



# CITY OF MORRO BAY CITY COUNCIL AGENDA

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*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.*

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## Regular Meeting Tuesday, April 13, 2021 – 5:30 P.M. Held Via Teleconference

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

- IWMA Presentation by Executive Director Brooks Stayer

### PUBLIC COMMENT

*Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this Meeting will be conducted telephonically through Zoom and broadcast live on Cable Channel 20 and streamed on the City website (click [here](#) to view). Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Veterans' Hall will not be open for the meeting.*

### **Public Participation:**

*In order to prevent and mitigate the effects of the COVID-19 pandemic, and limit potential spread within the City of Morro Bay, in accordance with Executive Order N-29-20, the City will not make available a physical location from which members of the public may observe the meeting and offer public comment. Remote public participation is allowed in the following ways:*

- *Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the City Council at [council@morrobayca.gov](mailto:council@morrobayca.gov) prior to the meeting and will be published on the City website with a final update one hour prior to the meeting start time. Agenda correspondence received less than an hour before the meeting start time may not be posted until after the meeting.*
- *Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).*
- *Alternatively, members of the public may watch the meeting and speak during general Public Comment or on a specific agenda item by logging in to the Zoom webinar using the information provided below. Please use the "raise hand" feature to indicate your desire to provide public comment. Each speaker will be allowed three minutes to provide input.*

Please click the link below to join the webinar:

- <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzdwTHlRTk9xaTlmWVNWRFUQT09>  
Password: 135692
- Or Telephone Attendee: 1 (408) 638-0968 or 1 (669) 900 6833 or 1 (346) 248 7799;  
Webinar ID: 827 2274 7698; Password: 135692; Press \*9 to "Raise Hand" for  
Public Comment

#### 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 FEBRUARY 9, 2021, CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-2 APPROVAL OF MINUTES FOR THE FEBRUARY 23, 2021, CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-3 RESOLUTION OF INTENTION TO RE-ESTABLISH THE MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT, TO HELP FUND SALES, MARKETING, AND COMMUNICATION PROGRAMS FOR MORRO BAY LODGING BUSINESSES AND VACATION RENTAL BUSINESSES, PURSUANT TO THE PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994; (CITY MANAGER)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 16-21 declaring its intention to form the (new) Morro Bay Tourism Business Improvement District (MBTBID) and fixing the time and place of a public meeting on April 27, 2021 to allow public testimony regarding the formation of the (new) MBTBID and the levy of assessments, and of a public hearing on June 8, 2021 at which time the Council proposes to form the (new) MBTBID and to levy the proposed assessment.**

- A-4 ADOPTION OF RESOLUTION NO. 17-21 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE CLOISTERS PARK AND OPEN SPACE - LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Adopt Resolution No. 17-21 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2021/22 for the maintenance of the Cloisters Park and Open Space under the provisions of the "Landscaping and Lighting Act of 1972."**

- A-5 ADOPTION OF RESOLUTION NO. 18-21 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA - LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 18-21 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2021/22 for the maintenance of the North Point Natural Area under the provisions of the "Landscaping and Lighting Act of 1972."**

- A-6 CONSIDERATION OF AMENDMENT TO AN EXISTING CONTRACT WITH GHD, INC. FOR ADDITIONAL ARCHEOLOGICAL PRE-CONSTRUCTION INVESTIGATIONS AND MITIGATION SERVICES AND ADDITIONAL PRELIMINARY DESIGN FOR THE PROJECT AUTHORIZATION AND ENVIRONMENTAL DETERMINATION (PA&ED) PHASE FOR INTERSECTION IMPROVEMENTS AT STATE ROUTE (SR) 41/SR 1/MAIN STREET; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION:** Staff recommends the City Council approve, and authorize the City Manager to sign, Amendment No. 2 to the existing amended agreement with GHD Inc, for Additional Archeological Pre-Construction Investigations and Mitigation Services and additional preliminary design for the Project Authorization and Environmental Determination (PA&ED) phase for Intersection Improvements at SR 41/SR 1/Main Street and extend the contract through June 30, 2022.

- B. PUBLIC HEARINGS -NONE

- C. BUSINESS ITEMS

- C-1 DIRECTION REGARDING PRINCIPLES FOR USES OF LOCAL VOTER APPROVED TRANSACTION AND USE TAXES (COMMONLY REFERRED TO AS MEASURES Q AND E) AND AUTHORIZE THE CITY MANAGER TO USE THE AFOREMENTIONED PRINCIPLES IN PROPOSING USES OF AMERICAN RESCUE PLAN ACT OF 2021 (ARP) PROCEEDS AND CONSIDER POTENTIAL CAPITAL PROJECTS TO SUBMIT FOR FEDERAL EARMARK FUNDING; (FINANCE DEPARTMENT/CITY MANAGER)

**RECOMMENDATION:** Staff recommend that City Council:

- 1) Direct the City Manager to implement a streamlined process for allocating Local Voter Approved Transaction and Use Taxes (commonly referred to as Measures Q and E) in accordance with Ordinance No. 635 and propose allocations of Measures Q and E revenue consistent with the following principles:
  - a. Maintain public safety services by funding staff positions that are most closely aligned with the purposes of the Measures Q and E. Expenses may include, but are not limited to, Morro Bay Fire Department, Morro Bay Police Department and Morro Bay Harbor personnel and equipment, in addition to the Fire Head Quarter Debt service and the Fire Engine loan repayment;
  - b. Maintain or enhances cleanliness and safety of public space such as parks, waterfront and the beach by funding personnel, supplies, expenses and equipment to support City operations in departments including, but not limited to, Public Works Consolidated Maintenance and Harbor Department;
  - c. Invest in infrastructure and equipment such as street paving, storm drains, and vehicle replacements that support City services. This priority may include increasing capacity to implement the backlog of unfunded capital projects.
  - d. Ensure financial health of the City by maintaining appropriate reserves to protect against economic downturns, natural/health emergencies and other unforeseen challenges or opportunities.
- 2) Authorize the City Manager to present proposed uses of the American Rescue Plan Act of 2021 (ARP) consistent with the proposed Measures Q and E Principles and guidance issued from the U.S. Department of Treasury; and
- 3) Provide input to City staff regarding Federal earmarks.

C-2 DISCUSS LOCAL FIREARM SAFETY AND REGULATION; PROVIDE DIRECTION TO STAFF; (CITY ATTORNEY)

**RECOMMENDATION: Staff recommends Council discuss local firearm safety and regulation, and Council provide direction to Staff as appropriate. As discussed in detail in this report, areas of possible direction to staff include:**

- 1) **Safety Regulations and Programs**
  - a. **Safe storage laws**
  - b. **Firearm owner's liability insurance**
  - c. **Firearms and public property**
  - d. **Firearms Businesses**
    - i. **Local Firearm Dealer Permit**
    - ii. **Videotaping of firearm sales**
    - iii. **Regular inventory reports**
    - iv. **No residential sales**
  - e. **Firearms Safety Education Program**
  - f. **Annual Firearm "Buy-Back" Program**
  - g. **Supplemental MBPD Officer mass/active shooter training**
- 2) **Advocacy at Federal and State Levels**
- 3) **Gun Violence Restraining Orders ("Red Flag Laws") – local education campaign**
- 4) **Market Leveraging of City Firearms Purchases**

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, April 27, 2021 at 5:30 p.m.** via teleconference.

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 UPON REQUEST BY CALLING THE CITY CLERK'S OFFICE AT 805-772-6205.

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.

*City Council conducted this meeting in accordance with Section 3 of California Governor Newsom's Executive Order N-29-20 issued on March 17, 2020 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.*

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Laurel Barton	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member
ABSENT:	None	
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Katie Lichtig	Interim Finance Director
	Scot Graham	Community Development Director
	Steve Knuckles	Fire Chief
	Jody Cox	Police Chief
	Eric Endersby	Harbor Director
	Rob Livick	City Engineer
	Eric Casares	WRF Program Manager

#### ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 p.m. with all but Council Member Barton present. Council Member Barton joined the meeting at 5:31 p.m.

#### 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 accordance with the Brown Act.

#### MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/Clp6lh4ai4g?t=252>

#### CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/Clp6lh4ai4g?t=1232>

PRESENTATIONS - NONE

#### PUBLIC COMMENT

<https://youtu.be/Clp6lh4ai4g?t=1476>

Betty Winholtz, Morro Bay, requested improved signage to inform the public of road closures for the WRF pipeline project and suggested the traffic control plan be posted on the WRF website. She also inquired as to whether there was an agreement in place for use of private property for the laydown area.

Mayor Heading closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA  
<https://youtu.be/Clp6lh4ai4g?t=2185>

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 JANUARY 12, 2021, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE JANUARY 14, 2021, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE JANUARY 26, 2021, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 FIRST AND SECOND QUARTER INVESTMENT REPORTS (PERIOD FROM JULY 1, 2020 TO DECEMBER 31, 2020) FOR FISCAL YEAR 2020/21; (FINANCE DEPARTMENT)

**RECOMMENDATION: Receive the attached First and Second Quarter Investment Reports (period from July 1, 2020 to December 31, 2020) for Fiscal Year 2020/21.**

A-5 ADOPTION OF RESOLUTION AMENDING CITIZEN'S FINANCE ADVISORY COMMITTEE ANNUAL MEETING SCHEDULE; ADOPTION OF RESOLUTION AMENDING COUNCIL POLICY RELATED TO COUNCIL VOTING PROCEDURES; AND, APPROVAL OF COUNCIL SUB-COMMITTEE TO REVIEW ADVISORY BOARD RECRUITMENT AND INTERVIEW PROCESS; (CITY CLERK/HUMAN RESOURCES MANAGER)

**RECOMMENDATION: Staff recommends that the City Council: 1) Adopt Resolution No. 07-21 approving the Citizen's Finance Advisory Committee's meeting calendar to allow for review of Water Reclamation Facility (WRF) Quarterly Reports; and 2) Adopt Resolution No. 08-21 amending Council Policies & Procedures subsection 1.3.6.7 regarding City Council meeting roll call voting order; and 3) Establish a Council sub-committee to review advisory board member policies to consider alternative and improved board and commission applicant interview procedures and appoint Mayor Heading and Council Member Addis to that sub-committee.**

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

MOTION: Council Member Addis moved approval of all items on the Consent Agenda. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 REVIEW OF THE WATERFRONT RV CAMPING PILOT PROGRAM, AND CITY COUNCIL INPUT AND RECOMMENDATIONS ON THE FUTURE OF THE PROGRAM; (HARBOR DIRECTOR)  
<https://youtu.be/Clp6lh4ai4g?t=2267>

City Manager Collins and Harbor Director Endersby provided the report and responded to Council inquires.

The public comment period for Item C-1 was opened.  
<https://youtu.be/Clp6lh4ai4g?t=6719>

Betty Winholtz, Morro Bay, expressed her opposition to RV Camping on the waterfront.

Jim Zion, Morro Bay, opposed RV camping at the boat launch area, which is surrounded by residential properties, but did not oppose in other areas.

Linda Winters, Morro Bay, objected to RV camping at Coleman Park.

Andy Hampp, owner of Cypress RV and Mobile Home Park, requested City-owned RV parking be used as an overflow service during summer months and the holiday season, not an ongoing basis that competes with other RV parks.

Seychelle Cannes, Morro Bay, opposed the use of public open space as a camping area.

Dawn Wood, Morro Bay, opposed RV camping in the boat launch area and asked how the City would ensure payment is received from those who arrive late at night.

Morgan Nolan, Morro Bay, echoed concerns expressed by others and added her thoughts about potential negative impacts on wildlife.

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

The Mayor and Council expressed appreciation for public input received on this issue and reached concurrence on the following:

- extend the trial period for the RV camping program,
- eliminate Target Rock sites and explore adding sites further north against Morro Rock near the inlet,
- mitigate community concerns related to the Coleman Park sites by installing sufficient physical and visual separations from the Harborwalk so as not to cause disturbances to either campers or the public,
- eliminate sites at the pit and Tidelands Park lot,
- explore adding sites in the parking lot near 456 Embarcadero, and
- explore camp host program.

MOTION: Council Member Davis moved to extend the trial period for RV camping program, and continue using the Coleman sites if we can install sufficient physical and visual separations from the public so as not to cause disturbances to either party; do not use the target rock area or the pit sites; use the 456 Embarcadero site rather than Tidelands parking lot; pursue a camp host program; and in regards to the rock parking area – would prefer to move those sites farther north as Council Member Heller suggested if that does not cause any unforeseen problems. The motion was seconded by Council Member Barton.

Following discussion, Council Member Davis amended the motion.

AMENDED MOTION: Council Member Davis moved to extend the trial period for RV camping program until the end of September 2021, and continue using the Coleman sites if we can install sufficient physical and visual separations from the public so as not to cause disturbances to either party; do not use the target rock area or the pit sites; use the 456 Embarcadero site rather than Tidelands parking lot; pursue a camp host program; and in regards to the rock parking area – would prefer to move those sites farther north as Council Member Heller suggested if that does not cause any unforeseen problems. The amended motion was seconded by Council Member Barton.

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

Staff clarified extension of the pilot program will require approval of Coastal Commission.

The Council took a brief recess at 8:24 p.m. and reconvened at 8:30 p.m. with all members present.

- C-2 AUTHORIZATION TO ENTER THE COUNTY OF SAN LUIS OBISPO COVID-19 VACCINATION ASSISTANCE AGREEMENT; (CITY MANAGER / FIRE DEPARTMENT)  
<https://youtu.be/Clp6lh4ai4g?t=10919>

Mayor Heading provided opening comments and turned to Fire Chief Knuckles, who provided the report and responded to Council inquires.

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

MOTION: Council Member Heller moved to authorize the City Manager to sign the County of San Luis Obispo's COVID-19 Vaccination Assistance Agreement, and to make minor changes to the Agreement that may arise, pending formal adoption from the County Board of Supervisors and other participating agencies. The motion was seconded by Council Member Addis for discussion.

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

- C-3 DISCUSSION AND DIRECTION OF WASHINGTON DC REPRESENTATION TO SUPPORT CITY OF MORRO BAY PROJECTS AND ECONOMIC DEVELOPMENT INITIATIVES; (CITY MANAGER)  
<https://youtu.be/Clp6lh4ai4g?t=12742>

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

The public comment period for Item C-3 was opened; seeing none, the public comment period was closed.

MOTION: Mayor Headding moved to authorize the City Manager to execute a modified 17-month retainer agreement (February 2021 – June 30, 2022) with The Ferguson Group to: 1) Support efforts to gain federal support and funding for the City's COVID-19 response effort, 2) Support offshore wind development and other economic development initiatives beneficial to Morro Bay, 3) Seek federal grants for the Wastewater Reclamation Facility (WRF) project and OneWater infrastructure projects, and 4) Keep the City apprised of other relevant federal legislation and funding opportunities. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/Clp6lh4ai4g?t=13590>

Council Member Heller proposed Council review and discussed all possible revenue options available to the harbor department to generate a long-term revenue stream to support infrastructure and maintenance needs. There was full Council support to discuss new revenue generating opportunities during the budget cycle.

E. ADJOURNMENT

The meeting adjourned at 9:19 p.m.

Recorded by:

Dana Swanson  
City Clerk

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*City Council conducted this meeting in accordance with Section 3 of California Governor Newsom's Executive Order N-29-20 issued on March 17, 2020 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.*

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Laurel Barton	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member
ABSENT:	None	
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Katie Lichtig	Interim Finance Director
	Scot Graham	Community Development Director
	Steve Knuckles	Fire Chief
	Jody Cox	Police Chief
	Eric Endersby	Harbor Director
	Amy Watkins	Police Commander
	Rob Livick	City Engineer
	Eric Casares	WRF Program Manager (Carollo)

#### ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 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 accordance with the Brown Act.

#### MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/oOXG7s5DqOU?t=193>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS - None

#### PRESENTATIONS

<https://youtu.be/oOXG7s5DqOU?t=1092>

- Neighborhood Cop Program Update

#### PUBLIC COMMENT

<https://youtu.be/oOXG7s5DqOU?t=2209>

Wendy Wendt, First 5 SLO County, provided an update on efforts to identify funding and increase access to quality child care in San Luis Obispo County. She urged the Council to keep child care programs in mind when making decisions regarding support for small businesses. Visit [www.first5slo.org](http://www.first5slo.org) for more information.

Sean Green, Morro Bay, thanked the Planning Commission and the Morro Bay Bike Park Group for extending the permit for the BMX Bike Park on Little Morro Creek Road and encouraged others to come forward with proposals for similar safe activities for kids.

Mayor Heading closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA  
<https://youtu.be/oOXG7s5DqOU?t=2554>

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 FEBRUARY 9, 2021, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 AUTHORIZATION FOR “VIRTUAL” ATTENDANCE AT THE C-MANC ANNUAL WASHINGTON D.C. “WASHINGTON WEEK” MEETINGS BY THE MAYOR, CITY MANAGER AND HARBOR DIRECTOR, AND DISCUSSION OF THE WASHINGTON WEEK AGENDA; (HARBOR DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council authorize a three-person “virtual” delegation (the Mayor, City Manager and Harbor Director) to virtually attend the California Marine Affairs and Navigation conference (C-MANC) 2021 “Washington Week” meetings in Washington D.C. slated for February 25 and 26, 2021, to represent the City’s interests in the nation’s capital, and to provide any desired input representing the City’s interests on the elements herein.**

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

MOTION: Council Member Addis moved approval of all items on the Consent Agenda. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS

B-1 PUBLIC HEARING FOR APPROVAL OF ISSUANCE BY HOUSING AUTHORITY OF SAN LUIS OBISPO (HASLO) OF TAX-EXEMPT BONDS FOR CONSTRUCTION AND ACQUISITION, THROUGH HASLO, OF 35 AFFORDABLE HOUSING UNITS IN CITY OF MORRO BAY AT 405 ATASCADERO ROAD, WITH NO INDEBTEDNESS NOR DEBT OBLIGATION INCURRED BY CITY OF MORRO BAY; (COMMUNITY DEVELOPMENT)  
<https://youtu.be/oOXG7s5DqOU?t=2700>

Community Development Director Graham provided the report and responded to Council inquires.

Mayor Heading opened the Public Hearing.

Mayor Heading opened Public Comment.

Betty Winholtz, Morro Bay, requested clarification regarding the affordability requirements for the proposed housing facility.

The Public Hearing was closed.

Staff responded to questions raised during public comment and clarified approval of this item does not have any relation to the permitting of the project.

MOTION: Council Member Addis moved to Adopt Resolution No. 09-21 allowing the issuance of a tax-exempt obligation by the Housing Authority of the City of San Luis Obispo (HASLO), for the purpose of providing financing for the construction of multifamily affordable rental housing located in the City of Morro Bay (the "Project"); and, providing consent to the operation by HASLO within the boundaries of the City in connection with the financing, development, and operation of the affordable rental housing (such adoption of the resolution is solely for the purposes of satisfying the requirements of TEFRA, the Code and the California Government Code Section 6500 et seq.) The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

### C. BUSINESS ITEMS

- C-1 FISCAL YEAR 2020/2021 MID-YEAR BUDGET PERFORMANCE AND STATUS REPORT – SIX MONTHS ENDING DECEMBER 31, 2020: A) RECEIVE FISCAL YEAR (FY) 2020/2021 MID-YEAR BUDGET PERFORMANCE AND STATUS REPORT AND AUTHORIZE BUDGET ADJUSTMENTS AS RECOMMENDED IN THE ATTACHED SECOND QUARTER BUDGET PERFORMANCE REPORT, AND B) RECEIVE THE FY 2020/2021 CAPITAL IMPROVEMENT PLAN MID-YEAR UPDATE, AND C) APPROVE THE ADMINISTRATIVE SERVICES DIRECTOR – ASSISTANT CITY MANAGER JOB DESCRIPTION, AND D) ADOPT RESOLUTION NO. 10-21 AUTHORIZING STAFF TO PROCEED WITH THE SECOND-QUARTER BUDGET ADJUSTMENTS AND APPROVING THE AMENDED COMBINED SALARY SCHEDULE TO INCLUDE THE ADMINISTRATIVE SERVICES DIRECTOR – ASSISTANT CITY MANAGER JOB CLASSIFICATION; (FINANCE DEPARTMENT)  
<https://youtu.be/oOXG7s5DqOU?t=3522>

City Manager Collins introduced the item and turned to Interim Finance Director Lichtig, who provided the report, including minor changes provided in Addendum 1 authorizing the full expenditure of \$49,900 for the Police Department replacement vehicle.

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

Betty Winholtz, Morro Bay, posed questions submitted as agenda correspondence regarding Measure Q receipts, storm drain repairs, WRF project cost overruns and litigation costs related to the WRF project. She also opposed the recruitment of an Administrative Services Director - Assistant City Manager.

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

Staff responded to questions raised during public comment.

MOTION: Council Member Heller moved the Council 1) receive the FY 2020/2021 Mid-Year Budget Performance and Status Report and authorize budget adjustments as recommended in the amended Second Quarter Budget Performance Report and as recommended by staff, and 2) receive the FY

2020/2021 Capital Improvement Plan Mid-Year Update, and 3) approve the Administrative Services Director – Assistant City Manager Job Description, and 4) adopt Resolution No. 10-21 Authorizing Staff to Proceed with the amended Second Quarter Budget Adjustments including corrections provided by staff and amending the Combined Salary Schedule to include Administrative Services Director – Assistant City Manager job classification. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

The Council took a brief recess at 7:41 p.m. The meeting reconvened at 7:47 p.m. with all members present.

C-2 REVIEW WATER RECLAMATION FACILITY (WRF) QUARTERLY UPDATE REPORT; (PUBLIC WORKS DEPARTMENT)  
<https://youtu.be/oOXG7s5DqOU?t=8211>

WRF Program Manager Casares provided the report and responded to Council inquires.

The public comment period for Item C-2 was opened.

Richard Sadowski, Morro Bay, questioned the validity of scientific study and asked what would be done if that information was determined to be fraudulent.

Betty Winholtz, Morro Bay, raised questions regarding the recent landslide, status of the SHPO and California Department of Fish & Wildlife permits, damaged pipes, conveyance completion date, trees cut along bike path and power plant site, and method of notice to residents along Quintana.

The public comment period for Item C-2 was closed.

Staff responded to questions raised during public comment.

No formal action was taken by the City Council.

C-3 CONSIDERATION OF AMENDMENT TO AN EXISTING CONTRACT WITH FAR WESTERN ANTHROPOLOGICAL RESEARCH GROUP, INC. (FAR WESTERN) FOR ADDITIONAL ARCHEOLOGICAL PRE-CONSTRUCTION INVESTIGATIONS AND MITIGATION SERVICES FOR THE WATER RECLAMATION FACILITY (WRF) LIFT STATIONS AND OFFSITE PIPELINES CONSTRUCTION; (PUBLIC WORKS DEPARTMENT)  
<https://youtu.be/oOXG7s5DqOU?t=11658>

WRF Program Manager Casares provided the report and responded to Council inquires.

The public comment period for Item C-3 was opened; seeing none, the public comment period was closed.

MOTION: Council Member Addis moved the Council authorize the City Manager to sign, Amendment No. 5 to the existing amended agreement with Far Western, dated February 23, 2021, for additional and continued archeological support of the Water Reclamation Facility (WRF) Project in an increased amount of \$115,065 and for an extended term through December 31, 2021. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

C-4 CONSIDERATION OF SALE OR LEASE OF CITY-OWNED REAL PROPERTY; (CITY MANAGER)  
<https://youtu.be/oOXG7s5DqOU?t=12298>

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

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

MOTION: Council Member Addis moved to direct staff to move forward with the potential sale of City property (0 Bolton Drive) and lease of City property located at 570 Dunes Street. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

C-5 CONSIDERATION AND APPROVAL OF TEMPORARY CITY GOAL AND ACTION ITEMS ASSOCIATED WITH COVID-19 RESPONSE AND RECOVERY; (CITY MANAGER)  
<https://youtu.be/oOXG7s5DqOU?t=13311>

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

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

Linda Winters, Morro Bay, thanked the City for its efforts.

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

MOTION: Council Member Addis moved to go past 9:30 p.m. The motion was seconded by Council Member Davis and carried 4-1 by roll call vote with Council Member Heller opposed.

MOTION: Council Member Addis moved to adopt a new temporary City Goal, COVID-19 Response and Recovery and associated action items. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS  
<https://youtu.be/oOXG7s5DqOU?t=14250>

Mayor Headding requested and received full Council support to discuss oversight of Measure E funds at a future meeting.

Council Member Davis shared SLOCOG will discuss a request for funding commitment from the City for the Highway 1 / Mainstreet interchange at its April 7, 2021 meeting and asked this issue be brought to the Council for consideration in March. There was full support for this item.

E. ADJOURNMENT

The meeting adjourned at 9:29 p.m.

Recorded by:

Dana Swanson  
City Clerk

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AGENDA NO: A-3

MEETING DATE: April 13, 2021

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** April 6, 2021

**FROM:** Scott Collins, City Manager

**SUBJECT:** Resolution of Intention to re-establish the Morro Bay Tourism Business Improvement District, to help fund sales, marketing, and communication programs for Morro Bay lodging businesses and vacation rental businesses, pursuant to the Property and Business Improvement District Law of 1994

### RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 16-21 declaring its intention to form the (new) Morro Bay Tourism Business Improvement District (MBTBID) and fixing the time and place of a public meeting on April 27, 2021 to allow public testimony regarding the formation of the (new) MBTBID and the levy of assessments, and of a public hearing on June 8, 2021 at which time the Council proposes to form the (new) MBTBID and to levy the proposed assessment.

### ALTERNATIVES

The Council could choose not to adopt the Resolution of Intention. Staff does not recommend this option.

### FISCAL IMPACT

None immediately. Because the MBTBID programs are intended to increase visitation to the City, there may be an increase in transient occupancy tax and sales tax collections.

### BACKGROUND

The existing Morro Bay Tourism Improvement District (MBTBID) was formed pursuant to the Parking and Business Improvement Area Law of 1989 (89 Law) (Streets and Highways Code sections 36500 *et seq.*). On April 27, 2009, City Council approved Ordinance No. 546 (the "Ordinance") amending the Morro Bay Municipal Code and establishing the MBTBID. This present effort seeks to modernize the MBTBID by allowing the MBTBID created via the 89 Law to expire and re-establishing the MBTBID pursuant to the Property and Business Improvement District Law of 1994 (94 Law) (Streets and Highways Code sections 36600 *et seq.*).

The MBTBID is a business improvement district designed to help fund sales, marketing, and communication programs for Morro Bay lodging businesses and vacation rental businesses. The MBTBID levies assessments to be used in accordance with the MBTBID mandate. This approach has been used successfully in other destination areas throughout

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

the state to improve tourism and drive additional room nights to assessed lodging businesses. The MBTBID includes all lodging businesses and vacation rental businesses, existing and in the future, within the boundaries of the City of Morro Bay, as shown on the map in the Management District Plan.

Lodging business and vacation rental business owners decided to pursue formation of the new MBTBID in order to create an up-to-date revenue source devoted to marketing Morro Bay as a tourist, meeting and event destination pursuant to the 94 Law. If (re)formed, the MBTBID would generate approximately \$991,000 on an annual basis for promotion of travel and tourism specific to Morro Bay.

