



CITY OF MORRO BAY CITY COUNCIL AGENDA

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

Regular Meeting Tuesday, September 14, 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

- SLOCOG/Rideshare presentation regarding their 2021 Fall Campaign “Commute with Confidence”
- Lighthouse Century Cycling Event presented by Mary Ann Gustafson

PUBLIC COMMENT

Pursuant to Executive Order N-08-21, issued by Governor Newsom on June 11, 2021, 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-08-21, 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 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.*

B. PUBLIC HEARINGS

- B-1 CONDUCT A PUBLIC HEARING ON DISESTABLISHMENT OF THE PREVIOUS MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT FORMED IN 2009 PURSUANT TO THE PARKING AND BUSINESS IMPROVEMENT AREA LAW OF 1989; AND, INTRODUCE FOR FIRST READING BY TITLE ONLY WITH FURTHER READING WAIVED, ORDINANCE NO. 643, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA RESCINDING MORRO BAY MUNICIPAL CODE CHAPTER 3.60 AND DISESTABLISHING THE OLD MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT FORMED IN 2009; (CITY MANAGER)

RECOMMENDATION: Staff recommends the Council: 1) Hold a public hearing on disestablishment of the previous Morro Bay Tourism Improvement District (MBTBID) formed in 2009 pursuant to the Parking and Business Improvement Area Law of 1989 ('89 Law); and 2) Introduce for First Reading by Title Only with Further Reading Waived, Ordinance No. 643, An Ordinance of the City Council of the City of Morro Bay, California Rescinding Morro Bay Municipal Code Chapter 3.60 and Disestablishing the Old Morro Bay Tourism Business Improvement District formed in 2009.

C. BUSINESS ITEMS

- C-1 DISCUSSION AND DIRECTION REGARDING 2022 SPECIAL ELECTION TO FILL A VACANT CITY COUNCIL SEAT AND APPOINTMENT TO TEMPORARILY FILL THE COUNCIL VACANCY UNTIL THE RESULTS OF THE 2022 SPECIAL ELECTION ARE CERTIFIED; (CITY MANAGER/CITY CLERK/HUMAN RESOURCES MANAGER)

RECOMMENDATION: Staff recommends the Council: 1) Discuss and direct staff to return with the necessary resolutions to call a Special Election on June 7, 2022, to fill a vacant City Council seat for the remainder of a term ending December 2024; and 2) Conduct interviews of applicant(s) to fill the existing vacant City Council seat until the results of the 2022 Special Election are certified by the San Luis Obispo County Clerk-Recorder's Office.

- C-2 LOCAL FIREARM SAFETY AND REGULATION: COMMUNITY EDUCATION ON FIREARM SAFETY AND GUN VIOLENCE RESTRAINING ORDERS; INTRODUCE FOR FIRST READING BY TITLE ONLY WITH FURTHER READING WAIVED, ORDINANCE NO. 644, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 9.36 (SAFE STORAGE OF FIREARMS) TO TITLE 9 (HEALTH AND SAFETY) OF THE MORRO BAY MUNICIPAL CODE, TO REQUIRE SAFE STORAGE OF FIREARMS LOCATED IN A RESIDENCE; FIREARM "BUY-BACK" PROGRAM; SUPPLEMENTAL MBPD OFFICER MASS/ACTIVE SHOOTER TRAINING; AND, LEGISLATIVE ADVOCACY LETTER FROM COUNCIL; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider action and associated budget direction on below local firearm safety and regulation. These are items that Council requested at the April 13, 2021 regular meeting be developed further by staff, however there is not yet any budget allocations for these items.

1. **Community education on firearm safety and gun violence restraining orders ("red flag" laws)**
 - a. **Two annual in-person Morro Bay Police Department ("MBPD") firearm safety trainings at Community Center; and/or**
 - ***At Council direction, trainings could also (or instead) be held at Morro Bay High School for teachers and staff and potentially also students***
 - ***At Council direction, in-person training / educational meetings on "Active Shooter Response" (and other topics) could also be held by the MBPD***

- b. 74 minute “Firearms Educational Series” video produced by the MBPD covering firearm safety components, gun violence restraining orders (“red flag” laws), and active shooter response; or, 8 minute video on *only* gun violence restraining orders; or, some but not all of the components of proposed “Firearms Educational Series”
2. Firearm safe storage local law
 - a. Introduce for First Reading by Title Only with Further Reading Waived, Ordinance No. 644, An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 9.36 (Safe Storage of Firearms) to Tile 9 (Health and Safety) of the Morro Bay Municipal Code, To Require Safe Storage of Firearms Located in a Residence
3. Firearm “buy-back” program under direction of Morro Bay Police Department
 - If Council directs staff to proceed with a firearm buy-back program, should there be a geographical limitation on who firearms are bought-back from (e.g., City of Morro Bay, San Luis Obispo County)?
4. Supplemental MBPD Officer mass/active shooter training
 - a. POST Certified Mass/Active Shooter Response training (16 officers); and/or
 - b. 1 hour of overtime monthly for off duty firearms training (16 officers); and/or
 - c. Supplemental ammunition for MBPD mass/active shooter incident training
5. Legislative advocacy for firearm safety and regulation - authorize letter from Council to elected federal officials supporting some or all of following proposals from President Biden:
 - a. Close loopholes in the federal gun background check system; and/or
 - b. Ban assault weapons and high-capacity magazines; and/or
 - c. Repeal gun manufacturers’ immunity from civil liability; and/or
 - d. Invest in evidence-based community violence interventions; and/or
 - e. National gun violence restraining order legislation (“red flag” laws) and incentivize states to pass “red flag” laws of their own.
6. If Council directs staff to pursue one or more of the above measures, staff recommends that Council direct staff to return at Midyear with budget increases necessary to implement (eligible funding sources would include General Fund and Measure Q&E funds).

C-3 STATUS UPDATE ON CITY EFFORTS TO IMPROVE THE DEVELOPMENT REVIEW PROCESS; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends the Council receive the report for informational purposes only; no action is being requested.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, September 28, 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.

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – JUNE 22, 2021
TELECONFERENCE – 3:30 P.M.

AGENDA NO: A-1

MEETING DATE: September 14, 2021

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
 Dana Swanson City Clerk
 Chris Neumeyer City Attorney
 Anita Luck Special Counsel
 Katie Lichtig Interim Finance Director
 Greg Kwolek Public Works Director
 Rob Livick City Engineer
 Alex Handlers Bartle Wells Associates
 Kyle Rohrer WRF Program Manager, Carollo Eng.

ESTABLISH QUORUM AND CALL TO ORDER

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

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

<https://youtu.be/UZ8PaneYmMI?t=139>

Mayor Headding opened public comment.

Betty Winholtz, Morro Bay, raised questions several regarding Item II.

The public comment period was closed.

SPECIAL MEETING AGENDA ITEM:

- I. APPROVAL OF A THREE YEAR AGREEMENT WITH THE CHAMBER OF COMMERCE FOR THE CHAMBER TO PROVIDE ECONOMIC DEVELOPMENT SERVICES ON BEHALF OF THE CITY; (CITY MANAGER)

<https://youtu.be/UZ8PaneYmMI?t=397>

City Manager Collins and Morro Bay Chamber of Commerce President/CEO, Erica Crawford, provided the report and responded to Council inquiries. Mr. Collins noted a correction in Section 2 on Page 2 of the Agreement should read “ninety-thousand dollars.”

MOTION: Council Member Addis moved to approve the agreement with the Morro Bay Chamber of Commerce for the provision of economic development services with the

change to the written contract amount to read “ninety-thousand dollars” on page 2 of the agreement. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

- II. ADOPTION OF RESOLUTION NO. 39-21 APPROVING A GRANT AND CONSTRUCTION INSTALLMENT SALE AGREEMENT, AND AMENDMENTS TO THE PLANNING LOAN WITH THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD FROM THE STATE REVOLVING LOAN PROGRAM TO FINANCE A PORTION OF THE WATER RECLAMATION FACILITY PROJECT; (FINANCE DEPARTMENT /PUBLIC WORKS DEPARTMENT/SPECIAL COUNSEL/BARTEL WELL ASSOCIATES) <https://youtu.be/UZ8PaneYmMI?t=3564>

Interim Finance Director Lichtig presented the report and along with Special Council Luck, City Engineer Livick, and Independent Public Finance Advisor Handlers, responded to Council questions.

MOTION: Mayor Headding moved to adopt Resolution No. 39-21 approving proceedings to finance the construction of the WRF Project from the proceeds of a construction installment sale agreement and grant between the City of Morro Bay and the California State Water Resources Control Board; authorizing and/or ratifying various amendments to the City’s Planning Loan with the State Board and authorizing certain actions in connection therewith; and authorizing staff to pursue bridge financing for the project in order to meet cash flow requirements. Specifically, City Council approval of Resolution No. 39-21 authorizes the following items:

1. Approves the Grant and Construction Installment Sale Agreement between the City of Morro Bay and the California State Water Resources Control Board in the aggregate principal amount not to exceed \$85,000,000.
2. Approves the execution and delivery of related documents, certificates and items needed for the financing.
3. Authorizes and/or ratifies one or more amendments to the Planning Loan to adjust the payment start dates, reset the interest rate, and adjust amortization/payment periods consistent with the Construction Installment Sale Agreement. The principal amount is \$10,305,298.03.
4. Authorizes the City Manager and other authorized officers to make amendments or changes to the Construction Installment Sale Agreement and amend the Planning Loan as necessary to accomplish the purposes of the Resolution and the financing.
5. Authorizes staff to work with Bartle Wells Associates, Independent Public Finance Advisors, to explore a cost-effective means of managing cashflow for the remainder of this project’s construction.

The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

ADJOURNMENT

The meeting adjourned at 5:15 p.m.

Recorded by:

Dana Swanson
City Clerk

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
	Greg Kwolek	Public Works Director
	Scot Graham	Community Development Director
	Steve Knuckles	Fire Chief
	Jody Cox	Police Chief
	Eric Endersby	Harbor Director
	Kyle Rohrer	WRF Program Manager (Carollo Engineering)

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 5:33 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

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

PRESENTATIONS

- o Proclamation presented to Fire Chief Steven C. Knuckles on his retirement.
<https://youtu.be/Z07iO0Hf8LQ?t=1142>

PUBLIC COMMENT

<https://youtu.be/Z07iO0Hf8LQ?t=2768>

Betty Winholtz, Morro Bay, congratulated Chief Knuckles on his retirement and requested the City join others in opposing SB-9, a bill making its way through the legislature that would affect planning and zoning.

Mayor Heading closed public comment.

The Mayor responded to issues raised during public comment.

- A. CONSENT AGENDA
<https://youtu.be/Z07iO0Hf8LQ?t=2931>

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 JUNE 16, 2021 CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF SB1 FUNDING PROJECT LIST FOR PAVEMENT MANAGEMENT PLAN PROJECT; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Adopt Resolution No. 30-21 approving the Fiscal Year 2021/22 project list for Senate Bill 1 (Road Repair and Accountability Act of 2017) Road Maintenance and Rehabilitation Account (RMRA) funding.

- A-3 ADOPTION OF RESOLUTIONS APPROVING MEMORANDA OF UNDERSTANDING BETWEEN THE CITY OF MORRO BAY AND EACH OF THE CITY'S BARGAINING GROUPS, AND ESTABLISHING COMPENSATION AND BENEFITS FOR UNREPRESENTED MANAGEMENT AND CONFIDENTIAL, AND DEPARTMENT HEAD EMPLOYEES OF THE CITY OF MORRO BAY ; (CITY MANAGER/ADMINISTRATION)

RECOMMENDATION: Staff recommends the City Council:

1) Adopt Resolution No. 31-21 implementing the Tentative Agreement and approving the 2021-2022 Memorandum of Understanding Between the City of Morro Bay ("City") and the Morro Bay Peace Officers Association ("MBPOA"); and 2) Adopt Resolution No. 32-21 implementing the Tentative Agreement and approving the 2021-2022 Memorandum of Understanding Between the City of Morro Bay ("City") and the Service Employees International Union Local 620 ("SEIU"); and 3) Adopt Resolution No. 33-21 implementing the Tentative Agreement and approving the 2021-2022 Memorandum of Understanding Between the City of Morro Bay ("City") and the Morro Bay Firefighters Association, IAFF Local 3725 ("MBFFA"); and 4) Adopt Resolution No. 34-21 amending and restating compensation and benefits for unrepresented Confidential Employees of the City of Morro Bay; and 5) Adopt Resolution No. 35-21 amending and restating compensation and benefits for unrepresented Management Employees of the City of Morro Bay; and 6) Adopt Resolution No. 36-21 amending and restating maximum compensation and benefits for Department Head Positions.

- A-4 COVID-RELATED DEFERRED MASTER LEASE RENT PAYBACK PROGRAM; (HARBOR DEPARTMENT)

RECOMMENDATION: Staff recommend Council adopt Resolution No. 37-21, setting forth a repayment program for any remaining deferred Tidelands Trust Master Tenant waterfront lease site rents, and authorizing, in arrears, the deferment of Tidelands Trust Master Tenant rents from July, 2020 through July, 2021, inclusive, without penalty or interest.

- A-5 ADOPTION OF RESOLUTION NO. 38-21 AUTHORIZING ACCEPTANCE OF A LOCAL ROAD SAFETY PLAN (LRSP) GRANT THROUGH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS), DISTRICT 5 AND EXECUTION OF THE MASTER AND SUPPLEMENTAL AGREEMENTS; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 38-21 authorizing staff accept a \$40,000 Local Road Safety Plan (LRSP) Grant provided by the California Department of Transportation (CalTrans), District 5 and authorize the City Manager or designee to execute the Master and Supplemental Agreements, and expend \$5,000 in City matching funds.

- A-6 AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH BROWN ARMSTRONG ACCOUNTANCY CORPORATION TO PERFORM ANNUAL FINANCIAL AUDITS OF THE CITY OF MORRO BAY FOR FISCAL YEARS ENDING JUNE 30, 2021 THROUGH 2025 AND TWO POSSIBLE ONE-YEAR EXTENSIONS FOR FISCAL YEARS ENDING JUNE 30, 2026 AND 2027, WITH COST OF \$45,740 PER YEAR. AGREEMENT INCLUDES A SINGLE AUDIT OF THE CONSTRUCTION OF NEW WATER RECLAMATION FACILITY; (FINANCE DEPARTMENT)

RECOMMENDATION: Authorize the City Manager to Execute an Agreement with Brown Armstrong Accountancy Corporation (BAAC) to perform annual comprehensive financial audits of the City of Morro Bay for fiscal years ending June 30, 2021 through 2025 and two possible one-year extensions for fiscal years ending June 30, 2026 and 2027, and a single financial audit of the construction of the new Water Reclamation Facility.

- A-7 ~~*THIS ITEM HAS BEEN WITHDRAWN AT THE REQUEST OF STAFF*
PUBLIC HEARING, AND ADOPTION OF RESOLUTION NO. 39-21, FOR MINOR REVISIONS TO THE ADOPTED FISCAL YEAR 2021/22 (FY 2021/22) REVISED MASTER FEE SCHEDULE; (FINANCE DEPARTMENT)~~

~~**RECOMMENDATION:** Staff recommends that the City Council hold the public hearing, consider the proposed amendments to the Master Fee Schedule for FY 2021/22, and then adopt Resolution No. 39-21 (Attachment 1), which updates the City's Master Fee Schedule for FY 2021/22 to correct two fees that need to be consistent with State law and one revision of the explanation of the fee's applicability.~~

- A-8 DESIGNATION OF REPRESENTATIVE(S) TO THE CALIFORNIA JOINT POWERS INSURANCE AUTHORITY; (ADMINISTRATION)

RECOMMENDATION: Staff recommends the City Council designate the Mayor as the official representative of the City of Morro Bay on the California Joint Powers Insurance Authority (CJPIA) Board of Directors, designate the City Clerk/Human Resources Manager as first alternate, and designate the City Manager as second alternate.

- A-9 PROCLAMATION COMMENDING AND HONORING FIRE CHIEF STEVEN C. KNUCKLES ON HIS RETIREMENT; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

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

Mayor Headding pulled Items A-3 & A-4.

MOTION: Council Member Davis moved approval of all items on Consent except Items A-3 A-4 and A-7 (this item was withdrawn at the request of staff). The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

A-3 ADOPTION OF RESOLUTIONS APPROVING MEMORANDA OF UNDERSTANDING BETWEEN THE CITY OF MORRO BAY AND EACH OF THE CITY'S BARGAINING GROUPS, AND ESTABLISHING COMPENSATION AND BENEFITS FOR UNREPRESENTED MANAGEMENT AND CONFIDENTIAL, AND DEPARTMENT HEAD EMPLOYEES OF THE CITY OF MORRO BAY ; (CITY MANAGER/ADMINISTRATION)
<https://youtu.be/Z07iO0Hf8LQ?t=3057>

Mayor Headding expressed his gratitude for community support of Measure E, which allowed the City to maintain public safety and maintenance by providing salary and wage increases that are more competitive with other cities.

MOTION: Mayor Headding moved approval of Item A-3. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

A-4 COVID-RELATED DEFERRED MASTER LEASE RENT PAYBACK PROGRAM; (HARBOR DEPARTMENT)
<https://youtu.be/Z07iO0Hf8LQ?t=3154>

MOTION: Mayor Headding moved approval of Item A-4 and requested if balances remain outstanding as of October 31, 2021, that staff would bring back a report on those items. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS

B-1 APPEAL OF PLANNING COMMISSION APPROVAL ON MAY 18, 2021 OF THE CONDITIONAL USE PERMIT (CUP21-03) FOR A PROPOSED 560 SQUARE FOOT (SF) ADDITION TO AN EXISTING NONCONFORMING 1,683 SF SINGLE-FAMILY RESIDENCE. THE EXISTING RESIDENCE IS NONCONFORMING IN REGARD TO THE FRONT AND SOUTH SIDE SETBACKS. THE PROJECT IS ZONED R-1 AND IS NOT WITHIN THE COASTAL COMMISSION APPEALS JURISDICTION; (COMMUNITY DEVELOPMENT)
<https://youtu.be/Z07iO0Hf8LQ?t=3293>

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

Mayor Headding opened the Public Hearing.

Wayne Johnson, Appellant, stated his concerns regarding the roof lines and stated the design was not appropriate for the neighborhood.

Brian Ridley, the Project Architect, spoke on behalf of the Applicant and responded to concerns noting the upper story is smaller than all but one of the seven nearby 2-story properties. He clarified the roofline is designed to be lowest on the street side, which may not be clear in the design drawings.

Mr. Johnson and Mr. Ridley responded to Council inquiries.

Mayor Heading opened Public Comment; seeing none, public comment and the public hearing were closed.

MOTION: Council Member Heller moved to adopt Resolution No. 40-21, making the necessary findings to deny the appeal and uphold the Planning Commission approval of Conditional Use Permit (CUP20-03) for the site at 429 Tulare to allow an addition to a single-family residence. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

- B-2 ADOPTION OF RESOLUTION NO. 41-21 DIRECTING THE LEVY OF THE ANNUAL ASSESSMENT FOR THE CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS DEPARTMENT)
<https://youtu.be/Z07iO0Hf8LQ?t=4984>

City Engineer Livick provided the report and responded to Council inquires.

Mayor Heading opened the Public Hearing.

Mayor Heading opened Public Comment; seeing none, public comment and the public hearing were closed.

MOTION: Council Member Addis moved to adopt Resolution No. 41-21, approving the levy of the annual assessment for the Cloisters Landscaping and Lighting Maintenance Assessment District for Fiscal Year 2021/22. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

- B-3 ADOPTION OF RESOLUTION NO. 42-21 DIRECTING THE LEVY OF THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS DEPARTMENT)
<https://youtu.be/Z07iO0Hf8LQ?t=5265>

City Engineer Livick provided the report and responded to Council inquires.

Mayor Heading opened the Public Hearing.

Mayor Heading opened Public Comment; seeing none, public comment and the public hearing were closed.

MOTION: Council Member Addis moved to approve the levy of the annual assessment for the North Point Natural Area Landscaping and Lighting Maintenance District by adopting Resolution No. 42-21. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

C. BUSINESS ITEMS

- C-1 ADOPT RESOLUTION NO. 43-21 ADOPTING THE FISCAL YEAR 2021/22 OPERATING AND CAPITAL BUDGETS; RESOLUTION NO. 44-21 ADOPTING THE CITY'S MASTER COMBINED SALARY SCHEDULE; APPROVE JOB CLASSIFICATIONS FOR THE FIRE MARSHAL/DIVISION CHIEF, SENIOR ADMINISTRATIVE SERVICES ANALYST AND FINANCE MANAGER; ADOPTING A SERIES OF RESOLUTIONS AMENDING AND/OR READOPTING THE CITY'S FINANCIAL POLICIES; AND ADOPT RESOLUTION NO. 54-

21 EXTENDING THE EXPANDED AND INCREASED COVID-19 UTILITY DISCOUNT AND SUBSIDY PROGRAM; (FINANCE DEPARTMENT)

<https://youtu.be/Z07iO0Hf8LQ?t=5495>

City Manager Collins and Interim Finance Director Lichtig provided the report and responded to Council inquires.

The public comment period for Item C-1 was opened; seeing none, the public comment period was closed.

MOTION: Mayor Headding moved to adopt Resolution No. 43-21 authorizing the Fiscal Year 2021/22 Operating and Capital Budgets, including amendments approved by the City Council, prior to the adoption of that Resolution; and adopt Resolution No. 44-21 approving the FY 2021/22 Master Combined Salary Schedule; and approve new or revised job descriptions for Fire Marshal/Division Chief, Senior Administrative Services Analyst and Finance Manager; and adopt Resolution No. 45-21 approving the revised General Fund Emergency Reserve Policy; and adopt Resolution No. 46-21 approving the revised Internal Services Fund Reserve Policy; and adopt Resolution No. 47-21 rescinding the Tourism Accumulation Fund Policy; and adopt Resolution No. 48-21 approving the revised Risk Management Reserve Policy; and adopt Resolution No. 49-21 approving the revised Local Agency Investment Fund Transaction Officers; and adopt Resolution No. 50-21 approving the revised Investment Policy; and adopt Resolution No. 51-21 readopting the Harbor Reserve Policy; and adopt Resolution No. 52-21 readopting the Revenue Policy; and adopt Resolution No. 53-21 readopting the Expenditure Policy; and adopt Resolution No. 54-21 extending the Utility Discount Program through December 31, 2021 and asking staff to bring back an evaluation of future viability of the fund over the long-term. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

C-2 APPROVAL OF AMENDMENT NO. 4 TO THE WATER RECLAMATION FACILITY PROGRAM MANAGEMENT CONTRACT AND AUTHORIZATION FOR THE PUBLIC WORKS DIRECTOR TO SIGN THE AGREEMENT TO COVER PLANNED PROGRAM MANAGEMENT COSTS FOR FISCAL YEAR 2021/2022; (PUBLIC WORKS DEPARTMENT)

<https://youtu.be/Z07iO0Hf8LQ?t=8316>

City Engineer Livick provided the report and, along with WRF Program Manager Rohrer, responded to Council inquires.

