

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – FEBRUARY 11, 2020
VETERAN'S MEMORIAL HALL – 5:30 P.M.

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| PRESENT: | John Heading | Mayor |
| | Dawn Addis | Council Member |
| | Robert Davis | Council Member |
| | Jeff Heller | Council Member |
| | Marlys McPherson | Council Member |
| ABSENT: | None | |
| STAFF: | Scott Collins | City Manager |
| | Chris Neumeyer | City Attorney |
| | Dana Swanson | City Clerk |
| | Jennifer Callaway | Finance Director |
| | Rob Livick | Public Works Director |
| | Scot Graham | Community Development Director |
| | Matt Vierra | Fire Marshal |
| | Amy Watkins | Police Commander |
| | Eric Endersby | Harbor Director |

ESTABLISH QUORUM AND CALL TO ORDER

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

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

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/zqfhH7PYTMQ?t=121>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS - None

PRESENTATIONS

- Measure Q Presentation by Citizens Oversight & Citizens Finance Advisory Committee
Chairwoman Barbara Spagnola
<https://youtu.be/zqfhH7PYTMQ?t=544>

Anna Patel, Hermit Crab Store located at 898 Main Street, Unit C, provided the business spot. For more information, visit thehermitcrab.shop or call (805) 225-1110.

The Mayor sought Council concurrence to move Item C-3 to the beginning of the meeting. All members agreed.

PUBLIC COMMENT

Shirley Fraser, Morro Bay, raised concerns regarding the increase in crime related to Monday night community dinners and impacts on nearby property owners.

Linda Winters, Morro Bay, provided an update on her 2020 goals regarding mobile home park housing affordability.

Terry Simons, Morro Bay, shared his appreciation for CFAC's work on the budget and thanked the Council for approving funds to improve City's ability to respond to Public Records Act requests.

Erica Crawford, Morro Bay Chamber of Commerce, provided an update and announced upcoming events.

Mimi Goldberg, Morro Bay, spoke regarding the importance of identifying resources to help solve homeless issues.

John Weiss, Morro Bay, announced a remembrance ceremony for Captain Stew would be held Saturday, Feb. 15, at Tidelands Park.

Dan Sedley, Morro Bay, requested a summary of the report provided by CFAC be included in water/sewer bills.

Linda Donnelly, Morro Bay, encouraged transparency and open discussion by the Council at the meeting, and that Council questions and answers received from staff become part of the record for public review.

Melanie Williams-Mahan, Morro Bay, suggested engaging volunteers to assist with clearing the drainage ditch next to Morro Bay High School to alleviate the mosquito problem and asked when cannabis stores will open

Mayor Headding closed public comment.

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

A. CONSENT AGENDA
<https://youtu.be/zqfhH7PYTMQ?t=2887>

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 14, 2020, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE JANUARY 14, 2020, CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE FEBRUARY 5, 2020, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 APPROVAL OF RESOLUTION NO. 11-20 AUTHORIZING EXECUTION OF A DEED AND LEASE RESTRICTION AND CERTIFICATE OF ACCEPTANCE FOR LEASE SITE 87-88/87W-88W (TLC FAMILY ENTERPRISES, 833 EMBARCADERO) TO INCORPORATE CALIFORNIA COASTAL COMMISSION PERMIT CONDITIONS; (HARBOR)

RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 11-20 authorizing the City Manager to execute a Deed and Lease Restriction and Certificate of Acceptance for Lease Site 87-88/87W-88W with TLC Family Enterprises, located at 833 Embarcadero Road, in order to incorporate the California Coastal Commission permit conditions for the redevelopment of the site into the property deed and lease.

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

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

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

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

- C-3 DISCUSSION CONCERNING AN ORDINANCE TO REGULATE TOBACCO, VAPING AND/OR SECONDHAND SMOKE, INCLUDING POTENTIALLY A TOBACCO RETAILER LICENSING PROGRAM, THE SALE OF E-CIGARETTES (VAPING PRODUCTS), AND ENHANCING THE CITY'S CURRENT SECONDHAND SMOKING REGULATIONS BY A SMOKEFREE POLICY FOR MULTI-UNIT HOUSING; (CITY ATTORNEY)
<https://youtu.be/zqfhH7PYTMQ?t=2943>

City Attorney Neumeyer provided the report and responded to Council inquires.

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

Traci Theis, SLO County of Education Tobacco Use Prevention Coordinator, encouraged the Council to move forward with an ordinance and provided packets of information to the Council, including the Stanford University Tobacco Prevention Toolkit.