### *TOURISM BUSINESS IMPROVEMENT DISTRICTS*

Tourism Business Improvement Districts (TBIDs) utilize the efficiencies of private sector operation in the market-based promotion of tourism. These special assessment districts allow assessed business owners to organize their efforts to increase tourism. Assessed business owners within the TBID fund the TBID, and those funds are used to provide services that are desired by and benefit the assessed businesses within the TBID.

TBID benefits:

- Funds cannot be diverted for other government programs;
- They are customized to fit the needs of each destination;
- They allow for a wide range of services; including: destination marketing, tourism promotion, and sales lead generation;
- They are designed, created and governed by those who will pay the assessment; and,
- They provide a stable funding source for tourism promotion.

In California, TBIDs may be formed pursuant to the Property and Business Improvement District Law of 1994 (94 Law) or the Parking and Business Improvement Area Law of 1989 (89 Law). These laws allow for the creation of a special benefit assessment district to raise funds within a specific geographic area. A key difference between TBIDs and other special benefit assessment districts is that funds raised may be returned to the private non-profit corporation governing the TBID.

The 94 Law provides for a more stream-lined approach - than the 89 Law - that many cities find more efficient and practical. The 94 Law provides for a 5-year window, whereas the 89 Law only allows for one year, with a renewal process each year to continue service. By providing a longer window of operation compared to the 89 Law, the 94 Law is more strategic in nature. This will allow the new TBID to evaluate effectiveness of strategic efforts that can often take several years to bear significant fruit. Because of the longer window of operation inherent in the 94 Law, forming a TBID under requires a positive petition to proceed forward of at least 50% of the revenue generation from hotels and vacation rentals in Morro Bay. In the last ten years, many 89 Law TBIDs have converted to the 94 Law. A partial list is below:

- Stockton (2010);
- Sacramento (2012);
- Fairfield (2013);
- West Hollywood (2013);

- Huntington Beach (2014);
- Lodi (2015);
- Richmond (2015);
- Palm Springs (2016);
- Yolo County (2017);
- Paso Robles (2017);
- Pasadena (2018); and
- Dana Point (2020)

#### MANAGEMENT DISTRICT PLAN

The Management District Plan (**Attachment 2**) includes the proposed boundary of the MBTBID, a service plan, a budget and a proposed means of governance. The MBTBID includes all lodging businesses and vacation rental businesses, existing and in the future, within the boundaries of the City of Morro Bay.

The MBTBID will have a five (5) year term, beginning July 1, 2021 through June 30, 2026. The assessment will be implemented beginning July 1, 2021. Once per year beginning on the anniversary of MBTBID formation there is a thirty (30) day period in which business owners paying fifty percent (50%) or more of the assessment may protest and begin proceedings to terminate the MBTBID.

The annual assessment rate is three percent (3%) of gross short-term room rental revenue. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days. Assessments will not be collected on any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

The City of Morro Bay (City) will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business and vacation rental business located in the boundaries of the MBTBID. The City shall take all reasonable efforts to collect the assessments from each lodging business and vacation rental business.

#### MBTBID FORMATION PROCESS

April 13, 2021

##### RESOLUTION OF INTENTION ADOPTION

Upon the submission of a written petition, signed by the business owners in the proposed MBTBID who will pay more than fifty percent (50%) of the assessments proposed to be levied, the City Council may initiate proceedings to form the MBTBID by the adoption of a resolution expressing its intention to form the MBTBID.

*Petition Status:* Petitions in favor of MBTBID formation were submitted by 23 businesses, which represent 61.73% of the total MBTBID assessment. This majority petition allows the Council to initiate proceedings for MBTBID formation at the April 13, 2021 meeting.

- April 15, 2021      NOTICE  
The 94 Law requires the City to mail written notice to the owners of all businesses proposed to be within the proposed MBTBID. Mailing the notice begins a mandatory forty-five (45) day period in which owners may protest MBTBID formation.
- April 27, 2021      PUBLIC MEETING  
Allow public testimony on the formation of the (new) MBTBID and levy of assessments. No Council action required.
- June 8, 2021      PUBLIC HEARING  
Allow public testimony regarding the formation of the (new) MBTBID and the levy of assessments.

Any owner of an assessed business within the proposed MBTBID that will be subject to the assessment may protest the formation of the MBTBID.

If written protests are received (at the public hearing, or by City Hall pursuant to notice before the public hearing during the protest period) from the owners of businesses in the proposed (new) MBTBID which will pay more than fifty percent (50%) of the assessments proposed to be levied, and protests are not withdrawn so as to reduce the protests to less than fifty percent (50%), no further proceedings to levy the proposed assessment against such businesses shall be taken for a period of one (1) year from the date of the finding of such a majority protest by the Council.

At the conclusion of the public hearing to form the MBTBID, if there is not a protest from the owners of businesses in the proposed (new) MBTBID which will pay more than fifty percent (50%) of the assessments proposed to be levied, the Council may establish the (new) MBTBID by adopting a resolution of formation.

### **ATTACHMENTS**

1. Resolution of Intention No. 16-21
2. Management District Plan
3. Draft Notice of Public Meeting and Public Hearing

**RESOLUTION NO. 16-21**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
DECLARING ITS INTENTION TO FORM THE  
MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT (MBTBID) UNDER  
THE PROPERTY AND BUSINESS IMPROVEMENT LAW OF 1994, AND FIXING  
THE TIME AND PLACE OF A PUBLIC MEETING AND A PUBLIC HEARING  
THEREON, AND GIVING NOTICE THEREOF**

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

**WHEREAS**, the Property and Business Improvement Law of 1994, Streets and Highways Code §36600 et seq., authorizes the City to form business improvement districts for the purposes of promoting tourism; and

**WHEREAS**, Visit Morro Bay, Morro Bay business owners, and representatives from the City of Morro Bay have met to consider the formation of the MBTBID; and

**WHEREAS**, Visit Morro Bay has drafted a Management District Plan (Plan) consistent with requirements of Streets and Highways Code section 36622 and which sets forth the proposed boundary of the MBTBID, a service plan and budget, and a proposed means of governance; and

**WHEREAS**, businesses who will pay more than fifty percent (50%) of the assessment under the MBTBID have petitioned the City Council to form the MBTBID pursuant to Streets and Highways Code section 36621.

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

1. The recitals set forth herein are true and correct.
2. The City Council finds that businesses that will pay more than fifty percent (50%) of the assessment proposed in the Plan have signed and submitted petitions in support of the formation of the MBTBID. The City Council accepts the petitions and adopts this Resolution of Intention to form the MBTBID and to levy an assessment on certain lodging businesses and vacation rentals within the MBTBID boundaries in accordance with the Property and Business Improvement District Law of 1994.
3. The City Council finds that the Plan satisfies all requirements of Streets and Highways Code §36622.
4. The City Council declares its intention to form the MBTBID and to levy and collect assessments on lodging businesses and vacation rental businesses within the MBTBID boundaries pursuant to the Property and Business Improvement District Law of 1994.
5. The MBTBID includes all lodging businesses and vacation rental businesses, existing and in the future, within the boundaries of the City of Morro Bay, as shown in the map attached as

Exhibit A.

6. The name of the district shall be Morro Bay Tourism Business Improvement District (MBTBID).
7. The annual assessment rate is three percent (3%) of gross short-term room rental revenue. The assessments will be collected on a monthly basis. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days. Assessments will not be collected on any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.
8. The assessments levied for the MBTBID shall be applied toward sales, marketing, and communications programs to promote an increase in overnight tourism through promotion of payors as tourist, meeting and event destinations, thereby increasing room night sales, as described in the Plan. Funds remaining at the end of any year may be used in subsequent years in which MBTBID assessments are levied as long as they are used consistent with the requirements of this resolution and the Plan.
9. The MBTBID will have a five (5) year life, beginning July 1, 2021 through June 30, 2026, unless renewed pursuant to Streets and Highways Code §36660.
10. Bonds shall not be issued.
11. The time and place for the public meeting to hear testimony on forming the MBTBID and levying assessments are set for April 27, 2021, at 5:30 PM, or as soon thereafter as the matter may be heard, at City Hall located at 595 Harbor Street, Morro Bay, CA 93442.
12. The time and place for the public hearing to form the MBTBID and the levy of assessments is set for June 8, 2021, at 5:30 PM, or as soon thereafter as the matter may be heard, at City Hall located at 595 Harbor Street, Morro Bay, CA 93442. The City Clerk is directed to provide written notice to the lodging businesses subject to assessment of the date and time of the meeting and hearing, and to provide that notice as required by Streets and Highways Code §36623.
13. At the public meeting and hearing, the testimony of all interested persons for or against the formation of the MBTBID may be received. If at the conclusion of the public hearing, there are of record written protests by the owners of the assessed businesses within the formed MBTBID that will pay more than fifty percent (50%) of the estimated total assessment of the entire MBTBID, no further proceedings to form the MBTBID shall occur for a period of one (1) year.
14. The complete Plan is on file with the City Clerk and may be reviewed upon request.

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15. This resolution shall take effect immediately upon its adoption 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 13th day of April 2021 by the following vote:

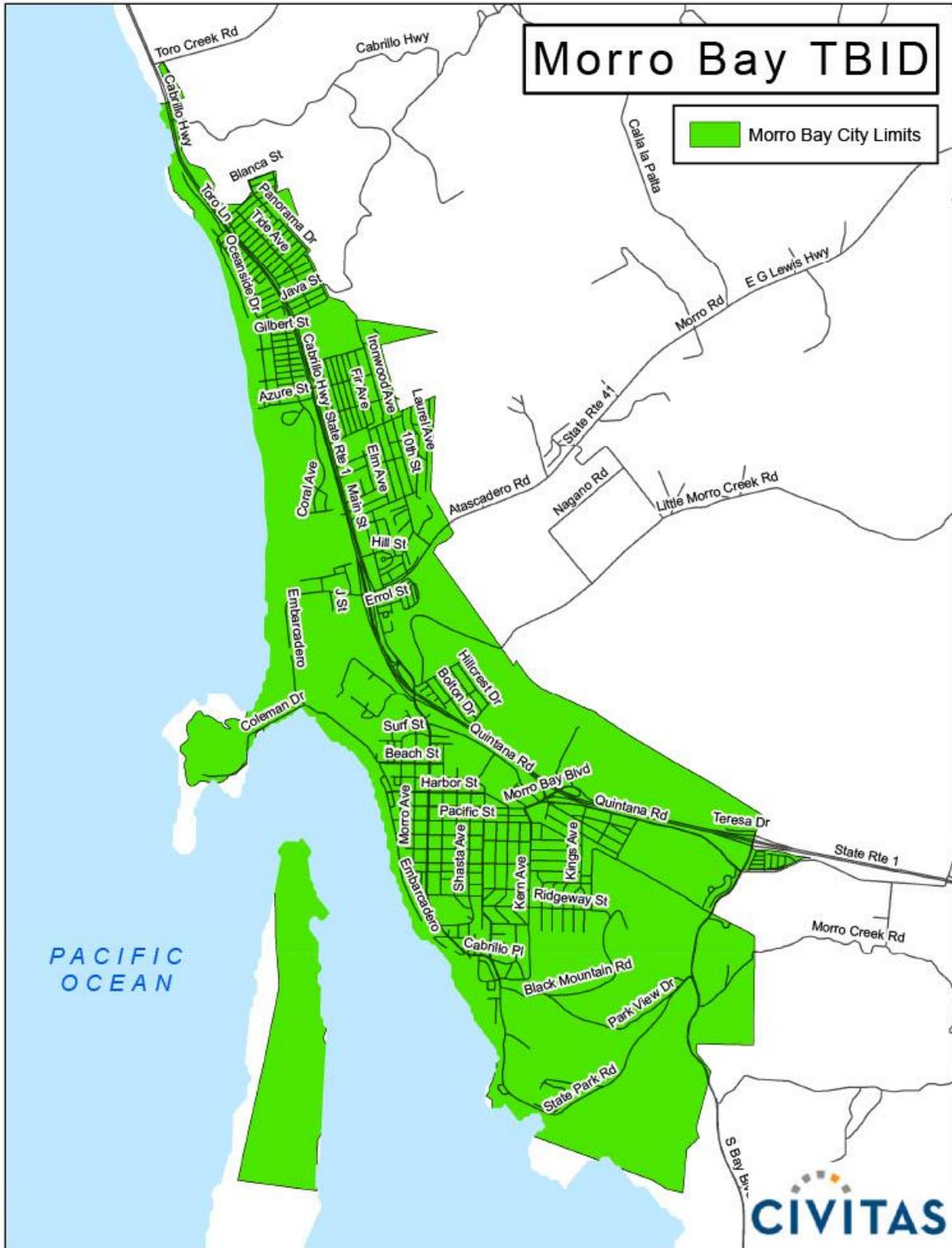
AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
JOHN HEADDING, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

EXHIBIT A  
District Boundaries



2021-2026



**MORRO BAY TOURISM BUSINESS  
IMPROVEMENT DISTRICT  
MANAGEMENT DISTRICT PLAN**

*Prepared pursuant to the Property and Business Improvement District Law of  
1994, Streets and Highways Code section 36600 et seq.*

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**March 3, 2021**

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## I. OVERVIEW

Developed by City of Morro Bay (City), Morro Bay hoteliers, and Morro Bay vacation rental businesses, the Morro Bay Tourism Business Improvement District (MBTBID) is an assessment district proposed to provide specific benefits to payors, by funding marketing and sales promotion efforts for assessed businesses. In 2009, the Morro Bay Tourism Business Improvement District (MBTBID) was formed pursuant to the Parking and Business Improvement Area Law of 1989 (89 Law). This effort seeks to modernize the MBTBID by disestablishing the 89 Law District and forming a new District pursuant to the Property and Business Improvement District Law of 1994 (94 Law).

*Location:* The MBTBID includes all lodging businesses and vacation rental businesses, existing and in the future, within the boundaries of the City of Morro Bay, as shown on the map in Section III.

*Services:* The MBTBID is designed to provide specific benefits directly to payors by increasing room night sales. Sales, marketing, and communications programs will increase overnight tourism through promotion of payors as tourist, meeting and event destinations, thereby increasing room night sales.

*Budget:* The total MBTBID annual assessment budget for the initial year of its five (5) year operation is anticipated to be approximately \$991,000. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do.

*Cost:* The annual assessment rate is three percent (3%) of gross short-term room rental revenue. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days. Assessments will not be collected on any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

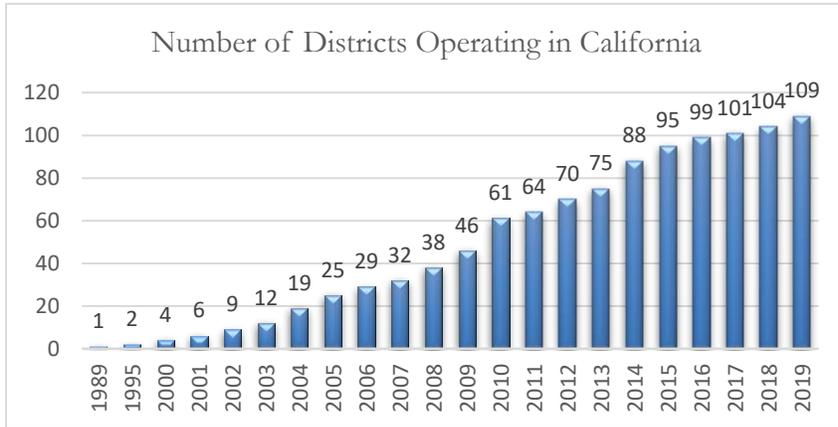
*Collection:* The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business and vacation rental business located in the boundaries of the MBTBID. The City shall take all reasonable efforts to collect the assessments from each lodging business and vacation rental business.

*Duration:* The MBTBID will have a five (5) year life, beginning July 1, 2021 through June 30, 2026. Once per year, beginning on the anniversary of the MBTBID formation, there is a thirty (30) day period in which assessed business owners paying fifty percent (50%) or more of the assessment by written petition may protest the assessment and thereby initiate a City Council hearing on MBTBID termination.

*Management:* Visit Morro Bay (VMB) will serve as the founding MBTBID's Owners' Association. The Owners' Association contracts with the City of Morro Bay to manage funds and implement programs in accordance with this Plan, is a private nonprofit entity, must provide annual reports to the City Council.

## II. BACKGROUND

TBIDs are an evolution of the traditional Business Improvement District. The first TBID was formed in West Hollywood, California in 1989. Since then, over one hundred California destinations have followed suit. In recent years, other states have begun adopting the California model – Montana, South Dakota, Washington, Colorado, Texas and Louisiana have adopted TBID laws. Several other states are in the process of adopting their own legislation. The cities of Wichita, Kansas and Newark, New Jersey used an existing business improvement district law to form a TBID. And, some cities, like Portland, Oregon and Memphis, Tennessee have utilized their home rule powers to create TBIDs without a state law.



California’s TBIDs collectively raise over \$250 million annually for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that Morro Bay lodging businesses invest in stable, lodging-specific marketing programs.

TBIDs utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TBIDs allow lodging business owners to organize their efforts to increase room night sales. Lodging business owners within the TBID pay an assessment and those funds are used to provide services that increase room night sales.

In California, many TBIDs are formed pursuant to the Property and Business Improvement District Law of 1994. This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area. *The key difference between TBIDs and other benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

There are many benefits to TBIDs:

- Funds must be spent on services and improvements that provide a specific benefit only to those who pay;
- Funds cannot be diverted to general government programs;
- They are customized to fit the needs of payors in each destination;
- They allow for a wide range of services;
- They are **designed, created and governed by those who will pay** the assessment; and
- They provide a stable, long-term funding source for tourism promotion.

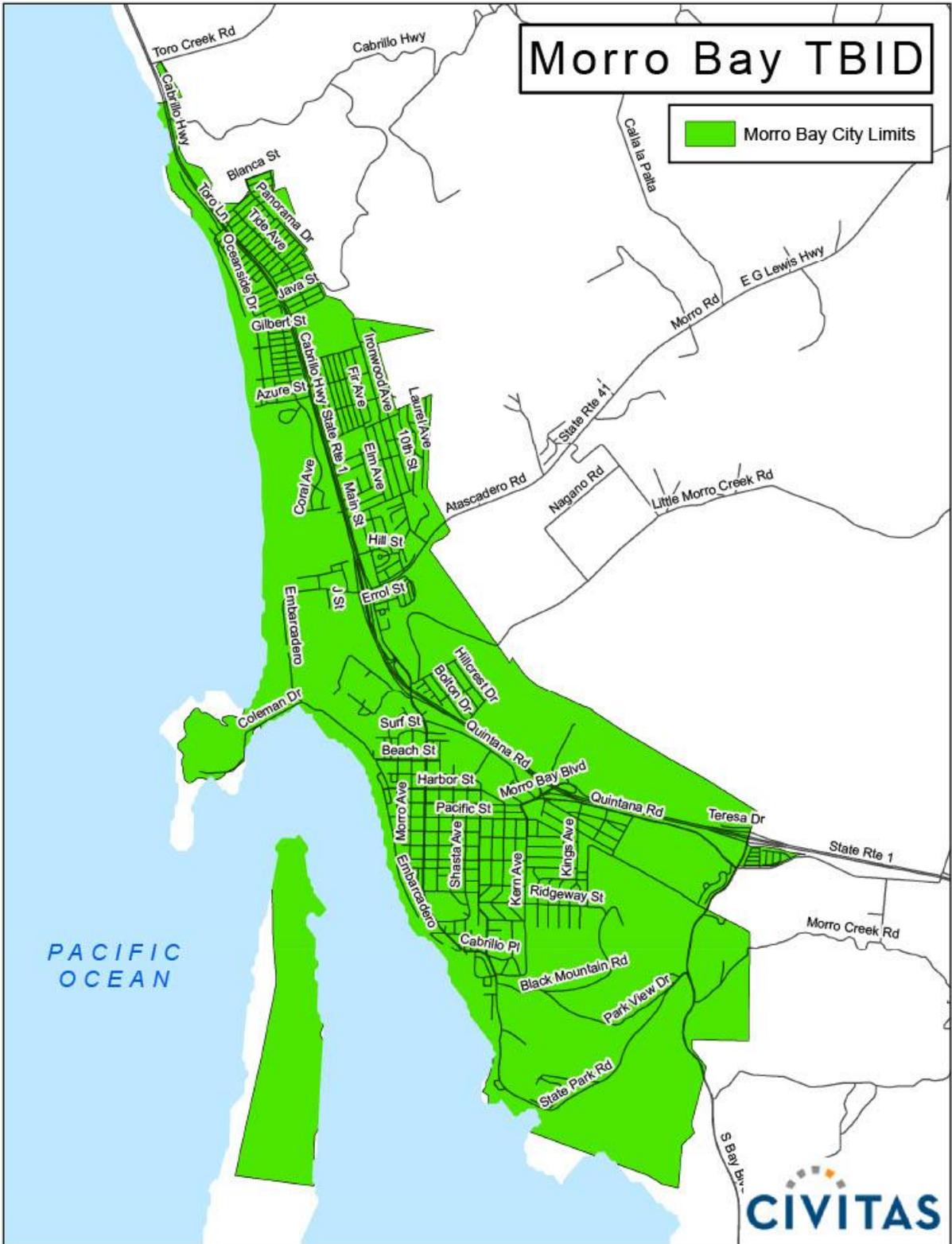
### III. BOUNDARY

The MBTBID will include all lodging businesses and vacation rental businesses, existing and in the future, within the boundaries of the City of Morro Bay.

Lodging business 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, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club at a fixed location or other similar structure or portion thereof; and shall further include any space, lot, area or site in any or other similar conveyance that is occupied or intended or designed for occupancy by transients dwelling, lodging or sleeping purposes. For purposes of this Plan, the definition of "lodging business" shall not include mobile homes, house trailers, trailer courts, recreational vehicle parks, mobilehome parks, camps, parks or lot where a trailer, tent, recreational vehicle, mobile home, motorhome or similar conveyance that is occupied or intended or designed for occupancy by transients dwelling, lodging or sleeping purposes.

Vacation rental means: the rental of any structure or any portion of any structure for occupancy for dwelling, lodging or sleeping purposes for thirty (30) consecutive calendar days or less in duration, including detached single-family residences, condominiums, duplexes, twinplexes, townhomes and multiple-family dwellings.

The boundary, as shown in the map on the following page, as of January 19, 2021 includes two hundred and eighty-two (282) businesses. A complete listing of lodging businesses within the MBTBID can be found in Appendix 2.

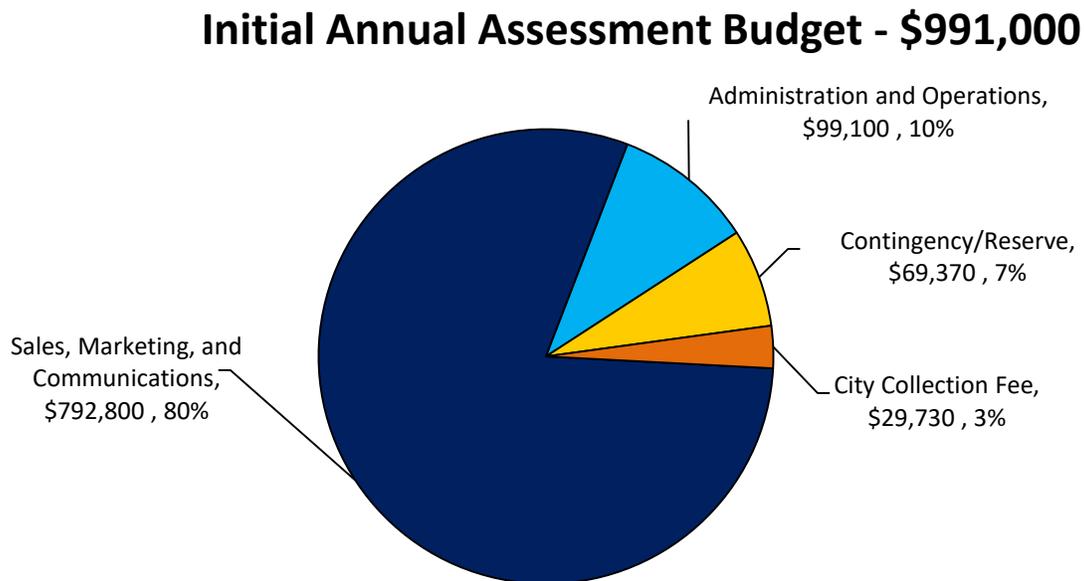


## IV. ASSESSMENT BUDGET AND SERVICES

### A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred or privileges granted directly<sup>1</sup> to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits or granting the privileges. The privileges and services provided with the MBTBID funds are sales, marketing, and communications programs available only to assessed businesses.

A service plan budget has been developed to deliver services that benefit the assessed businesses. A detailed annual budget will be developed and approved by VMB. The table below illustrates the initial annual assessment budget allocations. The total initial budget is \$991,000.



Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. However, the VMB board shall have the authority to adjust budget allocations between the categories by no more than fifteen percent (15%) of the total budget per year. A description of the proposed improvements and activities for the initial year of operation is below. The same activities are proposed for subsequent years. In the event of a legal challenge against the MBTBID, any and all assessment funds may be used for the costs of defending the MBTBID. In the first year of operation, the costs of creating the MBTBID may be repaid by deducting repayment funds proportionally from each of the budget categories.

Each budget category includes all costs related to providing that service. For example, the sales, marketing, and communications budget includes the cost of staff time dedicated to overseeing and implementing the sales, marketing, and communications program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of an individual staff member may be allocated to multiple budget categories. The staffing levels necessary to provide the services below will be determined by VMB on an as-needed basis.

<sup>1</sup> Notwithstanding businesses not assessed may “receive incidental or collateral effects that benefit them.” (Sts. & High. Code § 36601(d).)

## **Sales, Marketing, and Communications**

A sales, marketing, and communications program will promote assessed lodging businesses as tourist, meeting, and event destinations. The sales, marketing, and communications program will have a central theme of promoting the destination as a desirable place for overnight visits. The program will have the goal of increasing overnight visitation and room night sales at assessed lodging businesses, and may include, but is not limited to, the following activities:

- Internet marketing efforts to increase awareness and optimize internet presence to drive overnight visitation and room sales to assessed lodging businesses; Print ads in magazines and newspapers, television ads, and radio ads targeted at potential visitors to drive overnight visitation and room sales to assessed lodging businesses;
- Building the Morro Bay branding and local destination marketing to attract overnight visitation to assessed businesses and the MBTBID;
- Attendance of trade shows to promote assessed lodging businesses;
- Sales blitzes for assessed lodging businesses;
- Familiarization tours of assessed lodging businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed lodging businesses;
- Attendance of professional industry conferences and affiliation events to promote assessed lodging businesses;
- Lead generation activities designed to attract tourists and group events to assessed lodging businesses;
- Director of Sales and General Manager meetings to plan and coordinate tourism promotion efforts for assessed lodging businesses;
- Education of hospitality staff on service and safety (related to alcohol and food) designed to create a visitor experience that will bring repeat visits to assessed lodging businesses; and
- Education of lodging business management and the Owners' Association on marketing strategies best suited to meet assessed lodging businesses' needs.

## **Administration and Operations**

The administration and operations portion of the budget shall be utilized for administrative staffing costs, office costs, advocacy, and other general administrative costs such as insurance, legal, and accounting fees.

## **Collection Fee**

The City of Morro Bay shall be paid a fee equal to three percent (3%) of the amount of assessment collected to cover its costs of collection and administration.

