council, hold a joint meeting with the City Council twice annually to discuss proposed policies, programs, goals and objectives, budgeting, future planning, or any other planning matter requiring joint deliberation. The City Clerk shall in January of each year bring forth an agenda item to the City Council to schedule the two joint meetings; Upon request of the City Council, a joint meeting with the Planning Commission and the City Council may be held to discuss matters requiring joint deliberation.~~
- E. Recommend to the City Council the adoption of standards with respect to organization, personnel, facilities, programs and financial support of the planning commission;
- F. Disseminate to the public information concerning the policies and functions of the Planning Commission.

APPOINTMENT

The Planning Commission shall consist of five voting members and they shall be qualified electors and residents of the City. Appointments and the filling of vacancies shall be made by the City Council. Commissioners shall serve at the pleasure of the City Council.

TERMS OF OFFICE

~~Members of the Planning Commission shall be appointed by and serve at the pleasure of the City Council.~~ Terms shall be for a period of four years; vacancies shall be filled for the unexpired term only. Two-year short terms may be established to stagger terms. Expiration dates of specific terms shall be established by resolution of the City Council.

QUALIFICATIONS

A member must be a resident and registered voter of the City during the term of appointment, unless excepted by State Law or Council approved special requirements; must be at least 18 years of age at the time of appointment; and, may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

ABSENCE FROM MEETINGS

Because of quorum requirements, when an absence is anticipated, the individual advisory body member is responsible for notifying the Chair and the staff responsible in advance and the absence shall be counted in that member's attendance record. Approval for excused absences shall be the responsibility of the advisory body. Said excuses should be submitted in advance and formally approved at a regular meeting of the advisory body. Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any ~~12-month~~ calendar year period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. The assigned staff person responsible for taking the minutes will be responsible for monitoring advisory board members' attendance and conveying pertinent information to the City Clerk/Deputy City Clerk. City Council shall be notified when a member is determined to have not met the attendance requirements of the advisory body. ~~Requests for extended excused absences of three consecutive regular meetings or twenty five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.~~

ORGANIZATION

At the first regular meeting in each year wherein newly appointed Members are seated, the Members shall elect a Chair and Vice-Chair who shall hold office for a period of one year. The Chair shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chair, duties of the office shall be performed by the Vice-Chair. If both the Chair and Vice-Chair are absent, then the remaining quorum shall appoint one member to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Commission.

PROCEDURE

Regular meetings shall be held twice a monthly on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. If the Commission desires to change its meeting times, dates, or location, it must also seek prior approval from the Council.

The Chair may close meetings to public comment, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended. In instances where there is no business coming before the Board in a given month, the Chair and assigned staff person may agree to cancel the meeting. Cancellation shall occur at least 120 hours or five days before the scheduled meeting and all members and the public shall be duly notified.

All Commission meetings will be conducted in strict compliance with the policies and procedures contained in this Handbook. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Commission shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow “Robert’s Rules of Order.”

Staff support includes preparation of a summary agenda and preparation of agenda reports providing a brief background of the issue, a list of alternatives, recommendations and appropriate backup materials, as necessary. When possible, advisory body member questions for staff regarding agenda items should be made in advance of the meeting. Advisory body members should be mindful of staff’s time in making requests for information. The request should be channeled through the advisory body’s chairperson, be specific and be limited in scope so staff can respond without altering other priorities and with minimal delay to other assignments. The request should only impose a “one-time” work requirement and should not require a significant allocation of staff resources (generally defined as consisting of more than one staff person working on the issue in excess of 1-2 hours).

Communication between the Commission Members, and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Manager or the designee of the City Manager shall be responsible for preparing agendas, reports, and minutes pertaining to Commission business and shall attend the Commission meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

**CITY OF MORRO BAY
CITIZENS OVERSIGHT COMMITTEE
ACTING IN THE CAPACITY OF A CITIZENS FINANCE
ADVISORY COMMITTEE**

PURPOSE AND AUTHORITY

The Citizens Oversight Committee was established in accordance with the provisions of Morro Bay Municipal Code Section 3.22.120 as a result of Measure Q. The functions of the Citizens Oversight Committee shall be to semi-annually review revenues and expenditures from the ~~collection of~~ tax proceeds collected as a result of Measure Q and present its findings and conclusions to the City Council no later than the last day of the sixth month following the end of each City fiscal year.

~~The purpose of the Citizens Oversight Committee acting~~When the committee is acting in the capacity of a Citizens Finance Advisory Committee its purpose is to provide citizen input to the City Council and staff regarding financial policy or process issues, including audits, financial budgets, contract expenditures and financial reports. In addition, the Committee's role is to help promote citizen participation with, and understanding of, governmental financial information and processes, such as the financial documents, audits, and budgets, as well as the financial condition of the City.

The Citizens Finance Advisory Committee shall perform the following duties:

1. Annual review of independent financial audit, with recommendations, as appropriate.
- ~~2. Annual review of contract expenditures, with recommendations, as appropriate.~~
3. Review ~~existing budget~~the 10-Year Financial Forecast document to determine long-term financial sustainability, and make recommendations, as appropriate.
- ~~4. Review and provide comments on the mid-year budget reports prior to presentation to City Manager.~~
5. Review the annual budget and the mid-year budget report prior to presentation to the City Council (time permitting), and make recommendations, as appropriate.
6. Review and provide comments on routine quarterly financial reports (when possible) prior to presentation to the City Council.
7. Undertake sSpecial financial projects, as directed by the City Council, City Manager or City Treasurer.
- ~~8. Propose/recommend additional financial areas of study to the City Council.~~
- ~~9. All recommendations are to be provided to the City Council, in writing, unless otherwise requested, on no less than a semi-annual basis.~~
- ~~10. Submit an annual work program to the City Council review and approval.~~
11. Acting as tThe Citizens Oversight Committee it shall review a semi-annual expense report of the City relative to activities funded with the ½ cent Measure Q additional

general purpose local sales tax monies and present its findings and conclusions to the City Council for its review no later than December 31st each year.

APPOINTMENT AND TERMS OF OFFICE

The Committee shall have seven citizen-members appointed by the City Council for staggered four-year terms. Appointees shall be residents of the City; however, no member of the Committee shall be an elected official. Unanticipated vacancies shall be filled for the duration of the unexpired term only.

QUALIFICATIONS

All Committee Members must be residents and registered voters of the City during the term of appointment, unless excepted by State Law or Council approved special requirements; must be at least 18 years of age at the time of appointment; and may not be an Elected Official, Officer, or Employee of the City of Morro Bay. (Council Policies and Procedures, Section 6.6.1)

ABSENCE FROM MEETINGS

Because of quorum requirements, when an absence is anticipated, the individual advisory body member is responsible for notifying the Chair and the staff responsible in advance and the absence shall be counted in that member's attendance record. Approval for excused absences shall be the responsibility of the advisory body. Said excuses should be submitted in advance and formally approved at a regular meeting of the advisory body. Absence from three consecutive regular meetings or twenty-five (25) percent of the regular meetings during any ~~12-month~~ calendar year period, without the formal consent of the City Council, shall constitute the resignation of such absent member and the position will be declared vacant. The assigned staff person responsible for taking the minutes will be responsible for monitoring advisory board members' attendance and conveying pertinent information to the City Clerk/Deputy City Clerk. City Council shall be notified when a member is determined to have not met the attendance requirements of the advisory body. ~~Requests for extended excused absences of three consecutive regular meetings or twenty five (25) percent of the regular meetings during any 12-month period must be submitted to the City Council in writing prior to the extended absence to allow sufficient time for review and approval at a regular Council meeting.~~

ORGANIZATION

At the first regular meeting every two years wherein newly appointed members are seated, the members shall elect a Chair and Vice-Chair who shall hold office for a period of two years. The Chair shall preside over meetings, appoint appropriate sub-committees, and direct the affairs of the Committee. In the absence of the Chair, the Vice-Chair shall perform duties of the office. If both the Chair and Vice-Chair are absent, then the remaining quorum shall appoint one member

to preside at that meeting. The City of Morro Bay staff will maintain accurate minutes of the official activities of the Committee.

PROCEDURE

Regular meetings shall be held monthly on a regular schedule. The meetings shall be open to the public. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975. If the Committee desires to change its meeting times, dates, or location, it must also seek prior approval from the Council.

The Chair may close meetings to public comment, provided that the action is consistent with the Brown Act. Agendas, reports, meetings and any and all actions shall be governed by the requirements of the Brown Act, as amended. In instances where there is no business coming before the Board in a given month, the Chair and assigned staff person may agree to cancel the meeting. Cancellation shall occur at least 120 hours or five days before the scheduled meeting and all members and the public shall be duly notified.

All Committee meetings will be conducted in strict compliance with the policies and procedures contained in this Handbook. However, no ordinance, resolution, proceeding or other action of the City Council pertaining to the Committee shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow “Robert’s Rules of Order.”

Staff support includes preparation of a summary agenda and preparation of agenda reports providing a brief background of the issue, a list of alternatives, recommendations and appropriate backup materials, as necessary. When possible, advisory body member questions for staff regarding agendized items should be made in advance of the meeting. Advisory body members should be mindful of staff’s time in making requests for information. The request should be channeled through the advisory body’s chairperson, be specific and be limited in scope so staff can respond without altering other priorities and with minimal delay to other assignments. The request should only impose a “one-time” work requirement and should not require a significant allocation of staff resources (generally defined as consisting of more than one staff person working on the issue in excess of 1-2 hours).

Communication between the Committee Members, and the Council shall be in accordance with the City Council Policies and Procedures as currently adopted.

QUORUM

A majority of voting members shall constitute a quorum.

CITY STAFF

The City Finance Director/Treasurer shall be responsible for preparing agendas, reports, and minutes pertaining to Committee business and shall attend the Committee meetings.

BY-LAW AMENDMENTS

All amendments to the By-Laws shall be approved by the City Council.