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

MOTION: Mayor Headding moved to approve, and authorize the City Manager to sign, Amendment No. 4 to the existing agreement with Carollo Engineers, Inc., (Carollo), dated April 11, 2018, for continued program management of the Water Reclamation Facility Project in an increased amount of \$5,454,352 to cover estimated program management scope of work and costs for Fiscal Year 2021/22. The motion was seconded by Council Member Addis for discussion.

Following individual comments, the motion carried 4-1 by roll call vote with Council Member Heller opposed.

- C-3 APPROVAL OF AMENDMENT NO. 5 TO CONTRACT SERVICES AGREEMENT WITH ALESHIRE & WYNDER, LLP FOR CITY ATTORNEY SERVICES; (CITY MANAGER)
<https://youtu.be/Z07iO0Hf8LQ?t=10081>

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: Council Member Heller moved to approve Amendment No. 5 to the contract services agreement with Aleshire & Wynder, LLP for City Attorney Services, as presented. The motion was seconded by Mayor Heading and carried 5-0 by roll call vote.

- D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/Z07iO0Hf8LQ?t=10659>

Council Member Addis requested and received full support for a discussion of the City's policy related to water turn-offs and alternatives for those who don't pay their utility bills.

Council Member Addis requested and received full support for bringing forward a resolution to state explicitly the City supports free, fair, and enfranchised elections, with maximum access to voting.

Council Member Davis requested and received full support for consideration of City sponsorship of live music events in Cloister's Park.

Council Member Heller requested discussion of pending legislation around zoning and housing. Mayor Heading suggested if items lingered after the July break, the City could invite Dave Mullinax to provide an update. There was full support for that approach.

- E. ADJOURNMENT

The meeting adjourned at 8:35 p.m.

Recorded by:

Dana Swanson
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
AUGUST 25, 2021 – 3:30 P.M.
TELECONFERENCE

AGENDA NO: A-3
MEETING DATE: September 14, 2021

City Council conducted this meeting in accordance with California Governor Newsom's Executive Order N-08-21 issued on June 11, 2021 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
	Jeff Heller	Council Member
	Vacant	Council Member
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Scot Graham	Community Development Director
	Dana Swanson	City Clerk/Human Resources Manager
	Sarah Johnson-Rios	Assistant City Manager/Admin Services Director
	Colin Tanner	Special Counsel

ESTABLISH QUORUM AND CALL TO ORDER

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

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

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

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

CS-1 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) or (d)(3) & (e)(1): One Matter

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

Property: 781 Market Avenue, Space B (APN 066-321-027)

Property Negotiators: Travis Ford, Rock Harbor Marketing

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

Under Negotiation: Price and Terms of Payment

CS-3 CONFERENCE WITH LABOR NEGOTIATORS

A closed session will be held, pursuant to Government Code § 54957.6, with City negotiator and designated labor representative Colin Tanner, special labor counsel, regarding labor negotiations with employee organizations: 1) Morro Bay Firefighters' Association, 2) Service Employee's International Union - SEIU Local 620, and 3) Morro Bay Peace Officers' Association.

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

ADJOURNMENT - The meeting adjourned at 4:23 p.m.

Recorded by:

Dana Swanson
City Clerk

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AGENDA NO: A-4

MEETING DATE: September 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: September 8, 2021

FROM: Scott Collins – City Manager

SUBJECT: Update on City Partnership Agreements

RECOMMENDATION

City Council receive update on existing City partnership agreements.

ALTERNATIVES

None.

FISCAL IMPACT

The partnership agreements typically result in fee waivers or reductions, which results in reduced amount of fees that the City would otherwise collect for the specific activities outlined in the respective agreements. However, in return for fee reductions or waivers, the partners provide a service to the community the City would otherwise generally be unable to provide. The revenue that the City will forego by continuing the three partnership agreements outlined below totals approximately \$16,500 annually. In addition to the three outlined below, the City has entered into a new agreement that will likely result in the City not collecting \$5,000 to \$10,000 annually in fees. However, if the City were to try to provide similar services in-house rather than through partner organizations, the cost most likely would be considerably higher.

BACKGROUND

City Council approved the revised Partnership Policy in December 2019, via Resolution No. 106-19 (attachment). The partnership policy was developed to help facilitate formal agreements between the City and community organizations that serve a City purpose, while also benefitting the partnering organization. Benefits to the participating organization have primarily taken the form of reduced or waived City facility use and program fees. Prior to the original policy adoption, several organizations had informal arrangements in place with the City that provided mutual benefit. The policy was adopted to formalize those existing arrangements and create a fair, consistent, and documented process to develop future partnerships that could help enhance the quality of life in Morro Bay.

The policy was revised in 2019 to expand partnerships beyond recreational services and to streamline the overly burdensome application process. In addition, City Council authorized the City Manager to enter the City into new agreements with partnering organizations, and extend existing agreements given that most had small fiscal impacts to the City. Council directed staff to bring back updates on new partnerships to the Council.

Prepared By: SC

City Manager Review: SC

City Attorney Review: CFN

The City has extended four partnerships since the policy was adopted. Three of the participating organizations and the nature of the partnership agreements are outlined below:

- 1) Project Surf Camp (PSC) – The organization provides an affordable one of a kind surf and stand up paddle program to children with special needs at the public Coleman Park and Morro Rock beaches. This is a service the City does not provide. PSC provides this service, and in exchange, the City waives their facility fees and storage fees. That value is approximately \$11,000 annually to the organization. The agreement has been extended through 2024.
- 2) Estero Bay Community Foundation – The organization fundraises in the community and donates those funds (upwards of \$50,000 per year or more) to children in the form of sponsorships to participate in City of Morro Bay Recreation programs, such as soccer, basketball, and swimming. In exchange for providing this funding to Recreation program users, the City waives facility fees for the Foundation for their meetings and fundraising events held on City property (approximate annual value of \$3,000 annually). City staff are currently in the process of updating this agreement.
- 3) Estero Bay Radio (97.3 Radio Station) – This is a non-profit, listener supported community radio station located in Morro Bay. They provide the City with airwaves to share important information and engage with the community. In exchange for this free service to the City, the City offers the radio station a reduced rent at the Visitor Center building, and reduced fees for fundraising events that are held on City property (approximate annual value of \$2,500 annually). City staff are currently in the process of updating this agreement.

DISCUSSION

The City recently entered into a new partnership agreement, with the Lions Club of Morro Bay. The Lions Club, along with several other community organizations and volunteers, have been hosting the “Monday Night Meals” program for many years at the Veterans Hall. Together, the group has helped provide thousands of meals to the less fortunate in our community. In addition to serving as the main host of this program, the Lions Club also helps organize the Thanksgiving Dinner, providing a free meal for all in the Morro Bay community. These and other activities of the Lions Club benefit the general community of Morro Bay and are programs the City otherwise could not reasonably provide without significant expense. This agreement formalizes the Monday Night Meals program and other activities of the Lions Club that benefit the community, and the agreement also seeks to honor the great service the group has provided to the City and community.

In return for these public services, the City has agreed to partner with the Lions Club by providing use of certain City facilities at a reduced or no cost (Veterans Hall and Community Center). They intend to use these City facilities for the following purposes:

- Monday Night Meals - providing meals and general provisions to the community
- Thanksgiving dinner - annual event welcoming all members of the community to share a Thanksgiving meal with friends, family and neighbors
- Preparation of Christmas dinners - assisting with preparation of Christmas dinners for seniors to be distributed throughout the county including Morro Bay
- Lions Club monthly meetings and other club activities

The total value of the meals program is significant, certainly in the tens of thousands of dollars range annually, given the food that is obtained and the volunteer labor involved. In return, the City is reducing and waiving fees for the Lions Club activities, that likely total less than \$10,000 per year.

The City will continue to seek other partnership opportunities that create mutual benefit for the City and community organization(s). City staff will keep Council updated on any future agreements.

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ATTACHMENTS

1. Resolution No. 106-19 with Exhibit A “Partnership Policy Guidelines Document”

RESOLUTION NO. 106-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
RESCINDING RESOLUTION NO. 36-16 AND
ADOPTING A NEW PARTNERSHIP POLICY**

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

WHEREAS, the City Council supports robust partnerships with outside entities in order to enhance the quality of life of both residents and visitors; and

WHEREAS, it is appropriate to adopt a policy that provides clear guidance and standards for partnerships; and

WHEREAS, the City Council not only supports partnerships, it especially supports those that enhance the quality of life for seniors, low-income residents, children, and persons with disabilities; and

WHEREAS, in 2014 the City Council adopted an initial version of the Partnership Policy; and

WHEREAS, in 2016 the City Council adopted a revised version of the Partnership Policy; and

WHEREAS, from time to time it is appropriate to review existing policies and procedures and update them as necessary to reflect current trends and practices; and

WHEREAS, it is appropriate to adopt a new Partnership Policy that better reflects the goal of partnerships and seeks to enhance the quality of life for the community;

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

Section 1. Resolution No. 36-16 is hereby rescinded.

Section 2. The Partnership Policy, attached hereto as Exhibit A and incorporated herein by this reference is hereby adopted.

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

AYES: Headding, Addis, Davis, Heller, McPherson
NOES: None
ABSENT: None



John Headding, Mayor

ATTEST:


Dana Swanson, City Clerk

**City of Morro Bay
Partnership Policy
And
Partnership Proposal Guidelines**

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I. Morro Bay Partnership Policy

A. Purpose

This policy shall be referred to the Partnership Policy and is designed to guide the process for the City of Morro Bay (City) to carry out the City's desire to partner with private, non-profit, or other governmental entities for the development, design, construction and operation of partnered facilities or programs that may occur on City property, as well as with organizations that may provide service on the City's behalf. In particular, programs that can provide additional support for local seniors, youth, low-income residents, and persons with disabilities are highly desired. The City also welcomes partnerships that provide for the improvement or beautification of public spaces.

The Partnership Policy provides guidelines for the City to create partnerships of interest to the City and framework for how partnership agreements are to be proposed and created.

B. Partnership Definition

For purposes of the Partnership Policy, a Proposed Partnership is defined as:

"An identified idea or concept involving the City of Morro Bay, and one or more for-profit, non-profit or governmental entities, which outlines a method to combine resources for developing facilities, programs or amenities for the City and its residents, businesses and visitors or to provide services the City otherwise might provide on its own, but is not or cannot, presently."

The City will especially welcome potential partnerships that improve existing community facilities or provide services/programming for seniors, low-income individuals, local youth, or persons with disabilities.

Partnerships can take the form of (1) cash gifts and donor programs, (2) improved access to alternative funding, (3) property investments, (4) charitable trust funds, (5) labor, (6) materials, (7) equipment, (8) sponsorships, (9) technical/management skills and other valuable abilities and (10) programs or services provided on the City's behalf. The effective use of volunteers also can figure significantly in developing partnerships. Some partnerships involve active decision making, while in others, partners may take a more passive role.

C. Possible Types of Active Partnerships

The City of Morro Bay is interested in promoting collaborative partnerships with multiple community organizations. Types of agreements for Proposed "Active" Partnerships may include leases, contracts, sponsorship agreements, marketing agreements, management agreements, joint-use agreements, inter-governmental agreements, or a combination of those.

Proposed partnerships will be considered for facility, service, operations, and program development, including associated needs, such as, but not limited to, parking, paving, fencing, drainage systems, signage, outdoor restrooms, lighting and utility infrastructure. An innovative and mutually beneficial partnership that does not fit into any of these categories may also be considered.

D. Sponsorships

The City of Morro Bay is interested in actively procuring sponsorships for facilities and programs as one type of beneficial partnership.

E. Limited-Decision Making Partnerships: Donor, Volunteer, and Granting Programs

While the Partnership Policy focuses on the parameters for more active types of partnerships, the City is interested in, and willing to discuss, a proposal for Limited-Decision Making Partnerships, and may create specific plans for such in the future.

F. Benefits of Partnerships with the City of Morro Bay

The City expects any Proposed Partnership will have benefits for all involved parties. Some general expected benefits are:

Benefits for the City and the Community:

- Merging of resources to create a higher level of service and facility availability for community members.
- Making alternative funding sources available for public community amenities.
- Tapping into the dynamic and entrepreneurial traits of private industry.
- Delivering services and facilities more efficiently by allowing for collaborative business solutions to public organizational challenges.
- Meeting the needs of specific groups of users through the availability of land for development and community use.

Benefits for the Partners:

- Land or facility availability at a subsidized level for specific facility or program needs.
- Sharing of the risk with an established stable governmental entity.
- Becoming part of a larger network of support for management and promotion of facilities and programs.
- Availability of professional City staff to maximize the facilities and programs that may result.
- Availability of City staff facilitation to help streamline the planning and operational efforts.

II. The Partnering Process (Checklist)

The steps for the creation of a partnership with the City of Morro Bay are as follows:

- A. When applicable, the City of Morro Bay will create a public notification process that will help inform any and all interested partners of the availability of certain partnerships with the City.
- B. The proposing partner takes the first step to propose partnering with the City. To help in reviewing both the partnership proposed, and the project to be developed in partnership, the City asks for a Preliminary Proposal according to a specific format as outlined in Part Two - Proposed Partnership Outline Format.
- C. If initial review of a Preliminary Proposal yields interest and appears to be mutually beneficial based on the City Mission and Goals, and the Selection Criteria, then a City staff or appointed representative will be assigned to work with potential partners.
- D. The City representative is available to answer questions related to the creation of an initial proposal, and after initial interest has been indicated, will work with the proposing partner to create a checklist of what actions need to take place next. Each project will have distinct planning, design, review and support issues. The City representative will facilitate the process of determining how the partnership will address these issues. That representative can also facilitate approvals and input from any involved City departments, providing guidance for the partners as to necessary steps.
- E. An additional focus will be to determine whether the proposed project is appropriate for additional collaborative partnering, and whether the City should advertise a **Request for Proposal (RFP)** from competing/collaborating organizations, based on the following criteria.

Request for Proposal (RFP) Trigger: In order to reduce concerns of unfair private competition, if a proposed project involves partnering with a private “for-profit” entity and anticipated contribution from the City is greater than \$15,000, and the City has not already undergone a public process for solicitation of that particular type of partnership, then the City will request Partnership Proposals from other interested private entities for identical or complementary facilities, programs or services. A selection of appropriate partners will be part of the process.

- F. For some projects, a Formal Proposal from the partners for their desired development project will need to be presented for the City’s official development review processes and approvals. The project may require review and approval by City Staff, City Advisory Boards, the City Council, or the City Manager’s Office, depending on project complexity and applicable City Code provisions, ordinances, resolutions, or other regulations. If those reviews are necessary, then provision to reimburse the City for its costs incurred in having a representative facilitate the partnered project’s passage through Development Review should be included in the partnership proposal.

- G. Depending on project complexity and anticipated benefits, responsibilities for all action points are negotiable, within the framework established by law, to assure the most efficient and mutually beneficial outcome. Some projects may require all technical and professional expertise and staff resources come from outside the City's staff, while some projects may proceed most efficiently if the City contributes staff resources to the partnership.
- H. The partnership must cover the costs the partnership incurs, regardless of how the partnered project is staffed; and the project proposal and budget must reflect those costs. The proposal for the partnered project should also discuss how staffing and expertise will be provided, and what documents/products will be produced, if any. If City staff resources are to be used by the partnership, then those costs should be allocated to the partnered project and charged to it.
- I. Specific **Partnership Agreements** appropriate to the project will be drafted jointly. There is no specifically prescribed format for **Partnership Agreements**, which may take any of several forms depending on what will accomplish the desired relationships among partners. The agreements may be in the form of:
 - Lease Agreements
 - Management and/or Operating Agreements
 - Intergovernmental Agreements (IGAs)
 - Or a combination of those and other appropriate agreements

Proposed partnership agreements might include, but not be limited to, such things as oversight of the development of the partnership, concept plans and project master plans, environmental assessments, architectural designs, development and design review, project management, and construction documents, inspections contracting and monitoring. Provision to fund the costs and for reimbursing the City for its costs incurred in creating the partnership, facilitating the project's passage through the Development Review Process, and completing the required documents should be considered.

- J. If the proposal and all required documentation are approved, then the Partnership begins. The City is committed to upholding its responsibilities to Partners from the initiation through the satisfactory continuation and completion of a partnership. Ongoing evaluation will be an integral component of all Partnerships. The agreements should outline who is responsible for evaluation, the types of measures used, and detail what will occur should the evaluations reveal Partners are not meeting their Partnership obligations.

III. The Partnership Evaluation Process

A. Mission Statements and Goals

All partnerships with the City of Morro Bay should be in accord with the City's Mission and Goals to indicate how a proposed partnership with the City would be preliminarily evaluated.

B. Other Considerations

1. Costs for the Proposal Approval Process

For most proposed partnerships, there will be considerable staff time spent on the review and approval process once a project passes the initial review stage. That time includes, but is not limited to discussions with Proposing Partners, exploration of synergistic partnering opportunities, possible RFP processes, facilitation of the approval process, and assistance in writing and negotiating agreements and contracting. There may also be costs for construction and planning documents, design work, and related needs and development review processes mandated by City ordinances.

Successful partnerships will take those costs into account and may plan for City recovery of some or all of those costs within the proposal framework. Some of those costs could be considered construction expenses, reimbursed through a negotiated agreement, once operations begin, or covered through some other creative means.

2. Land Use and/or Site Improvements

Some proposed partnerships may include facility or land use. Necessary site improvements cannot be automatically assumed. Costs and responsibility for those improvements should be considered in any Proposal. Some of the general and usual needs for public facilities that may not be included as City contributions and may need to be negotiated for a project include:

- Any facilities or non-existent infrastructure construction
- Roads or street improvements
- Maintenance to specified standards
- Staffing
- Parking
- Lighting
- Outdoor restrooms
- Water fountains
- Complementary uses of the site
- Utility improvements
- Custodial
- Trash removal

3. Need

The nature of provision of public services determines certain activities will have a higher need than others. Some activities serve a relatively small number of users and have a high facility cost. Others serve a large number of users and are widely available from the private sector

because they are profitable. The determination of need for facilities and programs is an ongoing discussion in public provision of programs and amenities. The project will be evaluated based on how the project fulfills a public need.

4. Funding

Only when a Partnership Proposal demonstrates high unmet needs and high benefits for City citizens will the City consider contributing resources to a project or program. The City recommends Proposing Partners consider sources of potential funding. The more successful partnerships will have funding secured in advance. In most cases, Proposing Partners should consider funding and cash flow for initial capital development, staffing, and ongoing operation and maintenance.

The details of approved and pending funding sources should be clearly identified in a proposal.

For many partners, especially small private user groups, non-profit groups, and governmental agencies, cash resources may be a limiting factor in the proposal. It may be necessary for partners to utilize alternative funding sources for resources to complete a proposed project. Obtaining alternative funding often demands creativity, ingenuity, and persistence, but many forms of funding are available.

Alternative funding can come from many sources, e.g. sponsorships, grants, donor programs, and Internet searches can help with foundation and grant resources. Developing a solid leadership team for a partnering organization will help find funding sources. In-kind contributions can, in some cases, add additional funding.

All plans for using alternative funding should be clearly identified. The City's Co-sponsorship Policy and partnered projects will be expected to adhere to this Policy. That adherence includes the necessity of having an Approved Sponsorship Plan in place prior to procurement of sponsorships for a Partnered Project.

C. Selection Criteria

In assessing a partnership opportunity to provide facilities and services, the City will consider (as appropriate) the following criteria. The Partnership Proposal Guidelines in Part Two provide a structure to use in creating a proposal. City staff and representatives will make an evaluation by attempting to answer each of the following Guiding Questions:

- How does the project align with the City and the affected Department/Division's Mission Statement and Goals?
- How does the proposed facility fit into the current City and the affected Department/Division's Master Plan?
- How does the facility/program meet the needs of City residents?
- How will the project generate more revenue and/or less cost per participant than the City can provide with its own staff or facilities?
- What alternatives currently exist, or have been considered, to serve the users identified in this project?
- How much of the existing need is now being met within the City borders and within nearby

cities?

- What is the number and demographic profile of participants who will be served?
- How can the Proposing Partner assure the City of long-term stability of the proposed partnership, both for operations and for maintenance standards?
- How will the partnered project meet Americans with Disabilities Act (ADA) and Equal Employment Opportunity Commission (EEOC) requirements?
- How will the organization offer programs at reasonable and competitive costs for participants?
- What are the overall benefits for both the City and the Proposing Partner?

Part Two
City of Morro Bay
Partnership Proposal Guidelines

Please provide as much information as possible in the following outline form.

I. Description of Proposing Organization:

- Name of Organization
- Years in Existence
- Contact Name, Mailing Address, Physical Address, Phone, Email
- Purpose of Organization
- Services Provided
- Member/User/Customer Profiles
- Accomplishments
- Legal Status

II. Decision-making Authority

Who is authorized to negotiate on behalf of the organization? Who or what group (i.e. Council/Commission/Board) is the final decision maker and can authorize the funding commitment? What is the time frame for decision making?

Summary of Proposal (100 words or less)

What is being proposed in terms of capital development and program needs?

III. Benefits to the Partnering Organization

Why is the organization interested in partnering with the City of Morro Bay? Please list and discuss the benefits (monetary and non-monetary) to the proposing organization.

IV. Benefits to the City of Morro Bay

Please list and discuss the benefits (monetary and non-monetary) to the City of Morro Bay and residents of the City.