## **Contingency / Reserve**

The budget includes a contingency line item to account for lower than anticipated assessments. If there are contingency funds collected, they may be held in a reserve fund or utilized for other program, administration or renewal costs at the discretion of VMB. Policies relating to contributions to the reserve fund, the target amount of the reserve fund, and expenditure of monies from the reserve fund shall be set by VMB. Contingency/reserve funds may be spent on MBTBID programs or administrative and renewal costs in such proportions as determined by VMB. The reserve fund may be used for the costs of renewing the MBTBID.

## **B. Annual Assessment Budget**

The total five (5) year improvement and service plan assessment budget is projected at approximately \$991,000 annually, or \$4,955,000 through 2026. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do.

## **C. California Constitutional Compliance**

The MBTBID assessment is not a property-based assessment subject to the requirements of Proposition 218. Courts have found Proposition 218 limited the term ‘assessments’ to levies on real property.<sup>2</sup> Rather, the MBTBID assessment is a business-based assessment, and is subject to Proposition 26. Pursuant to Proposition 26 all levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the MBTBID, a “specific benefit” and a “specific government service.” Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

### **1. Specific Benefit**

Proposition 26 requires that assessment funds be expended on, “a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”<sup>3</sup> The services in this Plan are designed to provide targeted benefits directly to assessed businesses, and are intended only to provide benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific businesses within the MBTBID. The activities described in this Plan are specifically targeted to increase room night sales for assessed lodging businesses and vacation rental businesses within the boundaries of the MBTBID, and are narrowly tailored. MBTBID funds will be used exclusively to provide the specific benefit of increased room night sales directly to the assessees. Assessment funds shall not be used to feature non-assessed lodging businesses in MBTBID programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses.

The assessment imposed by this MBTBID is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in room night sales. The specific benefit of an increase in room night sales for assessed businesses will be provided only to businesses paying the district assessment, with marketing, sales, and communications programs promoting businesses paying the MBTBID assessment. The marketing, sales, and communications programs will be designed to increase room night sales at each assessed businesses. Because they are necessary to provide the marketing, sales, and communications programs that specifically benefit the assessed lodging businesses, the administration and contingency services also provide the specific benefit of increased room night sales to the assessed lodging businesses.

Although the MBTBID, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, “A specific benefit is not excluded from classification

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<sup>2</sup> *Jarvis v. the City of San Diego* 72 Cal App. 4<sup>th</sup> 230

<sup>3</sup> Cal. Const. art XIII C § 1(e)(1)

as a ‘specific benefit’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor.”<sup>4</sup>

## **2. Specific Government Service**

The assessment may also be utilized to provide, “a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”<sup>5</sup> The legislature has recognized that marketing and promotions services like those to be provided by the MBTBID are government services within the meaning of Proposition 26<sup>6</sup>. Further, the legislature has determined that “a specific government service is not excluded from classification as a ‘specific government service’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific government service to the payor.”<sup>7</sup>

## **3. Reasonable Cost**

MBTBID services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. The full amount assessed will be used to provide the services described herein. Funds will be managed by the MBTBID, and reports submitted on an annual basis to the City. Only assessed businesses will be featured in marketing materials, receive sales leads generated from MBTBID-funded activities, be featured in advertising campaigns, and benefit from other MBTBID-funded services. Non-assessed businesses will not receive these, nor any other, MBTBID-funded services and benefits.

The MBTBID-funded programs are all targeted directly at and feature only assessed businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed businesses receive incremental room nights, that portion of the promotion or program generating those room nights shall be paid with non-MBTBID funds. MBTBID funds shall only be spent to benefit the assessed businesses, and shall not be spent on that portion of any program which directly generates incremental room nights for non-assessed businesses.

## **D. Assessment**

The annual assessment rate is three percent (3%) of gross short-term room rental revenue. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days. Assessments will not be collected on any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

The term “gross room rental revenue” as used herein means: Gross room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

The assessment is levied upon and a direct obligation of the assessed business. However, the assessed business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. If the MBTBID assessment is identified separately it shall be disclosed as the “MBTBID Assessment.” As an alternative, the disclosure may include the amount of the MBTBID assessment and the amount of the assessment imposed pursuant to the California Tourism Marketing

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<sup>4</sup> Government Code § 53758(a)

<sup>5</sup> Cal. Const. art XIII C § 1(e)(2)

<sup>6</sup> Government Code § 53758(b)

<sup>7</sup> Government Code § 53758(b)

Act, Government Code §13995 et seq. and shall be disclosed as the “Tourism Assessment.” The assessment is imposed solely upon, and is the sole obligation of, the assessed lodging business, even if it is passed on to transients. The assessment shall not be considered revenue for any purpose, including calculation of transient occupancy taxes.

Bonds shall not be issued.

#### **E. Penalties and Interest**

The MBTBID shall reimburse the City of Morro Bay for any costs and fees (including, but not limited to, both City staff time as reasonably calculated by the City, as well as any attorney’s fees) associated with collecting unpaid assessments. If sums in excess of the delinquent MBTBID assessment are sought to be recovered in the same collection action by the City, the MBTBID shall bear its pro rata share of such collection costs. Assessed businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Original Delinquency.* Any owner who fails to remit any assessment imposed by this Plan within the time required shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.
2. *Continued Delinquency.* Any owner who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment and the ten percent (10%) penalty first imposed.
3. *Fraud.* If the City determines in its sole reasonable discretion that the nonpayment of any remittance due under this chapter is due to fraud and/or intent to mislead the City, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated in subsections 1 and 2 of this section.
4. *Interest.* In addition to the penalties imposed, any owner who fails to remit any assessment imposed by this Plan shall pay interest at the rate of one-half of one percent (0.05%) per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
5. *Penalties Merged with Assessment.* Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the assessment herein required to be paid.
6. *Appeals Procedure.* City will provide written procedures for appeal of contested assessments, consistent with due process.
7. *City Collection Costs.* Delinquent assessed businesses will be responsible for City collection costs, pursuant to section F below.

#### **F. Time and Manner for Collecting Assessments**

The MBTBID assessment will be implemented beginning July 1, 2021 and will continue for five (5) years through June 30, 2026. The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each assessed business. The City shall take all reasonable efforts to collect the assessments from each assessed business. The City shall forward the assessments collected to VMB.

## **V. GOVERNANCE**

### **A. Owners' Association**

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the MBTBID as defined in Streets and Highways Code §36612. The City Council has determined that Visit Morro Bay will serve as the Owners' Association for the MBTBID. The City reserves the right to conduct regular financial and/or operational audits, as reasonably determined to be appropriate by City in City's sole discretion, of the Owners' Association. Any such City audits will receive the full and unqualified cooperation and assistance of the Owners' Association, and upon request by City will be paid for in whole or part with MBTBID funds. Consistent with law, and for good cause as reasonably demonstrated to the satisfaction of the City Council, the City Council at a noticed public hearing may designate a different qualified private nonprofit entity as the Owners' Association of the MBTBID, to replace either Visit Morro Bay, or any subsequent designated Owners' Association.

### **B. Brown Act and California Public Records Act Compliance**

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Owner's Association board and certain committees must be held in compliance with the public notice and other requirements of the Brown Act. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

### **C. Annual Report**

Visit Morro Bay shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

# APPENDIX 1 – LAW

\*\*\* THIS DOCUMENT IS CURRENT THROUGH THE 2020 SUPPLEMENT \*\*\*  
(ALL 2019 LEGISLATION)

## STREETS AND HIGHWAYS CODE DIVISION 18. PARKING PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

### CHAPTER 1. General Provisions

#### ARTICLE 1. Declarations

##### **36600. Citation of part**

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

##### **36601. Legislative findings and declarations; Legislative guidance**

The Legislature finds and declares all of the following:

- (a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.
- (b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.
- (c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.
- (d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.
- (e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:
  - (1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.
  - (2) Job creation.
  - (3) Business attraction.
  - (4) Business retention.
  - (5) Economic growth.
  - (6) New investments.
- (f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.
- (g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.
- (h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.
  - (1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.
  - (2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the

incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

### **36602. Purpose of part**

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

### **36603. Preemption of authority or charter city to adopt ordinances levying assessments**

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

### **36603.5. Part prevails over conflicting provisions**

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

### **36604. Severability**

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

## **ARTICLE 2. Definitions**

### **36606. “Activities”**

“Activities” means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

### **36606.5. “Assessment”**

“Assessment” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

### **36607. “Business”**

“Business” means all types of businesses and includes financial institutions and professions.

**36608. “City”**

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

**36609. “City council”**

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

**36609.4. “Clerk”**

“Clerk” means the clerk of the legislative body.

**36609.5. “General benefit”**

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

**36610. “Improvement”**

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the district.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

**36611. “Management district plan”; “Plan”**

“Management district plan” or “plan” means a proposal as defined in Section 36622.

**36612. “Owners’ association”**

“Owners’ association” means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the district.

**36614. “Property”**

“Property” means real property situated within a district.

**36614.5. “Property and business improvement district”; “District”**

“Property and business improvement district,” or “district,” means a property and business improvement district established pursuant to this part.

**36614.6. “Property-based assessment”**

“Property-based assessment” means any assessment made pursuant to this part upon real property.

**36614.7. “Property-based district”**

“Property-based district” means any district in which a city levies a property-based assessment.

**36615. “Property owner”; “Business owner”; “Owner”**

“Property owner” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. “Business owner” means any person recognized by the city as the owner of the business. “Owner” means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

**36615.5. “Special benefit”**

“Special benefit” means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

**36616. “Tenant”**

“Tenant” means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

**ARTICLE 3. Prior Law**

**36617. Alternate method of financing certain improvements and activities; Effect on other provisions**

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

**CHAPTER 2. Establishment**

**36620. Establishment of property and business improvement district**

A property and business improvement district may be established as provided in this chapter.

**36620.5. Requirement of consent of city council**

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

### **36621. Initiation of proceedings; Petition of property or business owners in proposed district**

- (a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.
- (b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:
- (1) A map showing the boundaries of the district.
  - (2) Information specifying where the complete management district plan can be obtained.
  - (3) Information specifying that the complete management district plan shall be furnished upon request.
- (c) The resolution of intention described in subdivision (a) shall contain all of the following:
- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
  - (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

### **36622. Contents of management district plan**

The management district plan shall include, but is not limited to, all of the following:

- (a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.
- (b) The name of the proposed district.
- (c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.
- (d) The improvements, maintenance, and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.
- (e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial

year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) (1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(l) In a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district.

(m) In a property-based district, the total amount of general benefits, if any.

(n) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(o) Any other item or matter required to be incorporated therein by the city council.

### **36623. Procedure to levy assessment**

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

#### **36624. Changes to proposed assessments**

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

#### **36625. Resolution of formation**

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

### **36627. Notice and assessment diagram**

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

### **36628. Establishment of separate benefit zones within district; Categories of businesses**

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

### **36628.5. Assessments on businesses or property owners**

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

### **36629. Provisions and procedures applicable to benefit zones and business categories**

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

### **36630. Expiration of district; Creation of new district**

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

## **CHAPTER 3. Assessments**

### **36631. Time and manner of collection of assessments; Delinquent payments**

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

### **36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property**

- (a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.
- (b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.
- (c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

**36633. Time for contesting validity of assessment**

The validity of an assessment levied under this part shall not be contested in an action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. An appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

**36634. Service contracts authorized to establish levels of city services**

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

**36635. Request to modify management district plan**

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

**36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention**

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

**36637. Reflection of modification in notices recorded and maps**

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

**CHAPTER 3.5. Financing**

**36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments**

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to

be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

## **CHAPTER 4. Governance**

### **36650. Report by owners' association; Approval or modification by city council**

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements, maintenance, and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

### **36651. Designation of owners' association to provide improvements, maintenance, and activities**

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

## **CHAPTER 5. Renewal**

### **36660. Renewal of district; Transfer or refund of remaining revenues; District term limit**

(a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

## **CHAPTER 6. Disestablishment**

### **36670. Circumstances permitting disestablishment of district; Procedure**

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesseses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

### **36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district**

(a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

## APPENDIX 2 – ASSESSED BUSINESSES

<b>Motels</b>	<b>Address</b>
Anderson Inn	897 Embarcadero
Ascot Suites	260 Morro Bay Blvd
Bayfront Inn	1148 Front St.
Bay View Inn	225 Harbor St.
Beach Bungalow Inn & Suites	1050 Morro Ave.
Best Western San Marcos Inn	250 Pacific St.
Blue Sail Inn	851 Market Ave.
The Landing	780 Market Ave.
Coastal Breeze Inn	1098 Main St.
Comfort Inn	590 Morro Ave.
Harbor House	1095 Main St.
Morro Bay Beach Inn	1100 Main St.
El Rancho Motel	2460 Main St.
Embarcadero Inn	456 Embarcadero
Estero Inn	501 Embarcadero
Fireside Inn	730 Morro Ave.
Front Street Inn	1140 Front St.
Gray's Inn	561 Embarcadero
Harborfront Suites	581 Embarcadero
Holland Inn	2630 Main St.
Inn at Morro Bay	60 State Park Rd.
La Roche	575 Embarcadero
La Serena Inn	990 Morro Ave.
Marina Street Inn B & B	305 Marina St.
Masterpiece Hotel	1206 Main St.
Morro Crest Inn	670 Main St.
Morro Shores Inn & Suites	290 Atascadero Rd.
Motel Six	298 Atascadero Rd.
Pacific Cottage	2830 Alder
Pacific Shores Inn	890 Morro Ave.
Pleasant Inn Motel	235 Harbor St.
Salty Sister	1170 Front St.
Sandpiper Inn	540 Main St.
Sea Air Inn	845 Morro Ave.
Seaside Inn	220 Beach St.
Sundown Inn	640 Main St.
Rockview Inn	1080 Market Ave.
Tradewinds	225 Beach St.
<b>Vacation Rentals*</b>	<b>Address</b>
Garcia Investments	221 Piney Way

Kolb Properties	271 Main Street
Kolb Properties	271 Main Street #B
Kolb Properties	263 Main Street
Meske by the Sea	1210 Bolton Drive
The 1211 Trust	154 Orcas Street
The Saap Trust	965 Pelican Place
Brim J & June A Carter Trust	150 Verdon
Ciano Real Estate, Inc.	880 Main Street
Kenneth & Debra Lehman Trust	3350 Beachcomber
Klose Rentals	3390 Beachcomber Drive
Agnes Dill	2060 Seaview
Al & Geri Bevilacqua	3201 Tide Ave
Al Boada	310 Bernardo
Al Boada	356 Shasta Ave
Al Boada	337 Bernardo
Al Boada	229 Piney Way
Alice Frawley Bicksler	477 Kern Avenue
Allen Hochstetler	199 Main Street
Andrew & Hilary Wilkie	476 Hill St.
Anne Jenks	3130 Beachcomber Drive
Antonio Benevento	431 Panay Street
Arthur Dyson	1177 Main Street
Barron Aleshire	2958 Cedar Avenue
Barry Bailey	410 Mindoro
Beth & Douglas Kerns	921 Mesa St.
Beth Richie	238 Pacific Street
Beth Richie	240 Pacific Street
Blanche Hosfeldt	121 Bradley
Brenda Avery	550 Bernardo Avenue
Brian & Ann Littlefield	180 Verdon St.
Brian Hill	675 La Loma Avenue
Brian Lucas	150 Bali Street
Brian Osgood	2250 Hemlock Ave
Brian Salber	165 Panay Street
Bruce Morosin	150 Formosa Street
Cameron B. Samuelson-Sanford	121 Easter
Carol Burk	199 Sienna
Carol Ferioli-Moe	810 Luisita Street
Carol Soares	2400 Ironwood Ave.
Ceil & Gerri Howe	184 Tahiti St.
Chris Hunt	2470 Hemlock Avenue
Chris & Rebecca Running	155 Hatteras
Chris Bath	380 Las Vegas

Christine Barrett	216 Surf St.
Christopher & Elizabeth Appel	400 Pico Street
Chuck & Tillie Easterling	1178 Main St.
Cindy Gregory	645 Monterey Avenue #B
Colin Chaney	508 Shasta Avenue
Constance Hamilton Trustee Robert G Hamilton Trust	180 Gilbert Street
Craig Jeffus	405 Zanzibar
Craig & Ellen Fetterolf	3128 Beachcomber Drive
Cynthia & Thomas Nabors	240 Bali
Cynthia Mauch	280 Main Street
Dan & Dina Krull	2575 Greenwood Avenue
Dan & Teri Ennis	611 Estero Ave.
Daniel Yates	221 Main St.
David Eggers	938 Marina Street
David Zepp	120 Java Street
Daynard Tullis	456 Yerba Buena
Debbie Kopack	535 Dunes St.
Deborah Boyett	1280 Bolton Drive
Debra Lehman	2629 Koa Avenue
Dennis Buckley	2171 Sunset Avenue
DeRosa, Betty/ Pegler, Robert	270 Cypress Avenue
Diane Doban	2235 Hemlock Avenue
Diem Chau Le	455 Panay St.
Don & Carolyn Schimnowski	2615 Nutmeg Avenue
Don & Sandra Pool	2545 Elm Ave.
Donna & Robert Weigandt	491 Orcas St
Douglas & Catherine Loop	391 Luzon Street
E. Wade & June Ortman	650 Avalon Street
Ed & Erin Largoza	1215 Main Street
Elizabeth & Richard Egan	701 San Joaquin
Flaherty, Loreen/ Dent, Chris	731 Marina
Frank & Sandra Ciano	2960 Beachcomber Drive
Frank Ciano	115 Easter Street
Frank Ciano	897 Monterey Avenue
Frank Ciano	895 Monterey Avenue
Fred & Candi Wickman	3198 Beachcomber
Frederick Jack Buckman	671 Estero Avenue
Gail Johnson	470 Arbutus
Garry & Janice Wilson	560 Bonita Street
Gary & Nancy Weisenberger	115 Hatteras
Gary & Susie Ferreria	245 Gilbert Street
Gates, Jeff & Ronni Grogan, Rene	340 Vashon Street

Genji & Stephanie Arakaki	2799 Elm Avenue
Giacomo Licari	2950 Beachcomber Drive
Gina & John Strong	940 Monterey
Ginie Harris	460 Piney Way
Grant & Phyllis Morris	3370 Beachcomber Drive
Greg & Angie Wheeler	2697 Laurel Ave.
Greg & Jeanne Frye	3420 Toro Lane
Greg Finch	1881 Sunset Ave.
Gregory MacDougall	1851 Ironwood
Gustafson, Cindy/ Auerbach, Wally	3200 Beachcomber Drive
Harry Stroup	524 Yerba Buena Street
Helen Ferguson	700 Sierra Court
Herb & Gayle Rose	929 Mesa St.
Ilsa Pope	2585 Ironwood
Jack Franklin	299 Kern Avenue
Jack Randall	3033 Beachcomber
James & Casey Shuler	3464 Toro Lane
James & Peggy Church	195 Capri
James & Rhoda Gonzales	441 Luzon Street
James Cooley	510 Yerba Buena Street
James Sigler	390 Luzon Street
Janice Bryant	2665 Juniper
Janice Kennedy	385 Tulare Avenue
Jasmyn Haas	440 Java Street
Jean White	413 Arbutus
Jeannie Jorgensen	2615 Maple Ave.
Jeannie Mielke	550 Main St.
Jeff & Darlene Wise	360 Trinidad Street
Jenny B. & Ross Jones	450 Napa Ave.
Jim & Sharon Kroll	301 Trinidad
Joe & Susan Ross	120 Mindoro Street
John Strong	955 Napa Avenue Apt B
John Draxler	1279 Berwick Drive
John Hyché	377 Fairview Avenue
Jonel Mueller	1291 Main St.
Joseph & Beverly Heinemann	2889 Hemlock Avenue
Judy Kandarian	425 Bernardo
Julie & Ron Eddlemon	1197 Main St.
Julie Caglia	2811 Ironwood Avenue
Julie Sanders	1323 Clarabelle Drive
Karen Croley	2870 Fir Avenue
Karen Farlow	311 Piney
Karl & Elizabeth Levy	3480 Toro Lane

Karla A. Haeuser	501 Zanzibar Street
Kate Stulberg	261 Shasta Avenue
Kathy Taverner	324 Shasta Ave.
Ken Lehman	3015 Beachcomber Street
Kenneth Burke	370 Vashon Street
Kenneth Fiser	491 Mindoro
Kenneth Vogel	948 Marina Street
Kevin & Leslie Conrad	449 Panay Street
Kevin Winfield	2700 Greenwood Avenue
Kristin/Stacey Lopez/Houk	3476 Toro Lane
Kurt & Darcy Senff	180 Bali Street
L.M. Williams	157 Verdon Street
L.M. Williams	195 Orcas
L.M. Williams	3175 Orcas Way
Lani Colhouer	401 San Joaquin Street
LaRonda Chirman	1365 Prescott Drive
LaRonda Chirman	1363 Prescott Drive
Larry T & Corinne Black	625 Monterey Ave
Laura Andes	498 Nassau
Lee & Peggy Garispe	1271 Hillcrest
Lena Rutherford	2580 Laurel Avenue
Linda Rieger	2975 Beachcomber
Lisa Burgstrom	372 Main Street
Lisa Dornhofer	180 Andros St.
Loyd & Madalyn Clift	150 Andros
Maci & Henri Daramy	2740 Dogwood Ave.
Manuel & Geraldine Rodrigues	623 Kern Avenue
Mark Graham	166 Vashon
Mark Hays	3273 Tide Avenue
Marshall King	325 Shasta Ave
Mary Guinn Felsted	455 Oahu (457)
Michael & Jenny Hudson	2076 Seaview
Michael & Jordonna Dores	155 Formosa Street
Michael Chernekoff	2910 Fir Avenue
Michelle Quillin & William II Reynolds	234 Pacific Street
Michelle Wiebe	325 Kings Avenue
Mike & Laurel Blackenby-Slater Slater	686/690 Driftwood Street
Mike Fackler	2640 Maple Ave
Minh Riley	875 Ridgeway Street
N Keith Decker	2870 Hemlock Avenue
Nancy Seiler	2556 Koa Avenue
Nicholas Taron	340 Arbutus
Nicole Nix	370 Bonita St.

Patricia Brown	2780 Cedar Ave.
Patricia Czach	565 Monterey Ave #A
Patricia Czach	1890 Hill St
Paul & Janell Spencer	2630 Greenwood
Penni Daugherty	1098 Balboa St.
Perry William	235 Piney Way
Phillip & Mary Ann Britton	465 Whidbey Street
Pina Naran	2172 Main St.
Randall & Jennifer McNamee	844 Monterey St
Reba & Glenn Myers	226 Pacific Street
Reba & Glenn Myers	226 1/2 Pacific Street
Reg Whibley	471 Embarcadero
Reilly & Sean Carpenter	2076 Bayview Ave.
Rhonda L. Davis	564 Morro Avenue
Rich Buquet	647 Estero Avenue
Richard Moss	730 Luisita
Rigmor Samuelsen	230 Surf St.
Robert Naste	2660 Nutmeg Avenue
Robert & Cynthia Young	381 Panay St.
Robert & Donna Salber	176 Panay St.
Robert & Katie Heugly	2670 Greenwood Ave
Robert & Sabrina Elzer	169 Kodiak Street
Robert & Tiffany Eranio	1188 Main Street
Robert Coomer	3440 Toro Lane
Robert Schechter	245 Driftwood Street
Roberta & Wayne Colmer	424 Morro Avenue
Roberta Herter	3185 Orcas Way
Robyn Bowser	1364 Clarabelle Drive
Ron Medellin	320 Sicily
Rushdi Cader	1887 Ironwood
Sam & Manetta Shields	2700 Fir Avenue
Sara Williams	659 Kern Avenue
Satoshi Sasaki	452 Sicily Street
Sean Green	361 Dunes Street
Sebastian & Zulmira Sousa	360 Luzon Street
Sharon Duganne	636 Bay Avenue
Shiban & Sushma Tiku	221 Dunes Street
Stephen & Glenna Penner	645 Morro #2G
Stephen Burdette	530 Monterey, Unit #1
Steve Barton	860 Luisita
Steve Gong	217 Main Street
Steven Banner	110 Java
Steven Cox	1174 Main Street

Stuart & Marcy Styles	2290 Ironwood Ave.
Sue Quanstrom	645 Morro Avenue #2B
Susan Callado	471 Mindoro Street
Susan Craig	340 Island Street
Sylvia Sanchez	450 Tahiti Street
Tech Chea	218 Pacific St.
Tedd Struckmeyer	150 Gilbert Street
Teresa Shea	290 Terra Street
Terri Frank	445 Whidbey Street
Terry & Lissa Gillette	391 Panay Street
Thomas & Connie Jameson	2398 Laurel Avenue
Thomas Gruber	540 Downing Street
Thomas Harrington	496 Kern
Thomas Riley	881 Ridgeway Street
Tiffani & Anthony Gonzales	234 Beach St.
Tim & Karen Dixon	2746 Main Street
Timothy Gomes	2970 Greenwood Avenue
Todd & Ashley McGuyer	481 Jamaica
Tom & Cynthia Gotuzzo	300 Kings Avenue
Tom & Ordonna Link	1184 Main Street
Tom St. John	460 Jamaica St.
Tylor Mason	335 Fairview Avenue
Virginia & Tony Brazil	601 San Jacinto
Virginia Bailey	395 Avalon Street
Wayne Johnson	421 Kings Ave., Unit A
William & Marlene Regan	3030 Beachcomber Drive
William Benson	2670 Ironwood Avenue
Wilma Stephens	1275 Morro Avenue
Yolanda Hill	1368 Berwick Drive

\* The assessed business list was compiled from records provided by City of Morro Bay. The list was developed with the most reliable information provided, however, the list may contain discrepancies due to any of the following reasons: 1) The vacation rentals included in the list are businesses that have obtained a permit or license to operate as a vacation rental at the time of formation, and does not include vacation rentals that are not permitted or licensed to operate as a vacation rental; 2) Vacation rentals may cease operation with little or no notice, and may no longer be operating as a vacation rental; 3) the vacation rental list was compiled based on information provided in January of 2021, and may not include vacation rentals that began operation after the date listed.

**NOTICE OF PUBLIC MEETING AND PUBLIC HEARING CONCERNING THE  
FORMATION OF THE MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT  
(MBTBID) AND LEVY OF AN ASSESSMENT ON CERTAIN LODGING BUSINESSES AND  
VACATION RENTAL BUSINESSES WITHIN THE MBTBID**

**NOTICE IS HEREBY GIVEN** that on April 13, 2021, the City Council (the “Council”) of the City of Morro Bay (the “City”) adopted a Resolution of Intention to form the Morro Bay Tourism Business Improvement District (the “MBTBID”) and to levy an assessment on certain businesses within the MBTBID as set forth in the Resolution of Intention.

**NOTICE IS HEREBY FURTHER GIVEN** that at 5:30 PM on April 27, 2021, at City Hall located at 595 Harbor Street, Morro Bay, CA 93442, a public meeting shall be held pursuant to Government Code section 54954.6 to allow public testimony regarding the formation of the MBTBID and the levy of assessments therein as set forth in the Resolution of Intention and pursuant to Government Code section 54954.6.

**NOTICE IS HEREBY FURTHER GIVEN** that at 5:30 PM on June 8, 2021, at City Hall located at 595 Harbor Street, Morro Bay, CA 93442, has been set as the time and place for a public hearing at which time the Council proposes to form the MBTBID and to levy the proposed assessment as set forth in the Resolution of Intention.