RESOLUTION NO. 39-15

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AUTHORIZING FORMATION OF A GENERAL PLAN/
LOCAL COASTAL PROGRAM ADVISORY COMMITTEE (GPAC)**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay has both an outdated General Plan and Local Coastal Program; and

WHEREAS, the City Council has adopted the goal of updating and combining the General Plan and Local Coastal Program; and

WHEREAS, the City Council authorized preparation of a consultant prepared work plan for the update of General Plan/Local Coastal Program; and

WHEREAS, the City is in the process of preparing a Request for Proposal for consultant services to prepare an update of the General Plan/Local Coastal Program; and

WHEREAS, on April 14, 2015, the City Council moved to form a General Plan/Local Coastal Program Citizens Advisory Committee (GPAC), and directed staff begin recruitment for that committee to be selected and formed in May 2015; and

WHEREAS, following a broad outreach, the City Council held a special meeting on May 18, 2015 to conduct interviews and establish the committee.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Morro Bay, California, as follows:

- A. The GPAC is to be composed of nine members selected from the community at-large, with consideration also given to non-Morro Bay residents with established property or financial interests in the City, to be appointed by the City Council.
- B. The initial City Council appointments to GPAC are:
 - Rich Buquet
 - Robert Davis
 - Jan Goldman
 - Christine Rogers
 - Susan Schneider
 - Glenn Silloway
 - Melani Smith
 - Susan Stewart
 - Robert Tefft

PASSED AND ADOPTED, by the City of Morro Bay City Council, at a regular meeting held on this 9th day of June, 2015 by the following vote:

AYES: Irons, Headding, Johnson, Makowetski, Smukler
NOES: None
ABSENT: None



Jamie L. Irons, Mayor

ATTEST:



Dana Swanson, City Clerk

RESOLUTION NO. 64-17

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AMENDING RESOLUTION NO. 39-15, REDUCING THE NUMBER
GENERAL PLAN/LOCAL COASTAL PROGRAM ADVISORY COMMITTEE (GPAC)
MEMBERS FROM NINE TO SEVEN

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, by Resolution No. 39-15, the City Council formed the GPAC and appointed its nine members; and

WHEREAS, the GPAC was formed as a limited-term, special purpose committee for the purpose of providing input and guidance throughout the General Plan/Local Coastal Plan (GP/LCP) update process to ensure the interests and values of all segments of the community are well represented; and

WHEREAS, there are currently two vacancies on the GPAC and given the update process has been underway for well over a year and the amount of background material covered to date would make it extremely difficult for a new member to come up to speed with the process; and

WHEREAS, the GP/LCP Update is anticipated to be complete in September 2018 and the GPAC will be dissolved at the end of the process.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Morro Bay, California, hereby amends Resolution No. 39-15, reducing the number of GPAC members from nine to seven.

PASSED AND ADOPTED, by the City of Morro Bay City Council, at a regular meeting held on this 12th day of December 2017 by the following vote:

AYES: Irons, Davis, Headding, Makowetski, McPherson

NOES: None

ABSENT: None

ABSTAIN: None



Jamie L. Irons, Mayor

ATTEST:



Dana Swanson, City Clerk



City of Morro Bay

Morro Bay, CA 93442

(805) 772-6205

CITY OF MORRO BAY NOTICE OF WATER RECLAMATION FACILITY CITIZENS' ADVISORY COMMITTEE VACANCIES

The WRFCAC will consist of seven members, with two alternates; all members will serve at the pleasure of the City Council. This will be a single purpose, limited-term committee and subject to California's open meeting requirements (Brown Act). Members must be 18 years or older and reside and/or own a business or property in the greater Morro Bay area and should have an interest in or knowledge of engineering, water quality, planning, environmental permitting or municipal finance matters. It is the desire of the City Council to appoint members with backgrounds in the above mentioned subject areas, so they may advise the community and Council on WRF issues such as location, treatment technology and reclamation opportunities. The members will serve until the Council determines the committee is no longer needed.

For additional information regarding the appointment process, please contact the City Clerk at jboucher@morro-bay.ca.us or call 772-6205. Applications are being accepted through Friday, June 13, 2014.

PUBLISH (2 TIMES)
BAY NEWS - May 28th edition
June 4th edition

RESOLUTION NO. 34-14

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
REGARDING THE SITING OF A NEW WATER RECLAMATION FACILITY
AND FORMATION OF A TECHNICAL REVIEW COMMITTEE**

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, the City of Morro Bay has an existing Wastewater Treatment Plant that requires replacement; and

WHEREAS, it has been determined to be in the best interest of Morro Bay to construct a new Water Reclamation Facility that complies with the California Coastal Commissions actions of January 8, 2013; and

WHEREAS, it is in the best financial interest of the community to minimize the major maintenance and repair costs at the existing wastewater treatment plant; and

WHEREAS, on February 25, 2014, City Council adopted Resolution 17-14 committing to have a new Water Reclamation Facility operational prior to the expiration of the discharge permit for the existing wastewater treatment plant, being five years more or less, and

WHEREAS, on May 13, 2014, the City Council received and reviewed the report from John F. Rickenbach Consulting regarding recommended Water Reclamation Facility (WRF) sites and reclamation.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Morro Bay, California, as follows:

SECTION 1: The City Council provides the following direction to City staff:

- A. Begin preliminary discussions with the “Rancho Colina” property owner and regulatory agencies regarding site of a WRF on that property; and bring back to City Council a draft Memorandum of Understanding with the property owner that addresses the goals of each party, a negotiation timeline and general non-financial terms of the property acquisition.
- B. Continue parallel path discussions with County and regulatory staff regarding a WRF at the California Men’s Colony site.
- C. Form a WRF Technical Review Committee (TRC) that will be composed of one member from the Public Works Advisory Board and one member from the Planning Commission as appointed by each body and five members and two alternates to be selected from the community at-large. Council will appoint the at-large and alternate members using the same procedures as it uses to appoint to its standing advisory boards.

D. The City Council has reviewed the report entitled *New Water Reclamation Facility Project Report on Reclamation and Council Recommended WRF Sites* dated May 8, 2014, and will rely on its conclusions and recommendations as this process moves forward, with the understanding changes to those, and that reliance, may need to happen along the way due to more definitive or different information that may become available.

PASSED, APPROVED, AND ADOPTED, by the City of Morro Bay City Council, at a regular meeting held on this 27th day of May, 2014 by the following vote:

AYES: Irons, C. Johnson, N. Johnson, Leage, Smukler
NOES: None
ABSENT: None



Jamie L. Irons, Mayor

ATTEST:



Jamie Boucher, City Clerk

RESOLUTION NO. 53-14

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
MODIFYING THE MAKE UP OF THE WATER RECLAMATION FACILITY
CITIZEN'S ADVISORY COMMITTEE (WRFCAC)**

**The City Council
City of Morro Bay, California**

WHEREAS, it has been determined to be in the interest of the public to form a citizens advisory committee for the new Water Reclamation Facility; and

WHEREAS, on May 27, 2014, the City Council adopted Resolution 34-14 forming that advisory committee (now referred to as "WRFCAC") to be composed of one member from the Public Works Advisory Board and one member from the Planning Commission as appointed by those bodies and five members and two alternates to be selected from the community at-large; and

WHEREAS on July 7 and 8, 2014, the City Council conducted interviews of 16 applicants to fill vacancies on the newly formed WRFCAC and appointed five members and two alternates to that committee; and

WHEREAS, at the meeting of July 8, 2014, the City Council expressed its desire to eliminate WRFCAC alternates and appoint seven full members.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, as follows:

1. WRFCAC is to be composed of one sitting member from the Public Works Advisory Board and one sitting member from the Planning Commission, as appointed by those bodies, and seven members selected from the community at-large to be appointed by City Council.
2. The initial City Council appointments to WRFCAC are:
 - Planning Commissioner: Richard Sadowski
 - Public Works Advisory Board Member: Steven Shively
 - At large member: Barbara Spagnola
 - At large member: Bill Woodson
 - At large member: Dale Guerra
 - At large member: John Diodati
 - At large member: Mary (Ginny) Garelick
 - At large member: Paul Donnelly
 - At large member: Valerie Levulett

3. Changes in the above appointments to WRFCAC can be ratified or approved by motion of the City Council without the need for adoption of a new resolution.

PASSED AND ADOPTED by the Morro Bay City Council at a regular meeting thereof held on the 12th day of August, 2014 by the following vote:

AYES: Irons, C. Johnson, N. Johnson, Leage, Smukler
NOES: None
ABSTAIN: None



Jamie L. Irons, Mayor

ATTEST:



Jamie Boucher, City Clerk

PRESENT:	John Heading	Mayor
	Dawn Addis	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member
	Marlys McPherson	Council Member
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Jennifer Callaway	Finance Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Steve Knuckles	Fire Chief
	Jody Cox	Police Chief
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Heading called the meeting to order at 6:00 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in closed session.

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/bGbJxS52teE?t=98>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/bGbJxS52teE?t=382>

PRESENTATIONS

- Measure Q Report Presentation by CFAC Chair Spagnola
<https://youtu.be/bGbJxS52teE?t=390>

PUBLIC COMMENT PERIOD

<https://youtu.be/bGbJxS52teE?t=1327>

Chuck Netnan, Three Stacks Brewing located at 3118 Main Street, provided the business spot. Three Stacks Brewing is a small batch brewing company offering a relaxed family- and dog-friendly atmosphere.

Diane Cogdal, Morro Bay, expressed concern the Surf Street staircase had been removed and asked the Council to champion funding for its replacement.

Robert Cogdal, Morro Bay, was disappointed the Surf Street staircase had been removed. He also asked for an update on his request for a crosswalk from the Maritime Museum to restaurants on the Embarcadero.

Larry Truesdale, Morro Bay, provided the Council with an article from The Scientist magazine regarding cannabis use and shared his concerns about potential health impacts on infants and children.

Carole Truesdale, Morro Bay, provided information regarding the Los Osos sewer plant and expressed concern about potential escalating costs of Morro Bay's WRF project.

Rigmor, Morro Bay, spoke regarding the historic importance of the Surf Street staircase.

Erica Crawford, Morro Bay Chamber of Commerce, welcomed the new Council on behalf of the Chamber Board of Directors and local businesses, announced upcoming 4MB focus group meetings and the Annual Chamber Gala to be held Friday, January 11th.

Todd Gailey, SLO resident, spoke regarding his recent termination from the Morro Bay Fire Department and asked to meet individually with Council Members regarding his concerns.

Tim Gailey, Morro Bay, disagreed with the City's decision to terminate Fire Captain Gailey and urged the Council to investigate the case.

Barbara Spagnola, Morro Bay, spoke regarding application and selection process for advisory committees.

Nancy Bast, Morro Bay, disagreed with the proposed Council sub-committee assignments provided in Item A-4.

Chris Cameron announced the Morro Bay Winter Bird Festival will be held January 18 – 20 and stated his support for Todd Gailey.

Betty Winholtz, Morro Bay, was disappointed the Surf Street staircase had been removed, stated her support for Todd Gailey and noted all Morro Bay residents are qualified to serve on advisory boards.

Steve Stevens, Morro Bay, welcomed the new Council and encouraged appointing those with dissenting voices to committees.

Judith Johnston, Morro Bay, addressed the Council and chose to hold her comments until Item B-1.

Mayor Heading closed public comment.

Council asked staff to respond to issues raised during public comment including the Surf Street staircase, cannabis permit approval process, concerns regarding employee termination, and status of the crosswalk request. Mayor Heading commented on the proposed Council discretionary appointments.