V. Details (as currently known)

The following page lists a series of *Guiding Questions* to help address details and outline the benefits of a possible partnership. Please try to answer relevant questions to your organization and proposed partnership with the City. with currently known information. Include what the organization proposes to provide and what is being requested from the City of Morro Bay. Please include (as known) initial plans for the concept, operations, projected costs and revenues, staffing, and/or any scheduling or maintenance needs.

Guiding Questions

Meeting the Needs of our Community:

- How does the proposed project align with City of Morro Bay goals?
- How does the proposed program or facility use meet a need for City residents?
- Who will be the users? What is the projected number and profile of participants who will be served?
- How does the proposed project incorporate environmentally sustainable practices?

The Financial Aspect:

- Can the project generate more revenue or less cost per participant than the City can provide with its own staff or facilities? If not, then why should the City partner on the project?
- Will the proposing organization offer programs at reasonable and competitive costs for all participants? What are the anticipated prices for participants?
- What resources are expected to come from the City of Morro Bay?
- Will there be a monetary benefit for the City, and if so, how and how much?

Logistics:

- How much space is needed? What type of space?
- What is critical related to location?
- What is the proposed time line?
- What are the projected hours of operations?
- What are the initial staffing projections?
- Are there any mutually beneficial, cooperative marketing benefits?
- What types of insurance will be needed, and who will be responsible for acquiring and paying premiums on the policies?
- What is the organization's experience with providing this type of facility/program?
- How will the organization meet ADA and EEOC requirements?

Agreements and Evaluation:

- How, by whom, and at what intervals should the project be evaluated?
- How can the City be assured of the long-term stability of the proposing organization?
- What types and length of agreements should be used for the proposed project?



AGENDA NO: A-5
MEETING DATE: September 14, 2021

Staff Report

TO: Honorable Mayor and City Council DATE: September 7, 2021
FROM: Gregory Kwolek, Public Works Director
SUBJECT: Authorization to Add One Full-Time Equivalent Senior Civil Engineer Position in the Public Works Department

RECOMMENDATION

Staff recommends the City Council take the following action:

1. Authorize the City Manager to increase the Public Works Department by one Full-Time Equivalent (FTE) for a Senior Civil Engineer position.

ALTERNATIVES

1. Reject the staff request to authorize an FTE for a Senior Civil Engineer position.
2. Provide other direction to staff.

FISCAL IMPACT

Based on current salary and benefits costs, the addition of a Senior Civil Engineer is estimated to incur maximum annual costs of \$175,473, fully loaded. This total cost includes salary at top step, benefits, and CalPERS at the Tier 2 formula. The Senior Civil Engineer FTE would be funded by the ongoing Measure Q & E budget item "Public Works Pool for CIP Implementation," which was set at \$175,000 and adopted by City Council in June 2021 as part of the Fiscal Year 2021-22 Adopted Budget. Because the remaining \$473 balance can be absorbed, no budget changes are necessary to add this FTE.

BACKGROUND/DISCUSSION

The recommendation to add the Senior Civil Engineer position resulted from a Public Works performance and staffing needs evaluation, which identified gaps in the Engineering Division. These gaps include:

- Staff capacity to manage and implement capital projects
- Staff capacity to process plan reviews for development in a timely manner consistent with the Permit Streamlining Act (Government Code § 65920)
- Staff capacity to create short- and long-range plans for replacement of City infrastructure and related maintenance
- Staff availability to respond to resident concerns in a timely manner
- Succession planning for the City Engineer position

The intent of this position is to address these gaps by adding to the Department's capacity to complete work, engage and respond to the community, and assist in the development of a Capital

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

Improvement Program and other long-range plans. The position will be responsible for a variety of duties, including:

- Supervision of engineering and support staff as well as consultants
- Project management
- Preparation of comprehensive plans for a variety of City assets
- Land development plan reviews
- Permitting
- Interdepartmental coordination of projects, plans, and activities
- Attending and presenting at public and community meetings
- Assisting with the implementation of the City's Americans with Disabilities Act (ADA) transition plan

Additionally, the Department seeks to recruit a driven engineering professional interested in preparing to become the successor to the current City Engineer, who is expected to retire in the next two to five years after more than 15 distinguished years with the City and 33 years building a career as a remarkable engineer.

ATTACHMENT

None.



AGENDA NO: A-6

MEETING DATE: September 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: August 26, 2021

FROM: Scot Graham, Community Development Director

SUBJECT: Adoption of Resolution No. 60-21 Approving a Lease Amendment 1 extending for 3 years the Lease Agreement with Rock Harbor Marketing for property located at 781 Market Street

RECOMMENDATION

Staff recommends the Council adopt Resolution No. 60-21, approving Amendment 1 of the Rock Harbor Marketing lease, subject to city attorney approval, extending the lease for 3 years for the City owned property located at 781 Market Avenue (APN: 066-321-027).

ALTERNATIVES

The City Council could choose not to approve the lease extension and direct staff to either alter the agreement in a manner agreed upon by a majority of Council or the Council may choose to discontinue leasing the space to Rock Harbor Marketing by allowing the Lease to expire on its own terms on November 10, 2021.

FISCAL IMPACT

With approval of the Lease Amendment the City would starting October 1, 2021 receive \$1,143.00 a month in rent for the first twelve-month period (or total of \$13,716.00 for first year). Monthly rent would increase by the percent change in in the Consumer Price Index (CPI) for the Los Angeles area for years 2 and 3.

BACKGROUND

November 10, 2020 – City Council approves Resolution No. 93-20 authorizing the City to enter into a one year lease agreement with Rock Harbor Marketing for a lease payment of \$1,100 per month. Payment commenced 2-months after the effective date of the lease to allow for tenant improvements. Tenant Improvements (TI's) were originally estimated at \$25,000, however, actual costs totaled approximately \$29,000. Current lease expires on November 10, 2021.

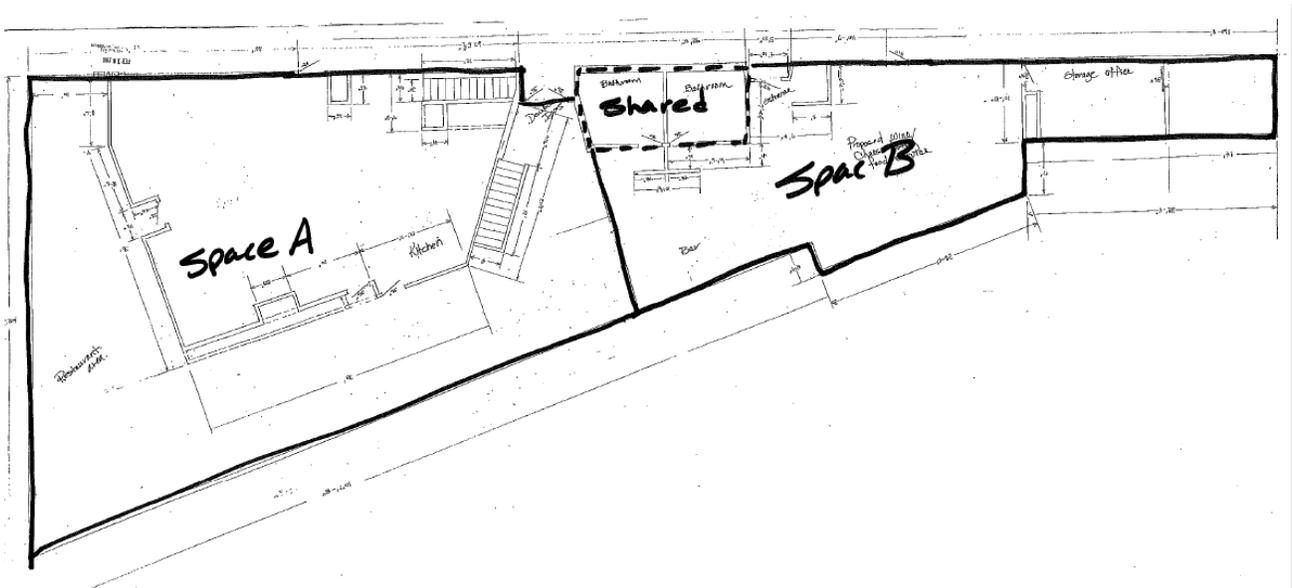
August 17, 2021 – City received a request from Travis Ford of Rock Harbor Marketing to extend the lease for a period of 1 year and expressing a desire to potentially stay in the lease for three more years. Request included a rent increase based on Consumer Price Index (CPI) and expressed desire to move to a month-to-month lease term after the requested 1-year lease extension period expires. While Mr. Ford requested a 1-year lease extension, the letter goes on to state he would like to stay in the property for 3 years to recoup TI costs. To this end, staff reached out to Mr. Ford and inquired

Prepared By: SG Dept Review: SG
City Manager Review: SC City Attorney Review: CFN

whether he would be interested in a longer-term lease. Mr. Ford expressed a desire for a three-year lease term, as he is very happy with the space. See lease extension request letter provided as Attachment 3.

As Council is aware, the City is working on redevelopment of the 781 Market Street property, with the process likely to take 2 to 3 years for sale/lease and permitting. Given the 2 to 3 year timeline, it makes sense for City to continue lease of the building on a limited term basis. Leasing the property provides income generation for the City, and ensures the property is occupied and maintained by lessees.

The building is comprised of two floors, however the lower floor is inaccessible from an Americans with Disabilities Act (ADA) standpoint (no elevator or ramp), and staff has not pursued lease of the lower floor. The upper floor currently contains two lease spaces (A & B), totaling approximately 5,220 square feet with 1,413 square feet allocated to Space B, which is currently occupied by Rock Harbor Marketing and 3,807 square feet allocated to Ciano Real Estate (Space A). See figure below depicting upper floor building layout.



DISCUSSION

Pursuant to the amendment, the term of the lease is extended by 3 years and includes rent increase based on the CPI for the Los Angeles Area. The current CPI for the Los Angeles area from July 2020 to July 2021 is 3.9%, which equates to an increase of approximately \$43 per month. Based on the current CPI, the resulting rental rate increases from \$1,100 to \$1,143 per month for a total first (extended) year rent of \$13,716.00.

Moving to a three-year lease extension agreement will result in the following changes to the lease agreement:

- a. The Term of the Lease shall be extended through September 14, 2024, unless otherwise terminated as permitted by the Lease.
- b. Section 2.3 of the Lease is amended to add the following: City shall have the right to terminate this Lease within the Term upon providing Rock Harbor at least sixty-days' written notice City has entered into a purchase and sale agreement with any party for redevelopment of the Premises.
- c. As of October 1, 2021, the monthly Rent is increased to One Thousand One Hundred Forty-three Dollars (\$1,143.00). As of September 15, 2022, and September 15, 2023, the Rent shall be increased in an amount equal to the increase in the then applicable Consumer Price Index for the Los Angeles area (Los Angeles-Long Beach-Anaheim) (CPI) for the twelve-month period immediately preceding each of those dates.
- d. Section 27 of the Lease is amended so the Rent shall increase in an amount equal to the then annual applicable CPI for the twelve-month period immediately preceding each September 15th if a month-to-month holdover remains in effect.

CONCLUSION

Having tenants occupy the building while the City pursues sale/redevelopment of the property will serve to generate income for the City and will ensure the property is maintained and not left to deteriorate while the City pursues redevelopment opportunities. Staff recommends Council adopt Resolution No. 60-21, approving Amendment 1 extending the Rock Harbor Marketing lease for a period of three years for lease of Space B within the 781 Market Street building.

ATTACHMENTS:

1. Resolution No. 60 -21
2. Rock Harbor Marketing Lease Extension Agreement
3. Rock Harbor Marketing Lease Extension Letter
4. 2020 Rock Harbor Marketing lease

RESOLUTION NO. 60-21

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AMENDMENT 1 OF THE ROCK HARBOR MARKETING
LEASE TO EXTEND LEASE TERM FOR 3 YEARS FOR LEASE SPACE B AT
781 MARKET STREET BETWEEN THE CITY OF MORRO BAY AND ROCK
HARBOR MARKETING LLC**

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

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

WHEREAS, Rock Harbor Marketing, LLC (Lessee) is proposing to lease Space B of the 781 Market Street Building; and

WHEREAS, City and Lessee have agreed to an amendment of the lease agreement to increase the term by 3 years, for a portion of the building located at 781 Market Street identified as Space B.

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

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

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of September 2021 on the following vote:

AYES:

NOES:

ABSENT:

John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk

**AMENDMENT #1 TO AND ASSIGNMENT AND
ASSUMPTION OF THE LEASE AGREEMENT
FOR PORTION OF 783 MARKET AVENUE**

This Amendment (this "Amendment #1") is made and entered into as of the 15th day of September, 2021 by and among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," Travis Ford, dba Rock Harbor Marketing, a sole proprietorship, hereinafter called "Ford" and Rock Harbor Marketing, LLC, a California limited liability corporation, hereinafter called "Rock Harbor." (Collectively, City, Ford and Rock Harbor are sometimes referred to herein as the "Parties.")

WHEREAS, City and Ford are parties to the certain lease, effective as of November 11, 2020 (the "Lease") for a portion of City-owned property at 783 Market Avenue, as further defined in the Lease (the "Premises");

WHEREAS, the Lease is due to terminate, by its own terms, on November 10, 2021;

WHEREAS, Ford desires to assign its rights under the Lease to Rock Harbor and Rock Harbor desires to assume all of Ford's rights and obligations pursuant to the Lease; and

WHEREAS, City and Rock Harbor desire to extend the term of the Lease with certain modifications.

NOW THEREFORE, City, Ford and Rock Harbor agree as follows:

1. Unless expressly stated herein, words used in this Amendment #1 shall have the same meaning as stated in the Lease, except to the extent the context requires otherwise.
2. The foregoing recitals are incorporated into this Amendment #1 as true and correct.
3. Rock Harbor acknowledges any assignment of the Lease is subject to prior approval by the City's City Council and is also subject to prior execution of this Amendment #1 by Rock Harbor and Ford.
4. On the Effective Date (defined below), Rock Harbor agrees (i) to comply with all the terms and conditions of the Lease, as amended by this Amendment #1, (ii) to assume all liabilities required under the Lease, as amended by this Amendment #1, (iii) to defend, indemnify and hold harmless City and its officers, employees and representatives from and against, any and all claims, lawsuits, costs and expenses, including reasonable attorney's fees and court costs arising from, or in any way related to the Lease, as amended by this Amendment #1, in

accordance with the terms set forth in the Lease, as amended by this Amendment #1, and (iv) to maintain liability insurance in the manner, form and amount required by the Lease and any future amendments thereto, with City, its officers, employees and representatives, included as an additional insureds without offset against the City's insurance.

5. Ford hereby assigns to Rock Harbor all rights, title and interest Ford has in the Lease, effective on the Effective Date.
6. Ford confirms to City Ford has no actual knowledge or reasonable cause to believe any release of hazardous substance has come to be located on/or beneath the real property during the term of Ford's occupation of the Premises that has not been reported pursuant to Health & Safety Code Section 253597.
7. Upon the Effective Date, Ford is released from any and all obligations created pursuant only to the Lease and this Amendment #1.
8. The Parties agree Ford is no longer a necessary party to any future amendment to the Lease after the Effective Date.
9. City and Rock Harbor agree to amend the Lease as follows:
 - a. The Term of the Lease shall be extended through September 14, 2024, unless otherwise terminated as permitted by the Lease.
 - b. Section 2.3 of the Lease is amended to add the following: City shall have the right to terminate this Lease within the Term upon providing Rock Harbor at least sixty-days' written notice City has entered into a purchase and sale agreement with any party for redevelopment of the Premises.
 - c. As of October 1, 2021, the monthly Rent is increased to One Thousand One Hundred Forty-three Dollars (\$1,143.00). As of September 15, 2022, and September 15, 2023, the Rent shall be increased in an amount equal to the increase in the then applicable Consumer Price Index for the Los Angeles area (Los Angeles-Long Beach-Anaheim) (CPI) for the twelve-month period immediately preceding each of those dates.
 - d. Section 27 of the Lease is amended so the Rent shall increase in an amount equal to the then annual applicable CPI for the twelve-month period immediately preceding each September 15th if a month-to-month holdover remains in effect.
10. Except as expressly stated herein, all provisions of the Lease shall remain in full force and effect.

11. The Effective Date of this Amendment #1 is the date first written above, as long as it has been signed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Amendment #1 as of the date written above.

CITY OF MORRO BAY

TRAVIS FORD

By: _____
John Headding, Mayor

APPROVED AS TO FORM:

ROCK HARBOR MARKETING, LLC,
a California limited liability company

Chris F. Neumeyer, City Attorney

By: 
Travis Ford, Managing Member

ATTEST:

Dana Swanson, City Clerk



August 17, 2021

Scot Graham
Community Development Director
595 Harbor Street
Morro Bay, Ca 93442

Dear Scot,

Being that we are within the 90 day window of our lease's initial contract expiring, I am writing to inform you of our intention to stay at the property located at 783 Market Ave., Morro Bay, CA 93442 and to request a continuing agreement.

Our current lease is set to expire in November 2021 and this letter acts as our request for renewal under the original terms and conditions of the original lease for one year at the standard increased CPI rate. In addition, we would like to request that at the end of the extended one-year contract, we transition to a month-to-month lease and also request our monthly rate hold with standard CPI rate increases. Our intention is to stay at this property for a minimum of 3 years to recuperate our costs invested in renovating the space (we can provide total costs if requested).

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Travis Ford', is written over a light blue circular background.

Travis Ford
Rock Harbor Marketing
783 Market Ave.
Morro Bay, CA 93442
805.234.5843

COMMERCIAL LEASE AGREEMENT

By and Between

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

“Landlord”

and

**Travis Ford, dba Rock Harbor Marketing,
a Sole Proprietorship**

“Tenant”

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Exhibit A Description and Depiction of Premises

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (“**Lease**”) is made effective this 11th day of November, 2020, by and between the CITY OF MORRO BAY, a municipal corporation (“**Landlord**”), and Travis Ford, dba Rock Harbor Marketing, a sole proprietorship (“**Tenant**”). Landlord and Tenant are sometimes individually referred to as a “**Party**” and jointly as the “**Parties.**”

RECITALS:

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

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

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

C. Tenant is a sole proprietor, currently operating a marketing business.

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

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

1. LEASE OF PREMISES; CONDITION OF PREMISES.

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

2. EFFECTIVE DATE; TERM.

- 2.1. **Effective Date.** This Lease shall be deemed effective as of November 11, 2020 (“**Effective Date**”). All other Tenant’s rights and obligations under this Lease shall commence as of the Effective Date.
- 2.2. **Term.** The term of this Lease shall commence on the Effective Date for a fixed term of one year, and terminate without notice on November 10, 2021 (“**Term**”), unless otherwise amended by the Parties pursuant to Sections 2.4 and 29.14.
- 2.3. **Right to Terminate.** Tenant shall have the right to terminate this Lease at any time within the Term upon providing Landlord at least sixty days’ written notice to Landlord.
- 2.4. **Exclusive Right to Negotiate Extension.** If Tenant has not been in default of any of its obligations under this Lease during the previous six months of the original Term (as defined in Section 2.2), then Tenant shall have the right (but not the obligation) to enter into a ninety-day period of exclusive negotiation with Landlord to extend this Lease upon mutually acceptable terms (including, but not limited to, rent payments) for an additional period up to one year (“**ENA Right**”). Tenant must exercise the ENA Right by sending a written notice to Landlord specifying its exercise of the ENA Right, which notice must be delivered to Landlord not less than ninety days prior to the expiration of the original Term (“**ENA Notice**”). Within fifteen business days after receipt of the ENA Notice, Tenant and Landlord will meet to begin negotiations for an amendment to this Lease to extend the Term. If prior to the end of the Term the Parties agree to an extension and other modifications, then such terms shall be effective only if this Lease is amended in accordance with Section 29.14. If the Parties do not agree to that amendment, then this Lease shall terminate without further notice at the end of the Term.

3. RENT & PERFORMANCE STANDARD.

- 3.1. **Monthly Rent.** Tenant agrees to pay One Thousand One Hundred Dollars (\$1,100) on a 30-day basis, in advance, due no later than the 10th day of first calendar month of each the ten calendar months for the 30-day period for which rent is being paid (“**Rent**”); with the first payment being due on January 10, 2021.
- 3.2. **Performance Standards.** As material consideration for this Lease, Tenant covenants to comply with the following requirement (the “**Performance Standard**”): diligently maintain and repair the Premises, in compliance with Section 7.1.
- 3.3. **Payment of Rent.** All Rent and all other monetary obligations to be paid by Tenant to Landlord shall be in lawful money of the United States of America at the address specified in Section 29.12, or such other address as Landlord shall notify Tenant in writing.
- 3.4. **Late Payment.** Any payment of any sum to be paid by Tenant, not paid within ten days after its due date, shall be subject to a ten percent late charge.

3.5. **Security Deposit.** Tenant is not required to provide, and has not provided, a security deposit to Landlord.

4. **USES.**

4.1. **Authorized Uses; Minimum Program Requirements.**

4.1.1. **Authorized Uses.** Tenant shall use the Premises solely as a Commercial office. As material consideration for this Lease, Tenant agrees to use the Premises and conduct all its business operations on the Premises under the designation of a commercial marketing business, currently named "Rock Harbor Marketing." No other name shall be used with respect to the Premises without the prior written consent of Landlord, which may be granted or withheld in its sole discretion.

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

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

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

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

Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Premises or any adjacent Premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other solvency proceeding nor display any "going out of business" or similar sign.

Tenant shall not engage in any activity in, on or about the Premises that violates any Environmental Law, and shall promptly, at Tenant's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly, by Tenant. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601, et seq.; (ii) the Resource Conservation and Recovery Act of

1976 ("RCRA"), 42 U.S.C. Sections 6901, et seq.; (iii) California Health and Safety Code Sections 25100, et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317, et seq.; (viii) California Water Code Section 13000, et seq.; and (ix) California Civil Code Section 3479, et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste", "or "hazardous substance" or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the Parties hereto to construe the terms "Hazardous Materials" and "Environmental Laws" in their broadest sense. Tenant shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq. Tenant shall provide prompt written notice to Landlord of the existence of Hazardous Materials on the Premises and all notices of violation of the Environmental Laws received by Tenant. Notwithstanding the foregoing, Tenant is not responsible for the remediation or removal of any Hazardous Materials which Tenant did not directly or indirectly cause to be placed at the Premises.