**Location:** The MBTBID includes all lodging businesses and vacation rental businesses, existing and in the future, within the boundaries of the City of Morro Bay, as shown on the map in the Management District Plan (Plan).

**Services:** The MBTBID is designed to provide specific benefits directly to payors by increasing room night sales. Sales, marketing, and communications programs will increase overnight tourism through promotion of payors as tourist, meeting and event destinations, thereby increasing room night sales.

**Budget:** The total MBTBID annual assessment budget for the initial year of its five (5) year operation is anticipated to be approximately \$991,000. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do.

**Cost:** The annual assessment rate is three percent (3%) of gross short-term room rental revenue. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days. Assessments will not be collected on any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

**Collection:** The City of Morro Bay (City) will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business and vacation rental business located in the boundaries of the MBTBID. The City shall take all reasonable efforts to collect the assessments from each lodging business and vacation rental business.

**Duration:** MBTBID will have a five (5) year life, beginning July 1, 2021 through June 30, 2026. Once per year, beginning on the anniversary of MBTBID formation, there is a thirty (30) day period in which owners paying fifty percent (50%) or more of the assessment may protest and initiate a City Council hearing on MBTBID termination.

**Management:** Visit Morro Bay (VMB) will serve as the founding MBTBID's Owners' Association. The Owners' Association contracts with the City of Morro Bay to manage funds and implement programs in accordance with the Plan, is a private nonprofit entity, and must provide annual reports to the City Council.

**Protest:** Any owner of an assessed business within the proposed MBTBID that will be subject to the assessment may protest the formation of the MBTBID. If written protests are received from the owners of assessed businesses in the proposed MBTBID who represent fifty percent (50%) or more of the estimated annual assessments to be levied, the MBTBID shall not be formed, and the assessment shall not be imposed.

You may mail a written protest to:

Office of the City Clerk  
595 Harbor Street  
Morro Bay, CA 93442

You may also appear at the public meeting or hearing and submit a written protest at that time.

**Information:** Should you desire additional information about this proposed MBTBID formation or assessment contact:

Scott Collins  
City Manager  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442  
(805) 772-6200



<b>AGENDA NO:</b> A-4 <b>MEETING DATE:</b> April 13, 2021
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# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** April 5, 2021

**FROM:** Rob Livick, PE/PLS - City Engineer

**SUBJECT:** Adoption of Resolution No. 17-21 Initiating Proceedings to Levy the Annual Assessment for the Cloisters Park and Open Space - Landscaping and Lighting Maintenance Assessment District

**RECOMMENDATION**

Adopt Resolution No. 17-21 ordering the preparation of an Engineer’s Report detailing the expenses projected for Fiscal Year 2021/22 for the maintenance of the Cloisters Park and Open Space under the provisions of the “Landscaping and Lighting Act of 1972.”

**ALTERNATIVE**

Staff does not recommend any alternatives to the recommendation.

**FISCAL IMPACT**

When approved by City Council, the FY2021/22 assessments are estimated to provide \$148,944 for the maintenance of the Cloisters Park and Open space totaling 34 acres.

**BACKGROUND**

On September 23, 1996, the City Council passed Resolution No. 69-96, which approved the final map for Tract 1996, known as the Cloisters Sub-division, consisting of 124 lots. With that approval, the City Council accepted lots 121 and 122 of the Cloisters subdivision, 34 acres of open space and organized park. Prior to the acceptance of the final map and pursuant to the Conditions of Approval, an assessment district was formed to cover the cost of maintenance of the parkland and open space. The assessment district formation proceedings began in August 1996 and concluded with the final public hearing for formation on September 23, 1996, which levied an annual assessment of \$148,944 for the maintenance of the 34 acres of parkland and open space.

After the initial formation of the assessment district, each year thereafter, for the assessment to continue, the City must adopt a series of three resolutions to confirm the levy of assessment for the upcoming fiscal year. The first resolution, which is the one being proposed by this staff report, initiates the annual levy process and orders the preparation of an Engineer’s Report; the second resolution approves the Engineer’s Report and notices the intent to levy the assessment; and the third resolution levies the assessment for the upcoming fiscal year.

**DISCUSSION**

After the adoption of Resolution No. 17-21, which initiates the proceedings to levy the annual assessment, an Engineer’s Report will be prepared for review, modification, acceptance or

<b>Prepared By:</b> <u>rl</u>	<b>Dept Review:</b> <u>    </u>
<b>City Manager Review:</b> <u>  SC  </u>	<b>City Attorney Review:</b> <u>  CFN  </u>

rejection at the May 11, 2021 City Council meeting. At that meeting there will be a resolution for consideration declaring the City Council's intent to levy and collect the assessment. That Resolution will list the improvements, name the district and give its general location; it also refers to the proposed assessment and gives notice of the time and place for a meeting regarding the levy of the continuing assessment. The Government Code states the third and final meeting must be noticed in accordance with Sections 22500 *et seq.* of the California Streets and Highways Code and is tentatively scheduled for June 22, 2021.

The Cloisters Landscaping and Lighting Maintenance Assessment District is a separate fund from all other City funds and can only be utilized for improvements within the District. Once set, the annual assessment is transmitted to the County Auditor for recording on the County assessment role. The assessment amount then appears on the parcel owner's annual property tax bill.

In conformance with Proposition 218, The Right to Vote on Taxes Act, passed in 1996 by the voters in the State of California, the Cloisters Landscaping and Lighting Maintenance Assessment District was approved, at that time, by one hundred percent (100%) of the owners for which the assessment is to be levied. All property owners were fully apprised of the costs and benefits associated with the district, prior to its approval by them.

### **CONCLUSION**

Resolution No. 17-21 has been prepared for City Council review and adoption. The Resolution serves as the initiation of the annual assessment proceedings and orders the preparation of the Annual Engineer's Report detailing the proposed costs for the maintenance of the Cloisters Park and Open Space, for purposes of assessing property owners of lots located within the bounds of Tract Map No. 1996 (excluding the City's property). The Resolution also gives notice of review and acceptance, modification, or rejection, of the Engineer's Report by City Council, scheduled for the May 11, 2021, Council meeting.

### **ATTACHMENT**

1. Proposed Resolution No. 17-21

**RESOLUTION NO. 17-21**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT  
FOR CLOISTERS LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE  
“LANDSCAPING AND LIGHTING ACT OF 1972”  
(STREETS AND HIGHWAYS SECTIONS 22500 *ET SEQ.*)**

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

**WHEREAS**, the City Council has placed certain conditions on the development of Tract 1996, The Cloisters, requiring formation of a property Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a public park, bicycle pathway, right-of-way landscaping, coastal access ways, ESH restoration area, and other common area improvements to be held by or dedicated to the City of Morro Bay as required by City Ordinance; and,

**WHEREAS**, those conditions are more specifically identified in Vesting Tentative Tract Map (condition 10e) and Precise Plan (condition 2c) as required by City Ordinance; and

**WHEREAS**, the owners of the real property within the proposed district (the “Owners”) consented in writing to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code sections 22500 *et seq.*) (the “Act”), and are the only owners of property to be subject to assessments within the district; and

**WHEREAS**, the Owners offered, in fee and in perpetuity, Lot 121 (Parcel 1) and Lot 122 of Tract 1996, and the City has accepted that Offer of Dedication; provided, that the costs of maintenance thereof, are borne by an assessment district as required by the Conditions of Approval of the project; and

**WHEREAS**, one hundred percent of the property owners, at the time of the subdivision of the land, approved formation of the district to assure conformance with the “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII C & D); and

**WHEREAS**, subsequent owners of the lots within the subdivision have received constructive notice of the existence of the assessment district through the real estate disclosures, title report process, and publicly available records.

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

1. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the Act.
2. The improvements to be subject to assessment for maintenance by such District shall include those enumerated in the conditions of project approval and in Section 22525 of the Act, which were installed by the developer as a condition of approval of Tract 1996; pursuant to the Final Improvement Plans for the Cloisters Project as approved by the City.

3. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the District is attached as Exhibit A which is hereby incorporated herein.
4. An Engineer's Report, detailing the proposed costs for the maintenance of the Cloisters Park and Open Space, will be prepared for consideration by the City Council at the May 11, 2021, meeting and that date is set to review and accept, modify, or reject that report.
5. This District is called the "Cloisters Landscaping and Lighting Maintenance Assessment District."

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 13<sup>th</sup> day of April 2021 by the following vote:

AYES:  
NOES:  
ABSENT:

---

JOHN HEADDING, Mayor

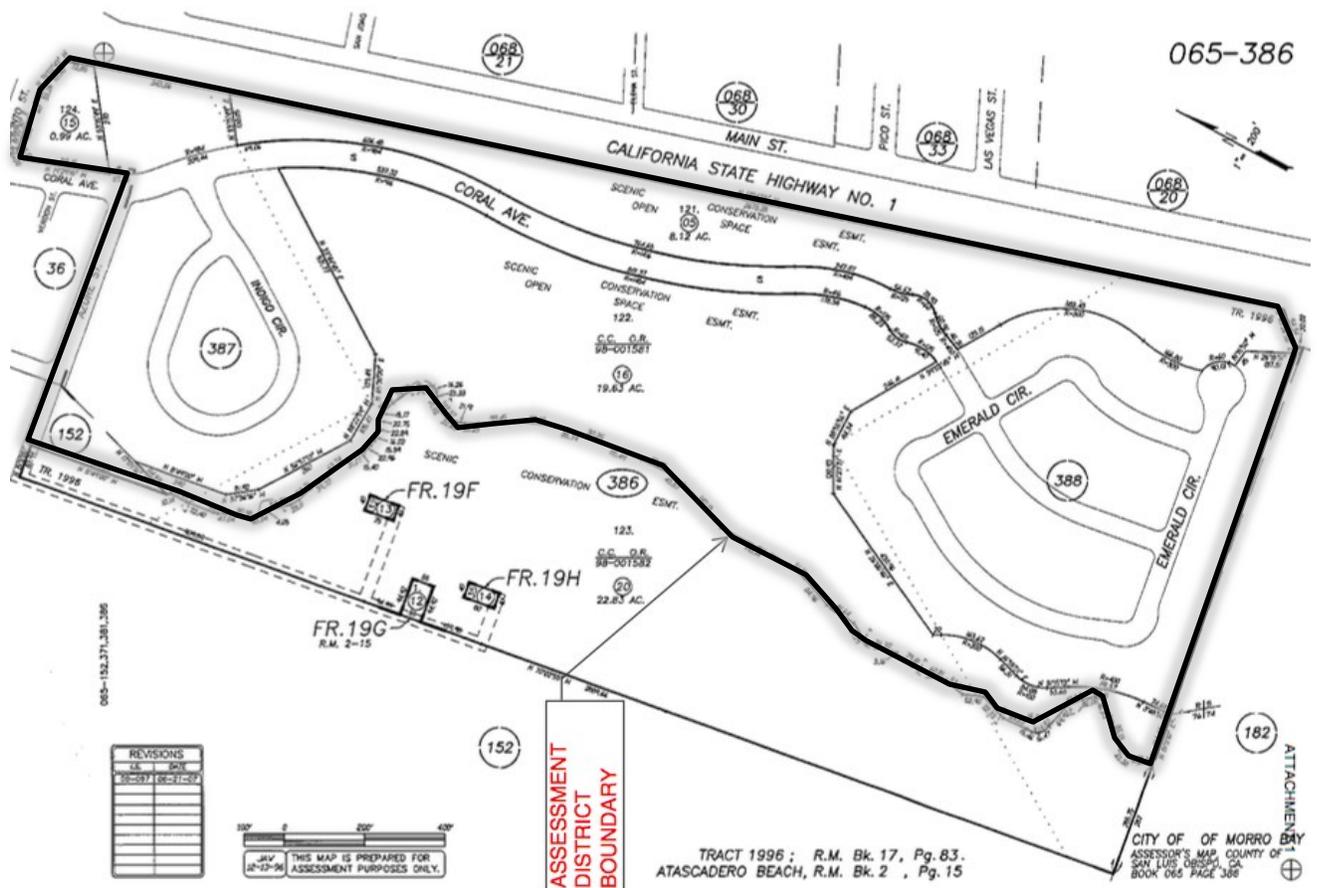
ATTEST:

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DANA SWANSON, City Clerk

EXHIBIT A  
 CLOISTERS  
 LANDSCAPING AND LIGHTING  
 MAINTENANCE ASSESSMENT DISTRICT  
 DISTRICT BOUNDARY DIAGRAM

The boundary diagrams for the District have previously been submitted to the City Clerk in the format required under the 1972 Act and, by reference, are hereby made part of this Report. The boundary diagrams are available for inspection at the office of the City Clerk during normal business hours. The following diagram provides an overview of the District.



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AGENDA NO: A-5  
MEETING DATE: April 13, 2021

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** April 5, 2021  
**FROM:** Rob Livick, PE/PLS – City Engineer  
**SUBJECT:** Adoption of Resolution No. 18-21 Initiating Proceedings to Levy the Annual Assessment for the North Point Natural Area - Landscaping and Lighting Maintenance Assessment District

### RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 18-21 ordering the preparation of an Engineer’s Report detailing the expenses projected for Fiscal Year 2021/22 for the maintenance of the North Point Natural Area under the provisions of the “Landscaping and Lighting Act of 1972.”

### ALTERNATIVE

Staff does not recommend any alternatives to the recommendation.

### FISCAL IMPACT

If approved by Council, the FY2021/22 assessments are estimated to provide \$5,645 for the maintenance of the North Point Natural Area.

### BACKGROUND

On June 27, 1994, the City Council accepted Lot 11 of the North Point subdivision and accepted the final map for Tract 2110. As per the conditions of approval, a Landscaping and Lighting Maintenance Assessment District was formed for the ongoing maintenance of the 1.3-acre natural area. The area includes a non-irrigated meadow area, decomposed granite and asphalt walkways, stairway/beach access, parking lot, drip irrigation system, public access signage and parking lot.

On December 9, 1996, the City Council adopted Resolution No. 89-96, which ordered the formation of the North Point Landscaping and Lighting Maintenance Assessment District and confirmed the yearly assessment of \$5,645. On January 13, 1997, the City Council adopted Resolution No. 01-97, which approved and accepted the on- and off-site improvements for Tract 2110. By adoption of Resolution No. 01-97, the City officially started the maintenance of the North Point Natural Area.

After the initial formation of the assessment district, each year, for the assessment to continue,

Prepared By: rl Dept Review: \_\_\_\_\_  
City Manager Review: SC City Attorney Review: CFN

the City must adopt a series of three resolutions to confirm the levy of assessment for the upcoming fiscal year. The first resolution, which is the one being proposed by this staff report, initiates the annual levy process and orders the preparation of an Engineer's Report; the second resolution approves the Engineer's Report and notices the intent to levy the assessment; and the third resolution levies the assessment for the upcoming fiscal year.

### **DISCUSSION**

Upon adoption of Resolution No. 18-21, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for review, modification, acceptance or rejection at the May 11, 2021 City Council meeting. At that meeting will be a resolution for consideration declaring the City Council's intent to levy and collect the assessment. That Resolution will list the improvements, names the district and gives its general location; it also refers to the proposed assessment and gives notice of the time and place for a meeting regarding the levy of the continuing assessment. The Government Code states the third and final meeting must be noticed in accordance with Sections 22500 *et seq.* of the California Streets and Highways Code and is tentatively scheduled for June 22, 2021.

The North Point Natural Area Landscaping and Lighting Maintenance Assessment District is a separate fund from all other City funds and can only be expended for improvements authorized for the District. Once set, the annual assessment is transmitted to the County Auditor for recordation on the County assessment role. The assessment amount then appears on the parcel owner's annual property tax bill.

In conformance with Proposition 218, "The Right to Vote on Taxes Act," passed in 1996 by the voters in the State of California, the North Point Natural Area Landscaping and Lighting Maintenance Assessment District was approved, at that time, by one hundred percent (100%) of the owners for which the assessment is to be levied. All property owners were fully apprised of the costs and benefits associated with the district, prior to its approval by them.

### **CONCLUSION**

Resolution No. 18-21 has been prepared for City Council review and adoption. The Resolution serves as the initiation to the annual assessment proceedings and orders an Engineer's Report detailing the proposed costs for the maintenance of the North Point Natural Area, for purposes of assessing private property owners of Tract Map No. 2110 (excluding the City's property). The Resolution also gives notice of review and acceptance, modification or rejection, of the Engineer's Report, scheduled for the May 11, 2021, Council meeting.

### **ATTACHMENT**

1. Proposed Resolution No. 18-21

**RESOLUTION NO. 18-21**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT  
FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING  
MAINTENANCE ASSESSMENT DISTRICT PURSUANT TO THE  
“LANDSCAPING AND LIGHTING ACT OF 1972”  
(STREETS AND HIGHWAYS SECTIONS 22500 *ET SEQ.*)**

**T H E C I T Y C O U N C I L  
City of Morro Bay, California**

**WHEREAS**, the City placed certain conditions on the development of Tract 2110 “North Point,” requiring formation of a property Landscaping and Lighting Maintenance Assessment District encompassing and coterminous with the proposed subdivision to provide for the maintenance of a natural area, parking lot, landscaping, decomposed granite and asphalt walkways, and coastal access stairway and other common area improvements to be held by or dedicated to the City of Morro Bay; and

**WHEREAS**, those conditions are more specifically identified in the Precise Plan (condition F1-F7) related to North Point; and

**WHEREAS**, the owners of the real property within the proposed district (the “Owners”) consented to the formation of the district pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code sections 22500 *et seq.*) (the “Act”), and are the only owners of property to be subject to assessments within the district; and

**WHEREAS**, the Owners offered, in fee and in perpetuity, Lot 11 of Tract 2110, and the City accepted that Offer of Dedication; provided, that the cost of maintenance, thereof, would be borne by an assessment district as required by the Conditions of Approval of North Point; and

**WHEREAS**, one hundred percent of the property owners, at the time of the subdivision of the land, approved formation of the District to assure conformance with the “Right to Vote on Taxes Act” (Proposition 218, California Constitution Act XIII, C & D); and

**WHEREAS**, subsequent owners of the lots within the subdivision have received “constructive notice” of the existence of the assessment district through the real estate disclosures, title report process, and publicly available records.

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

1. The City Council of the City of Morro Bay hereby declares its intent to initiate the proceedings to levy and collect assessments pursuant to the Act.

2. The improvements to be subject to assessment for maintenance by the District shall include those enumerated in the conditions of approval of North Point and in Section 22525 of the Act, which were installed by the developer as a condition of approval of Tract 2110 or which are hereafter installed by developer; pursuant to the Final Improvement Plans for North Point as approved by the City.
3. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the proposed District is attached as Exhibit A which is hereby incorporated herein.
4. An Engineer's Report will be prepared for consideration at the May 11, 2021, City Council meeting and that date is set to review and accept or reject that report.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 13<sup>th</sup> day of April 2021 by the following vote:

AYES:  
NOES:  
ABSENT:

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JOHN HEADDING, Mayor

ATTEST:

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DANA SWANSON, City Clerk



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AGENDA NO: A-6

MEETING DATE: April 13, 2021

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 7, 2021

**FROM:** Rob Livick, PE/PLS/QSD – City Engineer

**SUBJECT:** Consideration of Amendment to an Existing Contract with GHD, Inc. for Additional Archeological Pre-Construction Investigations and Mitigation Services and additional preliminary design for the Project Authorization and Environmental Determination (PA& ED) phase for Intersection Improvements at State Route (SR) 41/SR 1/Main Street

## RECOMMENDATION

Staff recommends the City Council approve, and authorize the City Manager to sign, Amendment No. 2 (Attachment 1) to the existing amended agreement with GHD Inc, for Additional Archeological Pre-Construction Investigations and Mitigation Services and additional preliminary design for the Project Authorization and Environmental Determination (PA&ED) phase for Intersection Improvements at SR 41/SR 1/Main Street and extend the contract through June 30, 2022.

## FISCAL IMPACT

The cost to complete the Preliminary Engineering (“PE”) phase of this project was estimated at \$650,000. Typically, the cost of the PE phase is fifteen to twenty-five percent of total project cost. With total project construction cost estimates of approximately \$7.5M, this equates to an estimated PE phase cost of between \$1,125,000 and \$1,875,000; the estimated fee proposed by Omni-Means (now GHD Inc) is below the typical range for the PE costs. Staff and the consultant were able to achieve these savings by leveraging previous work completed in 2001 and the detailed work completed during the Intersection Control Evaluation (ICE) phase.

In September 2016, the City executed an agreement for the first phase preparation of the Project Authorization and Environmental Determination (PA&ED) phase with Omni-Means (now GHD Inc) in the amount of \$236,557.00.

## BACKGROUND

Improvements to the SR1/SR41 and Main Street intersection to resolve issues with congestion and delays has been an issue for the last 20 years. After reinitiating the capital project in 2014, the State required Intersection Control Evaluation (ICE) two-step process was completed by GHD in 2016 and approved by Caltrans in 2020. The ICE recommends that two design alternatives, signalization, or a roundabout, be considered during the environmental evaluation. Initial meetings with Morro Bay High School and Coastal San Luis Unified School District officials have indicated their strong support for the roundabout alternative, which was determined to be the preferred alternative during ICE Step 2. The PWAB reviewed the project at their July and August 2016 meetings and continue to recommend moving forward with the proposed roundabout as the preferred alternative to improve the operational

Prepared By: rl

Dept Review: \_\_\_\_\_

City Manager Review: **SC**

City Attorney Review: **BWB**

deficiencies at this critical gateway to the community.

Issues with the current intersection configuration include the S41/Main intersection and the SR1/SR41 intersection are about 75 feet apart. Due to the close intersection spacing and the existing control, the two intersections operate as one unsignalized intersection with five approaches and exits. Project would upgrade capacity and intersection control for the existing, closely spaced, intersections on SR41 and SR1 NB ramps and Main Street. Intersection currently experiences congested conditions, and project would improve overall operational level-of-service, and safety conditions, while reducing congestion and collisions at the intersection.

The reduction in congestion also results in an air quality improvement by reducing the idling time of vehicles at the intersection. Air Quality modeling, by SLOCOG staff as part of the Federal Transportation Improvement Program (FTIP) authorization, projects a total emission reduction of 0.26 kg/day. This reduction includes a reduction in the following greenhouse gas components: Reactive Organic Gas (ROG) of 0.03kg/day; Carbon Monoxide (CO) of 0.21kg/day; Oxides of Nitrogen (NOx) of 0.02kg/day; and Particulate Matter (PM2.5) of 0.001kg/day.

Project would provide safer pedestrian and bicycle facilities for Morro Bay High School and visitor coastal access. Pedestrian crossings would be provided on all legs of the Roundabout with separated path from driving lane, and bicycles would be accommodated by navigating through the Roundabout in two ways: take the travel lane and travel through the Roundabout as a vehicle or take the separated bike ramp/shared use path and travel around as a pedestrian.

**DISCUSSION**

After consultation with Caltrans Environmental and Archaeological and completion of the Phase 1 investigation and consultation with affected tribes it was determined that additional work is required to complete the PA&ED. The additional scope of work of the proposed amendment number 2 includes the following items:

1. The additional environmental services include completion of the Extended Phase I (XPI) Proposal, and updates to previously prepared environmental studies (as necessary). The additional environmental services also include general management of the Environmental Project Team, as well as coordination/ correspondence with GHD, the City, Caltrans, and other regulatory agencies, as deemed appropriate, during completion of the XPI Proposal and updated environmental technical reports.
2. Additional general management, coordination with the City, Caltrans and SWCA (environmental sub-consultants), and meetings during completion of the XPI Proposal and updated environmental technical reports.
3. Supplemental preliminary design and updated preliminary cost estimates.

A summary of the original agreement and amendments is included in the table below:

<b>Contract Phase</b>	<b>Effective Date</b>	<b>Value</b>	<b>Total Contract Value</b>	<b>Description of Major Work Items</b>
Original Agreement	September 1, 2016	\$236,557.00	\$236,557.00	<ul style="list-style-type: none"> <li>• Preparation of documents required for the PA&amp;ED phase of the project</li> </ul>

<b>Contract Phase</b>	<b>Effective Date</b>	<b>Value</b>	<b>Total Contract Value</b>	<b>Description of Major Work Items</b>
Amendment No. 1	October 8, 2019	0	\$236,557.00	<ul style="list-style-type: none"> <li>• Firm Name Change</li> <li>• Time Extension</li> </ul>
Amendment No. 2	April 13, 2021	\$ 87,951.00	\$324,508.00	<ul style="list-style-type: none"> <li>• Completion of the Extended Phase I</li> <li>• Technical Studies Update and Revisions</li> <li>• Additional Project Management</li> <li>• Additional Preliminary Design</li> <li>• Time Extension</li> </ul>

**CONCLUSION**

Staff recommends the City Council approve, and authorize the City Manager to sign, Amendment No. 2 to the existing amended agreement with GHD, for additional Environmental and Design Services and for an extended term through June 30, 2022, which would result in a total aggregated not to exceed amount of \$324,508.00 for the entire amended New Agreement.

**ATTACHMENT**

1. New Amendment No. 2, including Exhibits A and B (Scope of Services and Fee)

**AMENDMENT # 2 TO THE  
AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN THE CITY OF MORRO BAY AND GHD, INC.**

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This Amendment is entered into on the 13th day of April, 2021, by and between the CITY OF MORRO BAY, a municipal corporation (“City”), and GHD INC., a California corporation (“Consultant”).

**RECITALS**

WHEREAS, City entered into an agreement with Omni-Means, Ltd., on September 1, 2016, for consulting services related to the State Route 1/41/Main Street Interchange Improvement Project (the “Agreement”); and

WHEREAS, on October 8, 2019, City and Consultant executed Amendment No. 1 to the Agreement, which extended the term of the Agreement until December 31, 2021, and in which Consultant assumed all rights and obligations of Omni-Means, Ltd., under the Agreement and City consented to such assumption; and

WHEREAS, City and Consultant now wish to add to the scope of work, increase the compensation to Consultant accordingly, and extend the term of the Agreement to June 30, 2022.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. Section 1 of the Agreement is amended as follows (new text in ***bold italics***, deleted text in ~~strikethrough~~):

This Agreement shall commence on September 1, 2016, and shall remain and continue in effect until tasks described herein are completed, but in no event later than ~~December 31, 2021~~, ***June 30, 2022***, unless sooner terminated pursuant to the provisions of this Agreement.

2. The additional scope of work, described in Exhibit A to this Amendment No. 2 (“Additional Scope of Work”) is added to the Agreement. The portion of the Additional Scope of Work to be completed by Consultant’s subcontractor, SWCA, is shown in Exhibit B to this Amendment.
3. Total compensation for the Additional Scope of Work shall not exceed \$87,951, paid on a time and materials basis. Payment to Consultant shall be based on the rates shown in Exhibit A to this Amendment. Payment to Consultant’s subcontractor, SWCA, shall be in accordance with the rates shown in Exhibit B to this Amendment. The total not-to-exceed amount for all work under the Agreement is increased to \$324,508.
4. Except as expressly set forth herein the terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives.