A. CONSENT AGENDA
<https://youtu.be/bGbJxS52teE?t=4936>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE NOVEMBER 13, 2018 SPECIAL CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE NOVEMBER 13, 2018 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FOR THE NOVEMBER 29, 2018 CITY COUNCIL SPECIAL
MEETING AND CLOSED SESSION; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 APPOINTMENT OF MAYOR PRO TEMPORE AND APPOINTMENT OF
REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL LIAISON
ASSIGNMENTS AND COUNCIL SUB-COMMITTEES; (MAYOR)

**RECOMMENDATION: Appoint Council Member Davis as Mayor Pro Tempore as well
as appoint representatives to serve on the various County or Regional
Discretionary Boards, Council Liaison Assignments and Sub-Committees for
calendar year 2019 as shown on the attached appointment list.**

- A-5 RECEIVE THE CITIZEN'S ADVISORY FINANCE COMMITTEE (CFAC) REPORT ON FY
2017/18 MEASURE Q TRANSACTIONS AND OTHER ACTIVITIES DURING THE YEAR;
(FINANCE)

**RECOMMENDATION: Receive the Citizen's Advisory Finance Committee (CFAC)
Report on FY 2017/18 Measure Q transactions and other activities during the past
year.**

- A-6 ADOPTION OF RESOLUTION NO. 02-19 APPROVING A NEW MASTER LEASE
AGREEMENT BETWEEN THE CITY OF MORRO BAY AND FLYING DUTCHMAN
ENTERPRISES, INC. (STAN VAN BEURDEN) FOR LEASE SITE 96/96W, LOCATED AT
945 EMBARCADERO, AND COMMONLY KNOWN AS "HOUSE OF JUJU"; (HARBOR)

**RECOMMENDATION: City Council adopt Resolution No. 02-19, approving a new
Master Lease Agreement for Lease Site 96/96W, as proposed.**

- A-7 ADOPTION OF RESOLUTION NO. 03-19 AUTHORIZING THE MAYOR TO EXECUTE
DOCUMENTS NECESSARY FOR A NEW LOAN FOR THE LEASE AGREEMENT AT
LEASE SITE 122-123/122W-123W AND EXTENSION OF 122W-123W AND
ACCEPTING A DEED OF TRUST RELATED THERETO FOR IMPROVEMENTS TO THE
LEASED PROPERTY (THMT, INC, HARBOR HUT AT 1205 EMBARCADERO);
(HARBOR)

**RECOMMENDATION: City Council adopt Resolution No. 03-19 authorizing the
Mayor to execute documents necessary: for a new loan regarding the leasehold
interest at Lease Site 122-123/122W-123W, for an extension of the lease for 122W-
123W for improvements to the leased property subject to approval of the City
Attorney and Harbor Director, and to accept a deed of trust related thereto.**

- A-8 ADOPTION OF RESOLUTION NO. 04-19 ESTABLISHING THE 2019 CITY COUNCIL
MEETING CALENDAR AS WELL AS THE GOALS, WORK PLAN AND BUDGET
DEVELOPMENT SCHEDULES; (ADMINISTRATION)

RECOMMENDATION: City Council review the proposed Council meeting calendar and schedules and adopt Resolution No. 04-19 approving the 2019 City Council Meeting Calendar and Goals, Work Plan and Budget Development Schedules.

The public comment period for the Consent Agenda was opened; seeing none, public comment was closed.

Council Member McPherson pulled Item A-2. Council Member Heller pulled Item A-4.

MOTION: Council Member McPherson moved approval of all items on Consent except Items A-2 and A-4. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

A-2 APPROVAL OF MINUTES FOR THE NOVEMBER 13, 2018 CITY COUNCIL MEETING; (ADMINISTRATION)
<https://youtu.be/bGbJxS52teE?t=5028>

On page 12 of the agenda packet, Council Member McPherson asked that Council clarify action taken regarding Item C-3 at the November 13 meeting. Her understanding was the Harbor Lease Management Policy Council sub-committee would continue but would not attend meetings of the working group.

City Manager Collins commented a member of the public attempted to address the Council during public comment for the Consent Agenda. Mayor Headding re-opened public comment.
<https://youtu.be/bGbJxS52teE?t=5028>

Betty Winholtz, Morro Bay, spoke regarding Item A-4 and suggested the Council Member assignments be more equally divided.

The public comment period for the Consent Agenda was closed.

Council Member McPherson suggested the following correction to the November 13, 2018, Meeting Minutes: "There was also Council consensus that the Council sub-committee (Davis and McPherson) would meet with Mr. Lomeli and staff but would not regularly attend meetings of the lease policy working group."

MOTION: Council Member McPherson moved for approval of Item A-2, as amended. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

A-4 APPOINTMENT OF MAYOR PRO TEMPORE AND APPOINTMENT OF REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL LIAISON ASSIGNMENTS AND COUNCIL SUB-COMMITTEES; (MAYOR)
<https://youtu.be/bGbJxS52teE?t=5028>

Council Member Heller stated he had met with Mayor Headding regarding Council assignments but, after further consideration, he requested the assignments be shuffled so that he would have approximately the same responsibilities as Council Member Addis.

MOTION: Council Member Heller moved the Council pull this item and that he meet with Mayor Headding and discuss committee assignments and not approve these at this time. The motion was seconded by Council Member McPherson for discussion.

At the Mayor's request, City Attorney Neumeyer confirmed the appointment of representatives to County boards and committees are made at the Mayor's discretion but that liaison assignments and Council sub-committees must be approved by the Council as a whole.

Council Member Heller withdrew the motion and Council Member McPherson withdrew the second.

MOTION: Council Member McPherson moved the Council approve the appointments to Regional / County boards that are at the Mayor's discretion as presented. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

Council Member Heller stated the WRFAC was important to him and he would like that to be a permanent committee.

MOTION: Council Member McPherson moved the Council allow Mr. Heller to meet with the Mayor to consider changing the assignments so he has more opportunity to participate. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

The Council took a brief recess at 7:33 p.m. The meeting reconvened at 7:47 p.m. with all members present.

B. PUBLIC HEARINGS

B-1 ADOPTION OF RESOLUTION NO. 01-19 REGARDING THE APPEAL OF THE PLANNING COMMISSION'S DENIAL OF THE APPEAL OF THE ADMINISTRATIVE COASTAL DEVELOPMENT PERMIT NO. CP0-575 FOR THE CONSTRUCTION OF AN ATTACHED ACCESSORY DWELLING UNIT WITHIN THE EXISTING GARAGE AND THE REMOVAL OF A NONCONFORMING SHED AT 2575 GREENWOOD AVENUE. THE PARCEL IS LOCATED WITHIN THE R-1/S.2 SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT AND OUTSIDE OF THE COASTAL COMMISSION APPEAL JURISDICTION; (COMMUNITY DEVELOPMENT)
<https://youtu.be/bGbJxS52teE?t=5713>

Community Development Director Graham provided the report and responded to Council inquiries. Council Member McPherson disclosed ex parte communications with the applicant and appellant.

Mayor Heading opened the public hearing and invited the appellant and respondent to provide testimony.

Judith Johnson, Appellant, provided background information regarding parking issues related to 2575 Greenwood Avenue and the lack of enforcement. She asked that laws be enforced consistently and evenly to all parties.

Dan Krull, Respondent, believed the proposed plan will help alleviate parking issues but those concerns are not related to this permit. If the proposed project is within legal requirements, he requested it be approved; if not, he would like feedback on what changes are needed to be compliant.

The public comment period for Item B-1 was opened.

Clay Kearny, Morro Bay, stated this is a parking issue, not restrictions on the dwelling unit itself. He suggested the back area be fenced and that parking spaces be added on Greenwood Avenue.

The appellant was provided the opportunity to respond to comments by the respondent.

Judith Johnston added the placement of trash cans for three properties further impedes parking.

The public comment period for Item B-1 was closed.

The public hearing was closed.

Council Member Heller stated he had visited property and met with the appellants. He was inclined to keep parking spaces on the Greenwood Street side of the property.

Following discussion, there was consensus the applicant had met all permit requirements and the issues raised regarding parking and trash can storage were a separate enforcement issue they hoped could be resolved peacefully between neighbors.

MOTION: Council Member McPherson moved the Council deny the appeal and uphold the Planning Commission's denial of the appeal of the Director's approval of Administrative Coastal Development Permit No. CP0-575 for the Accessory Dwelling Unit at 2575 Greenwood by adopting City Council Resolution No. 01-19 with the associated Findings and Conditions of approval. The motion was seconded by Council Member Addis and carried 4-1 by roll call vote with Council Member Heller opposed.

C. BUSINESS ITEMS

C-1 AUTHORIZATION FOR ATTENDANCE AT THE C-MANC ANNUAL WASHINGTON, D.C., "WASHINGTON WEEK" MEETINGS AND FOR SUPPORT OF FUNDING FOR THE WATER RECLAMATION FACILITY; (HARBOR/CITY MANAGER)
<https://youtu.be/bGbJxS52teE?t=8138>

Harbor Director Endersby and City Manager Collins provided the staff report and responded to Council inquiries. Mr. Collins amended the staff recommendation that, in addition to the City Manager and Public Works Director, the WRF Program Manager attend the Washington D.C. meetings to seek support for WRF funding and permitting.

The public comment period for Item C-1 was opened.

Nancy Bast, Morro Bay, expressed concern about cost and suggested only the Mayor and Harbor Director go to Washington D.C.

Betty Winholtz, Morro Bay, suggested it was too early to seek support for grant funding and that only the Mayor and Harbor Director need to attend C-MANC at this time.

The public comment period for Item C-1 was closed.

Following discussion, there was Council consensus to support the revised staff recommendation to send a 3-person contingent to attend meetings with legislative delegates and federal agencies representatives in support of the WRF funding and permitting. The Council appreciated the forethought to be in front of the decision makers before funding decisions were made and there was value in maintaining a presence.

Council Member Heller supported sending the Mayor and Harbor Director to attend C-MANC but felt it was an unnecessary expense to send additional people.

MOTION: Council Member McPherson moved the Council authorize a two-person delegation to attend the C-MANC 2019 "Washington Week" meetings in Washington D.C.,

that's the week of March 4 - 7, and authorize a 3-member delegation, the City Manager, Public Works Director and Program Manager, to travel to Washington D.C. and meet, alongside with the Mayor when appropriate, with Morro Bay's legislative delegation and relevant federal agencies representatives in support of the Water Reclamation Facility funding and permitting. The motion was seconded by Council Member Davis and carried 4-1 by roll call vote with Council Member Heller opposed.

C-2 DISCUSSION AND DIRECTION REGARDING RESOLUTION NO. 27-18 PLEDGING TO FOLLOW BEST PRACTICES OF CIVILITY AND CIVIL DISCOURSE; (ADMINISTRATION)
<https://youtu.be/bGbJxS52teE?t=10273>

City Clerk Swanson introduced the item.

The public comment period for Item C-2 was opened; seeing none, the public comment period was closed.