4.3. Abandonment. Tenant shall not vacate or abandon the Premises at any time during the Term of this Lease. Upon termination of this Lease for any reason, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord, shall become the property of Landlord.

5. REAL ESTATE TAXES. Tenant shall pay any and all real property taxes applicable to Tenant's possessory interest in the Premises. All such payments shall be made at least ten days prior to the due date of the applicable installment. Tenant shall promptly (at least five days prior to the due date) furnish Landlord with satisfactory evidence such taxes have been paid. If any such taxes to be paid by Tenant shall cover any period of time after the expiration or earlier termination of the Term hereof, then Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year that this Lease is in effect; and Tenant may apply to the County of San Luis Obispo (the "**County**") for reimbursement of any overpayments after such proration. Notwithstanding anything above to the contrary, to the extent any assessment is levied against the Premises payable in installments, Tenant shall pay all installments coming due and payable during the Term of this Lease.

Tenant acknowledges, although Landlord is a municipal entity exempt from real property taxes, Tenant's possessory interest under this Lease may be subject to real property taxation.

Upon request, Landlord agrees to work with Tenant to assist in providing information to the County Tax Assessor to reduce the valuation of Tenant's possessory interest in the Premises.

Landlord provides no assurance to Tenant that it will be successful in such efforts and that Tenant may be required to pay real property taxes.

6. **PERSONAL PROPERTY TAXES.** During the Term, Tenant shall pay prior to delinquency all taxes assessed against the levied upon fixtures, furnishings, equipment and all other personal property owned by Tenant (excluding Landlord's personal property) located in the Premises, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from Landlord's personal property. In the event any or all of Tenant's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with Premises, Tenant shall pay its share of such taxes within ten days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

7. **MAINTENANCE AND REPAIRS.**

7.1. **Maintenance and Repair by Tenant.** Except the specific maintenance obligations of Landlord as set forth in Section 7.2, Tenant shall at all times during the Term, and at Tenant's sole cost and expense, keep, maintain and repair the Premises in good and sanitary order, condition, and repair. Such maintenance obligations shall include, but not be limited to, any equipment installed by Tenant, furnishings (such as seating, carpeting and drapes, mirrors, and interior repainting) and landscaping.

Tenant shall also hire a cleaning service/custodian, who shall keep the Premises in good and sanitary order on a daily basis.

Tenant shall maintain a written record to evidence the regular performance of maintenance and upkeep of the facility consistent with the maintenance standards.

Upon termination of this Lease, the Premises shall be surrendered in a good, clean and sanitary condition except for reasonable use and wear. Tenant agrees to surrender the Premises in its original condition, together with all additional improvements or alternations, which have been approved by Landlord and installed by Tenant pursuant to Section 8.1. If Landlord wants to reserve the right to require Tenant to remove any such additional improvements upon the expiration or earlier termination of this Lease, then Landlord must reserve such right in its notice of approval. If Tenant is required to remove any improvements from the Premises upon termination of this Lease, then Tenant shall do so at Tenant's sole cost and expense, and Tenant will repair any damage to the Premises caused by such removal. Tenant shall promptly notify Landlord in writing of any condition in the Premises that require repairs by Landlord ("**Repair Notice**"), which shall be made by Landlord as set forth in Section 7.2.

Tenant acknowledges Tenant's maintenance obligations under this Section are material considerations to Landlord for this Lease and, therefore, this Section shall be construed liberally for the protection and preservation of the Premises.

7.2. **Limited Maintenance and Repair by Landlord.** Landlord shall be responsible to maintain in good repair and in compliance with all applicable laws, ordinances and regulations, at Landlord's sole cost and expense, **only** (i) the physical structure of the

Premises, such as the structural elements, roof, plumbing, water heating system, electrical systems, HVAC equipment and exterior painting, and (ii) subject to the financial limitations set forth below.

Notwithstanding the foregoing, Landlord shall not be required to make repairs necessitated by reason of (i) the negligence or willful misconduct of Tenant, or any of Tenant's staff, volunteers, students, contractors, invitees, subtenants, patrons or customers, (ii) the failure of Tenant to perform or observe and promptly report to Landlord any conditions the repair of which are Landlord's responsibility or (iii) the failure of Tenant to perform or observe the conditions or agreements in this Lease, or caused by unauthorized alterations, additions or improvements made by Tenant or anyone claiming under Tenant (collectively the "**Tenant Caused Damages**"). Tenant shall be solely responsible, at its sole cost and expense, to repair any Tenant Caused Damages.

Upon receipt of a Repair Notice, Landlord shall have a reasonable period of time (not to exceed five business days) to commence said repairs. Upon commencement of repairs, Landlord shall use reasonable efforts to diligently complete same. Tenant and Landlord shall jointly conduct an annual inspection of the Premises every April to aid Landlord in determining if any repairs by Landlord may be necessary.

Any renovation work performed by Landlord to the Premises shall not unreasonably interfere with Tenant's operations.

Notwithstanding the foregoing, Landlord's repair obligations are **specifically limited** in that Landlord shall not be required to make repairs the cost of which exceeds the Rent actually received by Landlord from Tenant as set forth below. During the Term, Landlord shall maintain a cumulative on-going record of all Rent received by Landlord ("**Landlord Repair Fund**"). Any repairs and maintenance costs incurred by Landlord under this Section shall reduce the Landlord Repair Fund. If at any time when a repair or maintenance item, which is Landlord's responsibility under this Section, then Landlord shall only be obligated to make such repair to the extent the current balance of the Landlord Repair Fund is sufficient to pay the cost of such repair. However, if the repair item is critical for Tenant's operation of the Premises, then Landlord shall promptly make such repair, but the cost of such shall reduce the Landlord Repair Fund. If Landlord elects, in its sole discretion, to make repairs notwithstanding the foregoing limitations, then such election shall not be deemed a waiver of this limitation with respect to future repairs and the cost of such repairs shall reduce the Landlord Repair Fund.

8. ALTERATIONS

8.1 To Premises. Tenant shall not make any alterations to the Premises, or any part thereof, without the prior written consent of Landlord. If Tenant wishes to make additional improvements to the Premises, then Tenant shall notify Landlord in writing specifying in reasonable detail the proposed alterations and the cost thereof. Within fifteen days after receiving such notice from Tenant, Landlord shall send written notice to Tenant indicating whether Landlord approves or disapproves of the contemplated improvements. The City Manager may act on behalf of Landlord for approvals or disapprovals under this Section. Landlord's approval shall not be unreasonably withheld and any disapproval shall be in writing and shall explain the reasons for the denial. However, as a condition to granting its approval to any of the improvements, Landlord may require Tenant to provide Landlord with reasonably satisfactory evidence of Tenant's financial ability to pay for the costs of the improvements and may require a completion bond be provided to Landlord or other security reasonably acceptable to Landlord. Any such alterations shall comply with all applicable laws and regulations. All improvements (excluding minor improvements as determined by Landlord) shall be under the supervision of a licensed architect or structural engineer (at Tenant's cost) and made in accordance with plans and specifications approved in writing by Landlord, in its governmental and landlord capacities, prior to the commencement of such work. All work shall be done in a good and workmanlike manner, diligently prosecuted to completion and completed in compliance with Section 12. All such improvements shall immediately be deemed a part of the Premises and may not be removed by Tenant. Prior to commencing any work of improvement hereunder, Tenant shall notify Landlord so that Landlord can post and record an appropriate Notice of Non-Responsibility.

9. COMPLIANCE WITH LAWS. Except as to the specific obligations of Landlord under Section 7.2, Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the General Plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force or which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between Landlord and Tenant.

10. INSURANCE.

10.1. Landlord to Provide Property Insurance. Landlord shall maintain, at Landlord's sole cost and expense, fire, and excess coverage insurance throughout the term of this Lease, on all buildings and improvements located on the Premises (and fixtures thereto), in an amount equal to one hundred percent of the replacement value of the Premises, together with such other insurance, coverages and endorsements as Landlord may determine in its sole discretion. Tenant hereby waives any right of recovery from Landlord, its officers and employees, and Landlord hereby waives any

right of loss or damage (including consequential loss) resulting from any of the perils insured against as a result of said insurance.

10.2. Tenant's Insurance Obligations.

10.2.1. Liability Insurance. During the entire term of this Lease, Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Premises, written on a per occurrence basis in an amount not less than either (i) a combined single limit of Five Million Dollars (\$5,000,000) for bodily injury, death, and property damage or (ii) bodily injury limits of Five Hundred Thousand Dollars (\$500,000) per person, One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) products and completed operations and property damage limits of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate.

10.2.2. Worker's Compensation Insurance. Tenant shall, at Tenant's sole cost and expense, maintain a policy of worker's compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both Tenant and Landlord against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of conducting Tenant's business in the Premises.

10.2.3. Business Automobile Coverage Insurance. Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent, with combined single limits of liability not less than One Million Dollars (\$1,000,000) per accident. If Tenant owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Tenant or Tenant's employees will use personal autos in any way for the operation of any business on the Premises, then Tenant shall provide evidence of personal auto liability coverage for each such person.

10.2.4. General Provisions. All of the policies of insurance required to be procured by Tenant pursuant to this Section 10.2 shall be primary insurance and pursuant to Subsections 10.2.1 and .3 shall name Landlord, its employees and agents as additional insureds. All policies shall waive all rights of subrogation and provide that said insurance may not be amended or canceled without providing thirty-days' prior written notice by registered mail to Landlord, unless the cancellation is for non-payment of a premium and then such written notice shall be no less than ten days.

Within ten business days after execution of this Lease by the last Party to sign, and at least thirty days prior to the expiration of any insurance policy, Tenant shall provide Landlord with certificates of insurance and full copies of the insurance policies evidencing the mandatory insurance coverages written by insurance companies acceptable to Landlord, licensed to do business in California and rated A:VII or better by Best's Insurance Guide. Landlord may require an increase in the coverage and/or the types of coverage from time to time upon written notice to Tenant. Each of the Parties, on behalf of their respective insurance companies insuring such property of either Landlord or Tenant against such loss, waive any right of subrogation that it may have against the other.

- 11. INDEMNIFICATION.** Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and its managers, officers, directors, members, employees, agents, contractors, partners and lenders, from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises by Tenant, the conduct of Tenant's business, any act, omission or neglect of Tenant, its officers, directors, members, employees, agents or contractors, and out of any breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease, except for matters which are the result of Landlord's gross negligence, intentional wrongful acts, or in default of this Lease. The foregoing shall include, but not be limited to, all costs of the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord) litigated and/or reduced to judgment. In case any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. In addition, Landlord may require Tenant to pay Landlord's reasonable attorneys' fees and costs in defending against or participating in such claim, action or proceeding if Landlord shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Tenant or its counsel.

Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, earthquake, flood, terrorism, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other any other cause, whether the said injury or damage results from conditions arising upon the Premises or from other source or places except if such injury or damage is the result of the gross negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents.

- 12. NO LIENS.** Tenant shall keep the Premises, free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant or alleged to have been incurred by Tenant. If Tenant shall fail to pay any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, and shall not have obtained the release of said

lien from the property subject to such lien, then Landlord may (but shall not be so required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, together with interest at the rate prescribed in Section 29.5, on the amount of the mechanic's lien claim.

13. SIGNS. Tenant shall not place or permit to be placed any signs upon the exterior or in the windows of the Premises without Landlord's prior written consent. Any sign installed without such approval shall be immediately removed by Tenant and, if said sign is not removed by Tenant within three days of written notice from Landlord to Tenant, then Landlord may remove and destroy said sign without Tenant's approval and without any liability to Tenant. Tenant shall not modify or alter any of the signs without the prior written approval of the City Manager for Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall reply to any proposed alteration within fourteen days from submission. Any revision shall comply with the Morro Bay Municipal Code requirements related to signage prior to any revisions actually being made to the signs. Tenant shall maintain the signs in good condition and repair at all times during the entire term at its sole cost and expense.

14. UTILITIES.

14.1. Tenant's Responsibilities. Tenant shall pay, before delinquency, all charges for water, gas, heat, electricity, power, sewer, telephone service, solid waste collection and all other services and utilities used in, upon, or about the Premises by Tenant or any of its subtenants, licensees, or concessionaires during the entire term of this Lease. Tenant shall pay such fees, assessments or charges as may be levied for the operation, maintenance and service of such facilities and shall comply with reasonable rules and regulations established from time to time for use thereof. Tenant shall insure that trash and debris produced by the activities on Premises do not accumulate on the Premises.

15. ENTRY AND INSPECTION. Tenant shall permit Landlord and its employees and agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs, alterations or additions or performing the improvements to any portion of said building(s), including the erection and maintenance of such scaffolding, canopy, and fences as may be required, or for the purpose of posting notices of non-responsibility for alterations, additions or repairs, or for the purpose of placing upon the Premises any usual or ordinary signs for public safety as determined by Landlord. Landlord shall be permitted to do any of the above without any rebate of Rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. Landlord shall make reasonable efforts to coordinate times for any repairs deemed necessary with Tenant to reduce to the extent practicable any interference with Tenant's use of the Premises. Tenant shall permit Landlord, at any time within ninety days prior to the expiration of the Term, to place upon the Premises any usual or ordinary "For Lease" or "For Sale" signs, and during such ninety-day period, Landlord or its agents may, during normal business hours, enter upon said Premises and exhibit the same to prospective tenants or purchasers.

16. DAMAGE AND DESTRUCTION.

- 16.1. **Notice to Landlord.** Tenant shall give prompt notice to Landlord in case of any fire or other damage to the Premises.
- 16.2. **Partial Casualty to Premises.** If the Premises shall be damaged by any casualty including, but not limited to, civil unrest, vandalism, a fire, flood or earthquake, such that (i) the cost of replacement or repair of the Premises is less than or equal to fifty percent of the total replacement cost thereof; or (ii) the cost of replacement or repair of damage to the Premises, and any structures comprising the Premises, when aggregated together is less than or equal to fifty percent of the total replacement cost thereof, then Landlord shall promptly repair and restore the same to substantially the condition thereof immediately prior to said damage or destruction. If insurance proceeds are forthcoming, then Landlord shall not be obligated to commence the restoration and/or repair until Landlord has received said insurance proceeds. Landlord shall take all reasonable steps necessary so as to obtain such insurance proceeds promptly so as to prevent delay in restoring and/or repairing the Premises to its prior condition.
- 16.3. **Substantial Damage to Premises.** If the Premises shall be damaged or destroyed by any casualty (or the other matters described above), such that (i) the cost of replacement or repair of the Premises exceeds one-years' rent; or (ii) the cost of replacement or repair of damage to the Premises, and any of the other structures comprising the Premises, when aggregated together exceeds one-years' rent total, then Landlord may elect to either replace or repair the damage as aforesaid, cancel this Lease by written notice of cancellation given to Tenant within ninety days after the date of the casualty, or allow Tenant to cause repairs to be made to City standards. This Lease shall cease and terminate twenty days following Tenant's receipt of Landlord's cancellation notice; and Tenant shall vacate and surrender the Premises to Landlord in accordance with the terms of this Lease.
- 16.4. **Reconstruction.** In the event of any reconstruction of the Premises under Section 16, Landlord shall be obligated to reconstruct the Premises only to the extent of the condition of the Premises prior to the damage.
- 16.5. **Rent Abatement.** In the event any casualty to the Premises is such that operations are impossible or impractical during the reconstruction as determined by Tenant, Tenant shall be entitled to abatement of the Rent for actual number of business days closed based on a pro-rata ratio of the total days in the month.
- 16.6. **Termination.** Upon any termination of this Lease under any of the provisions of Section 16, the Parties shall be released thereby without further obligations to the other Party coincident with the surrender of possession of the Premises to Landlord, except for obligations which have theretofore accrued and be then unpaid, and except for Tenant's obligations under Section 11.

16.7. Determination of Percentage of Damage or Destruction. If either Landlord or Tenant contends the percentage of the damage or destruction referred to above exceeds one-year's rent total and the other Party disagrees, then the determination of the percentage shall be made in writing by a senior officer of the insurance company that is to make insurance proceeds available for replacement or repair. If said insurance company elects not to render such a determination in a timely manner, or no determination is rendered for any other reason, then, in such event, upon fifteen-days' prior written notice to Tenant, then Landlord's determination shall be deemed the agreed upon determination of the damage or destruction.

17. ASSIGNMENT AND SUBLETTING.

17.1. Assignment and Subletting. Tenant shall not sublet the Premises or assign this Lease without the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent to an assignment or sublease to a proposed assignee or subtenant. In no event shall Landlord be required to approve of any assignment or sublease, which would result in a violation of any other agreements to which Landlord is a party and/or for which all of the following criteria are not met:

- a. The proposed assignee or subtenant has submitted to Landlord financial statements showing the proposed assignee's or subtenant's financial condition, including net worth and liquidity, is equal to or greater than Tenant's financial condition;
- b. The proposed assignee or subtenant is morally and financially responsible; and
- c. Tenant is not in default in the payment of Rent or the performance of any obligations under this Lease.

Any such assignment shall be subject to all of the terms and conditions of this Lease, including, but not limited to, the use restrictions, and the proposed assignee or subtenant shall assume the obligations of Tenant under this Lease in writing in form satisfactory to Landlord. The proposed assignee or subtenant shall simultaneously provide to Landlord an estoppel certificate in the form described in Section 21. Consent by Landlord to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. Any assignment or subletting without the prior written consent of Landlord shall be void, shall constitute a material breach of this Lease, and shall, at the option of Landlord, terminate this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of Tenant by operation of law.

Landlord shall be under no obligation to consider a request for its consent to an assignment or sublease until Tenant shall have submitted in writing to Landlord a request for Landlord's consent to such assignment or sublease, a history of the proposed assignee's or subtenant's business experience and financial viability and

such other information as required by Landlord to verify that the criteria set forth herein are met.

18. DEFAULT AND REMEDIES; TERMINATION.

18.1. Default by Tenant. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- (i) Failure to pay any Rent or other monetary payment required hereunder to Landlord within five days after receiving notice from Landlord of Tenant's failure to pay any such obligation when due under this Lease.
- (ii) Failure to perform any provision of this Lease (other than the payment of money), if the failure to perform is not cured within thirty days after receiving written notice of the default from Landlord. If the default cannot be reasonably cured within thirty days, then Tenant shall not be in default of this Lease if Tenant commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default, but within no more than one hundred eighty days from commencement of the cure.
- (iii) Failure of Tenant to meet or comply with the Performance Standard.
- (iv) Vacation or abandonment of the Premises by Tenant.
- (v) Making a general assignment for the benefit of creditors.
- (vi) Filing of a voluntary petition in bankruptcy or the adjudication of Tenant as a bankrupt.
- (vii) Appointment of a receiver to take possession of all or substantially all the assets of Tenant located at the Premises or of Tenant's leasehold interest in the Premises.
- (viii) Filing by any creditor of Tenant of an involuntary petition in bankruptcy which is not dismissed within sixty days after filing.
- (ix) Attachment, execution or other judicial seizure of all or substantially all of the assets of Tenant or Tenant's leasehold where such an attachment, execution or seizure is not discharged within sixty days.

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, without further notice or demand, rectify or cure such default, and any sums expended by Landlord for such purposes shall be paid by Tenant to Landlord upon demand and as additional Rent hereunder. In the event of any such default or breach by Tenant, Landlord shall have the right to continue the lease in full force and effect and enforce all of its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease or Landlord shall have the

right at any time thereafter to elect to terminate the Lease and Tenant's right to possession thereunder. Upon such termination, Landlord shall have the right to recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; and

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided.

The "worth at the time of award" of the amounts referred to in subparagraphs (a), (b), and (c) above shall be computed by allowing interest (or by discounting in the case of subparagraph (c)) at three percent over the prime rate, but in no event greater than the maximum rate permitted by law.

"Rent" shall include all sums payable pursuant to this Lease on a regular basis; including reimbursement of real estate taxes and any similar amounts. The payment shall be computed on the basis of the average monthly amount thereof accruing during any preceding twelve-month period selected by Landlord, except that if it becomes necessary to compute such Rent before such a twelve-month period has occurred, then such Rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

Such efforts as Landlord may make to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of Landlord's right to recover damages against Tenant hereunder.

Notwithstanding any of the foregoing, the breach of this Lease by Tenant, or an abandonment of the Premises by Tenant, shall not constitute a termination of this Lease, or of Tenant's right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover rent, and all other payments to be made by Tenant hereunder, as they become due. Failure of Landlord to terminate this Lease shall not prevent Landlord from later terminating this Lease or constitute a waiver of Landlord's right to do so.

18.2. No Waiver. Acceptance of any payment under this Lease shall not be deemed a waiver of any default or a waiver of any of Landlord's remedies.

18.3. Landlord's Default. Except as may be elsewhere expressly provided in this Lease, Landlord shall not be in default, unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty days after

written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty days are required for performance, then Landlord shall not be deemed in default if Landlord commences performance within that thirty-day period and thereafter diligently prosecutes the same to completion.

18.4. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity, except Tenant i) cannot seek money damages or pursue an action in law; and ii) is instead limited to bringing a proceeding in the nature of specific performance, injunctive relief or mandamus, or any other action in equity to enforce any applicable provision of this Lease.

18.5. Termination.

18.5.1. The Parties acknowledge this Lease shall be terminated immediately at the occurrence of any of the following events:

- a. By expiration of the Lease;
- b. By mutual agreement of both Parties; or
- c. In the case of casualty as provided for in Section 16.6.

18.5.2. The Parties acknowledge this Lease may be terminated by Landlord upon five-days' written notice if Tenant fails to meet the Performance Standard.

18.5.3. Except as set forth in Section 2.3, termination of this Lease shall not extinguish Tenant's obligations to pay Rent or its other obligations including indemnification of Landlord.

19. SURRENDER OF PREMISES. The voluntary or other surrender of the Premises by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or licensees, or may, at the option of Landlord, operate as an assignment to it of any or all of such subleases or licenses.

20. FORCE MAJEURE. If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the Party obligated (financial inability excepted), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section shall excuse Tenant from the prompt payment of any Rent.