Jeff Cadwallader, Paso Robles, expressed concern about widespread vaping at Morro Bay High School and encouraged action to get these products out of our schools.

Courtney Rasmussen, San Luis County Tobacco Control Program, expressed concern about relying on the FDA ban, which does not prohibit sale of refillable based electronic cigarettes and urged the Council to adopt a comprehensive ban on all types of vape systems.

Inger Appanaitis, San Luis Obispo Tobacco Control Program, shared statistics on youth vaping in Morro Bay and provided an update on action taken by other area cities as well as San Luis Obispo County.

Julia Alber, Chair of San Luis Obispo County Tobacco Control Coalition, provided statistics and asked the Council to consider banning e-cigarette products.

Ben Akkare, local business owner, disagreed with the studies and stated it was unfair to throw blame retailers.

Melanie Williams-Mahan, Morro Bay, supported I.D. checks but not a ban on the sale of legal products.

Mimi Goldberg, Morro Bay, was confident local retailers do not sell to minors and urged the Council to continue allowing the sale of menthol cigarettes.

Trent Johnson, San Luis Obispo, implored the Council to reconsider ban on all flavored products including menthol cigarettes.

Terry Simons, Morro Bay, questioned why cannabis had been removed from this ordinance and suggested Council Members who received contributions from cannabis companies abstain from a decision on this item.

Jessie Eilers, Morro Bay, urged the Council to move forward with an ordinance.

Jim Curnutt, Morro Bay, encouraged the Council to ban vaping in Morro Bay but did not support exempting cannabis dispensaries.

Dan Sedley, Morro Bay, appreciated the information provided by staff and the public and supported stronger secondhand smoke regulations.

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

Following discussion, there was Council consensus to bring forward an ordinance at a future meeting with the following components as defined on pages 112-114 of the agenda packet:

- 1) American Lung Association Recommended Regulations
 - a) Secondhand smoke regulations for multi-unit residences, including items i, ii and iii (5-0 Council support)
 - b) Tobacco Retailer License Program (5-0 Council support)
 - c) Prohibiting the sale of tobacco products by retail establishments containing a pharmacy (3-2 Council support with Davis and McPherson opposed)
 - d) Prohibiting the sale of single cigars that cost less than five dollars, and any number of cigars fewer than the number contained in the manufacturers' original consumer packaging designed for retail sale to a customer, and any package of cigars containing fewer than five cigars (3-2 Council support with Davis and McPherson opposed)
 - e) Retailer location restrictions (3-2 Council support with Davis and McPherson opposed, for a separate track to include Planning Commission review of zoning regulations).
 - f) Prohibit sale of flavored tobacco products, except for menthol and smokeless tobacco (3-2 Council support with Davis and McPherson opposed).

2) Vaping Products ("E-Cigarettes")

- a) Prohibit the sale of all vaping products (3-2 Council support with Davis and McPherson opposed)
- b) Prohibit only the sale of flavored vaping products (not applicable based on 3-2 support for Item a).
- c) Prohibit sale of vaping products containing Vitamin E Acetate (5-0 Council support).
- d) Effective date of Prohibition (5-0 Council support to extend the effective date of the prohibition to allow local retailers additional time to prepare for the prohibition, as well as generally extend various effective dates as agreed before)

3) ID checks (5-0 Council support)

Staff confirmed an ordinance reflecting Council direction will take some time to prepare and be brought back at a future meeting.

The Council took a brief recess at 7:44 p.m. The meeting reconvened at 7:53 p.m. with all members present.

C-1 PRESENTATION AND DISCUSSION OF THE FISCAL YEAR 2018/19 COMPREHENSIVE ANNUAL FINANCIAL REPORT AND RECOMMENDATION TO PAY-OFF CALPERS LIABILITIES FOR THE TIER II AND TIER III UNFUNDED LIABILITIES; (FINANCE)

<https://youtu.be/zqfhH7PYTMQ?t=8131>

Finance Director Callaway and Mr. Kenneth Pun from The Pun Group, provided the report and responded to Council inquires.

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

Terry Simons, Morro Bay, encouraged council to support and enhance public oversight to build confidence in the community and expressed concern a significant economic downturn may make the decision to pay down unfunded liabilities look like a mistake.

Betty Winholtz, Morro Bay, posed questions regarding CFAC recommendations and, while she appreciated paying off unfunded liabilities in advance, was concerned that may not happen in future years.

Dan Sedley, Morro Bay, asked if the City was within the scope of best practices to change auditors every five years.