Following discussion, the Council agreed the Code of Civility be amended to clarify the use of profanity is not allowed, that it be brought back annually for Council approval and, once approved, be placed at the entrance to the Vets Hall. In addition, instructions for Public Comment on the front of the agenda should be revised to clarify members of the public are not required to fill out a speaker slip or state their name for the record.

No formal action taken by the City Council.

C-3 ADVISORY BODY FINANCIAL REVIEW OF THE WATER RECLAMATION FACILITY (WRF) PROGRAM; (CITY MANAGER)
<https://youtu.be/bGbJxS52teE?t=11355>

Mr. Collins provided the report and responded to Council inquiries.

The public comment period for Item C-3 was opened.

Nancy Bast, Morro Bay, stated the analysis of construction costs should remain with the WRFCAC and project updates brought to the WRFCAC on a regular basis.

The public comment period was closed.

Mayor asked for a motion.

MOTION: Council Member Davis moved staff recommendation to revise the Citizens Finance Advisory Committee (CFAC) roles and responsibilities to include review of the financial aspects of the Water Reclamation Facility program, relieve the Water Reclamation Facility Citizens Advisory Committee of that responsibility, while maintaining the WRFCAC role of reviewing, and providing an opportunity for community input on the technical components of the WRF. The motion was seconded by Council Member McPherson for discussion.

Council Member McPherson noted the CFAC Chair is also the Acting Chair for the WRFCAC and is familiar with the workings of both committees. There was Council consensus the CFAC has the financial expertise and was the appropriate body to review and make recommendations regarding financial reports related to the WRF project.

Council Member Heller believed the CFAC should be looking at a high macro level information but that members of the WRFAC had the technical expertise to better understand how technical issues directly relate to cost.

The motion carried 4-1 by roll call vote with Council Member Heller opposed.

The Council took a brief recess at 9:46 p.m. The meeting reconvened at 9:57 p.m. with all members present.

C-4 ADOPTION OF RESOLUTION NO 05-19 REVISING THE CITY OF MORRO BAY EMERGENCY MANAGEMENT PLAN AND INTRODUCTION AND FIRST READING OF ORDINANCE 619 RENAMING AND AMENDING CHAPTER 8.08 OF THE MORRO BAY MUNICIPAL CODE RELATING TO THE EMERGENCY SERVICES ORGANIZATION; (FIRE)

<https://youtu.be/Gua2SJYB-4Y?t=12>

Fire Chief Knuckles provided the report and responded to Council inquiries.

The public comment period for Item C-4 was opened; seeing none, the public comment period was closed.

MOTION: Council Member Davis moved the Council adopt Resolution No. 05-19 revising the City of Morro Bay Emergency Management Plan, formally known as the Multi-Hazard Emergency Response Plan. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

MOTION: Council Member Davis moved the Council introduce, for first reading by title only and with further reading waived, Ordinance 619, an Ordinance of the City Council of the City of Morro Bay, California Renaming Chapter 8.08 of Title 8 of the Morro Bay Municipal Code as "Emergency Services Organization," and Amending Chapter 8.08, to Provide for Consistency with a Revised City of Morro Bay Emergency Management Plan. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/Gua2SJYB-4Y?t=1730>

Council Member Addis requested discussion of changing the start and end times of regular meetings. There was full support for this item.

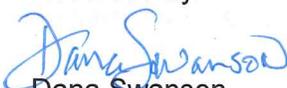
Council Member Heller requested discussion town hall meetings or some method to present and listen to opposing ideas regarding the WRF project but did not receive support for the item.

E. ADJOURNMENT

Addis moved to adjourn at 10:37 p.m. Heller second. Motion carried 5-0.

The next Regular Meeting will be held on **Tuesday, January 22, 2019 at 6:00 p.m.** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:


Dana Swanson
City Clerk



AGENDA NO: C-2

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: December 4, 2019

FROM: Scott Collins, City Manager

SUBJECT: Consideration of Adoption of Urgency Ordinance No. 629 Approving Just Cause Eviction Protections and Rental Increase Limits

RECOMMENDATION

Staff recommends the City Council consider adoption of an Urgency Ordinance No. by number and title only with further reading waved, Urgency Ordinance No. 629, "An Urgency Ordinance of the City Council of the City of Morro Bay, California, Adopting Just Cause Eviction Protections and Rental Rate Limits Effective Immediately" to be in effect until January 1, 2020.

ALTERNATIVES

The City Council may choose to not adopt an urgency ordinance or provide other direction to staff.

FISCAL IMPACT

There is no fiscal impact to the City related to approval of the recommendation. The provisions of this ordinance will not be directly enforced by the City so there will not be implementation costs.

BACKGROUND

On September 11, 2019, the California State Legislature passed Assembly Bill 1482 (AB 1482) placing limits on the amount a landlord may raise rents within any 12-month period and establishing "just cause" eviction protections. The bill was signed by the Governor on October 8, 2019, and goes into effect on January 1, 2020. City staff and Councilmembers were contacted by residents within the County of San Luis Obispo, concerned that they and other renters have already or may receive a notice of termination of their tenancy from their landlords in order to avoid the impact of AB 1482. One resident in Grover Beach, for instance, received a notice that says they must move out of their home before the end of the year. There are concerns that Morro Bay residents may receive similar notices prior to January 1, 2020 and initiation of AB 1482.

Morro Bay does not currently require "just cause" for the termination of any residential tenancy and the just cause provisions enacted in AB 1482 will not go into effect until January 1, 2020. The City of Morro Bay has received requests to adopt an urgency ordinance to put into place just cause requirements that would protect tenants until the time that AB 1482 goes into effect. The City Council typically adds items to future agendas through a consensus process at the end of Council meetings. This item was not scheduled through that process. However, given the fact that this item aligns with the City Council adopted goal of addressing affordable housing and that there was only one meeting in November, and this request for an urgency ordinance came after that November meeting, staff recommends that this item should come before Council at the December 10, 2019 City Council meeting.

Prepared By: SC

Dept Review: _____

City Manager Review: SC

City Attorney Review: _____

DISCUSSION

Attachment 1 contains the urgency ordinance for the City Council's consideration. The ordinance includes just cause eviction requirements and adopts rent increase limits consistent with those imposed by AB 1482.

With some exceptions, the eviction provisions only allow a landlord to evict a tenant for "just cause." This includes "at-fault just cause," such as when the tenant has breached the terms of the lease or engaged in other misconduct, and "no-fault just cause," such as when the landlord wants to move into the unit or chooses to remove the unit from the rental market. If a landlord evicts a tenant for "no-fault just cause," the landlord must provide relocation benefits to the tenant in the amount of one month's rent. These protections only apply to tenants who have continuously and lawfully occupied a residential unit for at least 12 months.

The rent increase limits also track the provisions of AB 1482 and would limit the amount of rent increases that can be imposed to the amount allowed under AB 1482 formula (change in CPI + 5%, but no more than 10%). AB 1482 includes a rent roll back provision whereby the limits established in the bill apply to any rent increases imposed after March 15, 2019. If between this date and the end of 2019 a landlord increases rents in an amount that exceeds the cap imposed by AB 1482, the rents will be rolled back to the maximum amount that would have been allowed had the bill been in effect in 2019. However, the bill also provides that the landlord will be able to keep any "overpayment."

The proposed ordinance is presented as an urgency ordinance pursuant to Government Code Sections 36934 and 36937(b). Section 36934 allows for an emergency/urgency ordinance to be adopted on the first reading and Section 36937(b) requires the emergency/urgency ordinance be approved by a four-fifths vote of the Council, including a declaration of the basis of the emergency. If the ordinance is approved, it will go into effect immediately and end on January 1, 2020, as AB 1482 goes into effect on January 1, 2020.

For the City Council's information, several California cities including Grover Beach, San Luis Obispo, Los Angeles, San Mateo, Redwood City, Daly City, Milpitas, and others have adopted emergency ordinances establishing protections during the gap period before AB 1482 goes into effect.

ATTACHMENTS

1. Urgency Ordinance No. 629

ORDINANCE NO. 629

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADOPTING JUST CAUSE EVICTION PROTECTIONS AND RENTAL RATE LIMITS EFFECTIVE IMMEDIATELY

WHEREAS, the “Tenant Protection Act of 2019” (“AB 1482”) was enacted by the Legislature on September 11, 2019, and signed by the Governor on October 8, 2019; and

WHEREAS, effective January 1, 2020, AB 1482 will add provisions to California landlord tenant law requiring just cause for evictions and imposing limits on rent increases; and

WHEREAS, the City Council, pursuant to its police powers, has broad authority to maintain the public peace, health, safety, and general welfare of its community and to preserve the quality of life for its residents; and

WHEREAS, Government Code Section 36937(b) authorizes the adoption of an urgency ordinance for the immediate preservation of the public peace, health or safety; and

WHEREAS, housing instability threatens the public peace, health, safety, and general welfare as eviction from one’s home can lead to prolonged homelessness; increased residential mobility; loss of community; strain on household finances due to the necessity of paying rental application fees and security deposits; stress and anxiety experienced by those displaced; increased commute times and traffic impacts if displaced workers cannot find affordable housing within the city in which they work; and interruption of the education of children in the home; and

WHEREAS, eviction creates particular hardships for individuals and household of limited means, given the shortage of housing, particularly affordable housing, within the City of Morro Bay and San Luis Obispo region generally; and

WHEREAS, in advance of the implementation of AB 1482, the City has become aware of no-fault terminations, eviction notices, and threats of eviction throughout the state; and

WHEREAS, the City desires to prohibit exorbitant rental rate increases as well as evictions without just cause during the period of time before AB 1482 becomes effective; and

WHEREAS, the City Council finds and determines that regulating the relations between residential landlords and tenants will increase certainty and fairness within the residential rental market in the City and thereby serve the public peace, health, safety, and general welfare; and

WHEREAS, the urgency ordinance would essentially establish the rental protections that will go into effect on January 1, 2020 under AB 1482 immediately within the City of Morro Bay to prohibit an owner of residential property from annually increasing rent more than five percent (5%) plus the percentage change in the cost of living, or 10%, whichever is lower; and

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, safety, or welfare, as failure to adopt this urgency ordinance could result in the displacement of the City's residents and community members.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MORRO BAY ORDAINS AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS. The City Council finds that the forgoing recitals and the staff report presented with this ordinance are true and correct and are incorporated in the ordinance by this reference and adopted as findings of the City Council.

SECTION 2. FINDINGS. The City Council hereby finds, determines and declares that this urgency ordinance, adopted pursuant to Government Code Sections 36934 and 36937, is necessary because:

- (a) Housing, particularly affordable housing, is difficult to procure in the Morro Bay area. Rent increases and evictions without just cause occurring in advance of the effectiveness of AB 1482 would destabilize the housing market and result in the loss of affordable housing.
- (b) For the immediate preservation of the public peace, health, safety, and general welfare, the City Council finds that it is necessary to adopt an ordinance regulating rental rate increases and just cause evictions, for all reasons set forth in the recitals.
- (c) Without the imposition of this ordinance, rent rate increases and evictions without cause may result in the displacement of residential tenants who could be forced to find new housing in the ever-more expensive housing market before a non-urgency ordinance or AB 1482 would become effective, and would significantly increase the risk of City residents becoming homeless.
- (d) There is a current and immediate threat to the public peace, health, safety, and general welfare of the City and its community due in part to the adoption of AB 1482 which increases the risk of tenant displacement prior to the effective date of the bill, thereby necessitating the immediate enactment of this urgency ordinance in order to ensure that tenants are not turned out to their homes without just cause.