**CITY OF MORRO BAY**

**GHD INC. (2 signatures required)**

By: \_\_\_\_\_  
*Scott Collins*  
*City Manager*

By: \_\_\_\_\_  
*William Silva*  
*Principal*

Attest:  
  
\_\_\_\_\_  
*Dana Swanson, City Clerk*

By: \_\_\_\_\_  
*Matt Winkelman*  
*Principal*

APPROVED AS TO FORM

\_\_\_\_\_  
*Chris Neumeyer, City Attorney*

EXHIBIT A

ADDITIONAL SCOPE OF WORK

**Task 1A (101): Project Management, Coordination and Meetings**

A budget augmentation is requested for additional general management, coordination with the City, Caltrans and SWCA, and meetings during completion of the XPI Proposal and updated environmental technical reports.

**Task 1B (102): Environmental Determination**

A budget augmentation is requested for additional environmental services identified by SWCA in their proposal dated March 8, 2021 which is provided in **Attachment A**. The additional environmental services include completion of the Extended Phase I (XPI) Proposal, and updates to previously prepared environmental studies (as necessary). The additional environmental services also include general management of the Environmental Project Team, as well as coordination/ correspondence with GHD, the City, Caltrans, and other regulatory agencies, as deemed appropriate, during completion of the XPI Proposal and updated environmental technical reports. SCWA's proposal does not include any additional Phase II or Phase III work that could be determined necessary based on the results of completion of the XPI Proposal.

**Task 1E (105): Preliminary Engineering**

A budget augmentation is requested for supplemental preliminary design and updated preliminary cost estimates.

**Budget for Additional Scope of Work**

Amendment No. 2 Fee Estimate											
GHD											
Task	Billing Phase	Task Description	Class Rate	Weiland PM \$235	Vanegas-Moran Design Engr \$135	Marsh Design Engr \$155	Stevens Drain Engr \$215	Total Hours	Total GHD \$	SWCA (per Attachment A)	Task Total
1A	101	Project Management, Coordination and Meetings		12				12	\$2,820.00		\$2,820.00
1B	102	Environmental Determination			12			12	\$1,620.00	\$72,321.00	\$73,941.00
1E	105	Preliminary Engineering		2	20	24	20	66	\$11,190.00		\$11,190.00
Subtotal Hours:				14	32	24	20	90			
Subtotal Dollars:				\$3,290.00	\$4,320.00	\$3,720.00	\$4,300.00		\$15,630.00	\$72,321.00	\$87,951.00

EXHIBIT B

SWCA SCOPE OF WORK AND COMPENSATION

# Attachment A



1422 Monterey Street, B-C200  
San Luis Obispo, California 93401  
Tel 805.543.7095 Fax 805.543.2367  
www.swca.com

March 8, 2021

Joe Weiland, P.E., Senior Manager  
GHD  
669 Pacific Street, Suite A  
San Luis Obispo, CA 93401

Submitted via email: [Joseph.Weiland@ghd.com](mailto:Joseph.Weiland@ghd.com)

**Re: State Route 1/State Route 41/Main Street Interchange Improvement Project / SWCA Project No. 39577**

Dear Mr. Weiland:

**SWCA Environmental Consultants (SWCA)** appreciates the opportunity to provide you with our scope of work and cost estimate to complete the Extended Phase I Proposal and update previously completed environmental studies (as necessary) for the proposed State Route (SR) 1/SR 41/Main Street Interchange Improvement Project in Morro Bay, San Luis Obispo County, California.

The cost to complete the proposed tasks, as described in the attached scope of work, is a time and materials cost not to exceed (NTE) total of **\$72,321.00**. Should you have any questions regarding our scope of work or cost estimate, please feel free to contact me at (805) 539-2870 or [ecreel@swca.com](mailto:ecreel@swca.com).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Emily Creel', is written over the typed name.

Emily Creel  
Project Manager

## SCOPE OF WORK

**SWCA Environmental Consultants (SWCA)** appreciates the opportunity to submit our scope of work and cost estimate to complete the Extended Phase I Proposal for the State Route (SR) 1/SR 41/Main Street Interchange Improvement Project (project), update previously prepared environmental studies (as necessary), and finish environmental documentation establishing compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

This scope includes additional tasks anticipated to be necessary to complete the Environmental Determination (ED) phase of the project, except for any additional Phase II or Phase III work that could be determined necessary based on the results of the Extended Phase I Proposal (refer to Task 2, below).

### TASK 1: PROJECT MANAGEMENT / QUALITY ASSURANCE/QUALITY CONTROL

SWCA project management will include general management of the Environmental Project Team, as well as coordination/correspondence with GHD, the City of Morro Bay (City), California Department of Transportation (Caltrans), and other regulatory agencies, as deemed appropriate by GHD, during completion of the Extended Phase I Proposal and updated environmental technical reports. SWCA Planning Team Lead and Project Manager Emily Creel will serve as the Environmental Team Lead and SWCA Project Manager for the proposed project. SWCA NEPA Specialist Gary Ruggerone will provide Quality Assurance/Quality Control (QA/QC) review of all deliverables and will advise the project team on complex issues that are identified.

### TASK 2: EXTENDED PHASE I PROPOSAL

SWCA previously prepared an Extended Phase I (XPI) Proposal for the State Route 1/State Route 41/Main Street Interchange Improvement Project: CA-SLO-165 and CA-SLO-2222 Morro Bay, San Luis Obispo County, California (XPI Proposal). The XPI Proposal was developed to identify the cultural resources studies that will be conducted for the project to determine whether the project's area of direct impact (ADI) contains intact archaeological deposits. XPI results demonstrating the observed materials are in a disturbed context and/or that there is a lack of subsurface archaeological deposits may lead to a recommendation for no further work, whereas positive XPI results may necessitate a resource evaluation (Phase II) study or archaeological data recovery mitigation (Phase III).

Completion of the XPI Proposal would include the following specific tasks.

#### ENCROACHMENT PERMIT

SWCA will coordinate with Caltrans to obtain an encroachment permit to conduct the fieldwork. For the purposes of this proposal, it is assumed that a pre-field meeting with the permit engineer will be required.

#### EXTENDED PHASE I FIELDWORK

SWCA proposes to use a combination of manual excavation methods to investigate the potential archaeological resources within the ADI. These include surface transect units (STUs), and auger borings (ABs). The goals of this investigation include determining the integrity of the archaeological deposits and identifying their vertical and horizontal extent within the ADI.

Each STU would measure 100 centimeters (cm) by 50 cm and would be manually excavated in arbitrary 20-cm levels using a shovel, trowel, and breaker bar. Each STU would be excavated to a minimum 30 cm depth below surface in native soils and to a maximum depth of 100 cm. All sediments would be screened through 1/8-inch hardware cloth (mesh). If the soils will not easily pass through this mesh size, a larger (1/4-inch) mesh size will be used. If the STU is

not culturally sterile at 120 cm below surface, a hand auger will be used to test for continued cultural material below that depth. In addition, augers may be used in culturally sterile STUs, regardless of depth, to further characterize the subsurface conditions (e.g. disturbance levels, evidence of buried soils) of the ADI.

All cultural materials will be quantified and described in the field, and then backfilled into the STU along with the screened soils. This proposal does not include any artifact collection, laboratory analysis, or curation. Exceptions may be made in consultation with the City, the Tribes, and Caltrans, for certain diagnostic or unique artifacts (e.g., beads, projectile points, or bone or shell tools).

The fieldwork will adhere to the safety standards of applicable federal, state, and agency guidelines, including relevant Occupational Safety and Health Administration (OSHA) and California Division of Occupational Safety and Health (Cal/OSHA) guidelines. SWCA assumes that traffic control will be required during fieldwork at a rate of \$2,400.00/day for five days.

### ***Proposed Testing Locations***

SWCA proposes to conduct subsurface testing within and adjacent to the ADI using a combination of STUs and ABs (as necessary). These excavations will occur within the project footprint, but outside of areas containing known utilities, which will be confirmed in the field after the Underground Service Alert (USA) is processed. These locations are proposed based on observed cultural materials, the accessibility of exposed soils, and the type and depth of disturbance that would occur during project implementation.

A total of 16 STUs is proposed. To the extent possible, the STUs will be placed as depicted in the XPI Proposal; however, if the proposed locations are not feasible (e.g., due to proximity to underground utilities), some STUs will be placed, taking into account constraints related to accessibility, ground cover, and safety.

If intact, subsurface components of site CA-SLO-165 are identified within the ADI during the XPI investigation, recommendations for evaluation will be presented in a Phase II evaluation or a Phase III mitigation proposal. An update to the DPR form for this site will be prepared describing the results of the XPI efforts.

## **NATIVE AMERICAN PARTICIPATION**

As required by Caltrans, SWCA will retain a tribal representative from the Northern Chumash and Salinan tribes to monitor excavations associated with the XPI fieldwork. We assume two monitors will be required for five days of fieldwork.

## **TECHNICAL LETTER REPORT**

Upon completion of the fieldwork, SWCA will prepare a technical report detailing the findings of the study. Updated and/or new site forms will be prepared, as necessary, pending the findings of the study.

In general, the XPI study generally has three potential outcomes: negative subsurface results, disturbed deposit, and intact deposit.

1. If no substantial subsurface deposits or archaeological features are encountered in the course of the study, the results for that resource will be considered negative. Negative results will justify a conclusion that no archaeological resources with substantial subsurface deposits exist within the tested areas, potentially leading to a recommendation of no further archaeological work for the resource within the study area.
2. Substantial artifact deposits or features may be present in disturbed condition. Disturbed deposits may consist of displaced prehistoric features and/or artifact deposits that contain significant quantities of intrusive debris that is less than 50 years old or fall within visibly disrupted soil strata. Such a deposit no longer has the

potential to contribute to eligibility for the site as a whole, potentially leading to a recommendation of no further archaeological work for the resource within the study area.

3. Substantial artifact deposits or features that are not significantly disturbed may be present. Substantial, undisturbed deposits will have in situ archaeological features (e.g., hearths or human burials) or a relatively dense concentration of artifacts that lack intrusive modern debris and that lie within apparently intact soil strata. The presence of an intact deposit would lead to a recommendation that further site evaluation is necessary. As a result, avoidance, a Phase II Evaluation, or a Phase III Data Recovery study may be required; these services could be provided under a contract amendment.

If the locations of sensitive archaeological sites or Native American cultural resources are shown or described in the report, the report will be considered confidential. The report may not be distributed to the public. In order to protect these sensitive resources, the confidential technical report shall be made available only to qualified cultural resources personnel, the landowner, and project management personnel on a “need-to-know” basis.

### TASK 3: UPDATED ENVIRONMENTAL TECHNICAL REPORTS

SWCA previously identified the following technical reports anticipated to be required as part of the environmental documentation process for the project. SWCA prepared drafts of some of these reports, which were previously reviewed and revised in response to GHD and Caltrans comments in 2017. Given the time that has elapsed since these reports were originally drafted and reviewed, SWCA anticipates that some of them will need to be updated to meet current CEQA/NEPA requirements and Caltrans regulations. Each study, and the updates anticipated to be needed, are itemized below.

1. Traffic Study – we assume GHD will update the Traffic Study as needed and provide the vehicle miles travelled (VMT) analysis needed to support the CEQA document.
2. Noise and Vibration Technical Memorandum – no updates anticipated. We can update the date of the report if requested. Any additional updates, if requested by the City and/or Caltrans, can be completed under a change order.
3. Air Quality/Climate Change Memorandum – this report will be updated to account for recent changes to state law and regulations.
4. Phase I Initial Site Assessment – we assumed GHD or another member of the engineering team would prepare the Phase I ISA or additional Phase II assessment, if necessary. We similarly assume GHD or another member of the engineering team will prepare any necessary updates to these reports.
5. Coastal Zone Consistency Determination – no work was previously conducted for this task; therefore, it is included in our previous scope and contract. No changes or updates are needed.
6. Floodplain Studies – we anticipated GHD or another member of the engineering team would prepare a Location Hydraulic Study and Summary Floodplain Encroachment Report for the project. We similarly assume GHD or another member of the engineering team will prepare any necessary updates to these reports.
7. Natural Environment Study – Minimal Impact (NES-MI) – SWCA will update the NES-MI to meet current CEQA/NEPA requirements and Caltrans regulations, including completing the following tasks:
  - A pedestrian field survey to update site conditions;

- An updated request for an official species list from the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Conservation (IPaC) website for the project location, which Caltrans typically requires to be updated within 6 months of submitting the NES-MI for review;
- An updated 5-mile radius search of the project impact area using the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDDB) to determine what other species may need to be taken into consideration;
- Updated seasonal botanical studies to document any special-status plant species or habitat for special-status species present in the project area, which Caltrans typically requires to be updated after 2 years; and
- Revisions to the NES-MI, as appropriate.

As stated in our original proposal, it is important to note that an NES-MI cannot be used by Caltrans for purposes of Section 7 consultation with USFWS. Therefore, this scope is based on our assumption that the evaluation will determine no potential for take of any federally listed species. We assume no potential for take will occur based on our familiarity with the project site and our understanding that no disturbance or discharge into Morro Creek will occur (which could affect California red-legged frog [*Rana draytonii*] and steelhead [*Oncorhynchus mykiss*] habitat). If studies determine that any potential for take of MSS or other federally listed species could occur, then additional analysis and documentation would be required to facilitate federal consultation under Section 7, including an NES, Biological Assessment, and Jurisdictional Waters Delineation. If necessary, SWCA could complete any additional documentation under a change order.

8. Minor Visual Impact Assessment – this report will be reviewed and updated to account for up-to-date information, laws, and regulations to confirm consistency with the Caltrans Standard Environmental Reference (SER).
9. Land Use and Community Impact Assessment / Memorandum – this report will be updated to account for up-to-date information and recent changes to state law and regulations.

Each of these updated reports assumes up to two rounds of review by GHD, the City, and/or Caltrans.

## SCHEDULE

SWCA is prepared to initiate this scope of work immediately after receiving authorization to proceed. The table below sets out anticipated general timeframes for completion of the identified environmental services. Note that the listed completion periods are for the submittal of administrative drafts, not final drafts, and do not include review by GHD, the City, or Caltrans, as timeframes for outside review are out of our control and can vary greatly. Note that these timeframes are just estimates; we are willing to commit to the overall project schedule developed by GHD and the City, and will provide environmental documentation within the timeframes necessary to maintain the overall project schedule to the extent feasible.

**Table 1. Proposed Work Schedule**

TASK	ESTIMATED COMPLETION PERIOD
<b>PROJECT MANAGEMENT AND QA/QC</b>	
Project Management / QA/QC	Throughout duration of the project
<b>EXTENDED PHASE I</b>	
Encroachment Permit	2 to 3 months after authorization to proceed
XPI Fieldwork (including traffic control)	Within 1 month after approval of encroachment permit
Native American Participation	Throughout duration of XPI fieldwork, as needed
Technical Letter Report	Within 1 months of completion of fieldwork (assumes negative results)
<b>UPDATED TECHNICAL ENVIRONMENTAL STUDIES</b>	
Traffic Study	(n/a)
Noise Study Report	(n/a)
Air Quality / Climate Change Memorandum	1 to 2 months after authorization to proceed
Phase I Initial Site Assessment	(n/a)
Coastal Zone Consistency Determination	1 to 2 months after completion of technical studies
Floodplain Studies	(n/a)
Natural Environment Study – Minimal Impact	1 to 2 months after notice to proceed (assumes seasonal botanical surveys can be scheduled within this window)
Minor Visual Impact Assessment	1 to 2 months after authorization to proceed
Land Use and Community Impact Memorandum / Assessment	1 to 2 months after authorization to proceed
<b>TOTAL</b>	<b>Approximately 6 months</b>

## COST ESTIMATE

The budget for this project is a time and materials, not-to-exceed estimate of \$72,321.00. We have attempted to be conservative in preparation of the budget with regard to the level of effort required so that the overall cost estimates are reasonable for your planning purposes. However, we are always willing to work with you regarding our scope of work and cost estimate. SWCA will not proceed with any work in excess of the time and materials budget without prior authorization to proceed from GHD. Table 1 reflects a summary of our proposed costs and a detailed breakdown of each phase follows.

**Table 2. Scope of Work Cost Estimate**

TASK	FEE
Task 1: Project Management	\$ 8,360
Task 2: Extended Phase I Proposal	\$ 48,064
Task 3: Updated Environmental Technical Reports	\$ 15,897
<b>PROJECT TOTAL</b>	<b>\$ 72,321</b>



Project Name:	SR 1/SR 41/Main St. _CO1	
Project No.:	39577	
Phase 01:	PM/ QA-QC	
Contract Year:	1	
Rate Esc. Factor:	0.0%	
Project Start (est.):	4/1/2021	Task 01
Project End (est.):	4/1/2022	Project Management / QA-QC

LABOR				
Name	Project Role	Rate	Hours	Charge
Creel, Emily	Project Manager	\$ 187.00	24.00	\$ 4,488
Ruggerone, Gary	QA/QC	\$ 133.00	20.00	\$ 2,660
Markley, Jacqueline	Sr. Environmental Planner	\$ 153.00	-	-
Williams, Cassidy	Environmental Planner	\$ 112.00	-	-
Kiimm, Annika	Environmental Planner	\$ 69.00	-	-
Belt, Travis	Senior Biologist	\$ 171.00	-	-
Wheeler, Tom	Principal Investigator	\$ 102.00	-	-
Laurie, Leroy	Cultural Team Lead	\$ 171.00	-	-
Bird, Morgan	Archaeologist	\$ 92.00	-	-
Howen, Kevin	GIS/CADD Specialist	\$ 123.00	-	-
Jones, Jaimie	Technical Editor	\$ 123.00	-	-
Young, Judi	Project Controller	\$ 101.00	12.00	\$ 1,212
Labor Subtotal			56.00	\$ 8,360.00
Communication Fee - % of Labor		0%		\$ -
Labor Total			56.00	\$ 8,360.00

SUBCONTRACTORS				
Description	Unit	Rate	Units	Charge
Terry A. Hayes Associates	enter rate/units or lump cha	\$ 1.00	-	\$ -
Traffic Control	enter rate/units or lump cha	\$ 1.00	-	\$ -
Native American Monitors	enter rate/units or lump cha	\$ 1.00	-	\$ -
Subcontractor Fee Subtotal			-	\$ -
Markup		20%		\$ -
Subcontractor Fee Total				\$ -
<b>Project Phase Totals</b>				<b>\$ 8,360</b>

TOTAL THIS PHASE	Charges
SWCA Labor Total	<b>8,360</b>
Expenses Total	-
Subcontractors Total	-
Total Phase	<b>\$ 8,360</b>
Tax Total	-
Total Including Taxes	<b>\$ 8,360</b>

Project Name:	SR 1/SR 41/Main St. _CO1				
Project No.:	39577				
Phase 02:	XPI Proposal				
Contract Year:	1				
Rate Esc. Factor:	0.0%				
Project Start (est.):	4/1/2021	Task 01	Task 02	Task 03	Task 04
Project End (est.):	4/1/2022	Encroachment Permit	XPI Fieldwork	Native American Participation	Technical Letter Report



LABOR										
Name	Project Role	Rate	Hours	Charge	Hours	Charge	Hours	Charge	Hours	Charge
Creel, Emily	Project Manager	\$ 187.00	2.00	\$ 374	-	\$ -	-	\$ -	2.00	\$ 374
Ruggerone, Gary	QA/QC	\$ 133.00	8.00	\$ 1,064	-	\$ -	-	\$ -	-	\$ -
Markley, Jacqueline	Sr. Environmental Planner	\$ 153.00	-	-	-	-	-	-	-	-
Williams, Cassidy	Environmental Planner	\$ 112.00	-	-	-	-	-	-	-	-
Kiimm, Annika	Environmental Planner	\$ 69.00	-	-	-	-	-	-	-	-
Belt, Travis	Senior Biologist	\$ 171.00	-	-	-	-	-	-	-	-
Wheeler, Tom	Principal Investigator	\$ 102.00	-	-	20.00	\$ 2,040	-	-	2.00	\$ 204
Laurie, Leroy	Cultural Team Lead	\$ 171.00	2.00	\$ 342	52.00	\$ 8,892	2.00	\$ 342	8.00	\$ 1,368
Bird, Morgan	Archaeologist	\$ 92.00	-	-	52.00	\$ 4,784	-	-	40.00	\$ 3,680
Howen, Kevin	GIS/CADD Specialist	\$ 123.00	-	-	-	-	-	-	-	-
Jones, Jaimie	Technical Editor	\$ 123.00	-	-	-	-	-	-	-	-
Young, Judi	Project Controller	\$ 101.00	-	-	-	-	-	-	-	-
Labor Subtotal			12.00	\$ 1,780.00	124.00	\$ 15,716.00	2.00	\$ 342.00	52.00	\$ 5,626.00
Labor Total			12.00	\$ 1,780.00	124.00	\$ 15,716.00	2.00	\$ 342.00	52.00	\$ 5,626.00

SUBCONTRACTORS										
Description	Unit	Rate	Units	Charge	Units	Charge	Units	Charge	Units	Charge
Terry A. Hayes Associates	enter rate/units or lump cha	\$ 1.00	-	\$ -	-	\$ -	-	\$ -	-	\$ -
Traffic Control	enter rate/units or lump cha	\$ 1.00	-	\$ -	10,000.00	\$ 10,000	-	\$ -	-	\$ -
Native American Monitors	enter rate/units or lump cha	\$ 1.00	-	\$ -	-	\$ -	10,500.00	\$ 10,500	-	\$ -
Subcontractor Fee Subtotal			-	\$ -	10,000.00	\$ 10,000	10,500.00	\$ 10,500	-	\$ -
Markup		20%		\$ -		\$ 2,000		\$ 2,100		\$ -
Subcontractor Fee Total				\$ -		\$ 12,000		\$ 12,600		\$ -
<b>Project Phase Totals</b>				<b>\$ 1,780</b>		<b>\$ 27,716</b>		<b>\$ 12,942</b>		<b>\$ 5,626</b>

TOTAL THIS PHASE	Charges
SWCA Labor Total	<b>23,464</b>
Expenses Total	-
Subcontractors Total	<b>24,600</b>
Total Phase	<b>\$ 48,064</b>
Tax Total	-
Total Including Taxes	<b>\$ 48,064</b>



Project Name:	SR 1/SR 41/Main St_ CO1
Project No.:	39577
Phase 03:	Updated Env Technical Reports
Contract Year:	1
Rate Esc. Factor:	0.0%
Project Start (est.):	4/1/2021
Project End (est.):	4/1/2022

	Task 01	Task 02	Task 03	Task 04
	AQ/GHG/Climate Change	NES-MI	Minor VIA	Land Use and CIA

LABOR										
Name	Project Role	Rate	Hours	Charge	Hours	Charge	Hours	Charge	Hours	Charge
Creel, Emily	Project Manager	\$ 187.00	2.00	\$ 374	2.00	\$ 374	1.00	\$ 187	4.00	\$ 748
Ruggerone, Gary	QA/QC	\$ 133.00	-	-	-	-	1.00	\$ 133	-	-
Markley, Jacqueline	Sr. Environmental Planner	\$ 153.00	-	-	-	-	-	-	24.00	\$ 3,672
Williams, Cassidy	Environmental Planner	\$ 112.00	-	-	-	-	8.00	\$ 896	-	-
Kienn, Annika	Environmental Planner	\$ 69.00	-	-	-	-	-	-	-	-
Belt, Travis	Senior Biologist	\$ 171.00	-	-	28.00	\$ 4,788	-	-	-	-
Wheeler, Tom	Principal Investigator	\$ 102.00	-	-	-	-	-	-	-	-
Laurie, Leroy	Cultural Team Lead	\$ 171.00	-	-	-	-	-	-	-	-
Bird, Morgan	Archaeologist	\$ 92.00	-	-	-	-	-	-	-	-
Howen, Kevin	GIS/CADD Specialist	\$ 123.00	-	-	-	-	-	-	-	-
Jones, Jaimie	Technical Editor	\$ 123.00	1.00	\$ 123	2.00	\$ 246	1.00	\$ 123	1.00	\$ 123
Young, Judi	Project Controller	\$ 101.00	-	-	-	-	-	-	-	-
Labor Subtotal			3.00	\$ 497.00	32.00	\$ 5,408.00	11.00	\$ 1,339.00	29.00	\$ 4,543.00
Labor Total			3.00	\$ 497.00	32.00	\$ 5,408.00	11.00	\$ 1,339.00	29.00	\$ 4,543.00

SUBCONTRACTORS										
Description	Unit	Rate	Units	Charge	Units	Charge	Units	Charge	Units	Charge
Terry A. Hayes Associates	enter rate/units or lump cha	\$ 1.00	3,425.00	\$ 3,425	-	-	-	-	-	-
Traffic Control	enter rate/units or lump cha	\$ 1.00	-	-	-	-	-	-	-	-
Native American Monitors	enter rate/units or lump cha	\$ 1.00	-	-	-	-	-	-	-	-
Subcontractor Fee Subtotal			3,425.00	\$ 3,425	-	-	-	-	-	-
Markup		20%	-	\$ 685	-	-	-	-	-	-
Subcontractor Fee Total			-	\$ 4,110	-	-	-	-	-	-
<b>Project Phase Totals</b>				<b>\$ 4,607</b>		<b>\$ 5,408</b>		<b>\$ 1,339</b>		<b>\$ 4,543</b>

TOTAL THIS PHASE	
	Charges
SWCA Labor Total	11,787
Expenses Total	-
Subcontractors Total	4,110
Total Phase	15,897
Tax Total	-
Total Including Taxes	15,897

## ASSUMPTIONS

For budgeting purposes, we are making the following assumptions because some of these items are beyond SWCA's control and because these factors could significantly affect project schedule and cost:

1. Staff working on the project will be billed based on their current standard title and default rate at the time the work is completed.
2. Two rounds of comments will be addressed for each report. Should additional revisions be necessary following review, a change order will be necessary to perform the work.
3. If human remains, intact features, or items requiring collection and/or curation are encountered, a change order may be required.
4. If traffic control exceeds the anticipated \$2,400/day for five days, a change order will be necessary.
5. Schedule assumes negative findings of the Extended Phase I Proposal.

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AGENDA NO: C-1

MEETING DATE: April 13, 2021

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 7, 2021

**FROM:** Scott Collins, City Manager  
Katie Lichtig, Interim Finance Director

**SUBJECT:** Direction regarding Principles for Uses of Local Voter Approved Transaction and Use Taxes (commonly referred to as Measures Q and E) and Authorize the City Manager to use the aforementioned principles in proposing uses of American Rescue Plan Act of 2021 (ARP) Proceeds and Consider Potential Capital Projects to Submit for Federal Earmark Funding

## RECOMMENDATION

Staff recommend that City Council:

1. Direct the City Manager to implement a streamlined process for allocating Local Voter Approved Transaction and Use Taxes (commonly referred to as Measures Q and E) in accordance with Ordinance No. 635 and propose allocations of Measures Q and E revenue consistent with the following principles:
  - a. Maintain public safety services by funding staff positions that are most closely aligned with the purposes of the Measures Q and E. Expenses may include, but are not limited to, Morro Bay Fire Department, Morro Bay Police Department and Morro Bay Harbor personnel and equipment, in addition to the Fire Head Quarter Debt service and the Fire Engine loan repayment;
  - b. Maintain or enhances cleanliness and safety of public space such as parks, waterfront and the beach by funding personnel, supplies, expenses and equipment to support City operations in departments including, but not limited to, Public Works Consolidated Maintenance and Harbor Department;
  - c. Invest in infrastructure and equipment such as street paving, storm drains, and vehicle replacements that support City services. This priority may include increasing capacity to implement the backlog of unfunded capital projects.
  - d. Ensure financial health of the City by maintaining appropriate reserves to protect against economic downturns, natural/health emergencies and other unforeseen challenges or opportunities.
2. Authorize the City Manager to present proposed uses of the American Rescue Plan Act of 2021 (ARP) consistent with the proposed Measures Q and E Principles and guidance issued from the U.S. Department of Treasury; and
3. Provide input to City staff regarding Federal earmarks.