21. ESTOPPEL CERTIFICATE. Tenant shall, at any time and from time to time upon not less than twenty-days' prior notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying this Lease is unmodified and is in full force and

effect, and the dates to which the Rent has been paid, and stating whether or not to the best knowledge Landlord is in default under this Lease, and, if in default, specifying in reasonable detail each such default, and such other matters as Landlord may reasonably request, it being intended that any such statement delivered by Tenant may be relied upon by Landlord or any prospective purchaser of the fee or any prospective mortgagee or encumbrancer thereof.

If Landlord desires to refinance or transfer the Premises, then Tenant agrees to deliver to Landlord or any lender or transferee designated by Landlord such financial information concerning Tenant as may be reasonably required by such lender or transferee and is reasonably available to Tenant. All such financial information shall be received by Landlord in confidence.

22. SUBORDINATION. The rights of Tenant shall be and are subject and subordinate at all times to the lien of any mortgage now or hereafter in force against the Premises, and Tenant shall promptly execute and deliver such further instruments subordinating this Lease to the lien of any such mortgage as shall be requested by Landlord.

23. CONDEMNATION. In the event a condemnation or transfer in lieu thereof results in a taking of any substantial and/or material portion of the Premises, Landlord or Tenant may, upon written notice given to the other Party within thirty days after such taking or transfer in lieu thereof, terminate this Lease. In connection therewith, Landlord and Tenant acknowledge that:

- a. Landlord (acting as the City of Morro Bay) possesses the power to take the Premises through eminent domain proceedings; and
- b. The business to be conducted by Tenant upon the Premises is not a viable business without financial assistance from Landlord, therefore if Tenant must vacate the Premises, it will be extremely impractical, if not impossible, for Tenant to operate its business elsewhere.

Therefore, upon such termination Tenant shall have the right to claim and recover from Landlord and/or the condemning authority only the amount equal to the value of any improvements installed by Tenant. Tenant shall **not** receive any value related to the leasehold value of the property which shall be paid solely to Landlord.

24. USE OF LANDLORD'S NAME. Tenant shall not use Landlord's name for advertising or promotion without Landlord's prior written consent, which may be granted or withheld in its sole discretion.

25. TRADE FIXTURES. Tenant has the right to use the Landlord's personal property located on the Premises, but Tenant shall, at its own cost and expense, install and equip the Premises with all furniture, fixtures, trade fixtures, equipment and personal property reasonably required for the operation of Tenant's business. Any and all fixtures and appurtenances installed by Tenant shall conform with the requirements of all applicable laws and regulations. All furniture, equipment, and trade fixtures installed by Tenant shall remain the property of Tenant during the Term of this Lease, but Tenant shall not remove any trade

fixtures during the Term hereof without Landlord's prior written consent, which may be provided by the City Manager on behalf of the Landlord, and which consent may be withheld or granted in Landlord's sole discretion. On termination of this Lease, Tenant may, provided Tenant is not in default of this Lease, remove at its own expense all trade fixtures, equipment and its personal property. At termination of this Lease, if Tenant has left any merchandise, furniture, equipment, signs, trade fixtures or other personal property in the Premises, then Landlord may give Tenant written notice to remove such property. In the event such property is not removed within fifteen days after the date of said notice, Landlord may dispose of said property in any manner whatsoever and Tenant hereby waives any claim or right to said property or any proceeds derived from the sale thereof. Any damage to the Premises resulting from the installation or removal of any of said trade fixtures or equipment shall be repaired by Tenant at Tenant's sole cost and expense.

26. QUIET ENJOYMENT. As long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises during the Term.

27. HOLDOVER. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over after the expiration of the term of this Lease, with the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty-days' written notice, and at a monthly rent equal to two hundred percent of the rent set forth in Section 3.1 and upon terms and conditions as existed during the last month of the Term.

28. NOTICE AND WAIVER REGARDING RELOCATION, GOODWILL, PROPERTY INTEREST AND CONDEMNATION

28.1. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Lease term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any circumstances, in no event shall Tenant be entitled or shall Landlord, including its employees, agents and assignees, be required to provide any relocation benefits, compensation for loss of goodwill, or assistance under any applicable federal, state, or local laws or regulations including without limitation, the Uniform Relocation Assistance Laws, California Government Code section 7260 *et seq.* Further, Tenant being fully informed of any and all of its rights and obligations and all laws and regulations (including without limitation, the Uniform Relocation Assistance Laws, California Government Code section 7260 *et seq.*) in connection therewith fully waives, releases and rejects any and all relocation assistance and benefits relating to or in any respect connected with Tenant vacating the Premises.

28.2. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any other circumstances, in no event shall Tenant be entitled or shall Landlord be required to provide any compensation or consideration to Tenant for the leasehold interest of Tenant, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses, whether based on

condemnation, inverse condemnation or any other reason. Upon vacation of the Premises or termination of the Lease, Tenant knowingly waives and surrenders any claims or rights to the leasehold interest, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses.

29. MISCELLANEOUS.

- 29.1. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the Superior Court of the State of California for the County.
- 29.2. **Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
- 29.3. **Successors in Interest.** The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto, and each and all, including the Party making the assignment, shall be jointly and severally liable hereunder.
- 29.4. **No Oral Agreements.** This Lease covers in full each and every agreement of every kind or nature whatsoever between the Parties hereto concerning this Lease, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein, and there are no oral agreements. Tenant acknowledges no representations or warranties of any kind or nature not specifically set forth herein have been made by Landlord or its employees, agents or representatives.
- 29.5. **Interest.** Any sum due to Landlord under this Lease shall bear simple interest from and after its due date at a rate equal to ten percent per month until paid to Landlord, but not in excess of the maximum rate permitted by law.
- 29.6. **Authority.** Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.
- 29.7. **Time.** Time is of the essence of this Lease.
- 29.8. **Consistency.** Each provision herein shall be interpreted so as to be consistent with every other provision.
- 29.9. **Relationship of Parties.** The relationship of the Parties is that of Landlord and Tenant, and it is expressly understood and agreed Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business or otherwise, or a joint venture with Tenant.

- 29.10. Non-Discrimination.** Tenant herein covenants by and for Tenant, Tenant's successors, heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, sexual preference or identity or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall the Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, Tenants, subtenants, subtenants or vendees of the Premises.
- 29.11. Non-Collusion.** No official, officer, or employee of Landlord has any financial interest, direct or indirect, in this Lease, nor shall any official, officer, or employee of Landlord participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or non interest pursuant to California Government Code Sections 1091 and 1091.5. Tenant represents and warrants that (i) it has not paid or given, and will not pay or give, to any third party including, but not limited to, Tenant or any of its officials, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining this Lease; and (ii) it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Landlord, as a result or consequence of obtaining this Lease. Tenant is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Lease void and of no force or effect.
- 29.12. Notices.** Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either Party to this Lease to or on the other, such notice or demand shall be given or served in writing and shall not be deemed to have been duly given or served unless in writing, and personally served or forwarded by certified mail, postage prepaid, addressed as specified below. Either Party may change the address set forth below by written notice by certified mail to the other. Any notice or demand given by certified mail shall be effective one (1) day subsequent to mailing.

Landlord: City of Morro Bay
Attn: City Manager
595 Harbor Street
Morro Bay, CA 94585

With a copy to: Aleshire & Wynder, LLP
Attn: Chris F. Neumeyer, City Attorney
18881 Von Karman Ave., Suite 1700, Irvine CA
92612

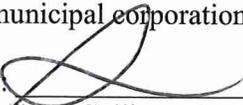
Tenant: Rock Harbor Marketing
Attn: Travis Ford
898 Napa Ave #267, Morro Bay CA, 93443

- 29.13. Not an Offer.** The submission of this Lease and any ancillary documents to Tenant shall not constitute an offer to lease, and Landlord shall have no obligation of any kind, express or implied, to lease the Premises to Tenant until Landlord has approved, executed and returned to Tenant a fully signed copy of this Lease.
- 29.14. Amendments.** This Lease may be modified or amended only in writing executed by both Parties and approved by Landlord in accordance with applicable law.
- 29.15. Exhibits.** Exhibit A is attached hereto and incorporated herein by reference.
- 29.16. Acknowledgement of Content.** Each Party acknowledges they have read and fully understand the contents of this Lease and have had an opportunity to consult with an attorney regarding the same. This Lease represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the Parties have duly executed this Lease on the day and year first above written in Morro Bay, California.

LANDLORD:

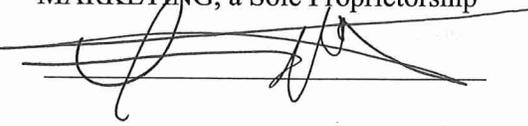
CITY OF MORRO BAY,
a municipal corporation

By: 
Scott Collins, City Manager

11/19, 2020

TENANT:

TRAVIS FORD, dba ROCK HARBOR
MARKETING, a Sole Proprietorship



November 18, 2020

ATTEST:


Dana Swanson, City Clerk

_____, 2020

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

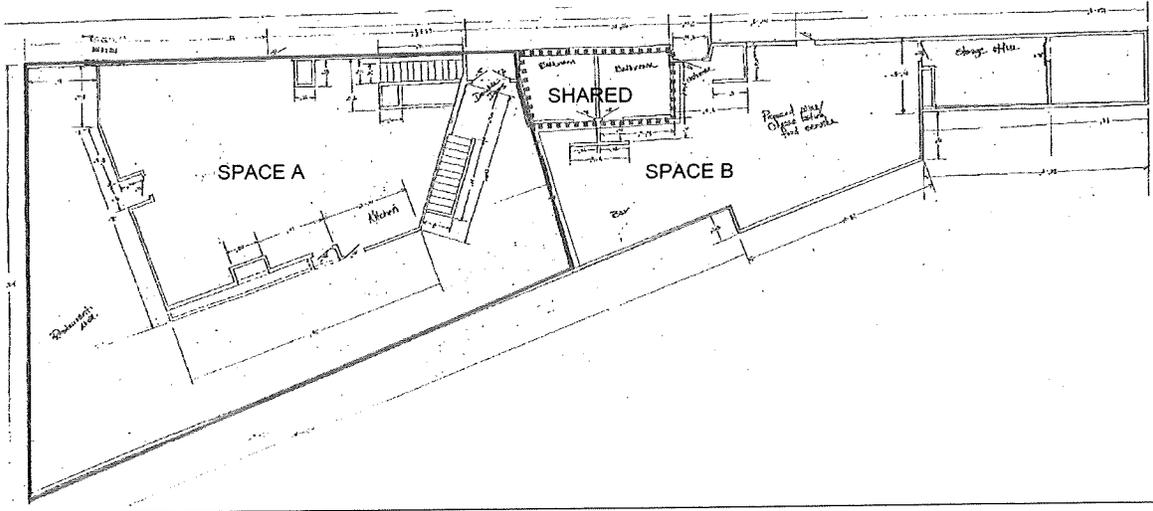
By: Chris Neumeyer by HO
Chris F. Neumeyer, City Attorney

EXHIBIT A

DESCRIPTION AND DEPICTION OF PREMISES

The Premises consist of Space B and shared use of the bathrooms as depicted on the figure below.

(APN: 066-321-027)





GEICO GENERAL INSURANCE COMPANY

Washington DC

VERIFICATION OF COVERAGE
(SEE BELOW UNDER CAUTIONARY NOTE)

MAILING ADDRESS

TRAVIS L FORD AND JENNIFER N

FORD

2981 SANDALWOOD AVE

MORRO BAY CA 93442-3151

Policy Number: 4224981607
Effective Date: 12-12-20
Expiration Date: 06-12-21
Registered State: CALIFORNIA

To whom it may concern:

This letter is to verify that we have issued coverage under the above policy number for the dates indicated in the effective and expiration date fields for the vehicle listed. This should serve as proof that the below mentioned vehicle meets or exceeds the financial responsibility requirement for your state.

This verification of coverage does not amend, extend or alter the coverage afforded by this policy.

Vehicle Year: 2009
Make: HYUNDAI
Model: ELANTRA
VIN: KMHDU46D39U815320

COVERAGES	LIMITS	DEDUCTIBLES
Bodily Injury Liability Each Person/Each Occurrence State Minimum \$15,000/\$30,000	\$50,000/\$100,000	
Property Damage Liability State Minimum \$5,000	\$100,000	
Uninsured & Underinsured Motorists Each Person/Each Occurrence	\$50,000/\$100,000	
Uninsured Motorists Property Damage	\$3,500	

___ **Lienholder** ___ **Additional Insured** ___ **Interested Party**

Additional Information:

Issued on 11/18/2020

If you have any additional questions, please call 1-800-841-3000.

CAUTIONARY NOTE: THE CURRENT COVERAGES, LIMITS, AND DEDUCTIBLES MAY DIFFER FROM THE COVERAGES, LIMITS AND DEDUCTIBLES IN EFFECT AT OTHER TIMES DURING THE POLICY PERIOD. THIS VERIFICATION OF COVERAGE REFLECTS THE COVERAGES, LIMITS, AND DEDUCTIBLES AS OF THE ISSUED DATE OF THIS DOCUMENT WHICH IS SHOWN UNDER "ADDITIONAL INFORMATION" OR IF AN ISSUED DATE IS NOT SHOWN, THE DATE OF THIS FACSIMILE OR EMAIL.



GEICO GENERAL INSURANCE COMPANY

Washington DC

VERIFICATION OF COVERAGE
(SEE BELOW UNDER CAUTIONARY NOTE)

MAILING ADDRESS

TRAVIS L FORD AND JENNIFER N
FORD
2981 SANDALWOOD AVE
MORRO BAY CA 93442-3151

Policy Number: 4224981607
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To whom it may concern:

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This verification of coverage does not amend, extend or alter the coverage afforded by this policy.

Vehicle Year: 2019
Make: SUBARU
Model: XV CROSSTR
VIN: JF2GTANC0KH291832

COVERAGES	LIMITS	DEDUCTIBLES
Bodily Injury Liability Each Person/Each Occurrence State Minimum \$15,000/\$30,000	\$50,000/\$100,000	
Property Damage Liability State Minimum \$5,000	\$100,000	
Uninsured & Underinsured Motorists Each Person/Each Occurrence	\$50,000/\$100,000	
Comprehensive (Excluding Collision)		\$500 Ded
Collision		\$500 Ded
Emergency Road Service	Full	
Rental Reimbursement	\$35 Per Day / \$1,050 Max	
Mechanical Breakdown		\$250 Ded

Lienholder Additional Insured Interested Party

JP MORGAN CHASE BANK
PO BOX 901098
FORT WORTH, TX 76101-2098

Additional Information:

Issued on 11/18/2020

If you have any additional questions, please call 1-800-841-3000.

CAUTIONARY NOTE: THE CURRENT COVERAGES, LIMITS, AND DEDUCTIBLES MAY DIFFER FROM THE COVERAGES, LIMITS AND DEDUCTIBLES IN EFFECT AT OTHER TIMES DURING THE POLICY PERIOD. THIS VERIFICATION OF COVERAGE REFLECTS THE COVERAGES, LIMITS, AND DEDUCTIBLES AS OF THE ISSUED DATE OF THIS DOCUMENT WHICH IS SHOWN UNDER "ADDITIONAL INFORMATION" OR IF AN ISSUED DATE IS NOT SHOWN, THE DATE OF THIS FACSIMILE OR EMAIL.



GEICO GENERAL INSURANCE COMPANY

Washington DC

VERIFICATION OF COVERAGE
(SEE BELOW UNDER CAUTIONARY NOTE)

MAILING ADDRESS

TRAVIS L FORD AND JENNIFER N
FORD
2981 SANDALWOOD AVE
MORRO BAY CA 93442-3151

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Effective Date: 12-12-20

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To whom it may concern:

This letter is to verify that we have issued coverage under the above policy number for the dates indicated in the effective and expiration date fields for the vehicle listed. This should serve as proof that the below mentioned vehicle meets or exceeds the financial responsibility requirement for your state.

This verification of coverage does not amend, extend or alter the coverage afforded by this policy.

Vehicle Year: 2020

Make: SUBARU

Model: OUTBACK

VIN: 4S4BTAPC4L3129668

COVERAGES	LIMITS	DEDUCTIBLES
Bodily Injury Liability Each Person/Each Occurrence State Minimum \$15,000/\$30,000	\$50,000/\$100,000	
Property Damage Liability State Minimum \$5,000	\$100,000	
Uninsured & Underinsured Motorists Each Person/Each Occurrence	\$50,000/\$100,000	
Comprehensive (Excluding Collision)		\$500 Ded
Collision		\$500 Ded
Emergency Road Service	Full	
Rental Reimbursement	\$35 Per Day / \$1,050 Max	
Mechanical Breakdown		\$250 Ded

Lienholder Additional Insured Interested Party

COASTHILLS CREDIT UNION
PO BOX 200
LOMPOC, CA 93438-0200

Additional Information:

Issued on 11/18/2020

If you have any additional questions, please call 1-800-841-3000.

CAUTIONARY NOTE: THE CURRENT COVERAGES, LIMITS, AND DEDUCTIBLES MAY DIFFER FROM THE COVERAGES, LIMITS AND DEDUCTIBLES IN EFFECT AT OTHER TIMES DURING THE POLICY PERIOD. THIS VERIFICATION OF COVERAGE REFLECTS THE COVERAGES, LIMITS, AND DEDUCTIBLES AS OF THE ISSUED DATE OF THIS DOCUMENT WHICH IS SHOWN UNDER "ADDITIONAL INFORMATION" OR IF AN ISSUED DATE IS NOT SHOWN, THE DATE OF THIS FACSIMILE OR EMAIL.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/17/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER TAPCO- KL (5576) PO Box 286 Burlington, NC 27216	CONTACT NAME	
	PHONE (A/C No, Ext):	FAX (A/C No):
INSURED ROCK HARBOR MARKETING 781 MARKET ST. SPACE B MORRO BAY, CA 93442	EMAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: United States Liability Insurance Company	25895
	INSUREB B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			MTK1564358A	05/30/2020	05/30/2021	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE	\$2,000,000
	AUTOMOBILIE LIABILITY						PRODUCTS-COMP/OP AGG	
	<input type="checkbox"/> ANY AUTO							\$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB						EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR						AGGREGATE	\$
	EXCESS LIAB							\$
	<input type="checkbox"/> CLAIMS-MADE							\$
	DED							\$
	RETENTION \$							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		N/A				E.L. EACH ACCIDENT	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE-EA EMPLOYEE	\$
							E.L. DISEASE-POLICY LIMIT	\$
A	Technology Professional Liability			MTK1564358A	05/30/2020	05/30/2021	EACH CLAIM	\$1,000,000
							ANNUAL AGGREGATE	\$1,000,000
							DEDUCTIBLE EACH CLAIM	\$0

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (See attached Acord 101 for additional liability limits)

Technology Professional Package. Re: 781 Market St Space B, Morro Bay, CA 93442 City of Morro Bay is an additional insured per BP 04 02 07 02BP-134 06/09 Blanket Additional Insured is part of this policy.

CERTIFICATE HOLDER

CANCELLATION

City of Morro Bay
585 Harbor St
Morro Bay, CA 94585

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



ADDITIONAL REMARKS SCHEDULE

AGENCY TAPCO- KL (5576)		INSURED ROCK HARBOR MARKETING 781 MARKET ST. SPACE B MORRO BAY, CA 93442	
POLICY NUMBER MTK1564358A			
CARRIER United States Liability Insurance Company	NAIC CODE 25895	EFFECTIVE DATE: 5/30/2020	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

COVERAGE PART	LIMITS
Businessowners Liability	
Liability and Medical Expenses	\$1,000,000
Medical Expense (per person)	\$10,000
Damages To Premises Rented To You (Any One Premises)	\$300,000
Hired and Non-owned Auto Each Occurrence	Included
Hired and Non-owned Auto Aggregate	Included
General Aggregate	\$2,000,000
Technology Professional Liability	
Each Claim Limit	\$1,000,000
Annual Aggregate Limit	\$1,000,000
Deductible	\$0
Privacy Breach Expense and Defense of Regulatory Claims Each Claim	\$250,000
Privacy Breach Expense and Defense of Regulatory Claims Aggregate	\$250,000
Retroactive Date	05/30/2019

ENDORSEMENT #3

This endorsement, issued by **United States Liability Insurance Company** to **ROCK HARBOR MARKETING** forms a part of Policy Number **MTK1564358A** effective on **11/9/2020** (MO. DAY YR.) at 12:01 A.M.

Add/Remove/Amend Businessowners Additional Insured Endorsement

In consideration of no change in premium it is hereby agreed that the following form(s) is(are) added to the Policy:

BP0402 07/02 - Additional Insured - Managers Or Lessors Of Premises

All other terms and conditions of this Policy remain unchanged.

ADD_REM (03-01)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE*

Name of Person or Organization:

Effective Date: 11/09/2020 12:01 AM
CITY OF MORRO BAY
595 HARBOR ST
MORRO BAY, CA 94585

Designation of Premises

781 MARKET ST. SPACE B
MORRO BAY, CA 93442

*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations

- A.** The following is added to Paragraph **C. WHO IS AN INSURED** in **Section II - Liability**:
4. The person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule.
- B.** The following exclusions are added to **Section II - Liability**:
- This insurance does not apply to:
1. Any "occurrence" that takes place after you cease to be a tenant in the premises described in the Schedule.
 2. Structural alterations, new construction or demolition operations performed by or for the person or organization designated in the Schedule.

ENDORSEMENT #4

This endorsement, issued by **United States Liability Insurance Company** to **ROCK HARBOR MARKETING** forms a part of Policy Number **MTK1564358A** effective on **11/11/2020** (MO. DAY YR.) at 12:01 A.M.