SECTION 3. URGENT NEED. Based on the foregoing recitals and findings, this ordinance is urgently needed for the immediate preservation of the public peace, health, safety, or welfare.

SECTION 4. JUST CAUSE EVICTION PROTECTIONS.

- (a) Notwithstanding any other law, after a tenant has continuously and lawfully occupied a residential real property for twelve (12) months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy. If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for

twenty-four (24) months, then this section shall only apply if either of the following are satisfied:

(1) All for the tenants have continuously and lawfully occupied the residential real property for twelve (12) months or more.

(2) One or more tenants have continuously and lawfully occupied the residential real property for twenty-four (24) months or more.

(b) For the purposes of this section, "just cause" includes either of the following:

(1) At-fault just cause, which is any of the following:

(A) Default in the payment of rent.

(B) A breach of a material term of the lease, as described in paragraph (3) of Section 1161 of the California Code of Civil Procedure, including, but not limited to, violation of a provision of the lease after being issued a written notice to correct the violation.

(C) Maintaining, committing, or permitting the maintenance or commission of a nuisance as described in paragraph (4) of Section 1161 of the California Code of Civil Procedure.

(D) Committing waste as described in paragraph (4) of Section 1161 of the California Code of Civil Procedure.

(E) The tenant had a written lease that terminated on or after December 10, 2019, and after a written request or demand from the owner, the tenant has refused to execute a written extension or renewal or the lease for an additional term of similar duration with similar provisions, provided that those terms do not violate this section or any other provision of law.

(F) Criminal activity by the tenant on the residential real property, including any common areas, or any criminal activity or criminal threat, as defined in subdivision (a) of Section 422 of the California Penal Code, on or off the residential real property, that is directed at any owner or agent of the owner of the residential real property.

(G) Assigning or subletting the premises in violation of the tenant's lease, as described in paragraph (4) of Section 1161 of the California Code of Civil Procedure.

(H) The tenant's refusal to allow the owner to enter the residential real property as authorized by Sections 1101.5 and 1954 of the California Civil Code and Sections 13113.7 and 17926.1 of the California Health and Safety Code.

(I) Using the premises for an unlawful purpose as described in paragraph (4) of Section 1161 of the California Code of Civil Procedure.

(J) The employee, agent, or licensee's failure to vacate after their termination as an employee, agent, or licensee as described in paragraph (1) of Section 1161 of the California Code of Civil Procedure.

(K) When the tenant fails to deliver possession of the residential property after providing the owner written notice as provided in Section 1946 of the California Civil Code of the tenant's intention to terminate the hiring of the real property, or makes a written offer to surrender that is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice as described in paragraph (5) of Section 1161 of the California Code of Civil Procedure.

(2) No-fault just cause, which includes any of the following:

(A) Intent to occupy the residential real property by the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents.

(B) Withdrawal of the residential real property from the rental market.

(C)

(i) The owner complying with any of the following:

(I) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property.

(II) An order issued by a government agency or court to vacate the residential real property.

(III) A local ordinance that necessitates vacating the residential real property.

(ii) If it is determined by any government agency or court that the tenant is at fault for the condition or conditions triggering the order or need to vacate under clause (i), the tenant shall not be entitled to relocation assistance as outlined in paragraph (3) of subdivision (d).

(D)

(i) Intent to demolish or to substantially remodel the residential real property.

(ii) For the purposes of this subparagraph, "substantially remodel" means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a

governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, state, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least thirty (30) days. Cosmetic improvements alone, including painting, decorating, and minor repairs, or other work that can be performed safely without having the residential real property vacated, do not qualify as substantial rehabilitation.

(c) Before an owner of residential real property issues a notice to terminate a tenancy for just cause that is a curable lease violation, the owner shall first give notice of the violation to the tenant with an opportunity to cure the violation pursuant to paragraph (3) of Section 1161 of the California Code of Civil Procedure. If the violation is not cured within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may thereafter be served to terminate the tenancy.

(d)

(1) For a tenancy for which just cause is required to terminate the tenancy under subdivision (a), if an owner of residential real property issues a termination notice based on a no-fault just cause description in paragraph (2) of subdivision (b), the owner shall, regardless of the tenant's income, at the owner's option, do one of the following:

(A) Assist the tenant to relocate by providing a direct payment to the tenant as described in paragraph (3) of this subdivision (d).

(B) Waive, in writing, the payment of rent for the final month of the tenancy, prior to the rent becoming due.

(2) If an owner issues a notice to terminate a tenancy for no-fault just cause, the owner shall notify the tenant of the tenant's right to relocation assistance or rent waiver pursuant to this section. If the owner elects to waive the rent for the final month of the tenancy as provided in subparagraph (B) of paragraph (1), the notice shall state the amount of rent waived and that no rent is due for the final month of the tenancy.

(3)

(A) The amount of relocation assistance or rent waiver shall be equal to one (1) month of the tenant's rent that was in effect when the owner issued the notice to terminate the tenancy. Any relocation assistance shall be provided within fifteen (15) calendar days of service of the notice.

(B) If a tenant fails to vacate after the expiration of the notice to terminate the tenancy, the actual amount of any relocation assistance or rent waiver provided pursuant to this subdivision shall be recoverable as damages in an action to recover possession.

(C) The relocation assistance or rent waiver required by this section shall be credited against any other relocation assistance required by any other law.

(4) An owner's failure to strictly comply with this subdivision shall render the notice of termination void.

(e) This section shall not apply to the following types of residential real properties or residential circumstances:

(1) Transient and tourist hotel occupancy as defined in subdivision (b) of Section 1940 of the California Civil Code.

(2) Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the California Health and Safety Code, or an adult residential facility, as defined in Chapter 6 of Division 6 of Title 22 of the Manual of Policies and Procedures published by the California State Department of Social Services.

(3) Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

(4) Housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner who maintains their principal residence at the residential real property.

(5) Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than two (2) units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit.

(6) A duplex in which the owner occupies one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.

(7) Housing that has been issued a certificate of occupancy within the previous fifteen (15) years.

(8) Residential real property that is alienable separate from the title to any other dwelling unit, provided that the following applies:

(A) The owner is not any of the following:

(i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(ii) A corporation.

(iii) A limited liability company in which at least one member is a corporation.

(B) The tenants have been provided written notice that the residential property is exempt from this section.

(9) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the California Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the California Health and Safety Code or comparable federal statutes.

(f) The provisions of this section shall apply to all residential rental units not specified as exempt from its requirements, including where a notice to vacate or quit any such rental unit has been served prior to, as of, or after the effective date of this urgency ordinance but where an unlawful detainer judgment has not been issued as of the effective date of this urgency ordinance.

(g) Any waiver of the rights under this section shall be void as contrary to public policy.

(h) For the purposes of this section, the following definitions shall apply:

(1) "Owner" and "residential real property" shall have the same meaning as those terms are defined in California Civil Code Section 1954.51.

(2) "Tenancy" means the lawful occupation of residential real property and includes a lease or sublease.

SECTION 5. RENTAL RATE LIMIT PROVISIONS.

(a)

(1) To the extent permitted under California Civil Code Section 1954.52, and subject to subdivision (b), an owner of residential real property shall not, over the course of any 12-month period, increase the gross rental rate for a dwelling or a unit more than five (5) percent plus the percentage change in cost of living, or ten (10) percent, whichever is lower, of the lowest gross rental rate charged for that dwelling or unit at any time during the twelve (12) months prior to the effective date of the increase. In determining the lowest gross rental amount pursuant to this section, any rent discounts, incentives, concessions, or credits offered by the owner of such unit of residential real property and accepted by the tenant shall be excluded. The gross per-month rental rate and any owner-offered discounts, incentives, concessions, or credits shall be separately listed and identified in the lease or rental agreement or any amendments to an existing lease or rental agreement.

(2) If the same tenant remains in occupancy of a unit of residential real property over any 12-month period, the gross rental rate for the unit of residential real property shall not be

increased in more than two increments over that 12-month period, subject to the other restrictions of this subdivision governing gross rental rate increase.

(b) For a new tenancy in which no tenant from the prior tenancy remains in lawful possession of the residential real property, the owner may establish the initial rental rate not subject to subdivision (a). Subdivision (a) is only applicable to subsequent increases after that initial rental rate has been established.

(c) A tenant of residential real property subject to this section shall not enter into a sublease that results in a total rent for the premises that exceeds the allowable rental rate authorized by subdivision (a). Nothing in this subdivision authorizes a tenant to sublet or assign the tenant's interest where otherwise prohibited.

(d) This section shall not apply to the following residential real properties:

(1) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the California Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the California Health and Safety Code or comparable federal statutes.

(2) Dormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution.

(3) Housing subject to rent or price control through a public entity's valid exercise of its police power consistent with Chapter 2.7 (commencing with Section 1954.50) of the California Civil Code that restricts annual increases in the rental rate to an amount less than that provided in subdivision (a).

(4) Housing that has been issued a certificate of occupancy within the previous 15 years.

(5) Residential real property that is alienable separate from the title to any other dwelling unit, provided that the following applies:

(A) The owner is not any of the following:

(i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(ii) A corporation.

(iii) A limited liability company in which at least one member is a corporation.

(B) The tenants have been provided written notice that the residential property is exempt from this section.

(6) A duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.

(e) An owner shall provide notice of any increase in the rental rate, pursuant to subdivision (a), to each tenant in accordance with California Civil Code Section 827.

(f) For the purposes of this section, the following definitions shall apply:

(1) "Owner" and "residential real property" shall have the same meaning as those terms are defined in Section California Civil Code Section 1954.51.

(2) "Percentage change in the cost of living" means the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the region where the residential real property is located, as published by the United States Bureau of Labor Statistics. If a regional index is not available, the California Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations, shall apply.

(3) "Tenancy" means the lawful occupation of residential real property and includes a lease or sublease.

(g)

(1) This section shall apply to all rent increases subject to subdivision (a) for rent due on or after December 10, 2019.

(2) In the event that an owner has sent any rent increase notice on or after September 1, 2019, to increase the rent due on or after December 10, 2019, by an amount greater than that permitted under subdivision (a), such increase shall be void and the applicable rent shall be the rent as of September 1, 2019, plus the maximum permissible increase under subdivision (a).

(h) Any waiver of the rights under this section shall be void as contrary to public policy.