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

At the Council's request, Mr. Pun and Ms. Callaway responded to questions raised during public comment.

MOTION: Mayor Headding moved for approval the FY 2018/19 Comprehensive Annual Financial Report (CAFR) for the period July 1, 2018 through June 30, 2019; and adoption of Resolution No. 12-20 approving allocation of \$486,504 in FY 2018/19 year-end revenues over expenditures to pay off the Tier II and Tier III (PEPRA) unfunded accrued liabilities for the Police,

Fire and Miscellaneous classifications. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

- C-2 ADOPTION OF RESOLUTIONS OF NECESSITY (RESOLUTION NO. 13-20 AND RESOLUTION NO. 14-20) AUTHORIZING EMINENT DOMAIN ACTIONS TO ACQUIRE EASEMENTS IN REAL PROPERTY FOR THE WATER RECLAMATION FACILITY PROJECT – APNs: 066-331-046 (VISTRA ENERGY) AND 066-331-036 (PG&E); (CITY MANAGER/CITY ATTORNEY)
<https://youtu.be/zqfhH7PYTMQ?t=11034>

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

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

Garrett Lewelling, appearing on behalf of his client, Vistra Energy, requested the Council continue hearing for 30 days to allow Vistra to respond and continue negotiations with goal of coming to an agreement with the City.

Terry Simons, Morro Bay, encouraged the Council to allow time for the City and Vistra to work out the details and suggested an alternative pipeline route exists that would be less impactful to the community.

Betty Winholtz, Morro Bay, raised various issues regarding the standards for eminent domain, proposed location and need for a new sewer plant with tertiary treatment, and inconsistencies in the staff report.

Dan Sedley, Morro Bay, questioned the number of infusion wells and location of the well easement. He did not believe the required criteria for eminent domain had been met.

Pauline Stansbury, Morro Bay, stated the project was not planned or located in a manner compatible for the most public good and least private injury and, therefore, does not meet requirements of eminent domain.

Mimi Goldberg, Morro Bay, stated her appreciation for Vistra's interest in working with the City.

Linda Donnelly, Morro Bay, raised various concerns about the status of the project.

Melanie Williams-Mahan, Morro Bay, requested more information regarding location of the pipelines.

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

MOTION: Council Member McPherson moved the meeting continue past 9:30 to a time uncertain. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

Council members provided individual comments with a majority of the members generally supportive and committed to ongoing negotiations with Vistra, in hopes of reaching an agreement. Given the project timeline by funding agencies, the majority agreed it was prudent to avoid potential delays and adopt the Resolution of Necessity, as presented.

Council Member Heller found public comments to be compelling and did not see the proposed action met the legal requirements to authorize the commencement of eminent domain actions.

MOTION: Mayor Headding moved to adopt the Resolutions of Necessity (Resolution No. 13-20 and Resolution No. 14-20) authorizing the commencement of eminent domain actions to acquire temporary construction easements and permanent pipeline, well, and access easements on real property with APN: 066-331-046 (Vistra Energy) and APN: 066-331-036 (PG&E) for purposes of the Water Reclamation Facility Project. The motion was seconded by Council Member McPherson and carried 4-1 by roll call vote with Council Member Heller opposed.

C-4 REVIEW OPTIONS FOR IMPROVEMENTS TO PUBLIC TRASH AND RECYCLING RECEPTACLES AND PUBLIC RESTROOM MANAGEMENT IN THE EMBARCADERO AND MORRO ROCK PARKING LOT AREAS; (CITY MANAGER/PUBLIC WORKS)
<https://youtu.be/zqfhH7PYTMQ?t=14018>

City Manager Collins and Public Works Director Livick provided the report and responded to Council inquires.

The public comment period for Item C-4 was opened.

Mimi Goldberg, Morro Bay, agreed with staff recommendations.

Linda Donnelly, Morro Bay, urged Council to consider Saturday trash pickup on event weekends and replace the roll-off bin at Dog Beach.

The public comment period for Item C-4 was closed.

The Council provided individual comments in support of staff recommendations, including the hiring of a temporary maintenance worker for summer weekends to service trash and recycling bins in heavy foot traffic areas, retrofitting the Morro Rock restroom toilets with touchless auto-flushers, adding an ADA porta-potty in the Morro Rock parking lot for the summer, and use of Proposition 68 grant funds to replace the Coleman Beach restroom with in-lieu funds for the required match.

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

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/zqfhH7PYTMQ?t=15327>
None

E. ADJOURNMENT

The meeting adjourned at 9:53 p.m.

Recorded by:

Dana Swanson
City Clerk