Add/Remove/Amend Coverage

In consideration of an **additional premium of \$33** it is hereby agreed and understood that the policy is amended with the following changes:

LOCATIONS:

Loc. #	Address	Territory
1	781 Market St. Space B, Morro Bay, CA, 93442	012
	Covered Causes of Loss: Special	Fire Code: 0702
	Construction: Unknown	Prot. Class: 1
	Description: Business Personal Property	Square Footage: 0
	Special Deductible: None	Special Deductible Type:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

COVERAGES:

<u>Loc#</u>	<u>Classification</u>	<u>Code No.</u>	<u>Premium Basis</u>	<u>Rate</u>		<u>Premium Change</u>		<u>Charged</u>
				<u>Pr/Co*</u>	<u>All Other</u>	<u>Pr/Co*</u>	<u>All Other</u>	
1 Amend	Additional Insured - Managers or Lessors of Premises	49950	1 Flat	0.000	0.000	Included	Included	\$0
1 Add	Non-Owned & Hired Automobile Liability - Errors and Omissions	90099	Flat	0.000	60.000	\$0	\$60	\$33

LIMITS:

The following Limits have been amended as shown:

Liability and Medical Expenses	\$1,000,000
Medical Expense (per person)	\$10,000
Damages To Premises Rented To You (Any One Premises)	\$300,000
Hired and Non-owned Auto Each Occurrence	Included
Hired and Non-owned Auto Aggregate	Included

It is hereby agreed that the following form(s) is(are) added to the Policy:

- BP-17 11/08 - Hired Auto And Non-Owned Auto Liability**
- Jacket 07/19 - Policy Jacket**
- MTK 258 03/19 - Privacy Breach Expense Plus Endorsement**

All other terms and conditions of this Policy remain unchanged.

* Products/Completed Operations

**UNITED STATES LIABILITY INSURANCE GROUP
WAYNE, PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

HIRED AUTO AND NON-OWNED AUTO LIABILITY

A. Insurance is provided only for those coverages for which a specific limit or premium charge is shown in the Declarations.

1. HIRED AUTO LIABILITY

The insurance provided under **SECTION II – LIABILITY; A. Coverages 1. Business Liability**; applies to “bodily injury” or “property damage” arising out of the maintenance or use of a “hired auto” by you or your “employees” in the course of your business.

2. NON-OWNED AUTO LIABILITY

The insurance provided under **SECTION II – LIABILITY; A. Coverages 1. Business Liability**; A. Coverages 1. Business Liability, applies to “bodily injury” or “property damage” arising out of the use of any “non-owned auto” in your business by any person other than you.

B. For insurance provided by this endorsement only:

1. The exclusions, under **SECTION II – LIABILITY; B. Exclusions; 1. Applicable to Business Liability Coverage**; other than exclusions **a., b., d., f.** and **i.** and the Nuclear Energy Liability Exclusion, are deleted and replaced by the following:

a. “Bodily injury” to:

(1) An “employee” of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured’s business; or

(2) The spouse, child, parent, brother or sister of that “employee” as a consequence of Paragraph (1) above.

This exclusion applies:

(a) Whether the insured may be liable as an employer or in any other capacity; and

(b) To any obligation to share damages with or repay someone else who must pay damages because of injury.

This exclusion does not apply to:

(i) Liability assumed by the insured under an “insured contract”; or

(ii) “Bodily injury” arising out of and in the course of domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

b. “Property damage” to:

(1) Property owned or being transported by, or rented or loaned to the insured; or

(2) Property in the care, custody or control of the insured,

2. **SECTION II – LIABILITY; C. Who Is An Insured**; is replaced by the following:

Each of the following is an insured under this endorsement to the extent set forth below:

a. You;

b. Any other person using a “hired auto” with your permission;

c. For a “non-owned auto”, any partner or “executive officer” of yours, but only while such “non-owned auto” is being used in your business; and

d. Any other person or organization, but only for their liability because of acts or omissions of an insured under **a., b.** or **c.** above.

None of the following is an insured:

- (1) Any person engaged in the business of his or her employer for "bodily injury" to any co-"employee" of such person injured in the course of employment, or to the spouse, child, parent, brother or sister of that co-"employee" as a consequence of such "bodily injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury;
 - (2) Any partner or "executive officer" for any "auto" owned by such partner or officer or a member of his or her household;
 - (3) Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate;
 - (4) The owner or lessee (of whom you are a sub lessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or "employee" of any such owner or lessee;
 - (5) Any person or organization for the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.
3. This insurance does not apply: If you regularly deliver the good or products which you are in the business of selling, "Bodily Injury" or "Property Damage" arising out of the delivery of those goods or products.
 4. This insurance does not apply: If you deliver any goods or products for a charge, "Bodily Injury" or "Property Damage" arising out of the delivery of those goods or products.
- C. The following additional definitions apply:
23. **"Auto Business"** means the business or occupation of selling, repairing, servicing, storing or parking "autos".
 24. **"Hired Auto"** means any "auto" you lease, hire or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees" or members of their households, or from any partner or "executive officer" of yours. This DOES NOT include any "Auto" you lease for a period of more than 30 consecutive days.
 25. **"Non-Owned Auto"** means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. However, if you are a partnership, a "non-owned auto" does not include any "auto" owned by any partner.

All other terms and conditions of this Policy remain unchanged. This endorsement is a part of your Policy and takes effect on the effective date of your Policy unless another effective date is shown.

INSURANCE

POLICY

UNITED STATES LIABILITY INSURANCE GROUP

A STOCK COMPANY

A BERKSHIRE HATHAWAY COMPANY

1190 Devon Park Drive
Wayne, PA 19087-2191
888-523-5545 – USLI.COM

This policy jacket together with the policy declarations, coverage forms and endorsements, if any, complete this policy.

The enclosed declarations designates the issuing company.

INSURANCE POLICY

Read your policy carefully!

In Witness Whereof, the company has caused this Policy to be executed and attested. Where required by law, this Policy shall not be valid unless countersigned by a duly authorized representative of the company.

Secretary



President



This endorsement modifies insurance provided under the following:

TECHNOLOGY PROFESSIONAL LIABILITY INSURANCE COVERAGE FORM

PRIVACY BREACH EXPENSE + ENDORSEMENT

Unless otherwise stated herein, the terms, conditions, exclusions and other limitations set forth in this endorsement are applicable only to coverage afforded by this endorsement. Otherwise, this endorsement is part of and subject to the provisions of the Policy to which it is attached.

I. SCHEDULE OF ADDITIONAL COVERAGE AND LIMITS

The following is a summary of Coverage and Limits of Liability provided by this endorsement.

COVERAGE	LIMIT OF LIABILITY
A. Privacy Breach Expense	\$250,000 each Privacy Breach or Security Event
	\$250,000 in the aggregate
B. Regulatory Claims	\$250,000 each Regulatory Wrongful Act
	\$250,000 in the aggregate
C. Business Interruption Injury and Extra Expense	See Section IV
D. Cyber Extortion Threat Expense	See Section IV
E. Payment Card Industry Fines, Penalties and Assessments	See Section IV

Aggregate Endorsement Limit \$250,000

Retroactive Date: 05/30/2019

II. INSURING AGREEMENTS

Words shown in **bold** shall have the meaning provided under DEFINITIONS of this endorsement or as provided in SECTION III., DEFINITIONS, of the Technology Professional Liability Insurance Policy, as applicable.

Privacy Breach Expense

The **Company** will pay on behalf of the **Named Insured** for **Privacy Breach Expenses** resulting from a **Privacy Breach**, suspected **Privacy Breach** or **Security Event** that first occurs on or after the Retroactive Date specified above and which is first discovered during the **Policy Period**. No retention applies to this coverage.

The **Insured** shall not incur any **Privacy Breach Expense** without (1) first reporting the **Privacy Breach**, suspected **Privacy Breach** or **Security Event** to the **Company** and (2) using a service provider of the **Company's** choice.

Regulatory Claims

The **Company** will pay on behalf of the **Insured**, **Claim Expenses** resulting from any written assertion or demand for liability, financial compensation, or non-monetary relief against any **Insured**; or any judicial or administrative proceeding initiated against any **Insured** including any appeal of such proceeding that any person or entity intends to hold such **Insured** responsible for a **Regulatory Wrongful Act**, first made against an **Insured** during the **Policy Period** or, if applicable, during any Extended Reporting Period for a **Regulatory Wrongful Act**. Such **Regulatory Wrongful Act** must first occur on or after the Retroactive Date specified above. The **Company** will also pay fines and penalties to the extent insurable by law which the **Insured** is legally obligated to pay, including amounts the **Insured** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims, resulting from a **Regulatory Notice/Proceeding** as a result of a **Regulatory Wrongful Act**.

Business Interruption Injury
and Extra Expense

The **Company** will pay the **Named Insured**:

- (1) **Business Interruption Loss** incurred by the **Named Insured**; and
- (2) **Extra Expense** incurred by the **Named Insured** during the **Period of Restoration**;

starting after 8 hours and as a direct result of the actual and necessary interruption or suspension of the **Named Insured's** computer systems directly caused by a **Privacy Breach** or **Security Event**.

If the **Named Insured** and the **Company** disagree on the amount of **Business Interruption Loss** covered under the "Business Interruption Loss and Extra Expense" Limit, either party may make a written request for an appraisal to be performed. In this event, each party will each select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree on an umpire, one will be selected by a judge of a court having jurisdiction over the parties. The appraisers will make an appraisal of the **Business Interruption Loss** incurred by the **Named Insured**. If they agree on the amount of the **Business Interruption Loss**, the **Company** will pay or reimburse the **Named Insured** for that amount up to the Limit of Liability set forth above. If the two appraisers cannot agree on the amount of the **Business Interruption Loss**, they will submit their appraisals to the umpire. A decision by the umpire with respect to the amount of any **Business Interruption Loss** will be final and binding on **Company** and the **Named Insured**.

In carrying out the appraisal process, each party will pay its designated appraiser and share fees and expenses of the umpire equally.

Any claims for **Business Interruption Loss** are otherwise subject to the terms, conditions and exclusions of this Policy.

Cyber Extortion Threat Expense

The **Company** will pay the **Named Insured**, **Cyber Extortion Threat Expenses** arising from a **Cyber Extortion Threat** against the **Named Insured**, which first occurs during the **Policy Period**. The **Company** will also pay up to \$5,000 per **Policy Period** for a **Cyber Extortion Threat** experienced by a **Named Insured's Client**.

The **Insured(s)** shall not incur any **Cyber Extortion Threat Expense** without (1) first reporting the **Cyber Extortion Threat** to the **Company** pursuant to Section VII and (2) obtaining the **Company's** written consent to payment of any **Cyber Extortion Threat Expense**, which consent will not be unreasonably withheld.

Payment Card Industry Fines,
Penalties and Assessments

The **Company** will pay on behalf of the **Named Insured** for **Payment Card Industry Fines, Penalties and Assessments** as a part of a **Payment Card Industry Wrongful Act** first made against an **Insured** during the Policy Period or, if applicable, during any Extended Reporting Period. Such **Payment Card Industry Fines, Penalties and Assessments** must first occur on or after the Retroactive Date specified above.

III. DEFINITIONS

Business Interruption Loss

means the following occurring during a **Period of Restoration**:

- (1) Any net profit or loss before income taxes that would have been earned or incurred; and
- (2) The **Named Insured's** normal, fixed operating and payroll expenses.

Business Interruption Loss does not mean:

- (1) Loss of bank interest or investment income;
- (2) **Loss** or **Claim Expense** arising out of any **Claim** by a third party;

- (3) Legal costs or any legal expenses; or
- (4) **Claims** or **Loss** incurred as a result of unfavorable business conditions, loss of unfavorable business conditions, loss of market or any other consequential loss; or
- (5) costs or expenses incurred by any **Insured** to identify, fix, or prevent a future **Privacy Breach** or **Security Event**.

Business Interruption Loss resulting from multiple interruptions or suspensions of the **Named Insured's** computer systems that arise out of or result from the same or a continuing **Privacy Breach** or **Security Event** or from related or repeated **Privacy Breaches** or **Security Events**, or from multiple **Privacy Breaches** or **Security Events**, shall be deemed to be a single **Business Interruption Loss**; provided, however, that a separate **Waiting Period** shall apply to each **Period of Restoration**.

In determining **Business Interruption Loss**, the **Company** will consider the **Named Insured's** net profit or loss before income taxes and normal fixed operating and payroll expenses from business operations immediately prior to the beginning of the **Period of Restoration** and will make any necessary adjustments based on expected market conditions and the volume and type of business actually on the **Named Insured's** books or reasonably certain to be put on the **Named Insured's** books, during the **Period of Restoration**. If the **Named Insured** is operating at a net loss, continuing expenses will only be paid to the extent that they exceed the amount of the net loss.

Additionally, the **Company** will reduce the amount paid for **Business Interruption Loss** under the Policy to the extent the **Named Insured** is able to reduce or limit such interruption or suspension of the **Insured's** computer systems and/or resume business operations by other reasonable means but fails to do so.

Cyber Extortion Threat

means a threat made to the **Named Insured** or a **Named Insured's Client** by an individual, entity or organization who is not an **Insured** or an **Named Insured's Client** to:

- (1) sell or publicly disclose **Personally Identifiable Information** held by the **Named Insured** or **Named Insured's Client**; or
- (2) alter, destroy, damage, delete or corrupt any **Data Asset**; or
- (3) prevent access to the **Named Insured's** or **Named Insured's Client's** computer system or **Data Assets**, including a denial of service attack or encrypting a **Data Asset** and withholding the decryption key for such **Data Asset**; or
- (4) perpetrate a theft or misuse of a **Data Asset** on the **Named Insured's** or **Named Insured's Client's** computer system through external access; or
- (5) interrupt or suspend the **Named Insured's** or **Named Insured's Client's** computer system;

unless cash or cash equivalent, including cryptocurrency, is received to prevent or terminate a **Cyber Extortion Threat** from the **Named Insured** or **Named Insured's Client**.

Cyber Extortion Threat Expense

means the following costs approved in advance by the **Company** and paid by or on behalf of the **Named Insured**:

- (1) Cash or cash equivalent, including cryptocurrency, payment is made under duress by or on behalf of the **Named Insured** for the sole purpose of preventing or terminating a **Cyber Extortion Threat**;
- (2) Payment for an independent negotiator or security consultant to resolve a **Cyber Extortion Threat**. Nothing herein shall obligate the **Company** to recommend, select, retain or arrange, manage or supervise such independent negotiator or security consultant nor shall the **Company** be liable, beyond what is covered under this Policy, for the acts or omissions of such negotiator or consultant;

(3) Reimbursement of up to \$5,000 in costs incurred by the **Named Insured** to:

(a) terminate a **Cyber Extortion Threat** on behalf of a **Named Insured's Client**, or;

(b) restore a **Data Asset** lost by a **Named Insured's Client**,

as a result of both a **Cyber Extortion Threat** experienced by the **Named Insured's Client** and the failure, error or omission of the **Insured's Professional Services**.

(4) A reward up to \$10,000 paid by the **Named Insured**, as applicable, to an informant, who is not an **Insured**, for information which leads to the arrest and conviction of the person(s) responsible for a **Cyber Extortion Threat**.

Data Asset

means any software or electronic data that exists in a computer system, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information and any other information maintained by the **Named Insured** in its ordinary course of business.

Denial of Service Attack

means an event caused by unauthorized or unexpected interference or malicious attack designed to overwhelm the capacity of a computer system by sending an excessive volume of electronic data for the purpose of preventing access to the computer system.

Extra Expense

means reasonable and necessary expenses incurred by an **Insured** to resume business operations following a **Privacy Breach** or **Security Event** that causes or requires the interruption or suspension of the **Named Insured's** computer systems which are over and above expenses the **Named Insured** would have normally incurred but for the **Privacy Breach** or **Security Event**. **Extra Expense** does not include any costs of updating, upgrading, or remediation of the **Named Insured's** computer systems that are not otherwise covered under this endorsement.

Key Personnel

means the individuals holding the following positions in the **Named Insured**: President; owner, partner, members of the Board of Directors; executive officers, including the Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer; General Counsel, staff attorneys employed by the **Named Insured**; Chief Information Officer; Chief Security Officer; Chief Privacy Officer; managing member of a limited liability company; and any individual in a substantially similar position as those referenced above, or with substantially similar responsibilities as those referenced above, irrespective of the exact title of such individual, and any individual who previously held any of the above referenced positions.

Named Insured's Client

means a client of the **Named Insured's** for which a written contract exists to receive **Professional Services** from the **Named Insured**.

Payment Card Industry Data Security Standards

means the published data security standard in effect now or as hereafter amended that all merchants and processors must follow when storing, processing and transmitting cardholder data.

Payment Card Industry Fines, Penalties and Assessments

means a written demand for monetary fines, penalties, and costs incurred by the payment card company, issuing bank, or acquiring bank to replace credit or debit cards whose card numbers were compromised or costs incurred to refund fraudulent charges.

Payment Card Industry Wrongful Act

means an **Insured's** actual or alleged noncompliance with published **Payment Card Industry Data Security Standards** as outlined under the terms of any agreement between the **Named Insured** and a financial institution, credit/debit card company, credit/debit card processor or independent service operator enabling an Insured to accept credit card, debit card, prepaid card, or other payment cards for payments or donations. Such act(s) of noncompliance must have resulted in a notice to the **Company** of a **Privacy Breach**.

Personally Identifiable Information

means the following non-public information in the care, custody and control of the **Insured**, or those acting on behalf of the **Insured**:

- (1) information, both in electronic and non-electronic form, concerning an individual(s) that would be considered “non-public information” within the meaning of Title V of the Gramm-Leach Bliley Act of 1999 (as amended) and its implementing regulations including but not limited to social security numbers or account numbers;
- (2) personal information as defined in any privacy protection law governing the control and use of an individual’s personal and confidential information, including any regulations promulgated thereunder; and
- (3) protected health information including but not limited to information as defined by the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) (“HIPPA”) or the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”) (Public Law 111-5), as amended, and any regulations promulgated thereto.

Period of Restoration

means the period of time, up to a maximum of one hundred eighty (180) days, commencing on the date and time that a caused or required suspension or interruption of the **Named Insured’s** computer systems first occurs and ending on the date and time that the caused or required interruption or suspension ends, or reasonably would have ended if the **Named Insured** had acted with due diligence to restore the computer systems and mitigate the **Business Interruption Injury** as provided below.

Privacy Breach

means the misappropriation, theft, loss of, unauthorized access, inadvertent disclosure or public exposure of **Personally Identifiable Information**. **Privacy Breach** does not mean a situation where **Personally Identifiable Information** is deliberately disclosed or sold to a third party with the knowledge and consent of **Key Personnel**.

Privacy Breach Expense

Privacy Breach Expense means the reasonable and necessary expenses listed below in (1) through (9) resulting from a **Privacy Breach**, suspected **Privacy Breach**, or **Security Event** and incurred by the **Named Insured** or assumed under a written contract or agreement.

- (1) Development of a plan to assist the **Named Insured**; and
- (2) Development, printing, and mailing of legally required notification letters to those affected persons; and
- (3) Development, printing and mailing of non-legally required notification letters to affected or potentially affected persons at the **Company's** discretion; and
- (4) Public relations or crisis management services retained for the **Named Insured** to mitigate any adverse effect on the **Named Insured's** reputation with customers, investors and employees resulting from a **Privacy Breach** that becomes public; and
- (5) Data analysis or forensic investigation; and
- (6) Development of a website link for use by the **Named Insured** in communicating with persons affected; and
- (7) Development and support of a Customer Relationship Management (CRM) system and call center for use by the **Named Insured** in communicating with persons affected; and
- (8) Credit monitoring services or identity restoration services that are reasonable and necessary to those persons affected; and
- (9) the cost for **Data Asset** restoration resulting from damages from the intentional or willful destruction of a **Data Asset**, but not including:
 - a) the cost to update or improve any **Data Asset** or computer system to a level beyond that which existed prior to such damages resulting from the intentional or willful destruction of a **Data Asset**; or
 - b) the economic or market value of any **Data Asset**.

The above costs are subject to the limit of liability for "each **Privacy Breach**" and "in the aggregate" for **Privacy Breach Expense** shown above.

Privacy Law

means any federal, state, local or foreign statute or regulation governing the confidentiality, access, control and use of **Personally Identifiable Information**.

Regulatory Notice/Proceeding means a request for information, civil investigation, civil proceeding or other similar proceeding directed to an **Insured** and brought by or on behalf of any federal, state, local, or foreign regulatory agency, related to an actual or alleged violation of any **Privacy Law**. This definition includes any proceeding regarding the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy, Security and Breach Notification Rules or regarding EU General Data Protection Regulation (2016/679)

Regulatory Wrongful Act means an **Insured's** actual or alleged violation of a **Privacy Law** which results in a **Regulatory Notice/Proceeding** against an **Insured**.

Security Event means:

- (1) An unauthorized access of the **Named Insured's** computer system(s); or
- (2) Transmission of malicious code or virus to the **Named Insured's** computer system(s); or
- (3) A **Denial of Service Attack** against an Insured Entity's computer system(s).

IV. LIMITS OF LIABILITY AND RETENTION

Privacy Breach Expense
Each Privacy Breach Limit

The “each **Privacy Breach or Security Event**” Limit of Liability specified in the schedule above for **Privacy Breach Expense** shall be the maximum liability for **Privacy Breach Expense per Privacy Breach or Security Event**.

Privacy Breach Expense
In the Aggregate Limit

The “in the aggregate” Limit of Liability specified in the Schedule above for **Privacy Breach Expense** shall be the maximum Limit of Liability for **Privacy Breach Expense** for all **Privacy Breaches**.

Regulatory Claims
Each Regulatory Wrongful Act

The “**Regulatory Wrongful Act**” Limit of Liability specified in the schedule above for **Regulatory Claims** shall be the maximum liability for **Regulatory Claims**.

Regulatory Claims
In the Aggregate Limit

The “in the aggregate” Limit of Liability specified in the Schedule above for **Regulatory Wrongful Act** shall be the maximum Limit of Liability for **Regulatory Claims**.

Business Interruption Injury
And Extra Expense

The “**Business Interruption and Extra Expense Limit**” shown on this endorsement shall be a part of and not in addition to the “**each Privacy Breach or Security Event**” and “in the aggregate” Limits of Liability specified in the schedule above for “**Privacy Breach Expense**”.

Cyber Extortion Threat Expense

The “**Cyber Extortion Threat**” Limit of Liability shown on this endorsement shall be a part of and not in addition to the “**each Privacy Breach or Security Event**” and “in the aggregate” Limits of Liability specified in the schedule above for “**Privacy Breach Expense**”.