SECTION 6. DEFINITIONS. Undefined terms in Sections 4 and 5, where not clearly defined by context, shall have the meaning applicable to such terms in Chapter 2 of Title 5 of Part 4 of Division 3 of the Civil Code (codified as Section 1940 et seq.).

SECTION 7. CEQA. In accordance with California Environmental Quality Act guidelines section 15061(b)(3), adoption of this urgency ordinance is exempt from the provisions of the California Environmental Quality Act because there is no possibility that the implementation of this ordinance may have significant effects on the environment. This ordinance will apply tenant protections to existing residential units for a limited period of time.

SECTION 8. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it should have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 9. EFFECTIVE DATE. This uncodified Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Morro Bay by Government Code Sections 36934 and 36937 and shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council. **This Urgency Ordinance shall remain in effect until 11:59 p.m. on December 31, 2019, at which time thereafter AB 1482 will become effective and govern the subject matter of this ordinance.**

SECTION 10. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted in the manner required by law.

THIS URGENCY ORDINANCE NO. 629 WAS DULY PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Morro Bay, held on the 10th day of December 2019, by motion of _____ and seconded by _____, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 629 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____, 2019, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this ____day of _____, 2019.

DANA SWANSON, City Clerk

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AGENDA NO: C-3

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: December 5, 2019

FROM: Scott Collins – City Manager

SUBJECT: Review and Modifications to the City Partnership Policy and City Partnership Policy Guidance Document; Discussion of City Event Policies

RECOMMENDATION

City Council rescind Resolution No. 36-16 and adopt Resolution No. 106-19, review and approve staff recommended changes to the Partnership Policy and Partnership Policy Guidelines document, and direction on City review of event policies.

ALTERNATIVES

Council could elect to:

- 1) Further modify the Partnership Policy and Policy Guidelines document, or
- 2) Make no changes to the Partnership Policy and Policy Guidelines document, or
- 3) Rescind the policy altogether.

FISCAL IMPACT

There is no immediate fiscal impact related to the proposed changes to the policy. Should Council elect to extend partnerships to other organizations, those proposed agreements would come back to Council at a future City Council meeting for review, and may have a fiscal impact on the General Fund and other funds depending upon the nature of the agreement.

BACKGROUND

City Council approved review of the Partnership Policy as one of its action items under the Council Goal of Improving Community Engagement for 2019/2020. Staff has reviewed and made recommended changes to the Partnership Policy guidance document for City Council consideration and is recommending rescinding Resolution No. 36-16 and adopting Resolution No. 106-19 to memorialize the proposed changes. Below is a quick overview of the Partnership Policy.

Partnership Policy as it Exists Today

The City Council approved the revised Partnership Policy (Resolution No. 36-16) and guidelines document on May 24, 2016. The original and revised policy was developed to help facilitate formal agreements between the City and organizations that serve a City purpose (primarily Recreation Services oriented), while also benefitting the partnering organization. Prior to the policy adoption, several organizations had informal arrangements in place with the City that provided mutual benefit. The policy was adopted to formalize those existing arrangements and create a fair, consistent, and documented process to develop future partnerships that could help enhance the quality of life in Morro Bay.

Prepared By: SC

City Manager Review: _____

City Attorney Review: CFN

The current policy defines a partnership as "an identified idea or concept involving the City of Morro Bay Recreation Services Division, or another City department or division, and one or more for-profit, non-profit or governmental entities, which outlines a method to combine resources for developing facilities, programs or amenities for the City and its residents, businesses and visitors or to provide services the City otherwise might provide on its own, but is not or cannot, presently."

In addition to discussing the intent of the policy, the guidelines document (attached) outlines the process to apply for a partnership agreement, requirements of the application, and the criteria used by the City to evaluate the proposal. Through the guidelines document, the City is seeking to understand what benefits will be accrued to the City, community and the organization through a partnership.

Benefits to the participating organization have primarily taken the form of reduced or waived City facility use and program fees. The City has extended three partnerships since the policy was adopted. The participating organizations and the nature of the partnership agreements are outlined below:

- 1) Project Surf Camp (PSC) – The organization provides an affordable one of a kind surf and stand up paddle program to children with special needs at the public Coleman Park and Morro Rock beaches. This is a service the City does not provide. PSC provides this service, and in exchange, the City waives their facility fees and storage fees. That value is approximately \$11,000 annually to the organization.
- 2) Estero Bay Community Foundation – The organization fund raises in the community and donates those funds to children in the form of sponsorships to participate in City of Morro Bay Recreation programs, such as soccer, basketball, and swimming. In exchange for providing this funding to Recreation program users, the City waives facility fees for the Foundation for their meetings and fundraising events held on City property (approximate annual value of \$3,000 annually).
- 3) Estero Bay Radio (97.3 Radio Station) – This is a non-profit, listener supported community radio located in Morro Bay. They provide the City with airwaves to share important information and engage with the community. In exchange for this free service to the City, the City offers the radio station a reduced rent at the Visitor Center building, and reduced fees for fundraising events that are held on City property (approximate annual value of \$2,500 annually).

While the City formally approved these mutually beneficial agreements, there are several other organizations that would likely qualify for a partnership agreement, which are currently receiving reduced fees from the City in exchange for services provided to the community by the organization. In addition, there are several areas of the policy guidance document that should be updated and revised to account for changes. Those items are discussed in the next section.

DISCUSSION

Staff recommends that Council rescind Resolution No. 36-16, adopting Resolution No. 106-19, which includes the following proposed changes to the Partnership Agreement Policy Guidance document:

- 1) Formally enlarge the program to the entire City organization. Currently the policy guidance document is geared toward Recreation services, while many other departments could and currently do participate in partnerships. Thus, all references to the City of Morro Bay Recreation Division in the document are deleted and replaced by the more general term "City of Morro Bay."
- 2) "Adopt it" program is removed from the document. The City Council approved a separate

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“Adopt Morro Bay” program in 2018. It is a standalone program at this time, with a funding source, so it no longer needs to reside in the Partnership Agreement Policy purview.

- 3) Reduce burden on proposing organizations. There are a significant number of questions posed to potential partnering organizations in the current guidelines document. Staff recommends deleting several of the questions, and request the proposers only answer questions pertinent to their proposal.

The Council may desire to add additional modifications which can be incorporated at this meeting or provide direction to staff to make changes and bring back for Council review at a subsequent meeting.

In addition, staff is aware of several organizations that would likely qualify for a partnership agreement, including the Monday Night Dinners (free meals provided to Morro Bay residents every Monday at the Veterans Hall, with the City not charging any facility fees), and the Lions Club, which provides numerous volunteers for City events (4th of July, Amgen, etc.) and do not pay facility fees for their Club meetings at the Veterans Hall. There are likely other such situated organizations, and those who may be interested in pursuing a partnership with the City. Thus, updating the policy serves as a good prompt to advertise the program to the community.

Finally, City Council did request that staff bring back a discussion about events in the City, with consideration of the City’s level of involvement in the oversight of events. Staff recommends that this item take place in the context of a larger discussion about the City’s event policies, including the process of how events are approved and conditioned, managed, and how the conditions of approval are monitored and enforced, etc. If Council concurs, staff can bring that larger discussion back to Council in spring 2020.

ATTACHMENTS

1. Resolution No. 106-19
2. Exhibit A to Resolution No. 106-19 “Partnership Policy Guidelines Document” (with recommended revisions in redline)

RESOLUTION NO. 106-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
RESCINDING RESOLUTION NO. 36-16 AND
ADOPTING A NEW PARTNERSHIP POLICY**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City Council supports robust partnerships with outside entities in order to enhance the quality of life of both residents and visitors; and

WHEREAS, it is appropriate to adopt a policy that provides clear guidance and standards for partnerships; and

WHEREAS, the City Council not only supports partnerships, it especially supports those that enhance the quality of life for seniors, low-income residents, children, and persons with disabilities; and

WHEREAS, in 2014 the City Council adopted an initial version of the Partnership Policy; and

WHEREAS, in 2016 the City Council adopted a revised version of the Partnership Policy; and

WHEREAS, from time to time it is appropriate to review existing policies and procedures and update them as necessary to reflect current trends and practices; and

WHEREAS, it is appropriate to adopt a new Partnership Policy that better reflects the goal of partnerships and seeks to enhance the quality of life for the community;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, as follows:

Section 1. Resolution No. 36-16 is hereby rescinded.

Section 2. The Partnership Policy, attached hereto as Exhibit A and incorporated herein by this reference is hereby adopted.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 10th day of December 2019 on the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

City of Morro Bay
~~Recreation Services Division~~
Partnership Policy
And
Partnership Proposal Guidelines

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I. Morro Bay ~~Recreation Services Division~~ Partnership Policy

A. Purpose

This policy shall be referred to the Partnership Policy and is designed to guide the process for the City of Morro Bay (City) ~~Recreation Services Division~~ to carry out the City's desire to partner with private, non-profit, or other governmental entities for the development, design, construction and operation of partnered ~~recreational~~ facilities or programs that may occur on City property, as well as with organizations that may provide service on the City's behalf. In particular, programs that can provide additional support for local seniors, youth, low-income residents, and persons with disabilities are highly desired. The City also welcomes partnerships that provide for the improvement or beautification of public spaces.

The Partnership Policy provides guidelines for the City to create partnerships of interest to the City and framework for how partnership agreements are to be proposed and created.

B. Partnership Definition

For purposes of the Partnership Policy, a Proposed Partnership is defined as:

"An identified idea or concept involving the City of Morro Bay ~~Recreation Services Division, or another City department or division~~, and one or more for-profit, non-profit or governmental entities, which outlines a method to combine resources for developing facilities, programs or amenities for the City and its residents, businesses and visitors or to provide services the City otherwise might provide on its own, but is not or cannot, presently."

The City will especially welcome potential partnerships that improve existing community facilities or provide services/programming for seniors, low-income individuals, local youth, or persons with disabilities.

Partnerships can take the form of (1) cash gifts and donor programs, (2) improved access to alternative funding, (3) property investments, (4) charitable trust funds, (5) labor, (6) materials, (7) equipment, (8) sponsorships, (9) technical/management skills and other valuable abilities and (10) programs or services provided on the City's behalf. The effective use of volunteers also can figure significantly in developing partnerships. Some partnerships involve active decision making, while in others, partners may take a more passive role.

C. Possible Types of Active Partnerships

The City of Morro Bay ~~Recreation Services Division~~ is interested in promoting collaborative partnerships with multiple community organizations. Types of agreements for Proposed "Active" Partnerships may include leases, contracts, sponsorship agreements, marketing agreements, management agreements, joint-use agreements, inter-governmental agreements, or a combination of those.

Proposed partnerships will be considered for facility, service, operations, and program development, including associated needs, such as, but not limited to, parking, paving, fencing, drainage systems, signage, outdoor restrooms, lighting and utility infrastructure. An innovative and mutually beneficial partnership that does not fit into any of these categories may also be considered.