Prepared By:   KEL  

Dept Review:       

City Manager Review:   SC  

City Attorney Review:  CFN

## **BACKGROUND/DISCUSSION**

The City has focused on financial sustainably providing services and program for nearly the past two decades. Dating back more than 15 years, the City has considered ways to fund the services and programs most desired by the Community in the wake of lost revenues associated with the closure of the Morro Bay Power Plant and increased costs outside the City's direct control. As a result, the Council placed a half percent local sales tax on the ballot for voter consideration (Measure Q-06). "The Morro Bay Vital Public Services Restoration and Protection Measure" (Measure Q-06) passed with 65 percent of Morro Bay voters in November 2006. The specific language was:

"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?"

With the passage of Measure Q, Chapter 3.22 of the Morro Bay Municipal Code was adopted. A citizens' oversight committee (working as the Citizens' Finance Advisory Committee) was required by Measure Q. The Citizens' Finance Advisory Committee (CFAC) was established and plays an important role in recommending proposed expenditures of Measure Q proceeds to Council and reporting to the Council whether Measure Q revenues have been spent as intended when the budget is adopted. The process has historically involved review of detailed accounting and budget documents (sometime up to 100 pages or more). This process has resulted in small adjustments. Some members of CFAC have questioned whether the level of detail is necessary and effective in fulfilling the committee's role as defined by the City Council. More on the proposed streamlining of this process is presented later in this report.

The efforts of Measure Q have been tremendous in supporting key public safety and infrastructure needs. Measure Q allowed the City to build a state-of-the-art Fire Headquarters, establish a pavement management program, and fund important police efforts. However, since the time of Measure Q's passage, the City suffered significant revenue losses stemming from the Great Recession and experienced, like all other California cities, significant increases in costs we have no direct control over (namely CalPERS and employee health care costs). The City tightened its belt as much as possible, yet still be able to provide core services. However, looking down the road in the 10-year financial model, it was clear that City could not sustain existing service levels without new revenue sources. Thus, the City began considering new measures in late 2018/early 2019 to address this funding imbalance so that we could continue to support the core services our community desires. Efforts were underway in 2019 to engage the community in conversation about our needs and financial challenges when the Global Pandemic hit, compounding our difficulties.

For more than a year our residents and businesses have steadfastly supported measures to address the public health emergencies related to the deadly COVID-19 pandemic. Our residents, businesses and all Californians have coped, navigated, and endured strict Shelter at Home orders, and then relaxed regulations, changing health orders related to business practices as well as orders to socially distance, wear masks and limit gatherings. Most recently, vaccine distribution and "shots in arms" have dramatically sped up. This means that our community and State are returning to our new normal in a phased and safe way. While we will continue to practice mask wearing and social distancing, we are slowly returning to many of the treasured activities we have missed over the past year, like family gatherings, re-opening of schools, sports activities, outdoor concerts and so much more. Most importantly, these measures have been responsible for flattening of the COVID-19 virus spread curve

in SLO County and throughout the State, meaning our local health care system can continue to treat all patients.

The City experienced significant fiscal impacts of the pandemic. The City suffered declines in several key revenues, such as Transient Occupancy Tax – aka “Bed Tax,” Sales Tax and user fees for recreation programs closed due to public health orders. Because the Pandemic came so late in the fiscal year there was little to be done to limit expenditures for Fiscal Year 2019-20 (July 2019 through June 2020). For the current fiscal year (2020-21) significant reductions in expenditures were adopted by City Council.

As a result of these financial impacts the City was forced to use emergency reserves to address budget shortfalls (expenditures exceeding revenues) in FY 2019-20 as well as in the current fiscal year. The following chart provides an overview of actuals in FY 2019-20 and projections as of the beginning of the fiscal year and as of mid-year (December 2020 presented to the City Council on February 23, 2021).

Projected General Fund Emergency Reserve with Mid-Year Adjustments						
	FY 19-20 Actual	FY 20-21 Budget	FY 20-21 Mid-Year	2020/21 Budget vs. Mid-Year		
				\$ Change	Percentage Change	
Beg Bal	\$ 3,808,577	\$ 2,384,436	\$ 2,384,436			
Revenue	180,161	370,380	652,630	\$ 282,250	76%	
Expenditures	(426,669)	(20,853)	(20,853)	\$ -	0%	
Transfer to GF to Support Operating Deficit	(1,177,633)	(1,283,319)	(731,086)	\$ 552,233	-43%	
<b>End Bal</b>	<b>\$ 2,384,436</b>	<b>\$ 1,450,644</b>	<b>\$ 2,285,127</b>	<b>\$ 834,483</b>	<b>58%</b>	

With this backdrop, and in spite of implementing these difficult measures to reduce General Fund spending, the City faced a future of deficit spending unless new revenue was identified. In response to this conundrum, the City explored options to balance the budget and the Council ultimately decided to place a measure on the November 2020 ballot to increase local sales tax by 1 percent (the total would then become 1.5 percent if it passed, because the City voters previously approved Measure Q for ½ percent).

That was the dawn of Measure E, which received over 58% support from Morro Bay voters in November 2020. Measure E is projected to raise about \$2.2 million a year and it went into effect April 1, 2021. In total, \$3.3 million is the current projected proceeds from both measures.

Like Measure Q, Measure E is a general-purpose revenue source and revenues are deposited in the general fund. The proposed uses focus on the following priorities:

- Maintain 24/7 911 public safety emergency response, 24/7 police services, 24/7 paramedic services, health emergency/disaster preparedness;
- Keep beaches, public areas, and public restrooms safe and clean (including the Embarcadero and Harbor);
- Invest in infrastructure; and
- Protect Morro Bay’s financial stability and City services.

**Measure Q and E Principles**

The passage of Measure E and the continuation of Measure Q presents new opportunities to focus on certain core services, programs, and goals. Staff is proposing principles that will assist in developing allocation proposal to CFAC (at their April 20, 2021 meeting) and later to the Council during the FY 2021/22 Budget hearings (May 25 and 26, 2021). The following principles for Measure Q and E moving forward are recommended for Council consideration and adoption:

1. Maintain public safety services by funding positions that are most closely aligned with the purposes of the Measures Q and E. Expenses may include but are not limited to Morro Bay Fire Department, Morro Bay Police Department, and Morro Bay Harbor Department personnel, equipment, and support service in addition to the Fire Headquarters Debt service and the Fire Engine loan repayment;
2. Maintain or enhance cleanliness and safety of public space such as parks, waterfront and the beach by funding personnel, supplies, operating expenses, and equipment to support City operations in departments including, but not limited to, Public Works Consolidated Maintenance and Harbor Department;
3. Invest in infrastructure and equipment such as street paving, storm drains, vehicle replacements that support City services. This may include increasing the City's capacity to implement the current backlog of unfunded infrastructure projects.
4. Ensure City's financial health by maintaining appropriate reserves to respond to economic downturns, natural disasters and/or health emergencies as well as other unforeseen challenges or opportunities.

This is also an opportunity to streamline the processes for allocating the revenue from both Measures Q and E, while ensuring transparency to the Morro Bay community and modeling best practices for citizen oversight. The following citizen oversight processes are proposed to achieve efficiency and effectiveness in oversight as required by Morro Bay Municipal Code section 3.26:

- CFAC role to provide recommended uses of Measures Q and E revenue to the City Council annually and provide oversight consistent with Morro Bay Municipal Code Chapter 3.26.
- All revenues are accounted for the Measures Q and E Fund (Fund 003). This is consistent with Resolution No. 69-20 in which the voters were asked to increase the City's Sales Tax rate from 0.5% to 1.5%.
- Revenues from both Measures Q and E will be accounted for in one revenue account. This is consistent with Resolution No. 69-20 in which the voters were asked to increase the City's Sales Tax rate from 0.5% to 1.5%.
- Streamline budgeting and accounting so that all expenditures are budgeted in the appropriate department and Fund (as an example, police personnel paid for by Measure Q or E will show up in the Police Department's budget as an expenditure). This will increase transparency as to the cost of providing the specific programs and services.
- Because the expenditures will be made in the appropriate Fund and departments, there will be no actual expenditures in the Measure Q and E Fund (003). A schedule of all Measures Q and E uses will be presented to CFAC. These outflows from Fund 003 will be represented as Transfers Out to the appropriate Departments and Fund. As an example, instead of accounting for the fourth fire personnel per shift in the Measures Q and E Fund (003), the expense will be included in the Fire Department's budget.

- Accounting for operating expenditures of personnel or other appropriate departmental cost will be accomplished through quarterly journal entries (we will discontinue the practice of specific employees tracking expenses using pay codes, saving significant staff time).

### American Rescue Plan Act of 2021

Congress passed and President Biden signed into law several recovery measures to help the American people and Governments recover from the impacts of the pandemic. Most recently the Congress passed, and President Biden signed the American Rescue Plan Act of 2021 (ARP) in to law on March 11, 2021 (the first anniversary of the World Health Organization declaring COVID-19 a global pandemic). Of the total \$1.9 trillion approved, \$350 billion is dedicated to “State and Local Fiscal Recovery.” Preliminary estimates indicate that Morro Bay will receive \$1.98 million from ARP. This preliminary estimate of funding is still being finalized by the US. Treasury Department so the City has been cautioned that this amount may change. The City will receive the funding in two equal payments, one that will be available in June or July 2021 and the second payment 12 months later. All funding must be spent no later than 2024.

According to Gene Sperling, the senior advisor to President Biden and the White House coordinator of ARP implementation, the major goals of the ARP are to cut child poverty by half, allow state and local governments to recover from the financial impacts of revenue lost during the pandemic, and provide dignity and hope through investment in our local government across the country. During a recent webinar sponsored by the National League of Cities, Mr. Sperling outlined the high level uses of funding:

### Eligible Expenditures



- A. to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
  - *No more restrictive than the CARES Act Coronavirus Relief Fund*
- B. to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the metropolitan city, nonentitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
  - *Allows a municipality to provide up to \$13 per hour above regular wages.*
- C. for the provision of government services to the extent of the reduction in revenue of such metropolitan city, nonentitlement unit of local government, or county due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, nonentitlement unit of local government, or county prior to the emergency; or
  - *Allows revenue replacement. The base year to measure lost revenue against is not the most recent full fiscal year, but the most recent full fiscal year **prior to the emergency.***
- D. to make necessary investments in water, sewer, or broadband infrastructure.
  - *Treasury will provide additional guidance*

The U.S. Treasury Department is working feverishly on finalized allocations as well as guidance that more precisely defines eligible expenditures, reporting and documentation requirements. The City is also working with Mike Miller of The Ferguson Group to obtain early indications of the same issues. A complication is that the Treasury regulations are scheduled to be issued after the City Manager’s Proposed Budget is released to the Council and Morro Bay community on May 11, 2021. Given this complication, staff is recommending that the same principles being recommended regarding

allocations of Measures Q and E revenue be applied to ARP funds. Obviously, all allocations will be consistent with Treasury rules and regulations which are scheduled to be released by May 15, 2021.

The National League of Cities is providing important guidance regarding how to navigate the funding opportunities contained in the ARP. The following graphic provides some relevant guidance from the NLC. The City is following this road map.

**Principles for Coronavirus Local Fiscal Recovery Fund**

- 1. Use dedicated grants and programs first whenever possible**
  - Save Local Fiscal Recovery Funds for gaps and priorities not eligible for other federal and state assistance programs
- 2. Assess government operations AND community needs**
  - Ask valuable staff and stakeholders for help creating a comprehensive needs assessment; be prepared to pivot
- 3. Prioritize fiscal stability and returning to work**
  - Save pet projects for earmarks
- 4. Maintain records and document success**
  - Create long-term information infrastructure for your future leaders
- 5. Your Congressional Delegation is part of your success**
  - Invite Members of Congress to re-openings, ribbon-cuttings, etc...

City staff proposes to use the similar principles as proposed for Measures E and Q for the ARP funds – supporting core services and backfilling lost revenues. Staff is currently developing proposals for ARP use as part of the FY2021/2022 Budget process, and it will remain a work in progress until final guidance is issued by the Treasury Department.

### **Federal Earmarks**

On a somewhat related note, staff is working closely with Congressman Carbajal's Office and the Ferguson Group to develop a list of capital projects to submit for Federal earmark consideration. It has been over 10 years since Congress authorized the use of earmarks to support state and local capital projects and programming. This year, each Congressman will be able to submit a certain number of projects for their individual districts for consideration. The amount in each bucket of potential earmarks has not been fully developed, but Congressmembers are asking each of their jurisdictions within their districts to submit projects now for consideration. Morro Bay staff will submit several projects in the next several weeks to Congressman Carbajal's office that we believe will meet qualifications (shovel readiness, other sources of funding) and will be competitive with other projects submitted in his district. The Ferguson Group is assisting staff in that endeavor. Staff will present those projects during the oral presentation, as that work is still on-going this week and not ready to be presented in this staff report.

## **Key Questions for City Council**

- 1) Does City Council support the proposed Measure E and Measure Q principles?
- 2) Does City Council support using the same principles to guide usage of ARP funds?
- 3) What input does City Council have with regard to potential Federal earmark projects?

## **ATTACHMENT**

None

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AGENDA NO: C-2

MEETING DATE: April 13, 2021

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 2, 2021

**FROM:** Chris F. Neumeyer, City Attorney

**SUBJECT:** Discuss Local Firearm Safety and Regulation; Provide Direction to Staff

## **RECOMMENDATION**

Staff recommends Council discuss local firearm safety and regulation, and Council provide direction to Staff as appropriate. As discussed in detail in this report, areas of possible direction to staff include:

1. Safety Regulations and Programs
  - a. Safe storage laws
  - b. Firearm owner's liability insurance
  - c. Firearms and public property
  - d. Firearms Businesses
    - i. Local Firearm Dealer Permit
    - ii. Videotaping of firearm sales
    - iii. Regular inventory reports
    - iv. No residential sales
  - e. Firearms Safety Education Program
  - f. Annual Firearm "Buy-Back" Program
  - g. Supplemental MBPD Officer mass/active shooter training
2. Advocacy at Federal and State Levels
3. Gun Violence Restraining Orders ("Red Flag Laws") – local education campaign
4. Market Leveraging of City Firearms Purchases

Prepared By:   CFN   Dept Review: \_\_\_\_\_  
City Manager Review:   SC   City Attorney Review:   CFN

## **ALTERNATIVES**

Council could choose to not provide any direction to Staff.

## **FISCAL IMPACT**

Local firearm regulation and programs may create additional administrative costs and/or enforcement costs for the City. Staff recommends Council consider directing staff to provide, as lawfully available, for cost recovery through assessment of related fees.

## **BACKGROUND/DISCUSSION**

Council requested a staff report be presented in early 2020, in the wake of multiple mass shootings in the nation, on lawful local government action to address firearm safety and to possibly regulate firearms. A report published for presentation on March 10, 2020 at a regular City Council meeting was tabled for presentation at a subsequent Council meeting.

At about the same time “[i]n 2020, a deadly coronavirus hit the United States, killing more than 500,000 Americans. Many schools, restaurants, sporting venues, and other businesses closed or limited occupancy to stop the contagion, and high-profile mass shootings in public places declined... In March 2021, as the country began to reopen amid declining coronavirus cases and an aggressive vaccination campaign, two mass shootings placed the gun control debate back in the national spotlight.”<sup>1</sup> Mass shootings have recently occurred in the United States in Orange, CA, Boulder, CO and Atlanta, GA.

This staff report provides a recent history of mass shootings and other firearm-related deaths, federal constitutional rights and state law concerning firearms, current City law and policies concerning firearms and mass-shootings, and possible options for local government action including municipal firearm regulation (as allowed by federal and state law).

### **I. Mass Shootings and Other Firearm-Related Deaths**

In recent years multiple mass shootings have occurred in the United States, including:

- On May 23, 2014, six people were killed and 14 were injured by a gunman in Santa Barbara, California.
- On October 1, 2017, a lone gunman massacred 59 people at the Route 91 Harvest music festival in Las Vegas, Nevada.
- On October 27, 2018, a gunman killed 11 people at a synagogue in Pittsburgh, Pennsylvania.
- On November 7, 2018, a gunman opened fire in a bar full of college students in Thousand Oaks, California, resulting in the deaths of 13 people.
- On May 31, 2019, a gunman killed 12 people and injured four others at a city public works building in Virginia Beach, Virginia.

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<sup>1</sup> Issues & Controversies, Infobase, *Gun Control: Should the United States Adopt Stronger Gun Control Laws?* pg 10 (March 24, 2021) <http://icof.infobaselearning.com/icofprintarticle.aspx?articleID=2263aa&citation=mla>  
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- On July 28, 2019, 16 people were shot and three were killed, including a gunman and two children, at the Gilroy Garlic Festival in Gilroy, California.
- On August 3, 2019, 22 people were killed and 24 were injured at a Walmart in El Paso, Texas by a gunman.
- On August 4, 2019, a gunman killed ten people and injured 27 outside of a bar in Dayton, Ohio.
- On December 10, 2019, a shootout occurred at kosher grocery store in Jersey City, New Jersey, resulting in the deaths of five people and injury of three.
- On February 26, 2020, a gunman opened fire at the Molson Coors brewery complex in Milwaukee, Wisconsin, killing five people before taking his own life.
- On March 16, 2021, a gunman killed eight people at three spas in the area of Atlanta, Georgia.
- On March 22, 2021 a gunman opened fire at a Boulder, Colorado supermarket, killing 10 people, including a police officer.
- On March 31, 2021, a gunman killed four people, including a 9-year-old boy, at an office park in Orange, California.

According to the National Safety Council, “gun-related deaths from preventable, intentional and undetermined causes totaled 39,773 in 2017, a 2.9% increase from 38,658 deaths in 2016.”<sup>2</sup>

And, while receiving less coverage in the media, suicide deaths are the most common firearm related fatalities, accounting for 60% of deaths related to firearms.<sup>3</sup> Data also indicates that access to a firearm increases the risk of death by suicide by three times.<sup>4</sup>

Defenders of firearm ownership argue defensive firearm use is common in the United States and deter crime. “Defensive use of guns by crime victims is a common occurrence, although the exact number remains disputed. Almost all national survey estimates indicate that defensive gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from about 500,000 to more than 3 million, in the context of about 300,000 violent crimes involving firearms in 2008. On the other hand, some scholars point to a radically lower estimate of only 108,000

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<sup>2</sup> <https://injuryfacts.nsc.org/home-and-community/safety-topics/guns/>.

<sup>3</sup> Centers for Disease Control and Prevention. National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (WISQARS) Fatal Injury Reports. A yearly average was developed using five years of recently available data: 2013 to 2017, [https://everytownresearch.org/gun-violence-america/#foot\\_note\\_4](https://everytownresearch.org/gun-violence-america/#foot_note_4).

<sup>4</sup> Anglemyer A, Horvath T, Rutherford G. The accessibility of firearms and risk for suicide and homicide victimization among household members: A systematic review and meta-analysis. *Annals of Internal Medicine*. 2014; 160(2): 101-110, [https://everytownresearch.org/gun-violence-america/#foot\\_note\\_6](https://everytownresearch.org/gun-violence-america/#foot_note_6).

annual defensive uses based on the National Crime Victimization Survey. The variation in these numbers remains a controversy in the field.”<sup>5</sup>

## **II. Federal Constitution and State Law Preemption Restrict Local Firearm Regulation**

### **A. Second Amendment Rights**

The Second Amendment to the United States Constitution reads in full: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

The meaning of the Second Amendment is the subject of vigorous legal debate amongst constitutional scholars. Nevertheless, the United States Supreme Court in 2008 in a 5-4 decision affirmed the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that firearm for traditionally lawful purposes, such as self-defense within the home. (*D.C. v. Heller* (2008) 554 U.S. 570.) The *Heller* decision held unconstitutional a law in the District of Columbia which effectively banned handgun possession in the home.

However, as further explained in the *Heller* decision, “[l]ike most rights, the right secured by the Second Amendment is not unlimited... nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” (*Id.* at 626-627.)

Subsequent to the *Heller* decision, lawsuits have been filed against regulations which are alleged to be in violation of the Second Amendment. For example, a federal district court (in a decision now on appeal) has held California’s ban on firearm magazines holding more than 10 rounds of ammunition violates the Second Amendment. (*Duncan v. Becerra*, (S.D. Cal. 2017) 265 F. Supp. 3d 1131.) On August 14, 2020, a three judge panel of the federal Ninth Circuit Court of Appeal upheld this decision, and then on February 25, 2021, the same federal court ordered the case to be reheard en banc, leaving a final decision on appeal still pending.

### **B. California Law and Local Government Regulation**

#### **1. California Constitution and State Firearm Regulation**

The California Constitution does not have a section equivalent to the federal Second Amendment.

The California Supreme Court held in 2000 that the right to bear arms is not one of the rights recognized in the California Constitution's declaration of rights, and the right to bear arms may not be implied from the constitutional recognition of the inalienable rights to defend life and protect property. (*Kasler v. Lockyer* (2000) 23 Cal. 4th 472.)

At present, the State of California arguably has the most robust firearms regulations in the United States. These include universal background checks, gun dealer licensing, an assault weapon prohibition, safety training for firearm purchasers, gun show regulations, waiting periods, state

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<sup>5</sup> Institute of Medicine and National Research Council of the National Academies, *Priorities for Research to Reduce the Threat of Firearm-Related Violence* (2013), page 15, <https://www.nap.edu/read/18319/chapter/3#15>  
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collection and maintenance of firearm sale records and handgun design safety standards.

## **2. Federal and State Restrictions on Local Firearm Regulation**

In 2010 the United States Supreme Court affirmed that the Second Amendment applies to state and local governments. (*McDonald v. City of Chicago*, Ill. (2010) 561 U.S. 742.) Thus, both the State of California and local governments are restricted by the Second Amendment in passage of laws to regulate firearms.

California's local governments are further restricted by state preemption of some (but not all) local firearms laws. "A review of the gun law preemption cases indicates that the [California] Legislature has preempted discrete areas of gun regulation rather than the entire field of gun control." (*Great W. Shows, Inc. v. Cty. of Los Angeles* (2002) 27 Cal. 4th 853, 861.)

A California appellate court reached the general conclusion "the Legislature has intended to preempt only narrow areas of firearms control ... state law tends to concentrate on specific areas, leaving unregulated other substantial areas relating to the control of firearms, indicat[ing] an intent to permit local governments to tailor firearms legislation to the particular needs of their communities. ... Finally, the Legislature's response to cases upholding local weapons legislation against a preemption challenge itself is persuasive evidence that it has no intention of preempting areas of weapons laws not specifically addressed by state statute." (*Suter v. City of Lafayette* (1997) 57 Cal. App. 4th 1109, 1119–20.)

For example, Government Code section 53071 preempts local regulations concerning the registration or licensing of firearms. California courts have affirmed this preemption means cities cannot require local permits for firearms, yet likewise a county may regulate the usage of firearms in parks and recreation areas. (*Fiscal v. City & Cty. of San Francisco* (2008) 158 Cal. App. 4th 895; *Calguns Found., Inc. v. Cty. of San Mateo* (2018) 218 Cal. App. 4th 661.)

### **III. City Law and Policies Concerning Firearms and Mass-Shootings**

Chapter 9.16 ("Dangerous or Deadly Weapons") of the Morro Bay Municipal Code renders the general discharge of firearms within City limits unlawful.

In response to the threat of mass shootings, the Morro Bay Police Department ("MBPD") has adopted Policy 412 entitled "Rapid Response and Deployment." (See Attachment No. 1.)

As stated in Section 412.1 ("Purpose and Scope") of Policy 412, "Violence that is committed in schools, workplaces and other locations by individuals or a group of individuals who are determined to target and kill persons and to create mass casualties presents a difficult situation for law enforcement. The purpose of this policy is to identify guidelines and factors that will assist responding officers in situations that call for rapid response and deployment."

Other policies adopted by the MBPD that concern firearms include: Policy 342, "Gun Violence Restraining Orders," which provides guidelines for petitioning and serving gun violence restraining orders and accounting for the firearms obtained pursuant to those orders (See Attachment No. 2); and, Policy 207, "License to Carry a Firearm," which provides the MBPD process for applying for a Carry Concealed Weapon ("CCW") license (See Attachment No. 3). See below for further discussion concerning both gun violence restraining orders ("GVRO") and CCW licenses.

## IV. Firearm Safety and Regulation at Local Level

### A. Safety Regulations and Programs

Gun safety regulations are one area of local regulation of firearms to consider. Some local regulation (rather than prohibition) of firearms for safety reasons have been found lawful by the courts.

Below are some examples of gun safety regulations. Further provided are possible gun safety programs for the Council to consider. If Council directs staff to pursue one or more of these options, Council will be advised (as appropriate) at a later date on potential exposure to litigation through adoption of any such policies.

#### 1. Safe Storage Laws

Safe storage laws are intended to prevent accidental shootings, suicides, and theft of firearms.

One study from 2004 “found that firearm owners who keep their firearms locked or unloaded were at least 60% less likely to die from firearm related suicide than those who store their firearms unlocked and/or loaded.”<sup>6</sup> However, another study from 2000 found “no support that safe storage laws reduce either juvenile accidental gun deaths or suicides. Instead, these storage requirements appear to impair people’s ability to use guns defensively.”<sup>7</sup>

Under current state law, the owner of a firearm is required to keep unattended firearms in a secure container or disabled **if** the owner lives with a person who cannot legally possess a firearm. (Penal Code § 25100.)

Some cities have adopted local laws mandating firearm owners store **all** unattended firearms in a residence in a locked container or with a locking device to prevent access by unauthorized users. Cities that have adopted such local laws include Los Angeles, San Francisco, Santa Cruz, Solana Beach, Sunnyvale, Tiburon, Palm Springs, Oakland and San Diego. Gun rights advocates claim such local regulations infringe on Second Amendment rights. Proponents of these laws say they save lives.

The federal Ninth Circuit Court of appeal in 2014 upheld San Francisco’s gun safety storage law which “provides that ‘[n]o person shall keep a handgun within a residence owned or controlled by that person unless’ (1) ‘the handgun is stored in a locked container or disabled with a trigger lock that has been approved by the California Department of Justice,’ or (2) ‘[t]he handgun is carried on the person of an individual over the age of 18.’” (*Jackson v. City & Cty. of San Francisco*, (9th Cir. 2014) 746 F.3d 953, 958.)

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6 Shenassa, Rogers, Spalding, et al, *Safer storage of firearms at home and risk of suicide: a study of protective factors in a nationally representative sample*, J Epidemiol Community Health (2004);58:846, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1763337/pdf/v058p00841.pdf>

7 Lott, Whitley, *Safe Storage Gun Laws: Accidental Deaths, Suicides, and Crime*, Yale Law School (2000), page 3, Law and Economics Working Paper No. 237, <https://poseidon01.ssrn.com/delivery.php?ID=518006097104088064118114005025016081023014008040030058110004106093077005116120114002001114015066097079037059094089116029115080075078078092116123102005095005005084123126079020106112017114084&EXT=pdf&INDEX=TRUE>  
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Council could authorize staff to review this potential regulation in depth and as appropriate bring back a firearm safe storage ordinance stricter than state law.