Payment Card Industry
Fines, Penalties and Assessments

The “**Payment Card Industry Fines and Penalties and Assessments**” Limit of Liability shown on this endorsement shall be a part of and not in addition to the “**each Privacy Breach or Security Event**” and “in the aggregate” Limits of Liability specified in the schedule above for “**Privacy Breach Expense**”.

Limits Outside Policy
Aggregate

The Limits of Liability for Coverages A, B, C, D and E provided by this endorsement shall be separate from the "IN THE AGGREGATE" LIMIT OF LIABILITY specified in the Policy Declarations for the Technology Professional Liability Insurance Coverage form.

Policy Period Aggregate Limit

In no event shall the **Company** pay more than the "Aggregate Endorsement Limit" specified in the Schedule above in any **Policy Period** for any combination of the above coverages.

Deductible

No deductible applies to coverage afforded by this endorsement.

V. ADDITIONAL EXCLUSIONS

In addition to the exclusions listed in Section IV EXCLUSIONS of the Policy, the following exclusions apply.

The **Company** shall not be liable to make payment for **Loss** or **Claim Expense** in connection with any suspected **Privacy Breach, Privacy Breach, Security Event or Cyber Extortion Threat Expense**, or **Claim** made against any **Insured** arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:

Other Costs/Expenses

cost or expense incurred or expected to be incurred by a person(s) whose **Personally Identifiable Information** was the subject of a **Privacy Breach** except as provided under **Privacy Breach Expense**; or

Other Coverage

cost or expense covered, in whole or in part under any other coverage which is part of this Policy; or

Prior Notice

any **Privacy Breach, Cyber Extortion Threat, Business Interruption Injury, Payment Card Industry Wrongful Act** or **Regulatory Action** of which any **Insured** had notice prior to the inception date of this Policy; or any fact, circumstance, event, situation or incident which before the inception date of this Policy was the subject of any notice under any other similar policy of insurance or any future claims for expenses under this Policy based upon such pending or prior notice; or

Intentional Failure to Provide Notice

any actual or alleged intentional failure of the **Named Insured** to provide notice of a known **Privacy Breach** to authorities or to potentially affected persons or organizations in accordance with the requirements of any federal or state statute or regulation; or

Criminal/Intentional Acts

any actual or alleged criminal, fraudulent dishonest or discriminatory act by the **Insured**, or the gaining by the **Insured** of any personal profit, gain or advantage to which the **Insured** was not legally entitled; or

Utility Service Disruption

failure, interruption or reduction in supply of utility service or infrastructure, including, without limitation, electrical, gas, water, telephone, internet, cable, satellite, or telecommunications.

VI. COVERAGE LIMITATIONS

The following terms, conditions and exclusions in the Technology Professional Liability policy do not apply to this endorsement:

Extension Period

Section VII EXTENSION PERIOD;

Full Prior Acts

Section II. FULL PRIOR ACTS COVERAGE PROVISION.

Criminal/Intentional Acts

Section IV. Exclusion A

VII. Section V DEFENSE AND SETTLEMENT is amended with the addition of the following:

F. For the purposes of Cyber Extortion Threat Expense coverage provided by this endorsement, the following conditions apply:

1. Notification of Law Enforcement
An **Insured** authorizes the **Company** or its representatives to notify the law enforcement authorities of any actual or potential **Cyber Extortion Threat**. An **Insured** shall thereafter cooperate fully with law enforcement authorities in the investigation and prosecution of a **Cyber Extortion Threat**.

2. Disclosure of Coverage
An **Insured** shall not disclose to any person, organization or entity outside of the **Named Insured**, other than law enforcement, of the existence of insurance coverage afforded by this Policy.

VII. NOTICE/CLAIM REPORTING PROVISIONS

Section VIII. NOTICE/CLAIM REPORTING PROVISIONS is deleted and replaced with the following:

Notice hereunder shall be given in writing to the **Company**. If mailed, the date of mailing of such notice shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

A. Written Notice of a **Claim** or **Privacy Breach**, suspected **Privacy Breach**, **Security Event**, **Cyber Extortion Threat**

(1) As a condition precedent to exercising any right to coverage under this Policy, the **Insured** shall give written notice to the **Company** of a **Claim** or **Privacy Breach**, suspected **Privacy Breach**, **Security Event**, **Cyber Extortion Threat** as soon as practicable after **Key Personnel** learns of such **Claim** or **Privacy Breach**, suspected **Privacy Breach**, **Security Event**, **Cyber Extortion Threat** during the Policy Period in which the **Claim** or **Privacy Breach**, suspected **Privacy Breach**, **Security Event**, **Cyber Extortion Threat** is first made against or discovered by an **Insured** but:

a. if the **Policy Period** expires, is cancelled or is non-renewed and if no Extended Reporting Period is purchased, no later than sixty (60) days after the expiration date or the effective date of such cancellation or non-renewal for **Claims** or **Privacy Breach**, suspected **Privacy Breach**, **Security Event**, **Cyber Extortion Threat** first made against or discovered by an **Insured** during the last sixty (60) days prior to the **Policy Period** expiration or effective date of cancellation or nonrenewal; or

b. if an Extended Reporting Period is purchased, no later than the last day of the Extended Reporting Period and the **Claim** must arise from a **Wrongful Act** committed before the date of the **Policy** expiration, cancellation or non-renewal. If an Extended Reporting Period is purchased, notice of a **Claim** shall be in accordance with the terms and conditions of Section VII. EXTENDED REPORTING PERIOD provided that if the **Company** sends written notice to the **Named Insured** stating that this Policy is being terminated for nonpayment of premium, an **Insured** shall give to the

Company written notice of such **Claim** or **Privacy Breach**, suspected **Privacy Breach, Security Event, Cyber Extortion Threat** prior to the effective date of such termination.

B. Written Notice of a Circumstance

(1) An **Insured** shall give to the **Company** written notice of a circumstance which could reasonably be expected to give rise to a **Claim** or **Privacy Breach**, suspected **Privacy Breach, Security Event, Cyber Extortion Threat**, being made against or happening to an **Insured** as soon as practicable during the **Policy Period** in which an **Insured** first becomes aware of the circumstance.

(2) If written notice of a circumstance which could reasonably be expected to give rise to a **Claim** or **Privacy Breach**, suspected **Privacy Breach, Security Event, Cyber Extortion Threat** made against or happening to an **Insured** has been given to the **Company** during the **Policy Period** or the Extended Reporting Period, where applicable and if purchased, any **Claim** or **Privacy Breach**, suspected **Privacy Breach, Security Event, Cyber Extortion Threat** which is subsequently made against an **Insured** and reported to the **Company** alleging, arising out of, based upon or attributable to the facts alleged in the reported circumstance shall be considered first made at the time such notice of the circumstance was given. Coverage for a circumstance reported pursuant to this provision applies only if the **Wrongful Act** that is a subject of the reported circumstance or the **Privacy Breach**, suspected **Privacy Breach, Security Event, Cyber Extortion Threat** occurs prior to the expiration date or, if applicable, prior to the effective date of cancellation or non-renewal of the **Policy Period** in which the circumstance was reported.

(3) When reporting a circumstance to the **Company**, an **Insured** shall give the reasons for anticipating why the circumstance could reasonably be expected to give rise to a **Claim**, or **Privacy Breach**, suspected **Privacy Breach, Security Event, Cyber Extortion Threat** being made against the **Insured** with full particulars as to the dates and persons involved.

Coverage provided by your Policy and any endorsements attached thereto are amended by this endorsement where applicable. All other terms and conditions of this Policy remain unchanged. This endorsement is a part of the **Named Insured's** Policy and takes effect on the effective date of the **Named Insured's** Policy unless another effective date is shown.

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
DECLARING SEPTEMBER 19 – SEPTEMBER 25, 2021 AS
THE 19TH ANNUAL SEA OTTER AWARENESS WEEK**

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

WHEREAS, the sea otter is a symbol of wildness, an integral part of California’s natural ecosystem and serves as an indicator for the overall health of California’s nearshore marine environment; and

WHEREAS, disease from a variety of sources accounts for a significant amount of the mortality of California sea otters in a given year; and

WHEREAS, the survival of the sea otter remains dependent upon continued public support and increased understanding of sea otters as a keystone species; and

WHEREAS, awareness of the benefits of maintaining the health of the nearshore marine environment has raised public awareness in the sea otter; and

WHEREAS, increased human viewing and other interactions with sea otters can have a detrimental effect on sea otter health; and

WHEREAS, through educational outreach, guidance and monitoring of the sea otter in our waters from the Monterey Bay Aquarium, California Department of Fish and Wildlife, Defenders of Wildlife, Friends of the Sea Otter, US Fish and Wildlife Service, California State Parks’ Sea Otter Experience, Sea Life Stewards and The Sea Otter Savvy program greater public awareness has been brought to the plight of the sea otter;

WHEREAS, the City of Morro Bay is grateful for those volunteers and scientists who give their time so freely in order to increase public awareness and understanding of sea otter importance and issues.

NOW, THEREFORE, BE IT RESOLVED, that the Morro Bay City Council does hereby proclaim September 19 – September 25, 2021 to be the 19th Annual “Sea Otter Awareness Week.”

IN WITNESS WHEREOF I have
hereunto set my hand and caused the
seal of the City of Morro Bay to be
affixed this 14th day of September, 2021

John Headding, Mayor
City of Morro Bay, California

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AGENDA NO: B-1

MEETING DATE: September 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: September 3, 2021

FROM: Scott Collins, City Manager

SUBJECT: Conduct a Public Hearing on Disestablishment of the Previous Morro Bay Tourism Business Improvement District formed in 2009 pursuant to the Parking and Business Improvement Area Law of 1989; and, Introduce for First Reading by Title Only with Further Reading Waived, Ordinance No. 643, An Ordinance of the City Council of the City of Morro Bay, California Rescinding Morro Bay Municipal Code Chapter 3.60 and Disestablishing the Old Morro Bay Tourism Business Improvement District formed in 2009

RECOMMENDATION

Staff recommends the Council:

1. Hold a public hearing on disestablishment of the previous Morro Bay Tourism Improvement District (MBTBID) formed in 2009 pursuant to the Parking and Business Improvement Area Law of 1989 ('89 Law) and
2. Introduce for First Reading by Title Only with Further Reading Waived, Ordinance No. 643, An Ordinance of the City Council of the City of Morro Bay, California Rescinding Morro Bay Municipal Code Chapter 3.60 and Disestablishing the Old Morro Bay Tourism Business Improvement District formed in 2009.

ALTERNATIVES

The Council could choose not to introduce Ordinance No. 643. Staff does not recommend this option.

FISCAL IMPACT

There is no fiscal impact associated with this action. The City Council adopted Resolution No. 28-21 approving a new MBTBID pursuant to the Parking and Business Improvement Area Law of 1994 ('94 Law) on June 8, 2021 re-establishing an assessment of 3% of gross short-term room rental revenue for all lodging businesses and vacation rental businesses for a five-year term beginning July 1, 2021 through June 30, 2026. Consistent with the prior Council direction, those revenues will be utilized by the new MBTBID, Visit Morro Bay, for tourism marketing and visitor services as outlined in their formation documents; the City will receive an administrative fee for staff time utilized to process and remit the revenues.

BACKGROUND/DISCUSSION

On April 27, 2009, City Council approved Ordinance No. 546 (the Ordinance) amending the Morro Bay Municipal Code and establishing the MBTBID pursuant to the '89 Law with a one-year renewal cycle. On June 8, 2021, pursuant to the '94 Law, the Council adopted Resolution No. 28-21 re-establishing the MBTBID for a five-year term beginning July 1, 2021 through June 30, 2026, and

Prepared By: ___MW/DS___

Dept Review: _____

City Manager Review: ___SC___

City Attorney Review: ___CFN___

allowing the MBTBID created under the '89 Law to expire (Attachment 2). This effort seeks to complete the process of modernizing the MBTBID by formally disestablishing the previous MBTBID created in 2009 pursuant to the '89 Law.

The '89 Law allows the City Council to initiate disestablishment of the '89 Law MBTBID by adoption of a resolution expressing its intention to disestablish the '89 Law MBTBID (**Attachment 1**). The resolution must state the reason for disestablishment, the time and place of the public hearing on disestablishment, and a proposal to dispose of any assets acquired with the revenues of the assessments levied within the '89 Law MBTBID. The proposal for the disposal of any assets acquired with the revenues of the assessments levied within the '89 Law MBTBID is to transfer them to the '94 Law MBTBID, because the '94 Law MBTBID will contain the same businesses as the '89 Law MBTBID and the assets will be used for marketing and promotions efforts that benefit those businesses who paid the assessment.

The reason for disestablishment of the '89 Law MBTBID is due to the proposal to modernize and replace it with the '94 Law MBTBID. The time and place of the public hearing on disestablishment of the '89 Law MBTBID has been set for 5:30 PM or as soon thereafter as the matter may be heard on September 14, 2021, via teleconference pursuant to Executive Order N-08-21, issued by Governor Newsom on June 11, 2021.

MBTBID DISESTABLISHMENT PROCESS

- August 24, 2021 **RESOLUTION OF INTENTION (COMPLETED)**
The City Council may disestablish an area by adopting an ordinance after holding a public hearing on the disestablishment. The City Council shall adopt a resolution of intention to disestablish the area prior to the required public hearing.
- August 25, 2021 **NOTICE (COMPLETED)**
Notice of the public hearing shall be given by both 1) publishing the resolution of intention in a newspaper of general circulation in the City of Morro Bay once, for at least seven (7) days before the hearing; and 2) mailing a complete copy of the resolution of intention by first-class mail to each business owner subject to the '89 Law MBTBID assessment within seven (7) days of the City Council's adoption of the resolution of intention.
- September 14, 2021 **PUBLIC HEARING & DISESTABLISHMENT ORDINANCE 1st READING**
The City Council shall hold a public hearing on the disestablishment of the '89 Law MBTBID and receive public testimony on the disestablishment of the '89 Law MBTBID.

At the conclusion of the public hearing to disestablish the '89 Law MBTBID, the City Council may introduce and conduct the first reading of the ordinance to disestablish the '89 Law MBTBID and rescinding MBMC Chapter 3.60.
- September 28, 2021 **DISESTABLISHMENT ORDINANCE 2nd READING & ADOPTION**
The City Council may conduct the second reading of the ordinance to disestablish the '89 Law MBTBID and adopt the ordinance.
- September 29, 2021 **NOTICE**
Notice of disestablishment of the MBTBID shall be published once in a

newspaper of general circulation in the City of Morro Bay, not later than fifteen (15) days after the ordinance disestablishing the '89 Law MBTBID is adopted.

June 30, 2021

EFFECTIVE DATE OF '89 LAW MBTBID DISESTABLISHMENT
The '89 Law MBTBID as a matter of law shall cease to exist.

ATTACHMENTS

1. Resolution No. 58-21 Declaring Intent to Disestablish the MBTBID under the '89 Law
2. Proposed Ordinance No. 643

RESOLUTION NO. 58-21

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
DECLARING ITS INTENTION TO DISESTABLISH THE PREVIOUS MORRO BAY TOURISM
BUSINESS IMPROVEMENT DISTRICT PURSUANT TO THE PARKING AND BUSINESS
IMPROVEMENT AREA LAW OF 1989; AND SET A PUBLIC HEARING**

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

WHEREAS, on April 27, 2009, City Council approved Ordinance No. 546 establishing the Morro Bay Tourism Business Improvement District (MTBID) pursuant to the Parking and Business Improvement Area Law of 1989, Streets and Highways Code §§36500 *et seq.* ('89 Law); and

WHEREAS, on June 8, 2021 with the adoption of Resolution No. 28-21, the City Council established a new Tourism Business Improvement District pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code §§36600 *et seq.* ('94 Law); and

WHEREAS, the '89 Law allows the City Council to disestablish the old MTBID; and

WHEREAS, the City Council now intends to disestablish the old MTBID;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT:

1. The recitals set forth herein are true and correct.
2. The City Council declares its intention to disestablish the old MTBID (established previously on June 8, 2021) pursuant to the '89 Law.
3. The reason for disestablishment of the old MTBID is because the old MTBID is being replaced by a new, similar district formed pursuant to the '94 Law.
4. The time and place for a public hearing on the disestablishment of the old MTBID is set for 5:30 PM, or as soon thereafter, as the matter may be heard on September 14, 2021, via teleconference pursuant to Executive Order N-08-21, issued by Governor Newsom on June 11, 2021.
5. The proposal for the disposal of any assets acquired with the revenues of the assessments levied within the '89 Law MTBID is to transfer them to the '94 Law MTBID, because the '94 Law MTBID will contain the same businesses as the '89 Law MTBID and the assets will be used for marketing and promotions efforts that benefits those businesses who paid the assessment.
6. The City Clerk is directed to provide notice of the public hearing in accordance with Streets and Highways Code §36523 by:
 - a. Publishing this Resolution of Intention in a newspaper of general circulation in the City of Morro Bay once, at least seven (7) days before the hearing; and

- b. Mailing a complete copy of this Resolution of Intention to each and every business owner subject to the assessment within the MBTBID within seven (7) days of the adoption of this Resolution by the City Council.

7. This resolution shall take effect immediately upon its adoption by the City Council.

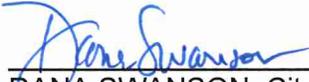
PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting of the City Council on the 24th day of August 2021 by the following vote:

AYES: Headding, Addis, Barton, Heller
NOES: None
ABSENT: None
ABSTAIN: None



JOHN HEADDING, Mayor

ATTEST:



DANA SWANSON, City Clerk

ORDINANCE NO. 643

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
RESCINDING MORRO BAY MUNICIPAL CODE CHAPTER 3.60 AND
DISESTABLISHING THE OLD MORRO BAY TOURISM BUSINESS
IMPROVEMENT DISTRICT FORMED IN 2009**

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

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

SECTION I. AUTHORITY.

This ordinance is adopted pursuant to the Parking and Business Improvement Area Law of 1989 (“89 Law”), Streets and Highways Code section 36500 *et seq.* and Resolution Number 58-21 adopted by the City Council on August 24, 2021, entitled a “Resolution of the City Council of the City of Morro Bay Declaring its Intention to Disestablish the Morro Bay Tourism Business Improvement District Pursuant to the Parking and Business Improvement Area Law of 1989; and Set a Public Hearing.” Such resolution was published and mailed as provided by law and a public hearing was held by the City Council at its regular meeting on September 14, 2021, at which time all persons desiring to be heard and all objections made or filed were fully heard. The City Council duly concluded the hearing on September 14, 2021.

SECTION II. AREA DISESTABLISHED.

The City Council finds and determines that public convenience and necessity require disestablishment of the old “89 Law” MBTBID for reasons given in the Resolution of Intention.

Pursuant to Streets and Highways Code section 36550, of the Parking and Business Improvement Area Law of 1989, the old 89 Law Morro Bay Tourism Business Improvement District, established on April 27, 2009, is hereby disestablished, and furthermore Morro Bay Municipal Code Chapter 3.60 is hereby rescinded in its entirety.

SECTION III. EFFECTIVE DATE.

This Ordinance shall be in full force and take effect 30 days after the date of its adoption.

SECTION IV. SEVERABILITY.

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

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SECTION V. CERTIFICATION.

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

INTRODUCED at a regular meeting of the City Council held on the 14th day of September 2021, by motion of Council Member _____ and seconded by Council Member _____.

PASSED AND ADOPTED on the _____ day of September 2021.

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 643 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the _____ day of September 2021, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

City Clerk, Dana Swanson

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

DANA SWANSON, City Clerk



AGENDA NO: C-1

MEETING DATE: September 14, 2021

Staff Report

TO: Honorable Mayor and Council Members **DATE:** September 3, 2021

FROM: Scott Collins, City Manager
Dana Swanson, City Clerk/Human Resources Manager

SUBJECT: Discussion and Direction regarding 2022 Special Election to fill a Vacant City Council Seat and Appointment to Temporarily Fill the Council Vacancy Until the Results of the 2022 Special Election are Certified

RECOMMENDATION

Staff recommends the Council:

1. Discuss and direct staff to return with the necessary resolutions to call a Special Election on June 7, 2022, to fill a vacant City Council seat for the remainder of a term ending December 2024; and
2. Conduct interviews of applicant(s) to fill the existing vacant City Council seat until the results of the 2022 Special Election are certified by the San Luis Obispo County Clerk-Recorder's Office.

ALTERNATIVES

1. Direct staff to return with the necessary resolutions to call a Special Election on April 12, 2022 at an additional City cost of approximately \$100,000, compared to the June 7, 2022 option.
2. Choose not to make a temporary appointment and allow the Council seat to remain vacant until the results of a 2022 Special Election are certified.

FISCAL IMPACT

The estimated cost to conduct a June 2022 Special Election is \$30,000 which is not included in the adopted Fiscal Year (FY) 2021/22 Adopted Operating Budget. Based on direction provided at this meeting, staff will bring this budget amendment to Council for approval at mid-year.

BACKGROUND/DISCUSSION

At the August 10, 2021 City Council meeting, the Council considered the available options for filling the vacant City Council seat resulting from the passing of Council Member Davis. The Council decided to temporarily fill the vacancy by appointment and invited registered voters in Morro Bay to apply for consideration of a temporary appointment, pending a Special Election to be held in 2022. Community members were asked to complete an application available on the City's website and submit it to the City Clerk's Office by 5:00 p.m. on Friday, September 3, 2021. As of September 3, the City received two qualified applications, which are provided as Attachment 1.

1. Special Election to fill Council Vacancy

Government Code Section 36512 states that if a vacancy occurs in an elective office, the Council

Prepared By: DS

Dept Review:

City Manager Review: SC

City Attorney Review: CFN

shall within 60 days from the commencement of the vacancy either call a special election to fill the vacancy or fill the vacancy by appointment (Attachment 2). If the Council should choose to hold a special election to fill the vacancy, the special election is required to be held at the next regularly “established election date” not less than 114 days from the call of the special election. Election Code section 1000 provides for “established election dates” pursuant to State law. The person elected to fill a vacancy holds the office for the unexpired term of the former incumbent.

While Government Code Section 36512 provides minimum requirements for filling a vacancy, it also provides that a city may enact an ordinance that requires a special election be called immediately to fill a city council or mayor vacancy on the next regularly established election date not less than 114 days from the call of the special election and also appoint a councilmember until the special election is held.