D. Sponsorships

[The City of Morro Bay Recreation Services Division](#) is interested in actively procuring sponsorships for facilities and programs as one type of beneficial partnership.

E. Limited-Decision Making Partnerships: Donor, Volunteer, and Granting Programs

While the Partnership Policy focuses on the parameters for more active types of partnerships, the City is interested in, and willing to discuss, a proposal for Limited-Decision Making Partnerships, and may create specific plans for such in the future.

F. Benefits of Partnerships with [the City of Morro Bay Recreation Services Division](#)

The City expects any Proposed Partnership will have benefits for all involved parties. Some general expected benefits are:

Benefits for the City and the Community:

- Merging of resources to create a higher level of service and facility availability for community members.
- Making alternative funding sources available for public community amenities.
- Tapping into the dynamic and entrepreneurial traits of private industry.
- Delivering services and facilities more efficiently by allowing for collaborative business solutions to public organizational challenges.
- Meeting the needs of specific groups of users through the availability of land for development and community use.

Benefits for the Partners:

- Land or facility availability at a subsidized level for specific facility or program needs.
- Sharing of the risk with an established stable governmental entity.
- Becoming part of a larger network of support for management and promotion of facilities and programs.
- Availability of professional City [staff recreation and planning experts](#) to maximize the facilities and programs that may result.
- Availability of City staff facilitation to help streamline the planning and operational efforts.

II. The Partnering Process (Checklist)

The steps for the creation of a partnership with the City of Morro Bay ~~Recreation Services Division~~ are as follows:

- A. When applicable, the City of Morro Bay ~~Recreation Services Division~~ will create a public notification process that will help inform any and all interested partners of the availability of certain partnerships with the City.
- B. The proposing partner takes the first step to propose partnering with the City. To help in reviewing both the partnership proposed, and the project to be developed in partnership, the City asks for a Preliminary Proposal according to a specific format as outlined in Part Two - Proposed Partnership Outline Format.
- C. If initial review of a Preliminary Proposal yields interest and appears to be mutually beneficial based on the City Mission and Goals, and the Selection Criteria, then a City staff or appointed representative will be assigned to work with potential partners.
- D. The City representative is available to answer questions related to the creation of an initial proposal, and after initial interest has been indicated, will work with the proposing partner to create a checklist of what actions need to take place next. Each project will have distinct planning, design, review and support issues. The City representative will facilitate the process of determining how the partnership will address these issues. That representative can also facilitate approvals and input from any involved City departments, providing guidance for the partners as to necessary steps.
- E. An additional focus will be to determine whether the proposed project is appropriate for additional collaborative partnering, and whether the City should advertise a **Request for Proposal (RFP)** from competing/collaborating organizations, based on the following criteria.

Request for Proposal (RFP) Trigger: In order to reduce concerns of unfair private competition, if a proposed project involves partnering with a private “for-profit” entity and anticipated contribution from the City is greater than \$15,000, and the City has not already undergone a public process for solicitation of that particular type of partnership, then the City will request Partnership Proposals from other interested private entities for identical or complementary facilities, programs or services. A selection of appropriate partners will be part of the process.

- F. For some projects, a Formal Proposal from the partners for their desired development project will need to be presented for the City’s official development review processes and approvals. The project may require review and approval by ~~the Legal, Planning, Fire and Safety, Finance or other City Staff Departments, City Advisory Boards, the Recreation and Parks Commission, the Planning Commission~~, the City Council, or the City Manager’s Office, depending on project complexity and applicable City Code provisions, ordinances, resolutions, or other regulations. If those reviews are necessary, then provision to

reimburse the City for its costs incurred in having a representative facilitate the partnered project's passage through Development Review should be included in the partnership proposal.

- G. Depending on project complexity and anticipated benefits, responsibilities for all action points are negotiable, within the framework established by law, to assure the most efficient and mutually beneficial outcome. Some projects may require all technical and professional expertise and staff resources come from outside the City's staff, while some projects may proceed most efficiently if the City contributes staff resources to the partnership.
- H. The partnership must cover the costs the partnership incurs, regardless of how the partnered project is staffed; and the project proposal and budget must reflect those costs. The proposal for the partnered project should also discuss how staffing and expertise will be provided, and what documents/products will be produced, if any. If City staff resources are to be used by the partnership, then those costs should be allocated to the partnered project and charged to it.
- I. Specific **Partnership Agreements** appropriate to the project will be drafted jointly. There is no specifically prescribed format for **Partnership Agreements**, which may take any of several forms depending on what will accomplish the desired relationships among partners. The agreements may be in the form of:
 - Lease Agreements
 - Management and/or Operating Agreements
 - ~~Maintenance Agreements (such as Adopt A Park)~~
 - Intergovernmental Agreements (IGAs)
 - Or a combination of those and other appropriate agreements

Proposed partnership agreements might include, but not be limited to, such things as oversight of the development of the partnership, concept plans and project master plans, environmental assessments, architectural designs, development and design review, project management, and construction documents, inspections contracting and monitoring. Provision to fund the costs and for reimbursing the City for its costs incurred in creating the partnership, facilitating the project's passage through the Development Review Process, and completing the required documents should be considered.

- J. If the proposal and all required documentation are approved, then the Partnership begins. The City is committed to upholding its responsibilities to Partners from the initiation through the satisfactory continuation and completion of a partnership. Ongoing evaluation will be an integral component of all Partnerships. The agreements should outline who is responsible for evaluation, the types of measures used, and detail what will occur should the evaluations reveal Partners are not meeting their Partnership obligations.

III. The Partnership Evaluation Process

A. Mission Statements and Goals

All partnerships with [the City of Morro Bay Recreation Services Division](#) should be in accord with the City's [and the Division's](#) Mission and Goals to indicate how a proposed partnership with the City would be preliminarily evaluated.

B. Other Considerations

1. Costs for the Proposal Approval Process

For most proposed partnerships, there will be considerable staff time spent on the review and approval process once a project passes the initial review stage. That time includes, but is not limited to discussions with Proposing Partners, exploration of synergistic partnering opportunities, possible RFP processes, facilitation of the approval process, and assistance in writing and negotiating agreements and contracting. There may also be costs for construction and planning documents, design work, and related needs and development review processes mandated by City ordinances.

Successful partnerships will take those costs into account and may plan for City recovery of some or all of those costs within the proposal framework. Some of those costs could be considered construction expenses, reimbursed through a negotiated agreement, once operations begin, or covered through some other creative means.

2. Land Use and/or Site Improvements

Some proposed partnerships may include facility or land use. Necessary site improvements cannot be automatically assumed. Costs and responsibility for those improvements should be considered in any Proposal. Some of the general and usual needs for public facilities that may not be included as City contributions and may need to be negotiated for a project include:

- Any facilities or non-existent infrastructure construction
- Roads or street improvements
- Maintenance to specified standards
- Staffing
- Parking
- Lighting
- Outdoor restrooms
- Water fountains
- Complementary uses of the site
- Utility improvements
- Custodial
- Trash removal

3. Need

The nature of provision of public services determines certain activities will have a higher need than others. Some activities serve a relatively small number of users and have a high facility

cost. Others serve a large number of users and are widely available from the private sector because they are profitable. The determination of need for facilities and programs is an ongoing discussion in public provision of programs and amenities. The project will be evaluated based on how the project fulfills a public need.

4. Funding

Only when a Partnership Proposal demonstrates high unmet needs and high benefits for City citizens will the City consider contributing resources to a project or program. The City recommends Proposing Partners consider sources of potential funding. The more successful partnerships will have funding secured in advance. In most cases, Proposing Partners should consider funding and cash flow for initial capital development, staffing, and ongoing operation and maintenance.

The details of approved and pending funding sources should be clearly identified in a proposal.

For many partners, especially small private user groups, non-profit groups, and governmental agencies, cash resources may be a limiting factor in the proposal. It may be necessary for partners to utilize alternative funding sources for resources to complete a proposed project. Obtaining alternative funding often demands creativity, ingenuity, and persistence, but many forms of funding are available.

Alternative funding can come from many sources, e.g. sponsorships, grants, donor programs, and Internet searches can help with foundation and grant resources. Developing a solid leadership team for a partnering organization will help find funding sources. In-kind contributions can, in some cases, add additional funding.

All plans for using alternative funding should be clearly identified. The City's Co-sponsorship Policy and partnered projects will be expected to adhere to this Policy. That adherence includes the necessity of having an Approved Sponsorship Plan in place prior to procurement of sponsorships for a Partnered Project.

C. Selection Criteria

In assessing a partnership opportunity to provide facilities and services, the City will consider (as appropriate) the following criteria. The Partnership Proposal Guidelines in Part Two provide a structure to use in creating a proposal. City staff and representatives will make an evaluation by attempting to answer each of the following Guiding Questions:

- How does the project align with the City and the affected Department/Division's Mission Statement and Goals?
- How does the proposed facility fit into the current City and the affected Department/Division's Master Plan?
- How does the facility/program meet the needs of City residents?
- How will the project generate more revenue and/or less cost per participant than the City can provide with its own staff or facilities?
- What alternatives currently exist, or have been considered, to serve the users identified in this project?

Partnership Policy and Proposal Guidelines

- How much of the existing need is now being met within the City borders and within nearby cities?
- What is the number and demographic profile of participants who will be served?
- How can the Proposing Partner assure the City of long-term stability of the proposed partnership, both for operations and for maintenance standards?
- How will the partnered project meet Americans with Disabilities Act (ADA) and Equal Employment Opportunity Commission (EEOC) requirements?
- How will the organization offer programs at reasonable and competitive costs for participants?
- What are the overall benefits for both the City and the Proposing Partner?

Part Two
City of Morro Bay ~~Recreation Services Division~~
Partnership Proposal Guidelines

Please provide as much information as possible in the following outline form.

I. Description of Proposing Organization:

- Name of Organization
- Years in Existence
- Contact Name, Mailing Address, Physical Address, Phone, Email
- Purpose of Organization
- Services Provided
- Member/User/Customer Profiles
- Accomplishments
- Legal Status

II. Decision-making Authority

Who is authorized to negotiate on behalf of the organization? Who or what group (i.e. Council/Commission/Board) is the final decision maker and can authorize the funding commitment? What is the time frame for decision making?

Summary of Proposal (100 words or less)

What is being proposed in terms of capital development and program needs?

III. Benefits to the Partnering Organization

Why is the organization interested in partnering with the City of Morro Bay ~~Recreation Services Division or another City Department/Division~~? Please list and discuss the benefits (monetary and non-monetary) to the proposing organization.

IV. Benefits to the City of Morro Bay ~~Recreation Services Department~~

Please list and discuss the benefits (monetary and non-monetary) to the City of Morro Bay ~~Recreation Services Division~~ and residents of the City.