## **2. Firearm Owners Liability Insurance**

An emerging area of local regulation is a requirement for all firearm owners to carry liability insurance for their firearms. Legal exposure to the City by adoption of such a policy is unclear.

The approach would be like a requirement for automobile owners to maintain liability insurance. Insurance would be obtained through either existing policies (like a homeowner's or renter's policy) or through a standalone policy. Presumably insurance premiums would be lower or higher based on factors such as taking firearm safety classes, prior records of criminal violence, etc. Accidental injuries caused by use of the firearm would be subject to coverage by the liability insurance (though not intentional acts by the owner).

The City of San Jose recently explored this option, with a public discussion in that city starting in August 2019, weeks after two children from San Jose were killed in the Gilroy mass shooting (see above). That proposal provides for penalties for noncompliance, like California law concerning auto insurance requirements (which renders operation of a motor vehicle without insurance a misdemeanor and imposes fines and other penalties for noncompliance). San Jose further proposed that firearm owners unable or unwilling to secure firearm insurance could pay a fee to the City instead which would be used for funding of gun safety program.

As reported in August, 2020, while this proposal in San Jose was at a halt then in part due to shifting priorities towards handling the COVID-19 pandemic, the San Jose Mayor "says that he is 'absolutely committed to seeing this through'... [while] gun rights groups say they will be waiting to take San Jose to court if it follows through with either the insurance or fee requirements."<sup>8</sup>

To date, the City of San Jose has not passed any laws in connection with this proposal. As reported in March, 2021, the Mayor's spokesperson stated "an independent third-party is currently collecting data on the public costs of gun violence in San Jose and Santa Clara County. Conversations with residents and community organizations are also ongoing. A report is expected by the end of June."<sup>9</sup>

One wrinkle in this approach is maintaining strict privacy of fee payment to avoid creating a de facto gun registry requirement for firearm owners (which is not available as a regulatory option for local governments under California law). Furthermore, gun rights advocates have threatened to take the City of San Jose to court over the proposal if adopted.

Staff can pursue further review and analysis of this issue at direction of Council, including further review of legal exposure to City if such a policy were adopted.

## **3. Firearms and Public Property**

California law prohibits the carrying of loaded firearms in public places or on public streets in cities.

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<sup>8</sup> <https://www.mercurynews.com/2020/08/04/after-gilroy-shooting-san-jose-mayor-pushed-for-a-gun-insurance-mandate-what-happened-to-his-plan/>

<sup>9</sup> <https://sanjosepotlight.com/san-jose-legislator-locals-weigh-in-on-gun-control-bills-in-congress/>  
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(Penal Code §§ 17030, 25850(a).) This prohibition is subject to certain exceptions, including for the carrying of a concealed and loaded handgun by a carry concealed weapon (“CCW”) licensee. (Penal Code § 26010.)

Council may want to address the issue of whether CCW licensees should be allowed to carry firearms on public property (which is otherwise allowed by their license, with the exception of certain locations like polling places).

For example, after intense discussion, the City of Fresno on February 13, 2020 adopted an ordinance to expressly prohibit the possession of all concealed firearms at City Hall or any City owned or leased building, including by CCW licensees. (Fresno Municipal Code § 9-2601.)

Reasons for such a policy include the argument that less firearms means more safety. For example, as reported in the Fresno Bee on January 16, 2020, Fresno Police “Chief Andy Hall said he’s happy to see the city is taking a proactive stance rather than waiting to react to violence. While saying CCW holders are good citizens, Hall said they are a complication for any officers responding to an active scene.” The new Fresno ordinance also requires that police officers are always stationed at City Hall.<sup>10</sup>

However, others argue that CCW licensees can and do save lives and prevent criminal activities. Recent examples of the use of firearms by citizens to stop crime and even potential mass shootings include:

- January 13, 2020 – Tonopah, AZ – “Good Samaritan” legally carrying a gun shoots man attacking an Arizona State Trooper who was ambushed next to freeway.
- December 30, 2019 – White Settlement, TX – A firearms instructor who trained others in his Texas church to use guns to protect the congregation fatally shot a gunman seconds after he opened fire during a service.
- December 26, 2018 – Springfield, MO – CCW holder saves officer during exchange of gunfire when officer tries to reload his firearm. CCW holder exits residence and shoots suspect who had already shot at officers.
- October 29, 2018 – Birmingham, AL – A dad armed with a pistol stopped what could have been a mass shooting inside an Alabama McDonald’s when he took down a masked gunman who stormed in and opened fire.
- May 25, 2018 – Oklahoma City, OK – Armed bystanders shoot a gunman who opened fire in a restaurant, striking three people inside the restaurant from a position outside the front door. The gunman ran from the scene when two bystanders got their guns from their vehicles and confronted the man and fatally shot the attacker.
- March 28, 2018 – River North Chicago, IL – An armed suburban man with a CCW license intervened in a 3-on-1 beating and robbery. Three suspects in surgical masks attack the victim when a passing motorist who saw the robbery pulled over, unholstered his concealed firearm and intervened in the attack. The three offenders fled the area.

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<sup>10</sup> <https://www.fresnobee.com/news/local/article239335893.html>  
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The California Supreme Court in 2002 affirmed that local governments “may ban possession of guns on its property.” (*Nordyke v. King* (2002) 27 Cal. 4th 875, 885.) A similar conclusion was reached in an appellate court decision in 2013 when that court held a county may prohibit firearms in county owned parks. (*Calguns Found., Inc. v. Cty. of San Mateo* (2013) 218 Cal. App. 4th 661.)

If Council desired to prohibit CCW permittees from carrying concealed handguns on some or all public property, the simplest manner of enacting this type of regulation is to list public property where possession of all firearms is prohibited, such as at municipal parks and/or municipal buildings in the City.

The Cities of Cupertino and Campbell prohibit the possession of firearms in city parks. (Cupertino Municipal Code § 13.04.130(J); Campbell Municipal Code § 13.04.170.) The City of Mountain View prohibits firearms in all city parks and city recreational facilities. (Mountain View Municipal Code § 38.9.)

Another approach is to prohibit the possession and/or firing of firearms in city limits with carefully carved out exceptions consistent with the Second Amendment and State law.

The City of Palo Alto has such a local regulation. Palo Alto Municipal Code § 9.08.010 simply prohibits firearms in city limits, with some exceptions, such as recognition Penal Code section 25605(a) provides that adults may carry “anywhere within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident, any handgun.”

This type of local regulation is more subject to legal challenge as it must provide exceptions for all areas protected by both State law and the Second Amendment.

The MBPD reached out previously to neighboring communities to determine what policies, if any, those cities have concerning CCWs and public property. Paso Robles, Grover Beach, Arroyo Grande, Atascadero and San Luis Obispo in early 2020 reported no current policies that restrict a private citizen from lawfully carrying a firearm with a valid CCW.

Council could direct staff to bring back an ordinance prohibiting firearms on all or some public property within the City.

#### **4. Firearms Businesses**

Cities have the authority to regulate certain aspects of firearms businesses in the interests of promoting the public health, safety and welfare. (*Suter v. City of Lafayette* (1997) 57 Cal. App. 4th 1109.) Below are examples of such regulations adopted by some California cities. Council could direct staff to bring back an ordinance containing regulations for firearms businesses for further discussion.

##### **a) Local Firearms Dealer Permit**

A city can require by local ordinance that firearms dealers (in addition to receiving federal and state licenses) secure a local permit for the operation of a firearms business. Local oversight can seek to make certain that such businesses are following federal, state and local law as well as operating responsibly and safely. Conditions of the permit could include specified gun safety regulations (such

as videotaping of sales and regular inventory reporting, as discussed below).

This is a common local regulation. Examples of cities with local firearms dealer permits include Alameda, Burbank, Corona, Fremont, Hayward, Long Beach, Los Angeles, Oakland, Palo Alto, Salinas, San Francisco, San Diego, San Rafael, Santa Barbara, Santa Cruz and Solana Beach.

#### **b) Videotaping of Firearm Sales**

A local requirement to videotape firearms sales can potentially provide law enforcement with evidence needed to solve certain firearm-involved crimes such as robberies and straw purchases.

Walmart began voluntarily videotaping firearm sales in 2008. In 2021, Illinois will become the first state to adopt this regulation statewide.

Several California cities, including Campbell, Emeryville, San Carlos and San Francisco, have adopted this local regulation.

#### **c) Regular Inventory Reports**

Law enforcement can be assisted in solving crimes involving firearms, and illegal trafficking in firearms can be deterred, through a requirement that local firearms dealers regularly report their inventory to local law enforcement.

Cities with such a requirement include Campbell, Emeryville, Los Angeles, Oakland and Santa Monica.

#### **d) No Residential Sales**

Many cities in California have adopted prohibitions on the sale of firearms from residential areas or from one's home. The intent is to ensure that firearm transactions occur within regular business establishments to discourage illegal sales.

Cities that have such prohibitions include Antioch, Burbank, Calabasas, Chino, Emeryville, Hollister, Long Beach, Los Angeles, Oakland, Palo Alto, Piedmont, Pleasanton, Roseville, San Jose, Santa Cruz and Stockton.

### **5. Public Firearms Safety Education Program**

The City could offer in-person training on firearms safety, storage, state laws, and local ordinances.

Officers on the MBPD Range Team could potentially lead courses and possibly use the Community Center for public firearms safety and awareness classes. The program could potentially be funded by the City, through private donations and/or non-profit support.

Firearms safety training could also potentially be offered for parents and students at Morro Bay High School. The MBPD recommends if either of these options are pursued that overtime be made available for Officers leading the courses.

## **6. Annual Gun “Buy-Back” Program**

The City could provide funding for an annual “buy-back” program led by MBPD with the assistance of local and regional firearm businesses for firearm destruction, refurbishment, or safekeeping for historical purposes.

Pursuant to the MBPD, firearms that are determined to be unsafe should be destroyed. Firearms with some practical use could be, if useful to the department, refurbished for training purposes or acquired by a licensed firearm business. Firearms of great value and historical significance could be held for safekeeping and acquired by a licensed firearm business.

## **7. Supplemental MBPD Officer Mass/Active Shooter Training**

MBPD Officers could attend POST Certified Mass/Active Shooter training yearly or bi-yearly.

MBPD Officers could be authorized up to one hour of overtime per month for off-duty firearms training, and a regular allowance of ammunition for mass/active shooter training purposes could be provided to MBPD Officers, and/or the MBPD could be provided with simply an increased amount of training ammunition.

## **B. Advocacy at Federal and State Levels**

As detailed above, local firearm regulation is restricted by both federal and state laws. If the Council desires broad changes in firearm regulation, the greatest change would need to come from both federal and state legislation.

No substantial federal firearm regulations have passed Congress since 1994.

For example, the federal government previously had a nationwide assault weapons ban (passed in 1994), yet that prohibition lapsed in 2004 when it was not renewed by Congress. Similarly, advocates of increased firearm regulation have called for broader federal regulation of gun shows as well as an expansion of federal background checks for the purchase of firearms.

President Biden has recently “urged Congress to resurrect a national ban on assault weapons similar to the one he had helped pass while serving as a senator in 1994, and pass legislation instituting universal background checks.”<sup>11</sup> And as reported on April 8, 2021, President Biden is at present taking “a modest set of steps to address what he called an ‘epidemic’ of gun violence, acknowledging that ‘much more needs to be done’ and pressing Congress to take more aggressive action by closing background check loopholes, banning assault weapons and stripping gun manufacturers of protection from lawsuits.”<sup>12</sup>

At the state level, California arguably has the strictest regulation of firearms in the nation.

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11 Issues & Controversies, Infobase, *Gun Control: Should the United States Adopt Stronger Gun Control Laws?* pg 11 (March 24, 2021) <http://icof.infobaselearning.com/icofprintarticle.aspx?articleID=2263aa&citation=mla>

12 <https://www.nytimes.com/live/2021/04/08/us/biden-news-today#biden-gun-control>

Nevertheless, advocates of greater firearm regulation believe California can do more in this area, for example to “increase funding to community violence prevention programs and address the ways some residents manage to skirt existing gun regulations.” (<https://lawcenter.giffords.org/gun-laws/state-law/california/>.)

As reported in April, 2021 State lawmakers “advanced a proposal for a new tax on the sale of guns and ammunition in California to boost funding for violence prevention programs. The legislation by Assemblyman Marc Levine (D-San Rafael) would place a \$25 excise tax on retailers for the sale of each new gun and an as-yet-undetermined levy on ammo sales to raise millions of dollars to fund the efforts.”<sup>13</sup>

Council could authorize advocacy positions to be taken by the City Council for greater firearm regulation and/or new firearm policies at both the federal and state levels.

### **C. Gun Violence Restraining Order Awareness**

Over fifteen states have adopted so-called “red flag laws,” which allow individuals like family members and law enforcement officers to petition a court for the temporary removal of firearms from individuals determined to be a threat to themselves or others.

Effective January 1, 2016 California law provides for family and household members, as well as law enforcement officers, to seek Gun Violence Restraining Orders (“GVRO”) against individuals who are believed to pose a significant danger to themselves or others by having access to firearms.

As of September 1, 2020, the law also allows employers, coworkers and teachers to seek GVROs.

If a judge makes the determination that the individual does poses a danger to themselves or others, then a court order can be issued prohibiting that individual from having possession or access to firearms for a limited period of time.

The new GVRO laws also generally require that all local law enforcement agencies adopt by January 1, 2021 written policies and procedures concerning use of GVROs. The Morro Bay Police Department has adopted such a policy. (See Attachment No. 2.)

Advocates for “red flag laws” argue they save lives from both suicide and homicide (especially mass shootings).

A study in 2018 by “a team of psychiatrists led by Duke University’s Dr. Jeffrey Swanson examined the efficacy of Connecticut’s [“red flag law”] policy. Swanson’s team estimated that for every 10 to 20 gun seizures, one suicide was prevented.

Another study, looking at Connecticut and Indiana’s [“red flag”] laws, found marked decreases in the states’ gun suicide rates — 7.5 and 13.7 percent, respectively — following implementation. Neither of the aforementioned studies found [“red flag laws”] to have a measurable effect on homicides. But reports examining the impact of more recent laws present compelling anecdotal evidence that they have the capacity to prevent mass violence. An August 2019 study that looked at red flag laws in

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<sup>13</sup> <https://www.latimes.com/california/story/2021-04-06/mass-shootings-california-lawmakers-tax-guns-ammo-violence-prevention>

01181.0001/707974.1

California between 2016 and 2018 found that 21 of the petitions disarmed potential mass shooters. While the study's authors noted that it's impossible to know if violence would have actually occurred if these people were never disarmed, they wrote that 'the cases suggest that this urgent, individualized intervention can play a role in efforts to prevent mass shootings.'"<sup>14</sup>

Critics question the effectiveness of such laws in the first place, and on a more fundamental level argue that these laws infringe on Second Amendment rights. Critics also voice concerns about government overreach, as "red flag laws" can result in court orders for the seizure of property and the infringement of rights against individuals that have not been charged with a crime or have not been diagnosed as mentally ill. Concerns about due process are underscored by a study done on "red flag laws" in Indiana.

A study was conducted on an "Indiana statute [that] allows police to seize firearms without a warrant if the officer believes a person meets the law's definition of 'dangerous.'... The court dismissed 29% of cases at the initial hearing, closely linked to the defendant's presence at the hearing. In subsequent hearings of cases not dismissed, the court ordered the destruction of the firearms in 72% of cases, all when the individual did not appear in court, and dismissed 24% of the cases, all when the individual was present at the hearing."<sup>15</sup>

The Council may desire staff engage in educational efforts to inform the local community of the availability of this new law.

#### **D. Market Leveraging**

One approach to gun safety is to use market leverage to change the conduct of firearm manufacturers. The idea is that purchases of firearms by cities for law enforcement come with a mandate that the sellers adhere to specified gun safety requirements and/or provide information on current practices.

For example, Jersey City, New Jersey in 2014 made a requirement, to bid on that city's contract for law enforcement firearms, for companies to detail what they do to comply with state and federal background check laws, as well as explain what is done with old firearms. The requirement was meant to encourage voluntary private business activity seeking an end to illegal or straw purchases of firearms.

For a city the size of Morro Bay such an approach would presumably work best if done through a regional (or even statewide) coalition of cities agreeing on the same approach.

Also, private groups have been attempting to create coalitions of cities and other public agencies which purchase firearms to bring pressure on firearm manufacturers to adopt more robust safety technologies and more accountable distribution practices.

For example, the organization Do Not Stand Idly By has enlisted 132 jurisdictions (as of December 10, 2018) throughout the United States to sign onto a Request from Information to major gun

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14 <https://www.thetrace.org/2020/02/states-are-embracing-red-flag-laws-for-gun-owners-heres-how-they-work/>

15 <https://www.ncbi.nlm.nih.gov/pubmed/25827648>

manufacturers, including the cities of Los Angeles, Oakland, Sacramento, San Francisco and Stockton.<sup>16</sup> (See Attachment No. 4)

At direction of Council, staff could explore market-based approaches for promotion of gun safety and bring back to Council a more detailed briefing along with options for regional, statewide and/or national efforts.

### **CONCLUSION**

Staff recommends that the City Council consider the options detailed above and provide further direction to staff as appropriate.

### **ATTACHMENTS**

1. MBPD Policy 412 - Rapid Response and Deployment
2. MBPD Policy 342 - Gun Violence Restraining Orders
3. MBPD 207 - License to Carry a Firearm
4. Request for Information from Firearm Manufacturer
5. Staff Presentation

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<sup>16</sup> <http://donotstandidlyby.org/what-public-officials-can-do/>  
01181.0001/707974.1

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## Rapid Response and Deployment

### 412.1 PURPOSE AND SCOPE

Violence that is committed in schools, workplaces and other locations by individuals or a group of individuals who are determined to target and kill persons and to create mass casualties presents a difficult situation for law enforcement. The purpose of this policy is to identify guidelines and factors that will assist responding officers in situations that call for rapid response and deployment.

### 412.2 POLICY

The Morro Bay Police Department will endeavor to plan for rapid response to crisis situations, and to coordinate response planning with other emergency services as well as with those that are responsible for operating sites that may be the target of a critical incident.

Nothing in this policy shall preclude the use of reasonable force, deadly or otherwise, by members of the Department in protecting themselves or others from death or serious injury.

### 412.3 FIRST RESPONSE

If there is a reasonable belief that acts or threats by a suspect are placing lives in imminent danger, first responding officers should consider reasonable options to reduce, prevent or eliminate the threat. Officers must decide, often under a multitude of difficult and rapidly evolving circumstances, whether to advance on the suspect, take other actions to deal with the threat or wait for additional resources.

If a suspect is actively engaged in the infliction of serious bodily harm or other life-threatening activity toward others, officers should take immediate action, if reasonably practicable, while requesting additional assistance.

Officers should remain aware of the possibility that an incident may be part of a coordinated multi-location attack that may require some capacity to respond to other incidents at other locations.

When deciding on a course of action officers should consider:

- (a) Whether to advance on or engage a suspect who is still a possible or perceived threat to others. Any advance or engagement should be based on information known or received at the time.
- (b) Whether to wait for additional resources or personnel. This does not preclude an individual officer from taking immediate action.
- (c) Whether individuals who are under imminent threat can be moved or evacuated with reasonable safety.
- (d) Whether the suspect can be contained or denied access to victims.
- (e) Whether the officers have the ability to effectively communicate with other personnel or resources.

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### *Rapid Response and Deployment*

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- (f) Whether planned tactics can be effectively deployed.
- (g) The availability of rifles, shotguns, shields, breaching tools, control devices and any other appropriate tools, and whether the deployment of these tools will provide a tactical advantage.

In a case of a barricaded suspect with no hostages and no immediate threat to others, officers should consider summoning and waiting for additional assistance (special tactics and/or hostage negotiation team response).

#### **412.4 CONSIDERATIONS**

When dealing with a crisis situation members should:

- (a) Assess the immediate situation and take reasonable steps to maintain operative control of the incident.
- (b) Obtain, explore and analyze sources of intelligence and known information regarding the circumstances, location and suspect involved in the incident.
- (c) Attempt to attain a tactical advantage over the suspect by reducing, preventing or eliminating any known or perceived threat.
- (d) Attempt, if feasible and based upon the suspect's actions and danger to others, a negotiated surrender of the suspect and release of the hostages.

#### **412.5 PLANNING**

The Operations Commander should coordinate critical incident planning. Planning efforts should consider:

- (a) Identification of likely critical incident target sites, such as schools, shopping centers, entertainment and sporting event venues.
- (b) Availability of building plans and venue schematics of likely critical incident target sites.
- (c) Communications interoperability with other law enforcement and emergency service agencies.
- (d) Training opportunities in critical incident target sites, including joint training with site occupants.
- (e) Evacuation routes in critical incident target sites.
- (f) Patrol first-response training.
- (g) Response coordination and resources of emergency medical and fire services.
- (h) Equipment needs.
- (i) Mutual aid agreements with other agencies.
- (j) Coordination with private security providers in critical incident target sites.

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### **412.6 TRAINING**

The Training Sergeant should include rapid response to critical incidents in the training plan. This training should address:

- (a) Orientation to likely critical incident target sites, such as schools, shopping centers, entertainment and sporting event venues.
- (b) Communications interoperability with other law enforcement and emergency service agencies.
- (c) Patrol first-response training, including patrol rifle, shotgun, breaching tool and control device training.
  - 1. This should include the POST terrorism incident training required for officers assigned to field duties (Penal Code § 13519.12).
- (d) First aid, including gunshot trauma.
- (e) Reality-based scenario training (e.g., active shooter, disgruntled violent worker).

## Gun Violence Restraining Orders

### 342.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for petitioning and serving gun violence restraining orders and accounting for the firearms obtained pursuant to those orders (Penal Code § 18108).

#### 342.1.1 DEFINITIONS

Definitions related to this policy include:

**Gun violence restraining order** - Civil restraining order prohibiting a named person from controlling, owning, purchasing, possessing, receiving, or otherwise having custody of any firearms or ammunition, including an ammunition magazine (Penal Code § 18100).

### 342.2 POLICY

It is the policy of the Morro Bay Police Department to petition and serve gun violence restraining orders in compliance with state law and to properly account for firearms and ammunition obtained by the Department pursuant to such orders.

### 342.3 GUN VIOLENCE RESTRAINING ORDER COORDINATOR

The Chief of Police will appoint a gun violence restraining order coordinator. The responsibilities of the coordinator include:

- (a) Developing and maintaining procedures for the filing of a petition for an order or a renewal of an order by department members, also including procedures for requesting and serving (Penal Code § 18108):
  1. A temporary emergency gun violence restraining order.
  2. An ex parte gun violence restraining order.
  3. A gun violence restraining order issued after notice and hearing.
- (b) Developing and maintaining factors to consider when assessing the need to seek an order, including:
  1. Whether threats have been made, and if so, whether the threats are credible and specific.
  2. Whether the potential victim is within close proximity.
  3. Whether the person has expressed suicidal tendencies.
  4. Whether the person has access to firearms.
  5. The criminal history of the person, in particular any history of criminal violence, including whether the person is currently on parole, probation, or monitored release.

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6. The mental health history of the person, in particular whether the person has any history of mental illness or has ever been detained for being a danger to themselves or others.
  7. Any upcoming holidays, anniversaries, or other dates of significance that may serve as a trigger for the person, such as the death of a family member.
  8. Whether the person has any history of drug or alcohol abuse.
- (c) Developing and maintaining procedures for the receipt and service of orders consistent with the requirements of Penal Code § 18115; Penal Code § 18120; Penal Code § 18135; Penal Code § 18140; and Penal Code § 18160. Procedures should include:
1. Evaluation of an order to determine appropriate service and necessary precautions (see the Warrant Service Policy and the Operations Planning and Deconfliction Policy).
  2. Forwarding orders to the Support Services Manager for recording in appropriate databases and required notice to the court, as applicable.
  3. Preparing or obtaining a search warrant prior to attempting service of an order, when appropriate (Penal Code § 18108).
  4. Seizure procedures of firearms and ammunition at the time of issuance of a temporary emergency gun violence restraining order.
  5. Verification procedures for the removal of firearms and ammunition from the subject of a gun violence restraining order.
- (d) Coordinating with the Training Sergeant to provide officers who may be involved in petitioning for or serving orders with training on such orders. Training should include determining when a petition is appropriate, the process for seeking an order, and the service of such orders.
- (e) Reviewing each petition and any associated court documents for an order prepared by members, for compliance with this policy, department procedures, and state law.
- (f) Developing and maintaining procedures for members to accept voluntarily surrendered prohibited items at times other than when an order is being served by the Department.
1. Procedures should include preparing and providing a receipt identifying all prohibited items to the person surrendering the items.
- (g) Coordinating review of notices of court hearings and providing notice to the appropriate officer of the hearing date and the responsibility to appear (Penal Code § 18108).

#### **342.4 GUN VIOLENCE RESTRAINING ORDERS**

An officer who reasonably believes a person is a present danger to him/herself or another person by controlling, owning, purchasing, possessing, receiving, or otherwise having custody of a firearm may request permission from his/her supervisor to petition the court for a gun violence restraining order.

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Officers petitioning the court should use the forms established by the Judicial Council (Penal Code § 18105). The petition should describe the number, types, and locations of any firearms and ammunition that the officer believes to be possessed or controlled by the person (Penal Code § 18107). The petition should also describe why less-restrictive alternatives are ineffective or inadequate for the circumstances (Penal Code § 18125; Penal Code § 18150; Penal Code § 18175).

If it is not practical under the circumstances to submit a written petition, an officer may orally request an order, and then prepare and sign a declaration under penalty of perjury that recites the oral statements provided to the judicial officer and memorialize the order of the court on the appropriate Judicial Council form (Penal Code § 18140).

#### **342.4.1 ADDITIONAL CONSIDERATIONS**

Officers should also consider requesting permission to petition the court for a gun violence restraining order (Penal Code § 18108):

- (a) When responding to a domestic disturbance where the residence is associated with a firearm registration or record.
- (b) When responding to any call or incident when a firearm is present or when one of the involved parties owns or possesses a firearm.
- (c) During a contact with a person exhibiting mental health issues, including suicidal thoughts, statements, or actions if that person owns or possesses a firearm.

Officers should consider obtaining a mental health evaluation if the encounter involves a situation where there is a reasonable cause to believe that the person poses an immediate and present danger of causing personal injury to themselves or another person by having custody or control of a firearm (see the Mental Illness Commitments Policy) (Penal Code § 18108).

#### **342.5 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS**

An officer serving any gun violence restraining order shall:

- (a) Verbally ask the subject of the order if he/she has any firearm, ammunition, or magazine in his/her possession or under his/her custody or control (Penal Code § 18160).
- (b) Request that any firearms or ammunition be immediately surrendered and issue a receipt for the surrendered items (Penal Code § 18120).
- (c) Take into temporary custody any firearm or other deadly weapon discovered in plain view or pursuant to consent or other lawful search (Penal Code § 18250).
- (d) Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160).
- (e) Transmit the original proof of service form to the issuing court as soon as practicable but within one business day (Penal Code § 18115).

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### *Gun Violence Restraining Orders*

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- (f) As soon as practicable, but by the end of his/her shift, submit proof of service to the Support Services Manager for prompt entry into the California Restraining and Protective Order System (Penal Code § 18115).

The officer should also inform the restrained person that he/she is required, within 24 hours, to surrender to a law enforcement agency any other firearms and ammunition he/she owns or that are in his/her custody or control or sell them to a firearms dealer. This notification should be documented.

All firearms and ammunition collected shall be handled and booked in accordance with the Property and Evidence Policy.

#### **342.5.1 SERVICE OF ORAL GUN VIOLENCE RESTRAINING ORDERS**

If a gun violence restraining order is obtained orally, the officer shall (Penal Code § 18140):

- (a) Serve the order on the restrained person in the manner outlined above, if the restrained person can reasonably be located.
- (b) File a copy of the order with the court as soon as practicable after issuance.
- (c) Ensure the order is provided to the Police Records for entry into the computer database system for protective and restraining orders maintained by the Department of Justice.

#### **342.6 SEARCH WARRANTS**

If a person who has been served with a gun violence restraining order refuses to surrender any firearm or ammunition, the officer should consider whether to seek a search warrant. If a search warrant is to be obtained, the preparation and service of the search warrant shall be done in accordance with the Warrant Service Policy. Additionally, (Penal Code § 1542.5):

- (a) The officer serving the warrant shall take custody of any firearm or ammunition that is controlled, possessed or owned by the person who is the subject of the gun violence restraining order, including any discovered pursuant to the warrant, a consensual search or other lawful search.
- (b) If the location being searched is jointly occupied and the firearm or ammunition is owned by a person other than the restrained person, the firearm or ammunition should not be seized if the following conditions are met:
  - 1. The firearm or ammunition can be stored in a manner that does not allow the restrained person to have control or access.
  - 2. There is no evidence that the owner unlawfully possesses the firearm or ammunition.
- (c) If a locked gun safe belonging to someone other than the subject of a gun violence restraining order is discovered, the officer shall not search the contents of the safe unless the owner consents or there is a valid search warrant for the safe. Any search of the safe must be done in the owner's presence.

#### **342.7 SUPPORT SERVICES MANAGER RESPONSIBILITIES**

The Support Services Manager is responsible for ensuring:

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- (a) Proof of service of any gun violence restraining order served by an officer or received from the clerk of the court is entered in the computer database system for protective and restraining orders maintained by the Department of Justice within one business day of service if served by an officer, or within one business day of receipt of proof of service if served by a person other than a law enforcement officer (Penal Code § 18115).
- (b) Oral orders are entered into the California Restraining and Protective Order System (Penal Code § 18140).
- (c) Copies of receipts of surrendered firearms or ammunition issued by other agencies for gun violence restraining orders issued by the Department are properly maintained (Penal Code § 18120).
- (d) Any relinquishment of firearm rights form received from the court is entered into the California Restraining and Protective Order System within one business day of receipt (Penal Code § 18115).

#### **342.8 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS**

Authorized members shall accept firearms and ammunition from any individual who is the subject of a gun violence restraining order. The member receiving any firearm or ammunition shall:

- (a) Record the individual's name, address and telephone number.
- (b) Record the serial number of the firearm.
- (c) Prepare an incident report and property report.
- (d) Provide a property receipt to the individual who surrendered the firearms and ammunition.
- (e) Package and submit the firearms and ammunition in accordance with the Property and Evidence Policy.

#### **342.9 RELEASE OF FIREARMS AND AMMUNITION**

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with Penal Code § 18120 and the Property and Evidence Policy.

#### **342.10 RENEWAL OF GUN VIOLENCE RESTRAINING ORDERS**

The Detective Bureau supervisor is responsible for the review of a gun violence restraining order obtained by the Department to determine if renewal should be requested within the time prescribed by law (Penal Code § 18190).

#### **342.11 POLICY AVAILABILITY**

The Chief of Police or the authorized designee shall be responsible for making this policy available to the public upon request (Penal Code § 18108).

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### **342.12 TRAINING**

The Training Sergeant should ensure that members receive periodic training on the requirements of this policy (Penal Code § 18108).

## License to Carry a Firearm

### 207.1 PURPOSE AND SCOPE

The Chief of Police is given the statutory discretion to issue a license to carry a firearm to residents within the community (Penal Code § 26150; Penal Code § 26155). This policy will provide a written process for the application and issuance of such licenses. Pursuant to Penal Code § 26160, this policy shall be made accessible to the public.

#### 207.1.1 APPLICATION OF POLICY

Nothing in this policy shall preclude the Chief or other head of a municipal police department from entering into an agreement with the Sheriff of the county or preclude the Sheriff of the county from entering into an agreement with the Chief of any municipal police department to process all applications and license renewals for the carrying of concealed weapons (Penal Code § 26150; Penal Code § 26155).

### 207.2 POLICY

The Morro Bay Police Department will fairly and impartially consider all applications to carry firearms in accordance with applicable law and this policy.

### 207.3 QUALIFIED APPLICANTS

In order to qualify for a license to carry a firearm, the applicant must meet certain requirements, including:

- (a) Be a resident of the City of Morro Bay (Penal Code § 26150; Penal Code § 26155).
- (b) Be at least 21 years of age (Penal Code § 29610).
- (c) Fully complete an application that will include substantial personal information. Much of the information in the application may be subject to public access under the Public Records Act.
- (d) Be free from criminal convictions that would disqualify the applicant from carrying a firearm. Fingerprints will be required and a complete criminal background check will be conducted.
- (e) Be of good moral character (Penal Code § 26150; Penal Code § 26155).
- (f) Show good cause for the issuance of the license (Penal Code § 26150; Penal Code § 26155).
- (g) Pay all associated application fees. These fees are set by statute and may not be refunded if the application is denied.
- (h) Provide proof of ownership or registration of any firearm to be licensed.
- (i) Be free from any psychological conditions that might make the applicant unsuitable for carrying a firearm (Penal Code § 26190).
- (j) Complete required training (Penal Code § 26165).

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### *License to Carry a Firearm*

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#### **207.4 APPLICATION PROCESS**

The application process for a license to carry a firearm shall consist of two phases. Upon the successful completion of each phase, the applicant will advance to the next phase until the process is completed and the license is either issued or denied.

##### **207.4.1 PHASE ONE (TO BE COMPLETED BY ALL APPLICANTS)**

- (a) Any individual applying for a license to carry a firearm shall first fully complete a California Department of Justice (DOJ) application to be signed under penalty of perjury. Any applicant who provides false information or statements on the application will be removed from further consideration and may be prosecuted for a criminal offense (Penal Code § 26180).
  1. In the event of any discrepancies in the application or background investigation, the applicant may be required to undergo a polygraph examination, at no cost to the applicant.
  2. If an incomplete application package is received, the Chief of Police or authorized designee may do any of the following:
    - (a) Require the applicant to complete the package before any further processing.
    - (b) Advance the incomplete package to phase two for conditional processing pending completion of all mandatory conditions.
    - (c) Issue a denial if the materials submitted at the time demonstrate that the applicant would not qualify for a license to carry a firearm even if the package was completed (e.g., not a resident, disqualifying criminal conviction, absence of good cause).
- (b) At the time the completed application is submitted, the applicant shall submit a check made payable to the California Department of Justice for the required California DOJ application fee, along with a separate check made payable to the City of Morro Bay for a nonrefundable 20 percent of the application fee to cover the cost of processing the application (Penal Code § 26190).
  1. Additional fees may be required for fingerprinting, training or psychological testing, in addition to the application fee.
  2. Full payment of the remainder of the application fee will be required upon issuance of a license.
  3. Payment of related fees may be waived if the applicant is a duly appointed reserve peace officer as defined in Penal Code § 830.6 (a) or (b) (Penal Code § 26170).
- (c) The applicant shall be required to submit to fingerprinting and a complete criminal background check by the California DOJ. A second set of fingerprints may be required for retention in department files. Two recent passport-size photos (2 inches by 2 inches) of the applicant shall be submitted for department use. No person determined to fall within a prohibited class described in Penal Code § 29800, Penal Code § 29900, Welfare and Institutions Code § 8100 or Welfare and Institutions Code § 8103 will be

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### *License to Carry a Firearm*

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issued a license to carry a firearm. A license shall not be issued if the California DOJ determines that the applicant is prohibited by state or federal law from possessing, receiving, owning or purchasing a firearm (Penal Code § 26195).

- (d) The applicant should submit at least three signed letters of character reference from individuals other than relatives.
- (e) The applicant shall submit proof of ownership or registration of each firearm to be licensed.

Once the Chief of Police or authorized designee has reviewed the completed application package and relevant background information, the application will either be advanced to phase two or denied.

In the event that an application is denied at the conclusion of, or during, phase one, the applicant shall be notified in writing within 90 days of the initial application or within 30 days after receipt of the applicant's criminal background check from the California DOJ, whichever is later. If the license is denied, the notice shall state which requirement was not satisfied (Penal Code § 26205).

#### 207.4.2 PHASE TWO

This phase is to be completed only by those applicants successfully completing phase one.

- (a) Upon successful completion of phase one, the applicant shall be scheduled for a personal interview with the Chief of Police or authorized designee. During this stage, there will be further discussion of the applicant's statement of good cause and any potential restrictions or conditions that might be placed on the license.
  - 1. The determination of good cause should consider the totality of circumstances in each individual case.
  - 2. Any denial for lack of good cause should be rational, articulable and not arbitrary in nature.
  - 3. The Department will provide written notice to the applicant as to the determination of good cause (Penal Code § 26202).
- (b) The Chief of Police may, based upon criteria established by the Chief of Police, require that the applicant be referred to an authorized psychologist used by the Department for psychological testing. The cost of such psychological testing (not to exceed \$150) shall be paid by the applicant. The purpose of any such psychological testing is intended only to identify any outward indications or history of psychological problems that might render the applicant unfit to carry a firearm. This testing is not intended to certify in any other respect that the applicant is psychologically fit. If it is determined that the applicant is not a suitable candidate for carrying a firearm, the applicant shall be removed from further consideration (Penal Code § 26190).
- (c) The applicant shall complete a course of training approved by the department, which complies with Penal Code § 26165. The applicant will not be required to complete and pay for any training courses prior to any determination of good cause (Penal Code § 26165; Penal Code § 26202).

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- (d) The applicant shall submit any firearm to be considered for a license to the Rangemaster or other department authorized gunsmith, at no cost to the applicant, for a full safety inspection. The Chief of Police reserves the right to deny a license for any firearm that has been altered from the manufacturer's specifications or that is unsafe (Penal Code § 31910).
- (e) The applicant shall successfully complete a firearms safety and proficiency examination with the firearm to be licensed, to be administered by the department Rangemaster, or provide proof of successful completion of another department-approved firearms safety and proficiency examination, including completion of all releases and other forms. The cost of any outside inspection/examination shall be the responsibility of the applicant.

Once the Chief of Police or authorized designee has verified the successful completion of phase two, the license to carry a firearm will either be granted or denied.

Whether an application is approved or denied at the conclusion of or during phase two, the applicant shall be notified in writing within 90 days of the initial application or within 30 days after receipt of the applicant's criminal background check from the California DOJ, whichever is later. If the license is denied, the notice shall state which requirement was not satisfied (Penal Code § 26205).

#### **207.5 LIMITED BUSINESS LICENSE TO CARRY A CONCEALED FIREARM**

The authority to issue a limited business license to carry a concealed firearm to a non-resident applicant is granted only to the Sheriff of the county in which the applicant works. A chief of a municipal police department may not issue limited licenses (Penal Code § 26150). Therefore, such applicants may be referred to the Sheriff for processing.

An individual who is not a resident of the county but who otherwise successfully completes all portions of phases one and two above, may apply for and be issued a limited license subject to approval by the Sheriff and subject to the following:

- (a) The applicant physically spends a substantial period of working hours in the applicant's principal place of employment or business within the City of Morro Bay (Penal Code § 26150).
- (b) Such a license will be valid for a period not to exceed 90 days from the date of issuance (Penal Code § 26220).
- (c) The applicant shall provide a copy of the license to the licensing authority of the city or county in which the applicant resides (Penal Code § 26220).
- (d) Any application for renewal or reissuance of such a license may be granted only upon concurrence of the original issuing authority and the licensing authority of the city or county in which the applicant resides (Penal Code § 26220).

#### **207.6 ISSUED FIREARMS PERMITS**

In the event a license to carry a firearm is issued by the Chief of Police, the following shall apply:

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- (a) The license will be subject to any and all reasonable restrictions or conditions the Chief of Police has deemed warranted, including restrictions as to the time, place, manner and circumstances under which the person may carry the firearm.
  - 1. All such restrictions or conditions shall be conspicuously noted on any license issued (Penal Code § 26200).
  - 2. The licensee will be required to sign a Restrictions and Conditions Agreement. Any violation of any of the restrictions and conditions may result in the immediate revocation of the license.
- (b) The license shall be laminated, bearing a photograph of the licensee with the expiration date, type of firearm, restrictions and other pertinent information clearly visible.
  - 1. Each license shall be numbered and clearly identify the licensee.
  - 2. All licenses shall be subjected to inspection by the Chief of Police or any law enforcement officer.
- (c) The license will be valid for a period not to exceed two years from the date of issuance (Penal Code § 26220).
  - 1. A license issued to a state or federal magistrate, commissioner or judge will be valid for a period not to exceed three years.
  - 2. A license issued to any reserve peace officer as defined in Penal Code § 830.6(a) or (b), or a custodial officer employed by the Sheriff as provided in Penal Code § 831.5 will be valid for a period not to exceed four years, except that such license shall be invalid upon the individual's conclusion of service as a reserve officer.
- (d) If the licensee's place of residence was the basis for issuance of a license and the licensee moves out of the county of issuance, the license shall expire 90 days after the licensee has moved (Penal Code § 26210).
- (e) The licensee shall notify this department in writing within 10 days of any change of place of residency.

#### 207.6.1 LICENSE RESTRICTIONS

- (a) The Chief of Police may place special restrictions limiting time, place, manner and circumstances under which any license shall be valid. In general, these restrictions will prohibit the licensee from:
  - 1. Consuming any alcoholic beverage while armed.
  - 2. Falsely representing him/herself as a peace officer.
  - 3. Unjustified or unreasonable displaying of a firearm.
  - 4. Committing any crime.

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5. Being under the influence of any medication or drug while armed.
  6. Interfering with any law enforcement officer's duties.
  7. Refusing to display his/her license or firearm for inspection upon demand of any peace officer.
  8. Loading the permitted firearm with illegal ammunition.
- (b) The Chief of Police reserves the right to inspect any license or licensed firearm at any time.
- (c) The alteration of any previously approved firearm including, but not limited to adjusting the trigger pull, adding laser sights or modifications shall void any license and serve as grounds for revocation.

#### 207.6.2 AMENDMENTS TO LICENSES

Any licensee may apply to amend a license at any time during the period of validity by completing and submitting a written Application for License Amendment along with the current processing fee to the Department in order to (Penal Code § 26215):

- (a) Add or delete authority to carry a firearm listed on the license.
- (b) Change restrictions or conditions previously placed on the license.
- (c) Change the address or other personal information of the licensee (Penal Code § 26210).

In the event that any amendment to a valid license is approved by the Chief of Police, a new license will be issued reflecting the amendment. An amendment to any license will not serve to extend the original expiration date and an application for an amendment will not constitute an application for renewal of the license.

#### 207.6.3 REVOCATION OF LICENSES

Any license issued pursuant to this policy may be immediately revoked by the Chief of Police for any of the following reasons:

- (a) The licensee has violated any of the restrictions or conditions placed upon the license.
- (b) The licensee becomes psychologically unsuitable to carry a firearm.
- (c) The licensee is determined to be within a prohibited class described in Penal Code § 29800, Penal Code § 29900, Welfare and Institutions Code § 8100, Welfare and Institutions Code § 8103 or any state or federal law.
- (d) The licensee engages in any conduct which involves a lack of good moral character or that might otherwise remove the good cause for the original issuance of the license.
- (e) If the license is one to carry "loaded and exposed," the license shall be revoked immediately upon a change of the licensee's place of residence to another county (Penal Code § 26210).

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The issuance of a license by the Chief of Police shall not entitle the holder to either a property or liberty interest as the issuance, amendment or revocation of such license remains exclusively within the discretion of the Chief of Police as set forth herein.

If any license is revoked, the Department will immediately notify the licensee in writing and the California DOJ (Penal Code § 26225).

#### 207.6.4 LICENSE RENEWAL

No later than 90 days prior to the expiration of any valid license to carry a firearm, the licensee may apply to the Chief of Police for a renewal by:

- (a) Verifying all information submitted in the original application under penalty of perjury.
- (b) Completing a department-approved training course pursuant to Penal Code § 26165. The applicant shall not be required to pay for a training course prior to the determination of good cause (Penal Code § 26165).
- (c) Submitting any firearm to be considered for a license renewal to the Rangemaster for a full safety inspection. The Chief of Police reserves the right to deny a license for any firearm that has been altered from the manufacturer's specifications or that is unsafe (Penal Code § 31910).
- (d) Paying a non-refundable renewal application fee.

Once the Chief of Police or authorized designee has verified the successful completion of the renewal process, the renewal of the license to carry a firearm will either be granted or denied. Prior issuance of a license shall not entitle any licensee to any property or liberty right to renewal.

Whether an application for renewal is approved or denied, the applicant shall be notified in writing within 90 days of the renewal application or within 30 days after receipt of the applicant's criminal background check from the California DOJ, whichever is later (Penal Code § 26205).

#### **207.7 DEPARTMENT REPORTING AND RECORDS**

Pursuant to Penal Code § 26225, the Chief of Police shall maintain a record of the following and immediately provide copies of each to the California DOJ:

- (a) The denial of a license
- (b) The denial of an amendment to a license
- (c) The issuance of a license
- (d) The amendment of a license
- (e) The revocation of a license

The Chief of Police shall annually submit to the State Attorney General the total number of licenses to carry firearms issued to reserve peace officers and judges.

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### **207.8 CONFIDENTIAL RECORDS**

The home address and telephone numbers of any peace officer, public defender, prosecutor, magistrate, court commissioner or judge contained in an application shall not be considered public record (Government Code § 6254(u)(2)).

Any information in an application for a license to carry a firearm that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of his/her family shall not be considered public record (Government Code § 6254(u)(1)).

## **REQUEST FOR INFORMATION**

Local, state and other governmental bodies in the United States are conducting reviews of their firearms procurement practices to ensure that future purchases of firearms achieve the maximum benefit to taxpayers in terms of public safety. As part of this process, these jurisdictions are seeking information from companies that manufacture firearm models that are currently purchased by public-sector agencies or that are suitable for use by such agencies. The following information is requested regarding each manufacturer's capabilities and practices with respect to safety.

### **DISTRIBUTION PRACTICES IN THE UNITED STATES**

1. What are the company's standards and criteria for selecting dealers authorized to sell the company's firearms? Please list any specific standards in terms of security, recordkeeping, employee training, and cooperation with law enforcement.
2. How does the company respond when one of its firearms is determined to have been used in a crime? How does the company use its federal crime gun trace results to evaluate dealers with whom it does business? How does the company respond when gun traces show a pattern of disproportionate numbers of crime guns being sold by particular dealers?
3. Would the company be willing to work with public officials and law enforcement agencies to establish networks of authorized dealers in the United States that maintain high standards in the following areas?
  - a. Employee training to detect "straw buyers"
  - b. Record keeping of inventory and all transactions
  - c. Security measures to deter gun theft
  - d. Education of buyers regarding gun safety and storage
  - e. Prompt and complete responses to gun trace requests.
4. What efforts does the company currently undertake to prevent its firearms from being stolen from distributors, transporters or dealers, or from being sold or conveyed to individuals not legally permitted to own a firearm? Would the company be willing to establish, if it has not already done so, gun re-purchase or trade-in programs that reduce the number of its products sold second-hand on the internet and in other private sales?
5. What safety products (e.g. trigger locks), if any, does the company include with guns sold in the United States? Please provide descriptions of these products and how they are distributed.

### **NEW TECHNOLOGIES TO IMPROVE GUN SAFETY AND ASSIST LAW ENFORCEMENT**

1. Please provide a detailed overview of the company's activities and goals with respect to gun safety technologies. Please include description of any technologies currently used by the company or now in development that would prevent or deter the use of a gun by unauthorized users, make a gun more difficult for a child to fire, or prevent accidental discharge of a gun. Please describe the extent to which these technologies are already incorporated into the company's products, and projections for bringing new technologies to market.
2. Please provide an overview of the company's activities and goals, if any, with respect to bullet microstamping capabilities and any other technologies that enhance ballistics tracing by law enforcement. Please include current uses of these technologies, and plans and projections regarding future use.
3. Would the company be willing to demonstrate its gun safety technologies and capabilities at a U.S. Gun Safety Expo?

# LOCAL FIREARM SAFETY AND REGULATION



Presented by  
**Chris F. Neumeyer, City Attorney**  
April 13, 2021

# RECOMMENDATION – DISCUSS AND PROVIDE DIRECTION AS APPROPRIATE

## 1. Safety Regulations and Programs

- a) Safe storage laws
- b) Liability insurance
- c) Firearms on public property
- d) Businesses (permits, videotape sales, inventory reports, residential sales)
- e) Firearms Safety Education Program
- f) Annual Firearm “Buy-Back” Program
- g) Supplemental MBPD Officer Training

**\*\* And, Provide for Cost Recovery as Lawful**

# RECOMMENDATION – DISCUSS AND PROVIDE DIRECTION AS APPROPRIATE

- 2. Advocacy at Federal and State levels**
- 3. Gun Violence Restraining Orders: education**
- 4. Market Leveraging of City Firearm Purchases**

# MASS SHOOTINGS AND FIREARM RELATED DEATHS

- Council requested report on lawful local government action concerning firearm safety and regulation in wake of continuing mass shootings throughout nation (most recently in 2021 in Orange, CA; Boulder, CO; and, Atlanta, GA)
- Annually about 40,000 firearm related deaths nationally
- Suicides account for almost 60% of deaths related to firearms
- Defenders of firearm ownership refer to defensive firearm use deterring crime

# SECOND AMENDMENT RIGHTS

- “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” – U.S. Constitution, Second Amendment
- *D.C. v. Heller* (2008) 554 U.S. 570 – U.S. Supreme Court affirms Second Amendment protects right to possess a firearm with limits
- *Duncan v. Becerra*, (S.D. Cal. 2017) 265 F. Supp. 3d 1131.) – California firearms law struck down

# CALIFORNIA LAW AND STATE FIREARM REGULATION

- California Constitution does not have a section equivalent to federal Second Amendment
- *Kasler v. Lockyer* (2000) 23 Cal. 4th 472 – California Supreme Court holds no right to bear arms in State Constitution
- California regulation of firearms – universal background checks, gun dealer licensing, assault weapon ban, gun show regulation, waiting periods, sale records, safety design standards

# FEDERAL AND STATE RESTRICTIONS ON LOCAL FIREARM REGULATION

- *McDonald v. City of Chicago, Ill.* (2010) 561 U.S. 742 – U.S. Supreme Court affirms Second Amendment applies to States and local govts
- California State law preemption of some local firearms laws
  - “A review of the gun law preemption cases indicates that the [California] Legislature has preempted discrete areas of gun regulation rather than the entire field of gun control.” (*Great W. Shows, Inc. v. Cty. of Los Angeles* (2002) 27 Cal. 4th 853, 861.)

# CITY LAW AND POLICIES

- Chapter 9.16 (“Dangerous or Deadly Weapons”) of the Morro Bay Municipal Code renders general discharge of firearms within City limits unlawful
- MBPD Policy 412 - Rapid Response and Deployment
- MBPD Policy 342 - Gun Violence Restraining Orders
- MBPD 207 - License to Carry a Firearm

# SAFETY REGULATIONS – SAFE STORAGE LAWS

- Intended to prevent accidental shootings, suicides, and theft of firearms
- Penal Code § 25100 requires unattended firearms be secured if live with person who cannot legally possess a firearm
- Stricter local law permissible such as always keep firearms secure (*Jackson v. City & Cty. of San Francisco*, (9th Cir. 2014) 746 F.3d 953, 958.)

# SAFETY REGULATIONS – FIREARM OWNERS LIABILITY INSURANCE

- **Require firearm owners to carry liability insurance for firearms. Unclear legal exposure.**
- **Accidental injuries caused by firearm use would be subject to coverage by the liability insurance (though not intentional acts by the owner)**
- **City of San Jose in 2019 began exploring this option and continues to work on option**
- **Cannot be a de facto gun registry requirement**

# SAFETY REGULATIONS – FIREARMS AND PUBLIC PROPERTY

- Cannot carry loaded firearms in public places or on public streets in cities. (Penal Code §§ 17030, 25850(a).) Carrying of a concealed and loaded handgun by a carry concealed weapon (“CCW”) licensee is an exception. (Penal Code § 26010.)
- City of Fresno banned CCWs in February, 2020 from City buildings on basis less guns saves lives
- Examples of citizens with firearms stopping crime
- Cities can prohibit CCWs on public property (*Nordyke v. King* (2002) 27 Cal. 4th 875, 885.)
- SLO County cities surveyed do not restrict CCWs

# SAFETY REGULATIONS – FIREARMS BUSINESS

- Cities may regulate firearms businesses (*Suter v. City of Lafayette* (1997) 57 Cal. App. 4th 1109.)
- Common local regulation to require a local permit to operate a firearms business
- Options include:
  - a) Local Firearms Dealer Permit
  - b) Videotaping of Firearm Sales
  - c) Regular Inventory Reports
  - d) No Residential Sales

# **FIREARM SAFETY, GUN “BUY-BACK,” & MASS/ACTIVE SHOOTER TRAINING PROGRAMS**

## **1. Public Firearms Safety Educational Program**

- A. In-person training on safety, storage, laws, etc. through the MBPD**

## **2. Annual Gun “Buy-Back” Program**

## **3. Supplemental MBPD Officer Mass/Active Shooter Training**

- A. POST Certified Mass/Active Shooter training**
- B. Authorized overtime for off-duty firearms training**
- C. Provision for increased training ammunition for mass/active shooter training purposes**

# ADVOCACY AT FEDERAL AND STATE LEVELS

- **Local firearm regulation (as discussed) is restricted by both federal and state laws**
- **If Council desires broad changes in firearm regulation, the greatest change would need to come from both federal and state legislation**
- **Federal changes could include broader federal regulation of gun shows, assault weapons ban, and expansion of federal background checks for the purchase of firearms**
- **State changes could include more community violence prevention, tighter regulations, gun tax**

# GUN VIOLENCE RESTRAINING ORDERS / “RED FLAG LAWS”

- Over fifteen States have “red flag laws” for court orders to restrict access to firearms by those deemed a threat to self or others
- California law provides for family and household members, as well as law enforcement officers, to seek Gun Violence Restraining Orders (“GvRO”) against individuals who are believed to pose a significant danger to themselves or others by having access to firearms
- Debate over GvROs and “red flag laws”
- Council could provide for community education

# MARKET LEVERAGING

- Use market leverage to change the conduct of firearm manufacturers
- Jersey City NJ in 2014 added bidding requirement for law enforcement firearms contracts to explain how combat illegal or straw firearm purchases
- Some cities would see greater effectiveness with group efforts

# RECOMMENDATION – DISCUSS AND PROVIDE DIRECTION AS APPROPRIATE

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# QUESTIONS