V. Details (as currently known)

The following page lists a series of *Guiding Questions* to help address details and outline the benefits of a possible partnership. Please try to answer relevant questions to your organization and proposed partnership with the City as many as possible with currently known information. Include what the organization proposes to provide and what is being requested from the City of Morro Bay ~~Recreation Services Division~~. Please include (as known) initial plans for the concept, operations, projected costs and revenues, staffing, and/or any scheduling or maintenance needs.

Guiding Questions

Meeting the Needs of our Community:

- How does the proposed project align with [City of Morro Bay Recreation Services Division](#) goals?
- How does the proposed program or facility use meet a need for City residents?
- Who will be the users? What is the projected number and profile of participants who will be served?
- ~~What alternatives currently exist to serve the users identified in this project?~~
- ~~How much of the existing need is now being met? What is the availability of similar programs elsewhere in the community?~~
- ~~Does the proposed program provide opportunities for entry-level, intermediate and/or expert skill levels?~~
- How does the proposed project incorporate environmentally sustainable practices?

The Financial Aspect:

- Can the project generate more revenue or less cost per participant than the City can provide with its own staff or facilities? If not, then why should the City partner on the project?
- Will the proposing organization offer programs at reasonable and competitive costs for all participants? What are the anticipated prices for participants?
- What resources are expected to come from the [City of Morro Bay Recreation Services Division](#)?
- Will there be a monetary benefit for the City, and if so, how and how much?

Logistics:

- How much space is needed? What type of space?
- What is critical related to location?
- What is the proposed time line?
- What are the projected hours of operations?
- What are the initial staffing projections?
- Are there any mutually beneficial, cooperative marketing benefits?
- What types of insurance will be needed, and who will be responsible for acquiring and paying premiums on the policies?
- What is the organization's experience with providing this type of facility/program?
- How will the organization meet ADA and EEOC requirements?

Agreements and Evaluation:

- How, by whom, and at what intervals should the project be evaluated?
- How can the City be assured of the long-term stability of the proposing organization?
- What types and length of agreements should be used for the proposed project?
- ~~What types of "exit strategies" should we include?~~



AGENDA NO: C-4

MEETING DATE: December 10, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 5, 2019
FROM: Chris F. Neumeyer, City Attorney
SUBJECT: Review and Approve the Second Amendment to Employment Contract with Scott Collins, City Manager

RECOMMENDATION

Council consider approving the Second Amendment to the employment contract with Scott Collins, City Manager, and authorizing the Mayor to sign the contract on behalf of the City and adopt Resolution No. 107-19 approving the related budget adjustment.

ALTERNATIVES

No alternatives proposed.

FISCAL IMPACT

The total cost to the City of Morro Bay for monthly life insurance stipend (\$75) and deferred compensation increase (\$2,000) is \$2,900 per year (\$2,525 for the remainder of FY 2019/20). The potential additional cost to the City if the additional three months of severance pay is provided is \$48,141.60, in the case of termination of the City Manager without cause. For the remainder of Fiscal Year 2019/2020 increases will be covered through existing general fund appropriations.

BACKGROUND/DISCUSSION

Effective October 10, 2017, the City and Mr. Collins entered into an employment agreement for him to serve as City Manager (Agreement). An annual confidential personnel evaluation by the City Council of Mr. Collins for the period of November 2018 through October, 2019 was successfully and satisfactorily completed on November 13, 2019.

Mr. Collins did not seek any increase in his annual salary. City and Mr. Collins agreed to amend his contract through a Second Amendment to the Agreement to provide a \$75 monthly stipend for additional life insurance, an increase in deferred compensation annual contribution by \$2000, and provision of an additional three (3) months of severance pay in the event Mr. Collins is terminated without cause by the City.

Effective January 1, 2018, Subdivision 54953(c)(3) of the California Government Code requires the City Council, prior to taking final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive (e.g., City Manager), to report orally, in an open meeting, a summary of a recommendation for a final action.

The law is unclear whether that oral report must actually be provided by a Council Member or if staff can make that presentation to the City Council. To be certain legal requirements are met, staff recommends the presiding officer reads the below descriptions of the life insurance stipend, deferred compensation, and potential severance pay (for termination without cause) to be paid

Prepared By: <u>CFN</u>	Dept Review: <u>N/A</u>
City Manager Review: <u>N/A</u>	City Attorney Review: <u>CFN</u>

pursuant to the Second Amendment:

- The City will provide a monthly stipend of \$75 for purchase of additional life insurance.
- The City's annual contribution to deferred compensation will total \$7,500.
- The City's severance pay in event of termination without cause will be equal to monthly base salary then in effect multiplied by nine (9).

CONCLUSION

Staff recommends the City Council, after review of the Second Amendment, consider approving the Second Amendment and authorizing the Mayor to sign it on behalf of the City.

ATTACHMENTS

1. Second Amendment to City Manager Employment Agreement
2. Resolution No. 107-19 approving amendments to the FY 2019/20 Budget

CITY OF MORRO BAY
SECOND AMENDMENT TO CITY MANAGER
EMPLOYMENT AGREEMENT

This SECOND AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT (“SECOND AMENDMENT”) is entered into and made effective the 10th day of December, 2019 by and between the CITY OF MORRO BAY, a general law city and municipal corporation (“CITY”) and Scott J. Collins, an individual (“EMPLOYEE”). For purposes of this SECOND AMENDMENT, CITY and EMPLOYEE may be collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, on October 10, 2017, the City Council of the CITY approved the City Manager Employment Agreement (“AGREEMENT”), which appointed EMPLOYEE to the position of City Manager effective November 6, 2017, and set forth the terms and conditions of his employment with the CITY; and

WHEREAS, on November 27, 2019, the CITY and EMPLOYEE through the First Amendment to City Manager Employment Agreement (“FIRST AMENDMENT”) amended the terms of the AGREEMENT; and

WHEREAS, Section 2.4 of the AGREEMENT provides the City Council may increase EMPLOYEE’S salary and benefit package after an annual evaluation of EMPLOYEE; and

WHEREAS, Section 9.2 of the AGREEMENT provides the AGREEMENT may be amended at any time by the mutual consent of the Parties by written amendment, as approved by the City Council; and

WHEREAS, the CITY and EMPLOYEE now desire to amend the terms of the AGREEMENT in order to: i) provide EMPLOYEE additional severance pay of three (3) months in the event of termination by the CITY without cause; ii) provide EMPLOYEE an additional \$2,000 annually in deferred compensation; and, iii) provide a stipend of \$75.00 a month for purchase by EMPLOYEE of additional life insurance coverage.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the CITY and EMPLOYEE hereby agree as follows:

TERMS

- 1. Recitals.** The above recitals are incorporated by reference as if set forth in full herein.
- 2. Agreement Changes.** The AGREEMENT is amended as provided herein (new text is identified in *bold italics*, deleted text in ~~strike through~~).

2.1 Section 4.1, “Severance Pay,” is hereby amended to read, in its entirety, as follows:

“4.1 Severance Pay. In the event EMPLOYEE is terminated without cause and EMPLOYEE does not challenge such termination, including but not limited to, by means of appeal or civil or administrative claim or liberty hearing, then CITY shall pay to EMPLOYEE severance in an amount equal to EMPLOYEE’s monthly base salary then in effect multiplied by ~~six (6)~~ **nine (9)**. The severance payment shall not include the monetary value of benefits during said time, but salary only. This AGREEMENT does not have a defined term, but in the event this AGREEMENT is construed by a court of law to have a fixed term, notwithstanding any other provision of this Section 4.1, should such proposed severance payment exceed the amount authorized to be paid under Government Code Section 53260, then the amount paid to EMPLOYEE shall be reduced in the amount necessary to comply with such statute. (Government Code Section 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than eighteen (18) months if the unexpired term exceeds 18 months).”

2.2 Section 6.6, “Deferred Compensation,” is hereby amended to read, in its entirety, as follows:

“6.6 Deferred Compensation. The CITY shall pay a total annual amount of \$3,500, on a pro-rated basis bi-weekly at the same time as other employees of the CITY are paid, into a qualified Section 457 Plan from one of the City approved plans selected by EMPLOYEE. Effective the payroll period beginning December 15, 2018, the CITY shall pay a total annual amount of \$5,500, on a pro-rated basis bi-weekly at the same time as other employees of the CITY are paid, into a qualified Section 457 Plan from one of the City approved plans selected by EMPLOYEE. ***Effective the payroll period beginning December 15, 2019, the CITY shall pay a total annual amount of \$7,500, on a pro-rated basis bi-weekly at the same time as other employees of the CITY are paid, into a qualified Section 457 Plan from one of the City approved plans selected by EMPLOYEE.*** Amounts contributed under this section shall be to the benefit of EMPLOYEE in accordance with the CITY’s Deferred Compensation Plan participation agreement. No requirement of any provision of this Subsection shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the CITY to effectuate such requirements shall not constitute a breach of this AGREEMENT.”

2.3. Section 6.8, “Life Insurance,” is hereby amended to read, in its entirety, as follows:

“6.8 Life Insurance. EMPLOYEE shall be entitled to a \$50,000.00 life insurance policy, ***as well as a \$75.00 monthly stipend for EMPLOYEE use to secure further life insurance coverage on EMPLOYEE, in addition to the aforementioned \$50,000.00 life insurance policy provided by City.***”

3. Continuing Effect of AGREEMENT. Except as expressly amended by the FIRST AMENDMENT and this SECOND AMENDMENT, all the terms, conditions, and compensation

of EMPLOYEE'S employment by the CITY as and for his employment as City Manager shall be as set forth in the AGREEMENT.

IN WITNESS WHEREOF, the CITY has caused this SECOND AMENDMENT to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and EMPLOYEE has signed and executed this SECOND AMENDMENT.

CITY OF MORRO BAY:

John Heading, Mayor

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

Chris F. Neumeyer, City Attorney

EMPLOYEE:

Scott Collins, City Manager

RESOLUTION NO. 107-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
APPROVING AMENDMENTS TO THE CITY'S FISCAL YEAR 19/20 BUDGET
TO AUTHORIZE EXPENDITURE ADJUSTMENTS RELATED TO THE CITY MANAGERS
CONTRACT AMENDMENT**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, pursuant to Government Code section 54957 the City Manager underwent an annual performance review by the City Council in closed session on November 13, 2019; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California authorizes the General Fund operating budget of the City be amended by the additional expenditures related to the City Manager's contract amendment, as shown on the attached Exhibit 1, that was approved at the December 10, 2019 Council Meeting.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 10th day of December 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

Revenues				
Fund	Prog	Acct	Description	Adjustment
Total General Fund				-

Expenditures				
Fund	Prog	Acct	Description	Adjustment
001	3110	4599	Other Pay - Additional Contribution to Deferred Compensation	2,000.00
001	3110	4599	Other Pay - seven months of \$75 life insurance stipend	525.00
Total General Fund				2,525.00

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