Morro Bay Municipal Code Section 2.06.030 (Measure “R”)

In 2006, Morro Bay residents approved Measure R, an Initiative Ordinance to Amend Morro Bay Municipal Code by adding Section 2.06.030 - Council Vacancy Reform (Attachment 3) which, in part, provides the following local requirements for filling Council vacancies:

- B. How Vacancies Filled. The city council shall immediately call a special election to fill any vacant seat on the council, including the mayor's seat. The special election shall be held on the next established election date, as specified in California Elections Code, which is not less than one hundred fourteen days from the call of the special election. The city council may appoint an elector who is a registered voter in the city of Morro Bay to fill such vacancy prior to the special election. The appointee shall hold office only until the date of said special election.

Alternative 1 – April 12, 2022 Special Election (not recommended)

The next “established election date” in not less than one hundred fourteen days, pursuant to Election Code section 1000, is April 12, 2022. Since 1991, all municipal elections held by the City of Morro Bay have been consolidated with San Luis Obispo County and conducted by the County Clerk-Recorder’s office. While the city clerk as the elections official is responsible for preparing, reviewing, and accepting candidate materials, the services provided by the County in a consolidated election include preparation of the voters’ guide, ballot creation, printing, mailing, voter registration, voting site operation, tabulation, and certification of the results.

Due to the current recall election, redistricting efforts and timeline for the June 2022 Statewide Primary election, the County Clerk’s office has informed City staff they do not have the capacity to conduct an April election on the City’s behalf. If that date were chosen, the City could still conduct a stand-alone all mail ballot election (Election Code section 4004) but at considerable expense.

Staff has sought proposals for consulting services and materials to develop cost estimates for a stand-alone vote by mail election, which includes:

Professional Elections Management Consulting Services	NTE \$20,000.00
Production of voter information guide, ballots, envelopes & “I voted” stickers	\$22,187.00
Verity rental, scanning and ballot tabulation services	\$51,251.70
First class postage out & back with “track my mail” service	\$16,564.00
Total Estimated Cost <i>not including staff time</i>	\$110,002.70

A precinct election (i.e., one not done by mail only ballot) would require all of the above as well as the cost of additional equipment, supplies and the hiring and training poll workers. The additional staff time to conduct a stand-alone all mail ballot election is estimated to be 150 – 200 hours over a six month period of time.

Alternative 2 – June 7, 2022 Special Election (recommended)

The County will be conducting a June 7, 2022 Statewide Primary Election and the City can request consolidation for election to fill one Council seat for the remainder of the term through 2024. The estimated City costs for the County to conduct a Special Election in June 2022 is estimated to be **\$28,500**.

Aside from the substantial difference in costs and required staff time is a question regarding the level of public participation in an off-cycle stand-alone election in April vs. a June primary, not only from a voting perspective but also prospective candidates. If the election were held in April, the time period when candidates can circulate nomination papers for signature and submit candidate statements would be December 20, 2021 – January 14, 2022. Given the holidays and fact the Council goes dark from December 14 – January 11, this seems to not be ideal for having broad community attention and participation. If held in June, that nomination period would be February 14 – March 11, 2022.

Voter Intent of Measure “R”

Given costs and nomination period timing, the choice between an April and June election seems obvious. The intent of Measure R appears to be that a special election be held, rather than only an appointment made and no election held, even though Measure “R” arguably out of context seeks an April election date. The Argument for Measure “R” states that “in the extremely rare case of a legitimate vacancy, like death or incapacity, the measure provides **the replacement election be held in conjunction with other elections, or by mail, to minimize costs.**” (Attachment 3.) (emphasis added.) The intent of Measure R reasonably was not for the City to spend an extra \$100,000 or more to hold an election less than two months before the June 7, 2022 Statewide Primary election date.

The focus of both the official Measure R Argument, as well as the Measure R impartial analysis (Attachment 4) appears to be making sure an election is held, as opposed to Council only making an appointment and then not holding an election. Based on this, one can reasonably argue that the spirit and intent of Measure R is met by holding the special election in June as opposed to April to save the City ~\$100,000, because the bottom line is a special election is still being held.

Based on the above, staff recommends the Council direct staff to bring back the necessary resolutions to call a Special Municipal Election to be held on Tuesday, June 7, 2022, for the election of a council member for the remainder of a term ending December 2024, and further request the County Board of Supervisors consolidate the Special Municipal Election with the Statewide Primary Election to be held on the same date.

2. Temporary Appointment to fill the City Council vacancy pending certified results of the 2022 Special Election

There are no requirements within State law that define a specific process for how the Council may decide to make an appointment to the currently vacant Council seat (other than by majority vote), as this is a policy decision of the Council. As of the September 3, 2021 application deadline, staff received two qualified applications submitted by Jennifer Ford and Sean Green, which are provided as Attachment 1 with personal information redacted. Ms. Ford and Mr. Green have been asked to provide a three-minute overview about themselves and why they are interested in serving on the City Council followed by questions from the Council. Following the interviews, the Council can consider the appointment, which may be made by a voice vote or motion that is seconded and approved by at least three members of the Council.

Once the Council reaches a decision on the appointment, a virtual Oath of Office will be administered to the appointee and the newly appointed Council Member will be virtually seated at the dais and can

participate in the remaining items on the September 14, 2021 Council meeting.

A new Council Member orientation will be scheduled with the City Manager, City Attorney and City Clerk prior to the next regular City Council meeting scheduled for September 28. Pursuant to State law, the Council Member will be required to file a Statement of Economic Interests (Fair Political Practices Commission – Form 700) reporting sources of income or financial interests for the appointed member, their spouse or registered domestic partner, or dependent children that are located in, doing business in, planning to do business in, or having done business within the City's jurisdiction during the past two years.

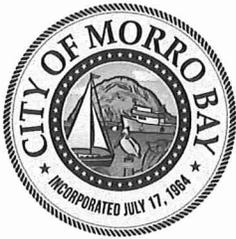
CONCLUSION

Staff recommends the Council:

1. Discuss the alternatives and direct staff to return with the necessary resolutions to call a Special Election on June 12, 2022, to fill a Council Vacancy, and
2. Conduct interviews of applicants to fill the existing vacant City Council seat until the results of the 2022 Special Election are certified by the San Luis Obispo County Clerk-Recorder's Office, and

ATTACHMENTS

1. Applications submitted by Jennifer Ford and Sean Green
2. Government Code Section 36512
3. Morro Bay Municipal Code Section 2.06.030
4. Argument in favor of Measure "R"
5. Impartial Analysis for Measure "R"



CITY OF MORRO BAY

CITY HALL
 595 Harbor Street
 Morro Bay, CA 93442

RECEIVED
 City of Morro Bay

AUG 20 2021

City Clerk

**APPLICATION FOR APPOINTMENT
 TO CITY COUNCIL
 CITY OF MORRO BAY**

ALL APPLICANTS MUST BE RESIDENTS AND REGISTERED VOTERS WITHIN THE CITY OF MORRO BAY AT THE TIME THE APPLICATION IS SUBMITTED. THE APPOINTED COUNCIL PERSON IS REQUIRED TO FILE A STATEMENT OF ECONOMIC INTEREST PURSUANT TO THE POLITICAL REFORM ACT.

<p>Completed Applications and Questionnaire Responses must be submitted by 5:00 p.m. on Friday, September 3, 2021</p>
<p>To: City Clerk's Office 595 Harbor Street Morro Bay, CA 93442 (805) 772-6205</p>

Full Name: Jennifer Nicole Ford	
Street Address: [REDACTED] Morro Bay, CA 93442	
Years resided at this address: 2 year, 11 months	
Have you lived at any other address in the City? If yes, give previous address: [REDACTED] Morro Bay, CA 93442	
Home Phone: [REDACTED]	Cell Phone: [REDACTED]
Email Address: [REDACTED]	
Employer: Self - Rock Harbor Marketing	
Employer Address: 783 Market Ave., Morro Bay, CA 93442	
Employer Phone: 805.235.8463	
Occupation: CEO	How Long: 8 years, 10 months
Education (highest grade completed): A.A. Psychology	
Licenses or special certificates held:	

Name, location of Schools/Colleges/ Universities attended	Major	Degree
Bakersfield College	Psychology	A.A.
Cerro Coso Community College	Early Childhood Education	

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Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

Yes _____ No X (If yes, please attach a separate sheet of explanation.)

Membership or Participation in professional, charitable or community organizations	Office Held (if any)	Dates of Membership
Del Mar Elementary PTA	Volunteer Coordinator (2 terms), President (2 terms)	2011- 2015
Women's March San Luis Obispo	Co-Founder, Co-Organizer	2016 - current
Morro Bay Open Space Alliance		2018 - 2020
Friends of the Harbor Department		June 2015 - current
Morro Bay Planning Commissioner		February 2021 - current

+ more (ask me about them)

I declare under penalty of perjury that all statements in this application and the attached responses are true and complete to the best of my knowledge and belief.



 Signature of Applicant

August 20, 2021

 Date

Application for Appointment to MB City Council Questionnaire - Jennifer Ford

1. Why do you want to be appointed to the City Council? What do you feel you will bring to the position?

- Since I was a child, I have cared about the City of Morro Bay, visiting this wonderful town, admiring the massive Morro Rock, sea mammals, and shopping for souvenirs. When the chance to move here presented itself, I didn't have to think twice. When I became a parent, my goal was to provide a loving and healthy childhood to my girls and living in Morro Bay's fresh air and caring community has helped deliver this for our family since June of 2011. I want to do what I can to help maintain and steer the community's development as we face economic and physical challenges from climate change and other factors. I'm a natural troubleshooter, and I know I can contribute to the success of our city. I will bring genuine honesty, transparency in my intentions, and passion for sustainable solutions to issues we face. My perspective is unique to the dynamics of the current council due to my experience as an early childhood educator for ten years, the CEO of a marketing company, founder of a women's rights organization, PTA President for two terms, lifelong community volunteer, mother of two daughters, and wife to the most incredible life partner. My age, gender identity, and work/life experience would bring about diversity among my fellow council.

2. Look 10 years into the future and describe what you want the City to look like and why.

- I envision the future as safe and welcoming as our City intentionally provides sustainable businesses and affordable housing that nurtures tourists AND residents, creating opportunities to thrive. It's no secret that our little town faces growing tourism and we must plan for that increase to continue. Morro Bay's location is significant as it is home to a calm bay and an open ocean. It's essential to find a balance between the unique habitats surrounding us and the development needed. I currently see the Waterfront and Downtown areas as key tourist-driven areas that most locals avoid. We can bridge that gap by creating a well-developed plan. Vital improvements would include parking along the waterfront, acquiring valuable public benefits from Vistra Corp. as we find ways to harvest Earth-friendly energy, funding the Harbor and creating a cohesive look/feel to our City from the Northern to the Southern end of town.

3. What do you see as the role of the City Council? What do you see as the role of City Staff?

- Council members are elected representatives who are responsible for and responsive to the citizens and visitors in their jurisdiction. Council sets the direction of the City by approving the City goals and approving a budget aligned with those goals. They also guide the City through policy decisions based on input from the community. Staff's responsibility is to implement the policy, manage the budget, and provide input to the Council when directed to do so.

4. The MB City Council is a microcosm of the broader community, which has diverse perspectives on a number of issues. How would you effectively represent and connect with Council and community members with diverse perspectives?

- I believe that all humans in our City should have a say. Anyone who takes the time to give input deserves to be heard. Having said this, I also believe that many are silent even though they have something to say. By creating a welcoming atmosphere, our diverse community members may begin to feel confident that their words matter. As a Co-Founder of Women's March SLO, I have worked tirelessly to create change and promote equality and equity in our county. As PTA President, I attended the English Learner Advisory Committee meetings and continued to do so through my children's high school career. I accompanied two parents from MBHS to speak to the MB City Council after requesting an extension of time for public comment because of the language barrier.

If appointed, I plan to follow the legacy of Councilmember Davis. Holding "office hours" at a local coffee shop for anyone to join me to discuss city issues. Most people, including fellow Council, have similar values and having tough discussions typically uncover common ground.

5. The City has adopted a Policy pledging to follow best practices of Civility and Civil Discourse. What does this mean to you and, if appointed, how would you apply these principals as you serve the community?

- I believe civility is vital among fellow Council members and constituents. Disagreements among Council promote discussion, which can lead to well-developed policy. This can be done respectfully at every meeting between Council and public commentators. Setting an example as a Councilmember is vital, as my demeanor directly influences others. If our community feels heard by acknowledging their problem, it can truly change their approach. Humans recognize sincerity when they see/hear it.

6. What would you do if you were contacted directly by a resident or business to resolve a City related problem?

- Despite what the issue may be, I will respond asap. Whether it's a thank you for bringing light to the problem, giving simple advice based on prior experience, or informing them that I'll be looking into the matter and respond with further information once researching the issue. If the email or phone call doesn't resolve the issue, I am ALWAYS willing to meet in person, even if it involves facilitating an in-person meeting with City staff.

7. How would you work with Council colleagues who may have different perspectives than you have to ensure effective City service provision and advance community goals?

- Where there's a will, there's a way! Council's goals are generated and molded to BETTER our community, inspired by our community's wants and needs. My decisions and opinions are informed by the voters. Each Councilmember is there be-

cause they were elected to serve and people have put their faith in us by voting for us.

8. If you are currently contracting with or providing services to the City, are you willing to suspend those specific activities?

- Yes

9. What do you see as the biggest challenges currently facing the City?

- Affordable housing, development of the Vistra Corp. property, increasing revenue for our City to fund City staff, environmental impact due to climate change, supporting our Harbor Department, keeping our harbor clean, and developing the City into a place where residents want to live full-time.

10. What are your top three priorities for the City?

- 1) Improve infrastructure and our public spaces
2) Improving our Harbor and historic preservation
3) Achieve economic and fiscal sustainability which includes replenishing our General Fund Emergency Reserve

11. Have you reviewed the City's budget and are you familiar with where and how the City receives its revenues?

- Yes, I have reviewed both 2019/20 and 2020/21 and noticed the deficit narrowing. While this is trending, I still see a need for growth and my experience as PTA President, a business owner, and school site council can help our City Council. Our City's revenues are received from capital projects, TOT, sales & use tax, property tax, and various smaller resources such as business license and cannabis city tax.

12. Have you reviewed the City's General Plan/Local Coastal Plan?

- I have read EVERY word of the proposed General Plan/Local Coastal Plan. As part of the current Planning Commission, it was essential to be well versed in this document since we were the starting point for the approval process. I owed this to the community members who put years into its creation as the future guide for our City's development, and to the City Council who appointed me.

13. Have you attended and/or participated in any civic meetings? If so, which ones and describe your participation.

- Months after I moved to Morro Bay, my daughter fell off her bike and was injured. She hit a pothole while riding along our street. It was the validation I needed to step up and say something after already having concerns for safety. I found the Pavement Management Plan and discovered that our neighborhood was not a priority. I also realized that the Northern end of Morro Bay was almost absent from the plan. I attended the next PWAB meeting and asked for it to be reviewed and revised. From that point on, I have attended various meetings over the last ten years to provide public comment on various issues, including the WRF, Resource Officer for MBHS, invitations to community events, and support of council's decision making. Since February of this year, I have served as a Planning Commissioner for Morro Bay.



CITY OF MORRO BAY

CITY HALL
595 Harbor Street
Morro Bay, CA 93442

RECEIVED
City of Morro Bay

SEP 3 2021

City Clerk

**APPLICATION FOR APPOINTMENT
TO CITY COUNCIL
CITY OF MORRO BAY**

ALL APPLICANTS MUST BE RESIDENTS AND REGISTERED VOTERS WITHIN THE CITY OF MORRO BAY AT THE TIME THE APPLICATION IS SUBMITTED. THE APPOINTED COUNCIL PERSON IS REQUIRED TO FILE A STATEMENT OF ECONOMIC INTEREST PURSUANT TO THE POLITICAL REFORM ACT.

Completed Applications and Questionnaire Responses must be submitted by 5:00 p.m. on Friday, September 3, 2021
To: City Clerk's Office 595 Harbor Street Morro Bay, CA 93442 (805) 772-6205

Full Name: Sean Green	
Street Address: [REDACTED] Morro Bay, CA 93442	
Years resided at this address: 5	
Have you lived at any other address in the City? If yes, give previous address: No	
Home Phone: [REDACTED]	Cell Phone: [REDACTED]
Email Address: [REDACTED]	
Employer: California Polytechnic State University	
Employer Address: 1 Grand Avenue, Building 47 (English Department), SLO, CA 93407	
Employer Phone:	
Occupation: Educator	How Long: 11 years
Education (highest grade completed): MFA Creative Writing, BA Economics, History	
Licenses or special certificates held: AS Construction Technology	

Name, location of Schools/Colleges/ Universities attended	Major	Degree
Louisiana State University	Creative Writing	Master's
UCLA	Economics, History	Bachelor's
Cuesta College	Construction	Associate's

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Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

N/A

Yes _____ No _____ (If yes, please attach a separate sheet of explanation.)

Membership or Participation in professional, charitable or community organizations	Office Held (if any)	Dates of Membership
Morro Bay Beautiful		2019-present
MBOSA		2021-present
California Faculty Association		2015-present
CAR/NAR		2017-19, 2021
Morro Bay TBID Board		2017-19

I declare under penalty of perjury that all statements in this application and the attached responses are true and complete to the best of my knowledge and belief.



Signature of Applicant

9/3/21

Date

QUESTIONNAIRE

Answers to questions are required. Please use no more than three typed or handwritten pages to respond to all of the following questions.

1. Why do you want to be appointed to the City Council? What do you feel you will bring to the position?
2. Look 10 years into the future and describe what you want the City to look like and why.
3. What do you see as the role of the City Council? What do you see as the role of City staff?
4. The Morro Bay City Council is a microcosm of the broader community, which has diverse perspectives on a number of issues. How would you effectively represent and connect with Council and community members with diverse perspectives?
5. The City has adopted a Policy pledging to follow best practices of Civility and Civil Discourse. What does this mean to you and, if appointed, how would you apply these principals as you serve the community.
6. What would you do if you were contacted directly by a resident or business to resolve a City related problem?
7. How would you work with Council colleagues who may have different perspectives than you have to ensure effective City service provision and advance community goals?
8. If you are currently contracting with or providing services to the City, are you willing to suspend those specific activities?
9. What do you see as the biggest challenges currently facing the City?
10. What are your top three priorities for the City?
11. Have you reviewed the City's budget and are you familiar with where and how the City receives its revenues?
12. Have you reviewed the City's General Plan/Local Coastal Plan?
13. Have you attended and/or participated in any civic meetings? If so, which ones and describe your participation.

APPROVED APPLICANTS WILL BE INVITED FOR AN ORAL INTERVIEW BEFORE THE CITY COUNCIL.

SEAN GREEN

QUESTIONNAIRE | 9.3.21

1. Why do you want to be appointed to the City Council? What do you feel you will bring to the position?

Well, I already read through every agenda, spend significant time preparing public comments, participate on multiple committees, and invest emotionally in the decision-making process, so it doesn't feel like a huge leap to try my hand at this next level. It is my hope, as a relatively young, fully employed citizen, to engage new groups of diverse residents, businesses, and local organizations in the effort to make Morro Bay what we *all* want it to be, and more, not just in 2021, but in 2031, 2041, and beyond.

2. Look 10 years into the future and describe what you want the City to look like and why.

In my seven years of living in and speaking with residents on the Central Coast, I think it's fair to say Morro Bay has remained more unchanged than most SLO County cities since incorporating in 1964. In many ways, that's a good thing (small-town feel, reasonable open space, personal ownership stake in the community), but in other ways, it may suggest an unwillingness to change, even when change is needed (deteriorating infrastructure, unresolved parking issues, lack of affordable housing, honor-system accounting). In recent years, however, change has seemingly occurred at a much more rapid pace than many longtime residents have come to expect, which has understandably created tension in town. Over the next few years, as huge development projects (private and public) appear on the horizon that could make or break a small town like ours, City Council must seek balance between "pedal to the metal" progress and "pump the brakes" resistance. By doing so effectively, there's no reason Morro Bay's future in 10 years can't include both modern infrastructure improvements and historic preservation, public spending and public saving, private investment and private restraint. Ultimately, Morro Bay's 10-year outlook depends heavily on the swift completion of the WRF project without further complications, substantial cleanup of power plant land and subsequent redevelopment led *equally* by Vistra and Morro Bay leadership, a reinvigorated approach to maximizing use and appearance of city-controlled spaces, and strengthened efforts to *truly* improve (not just in appearance) communication and transparency.

3. What do you see as the role of the City Council? What do you see as the role of City staff?

City Council ought to represent the people and businesses of Morro Bay, serving as custodians and proxies for the city and its stakeholders. In a perfect world, city staff serves that same role, but practically speaking, we must understand that city staff have, in addition to their jobs, their own families, homes, and priorities, often focussed outside of Morro Bay. One major role of Council, then, is to oversee city management and guide, from a big picture level more than micro-manage, the overall trajectory of city decision-making. Council members should, in my opinion, be open and available to staff questions, just as staff should be open and available to Council questions. Rarely are Council members experts in a specific city department or field, whereas city staff typically are. Conversely, city staff are rarely as in tuned with resident and business needs as Council members are (or should be). Thus, respectful communication must be the rule in both directions.

4. The Morro Bay City Council is a microcosm of the broader community, which has diverse perspectives on a number of issues. How would you effectively represent and connect with Council and community members with diverse perspectives?

In order to save a little space here and elaborate elsewhere, I'll simply say that as both an educator and human being who has experienced many diverse cultures in my professional and personal experience, I'm still regularly humbled and surprised in the best way by fresh takes and new perspectives, whether from a student, a colleague, a mentor, a podcast, or a random stranger on the street. People are kind of amazing in that way, if you let them.

5. The City has adopted a Policy pledging to follow best practices of Civility and Civil Discourse. What does this mean to you and, if appointed, how would you apply these principals as you serve the community.

Re: Council Application Supplement

I think of myself as a good person who wants to do right by the people of Morro Bay, but that doesn't mean I don't get irked by a decision or comment every now and then. Yet, exactly because I hope to do right by the people of Morro Bay, I do my best to remain civil, even in the face of incivility. Thankfully, our city has been generally civil, at least in my experience. Personally, I don't think it would be all that bad for Council to get a little more fired up every now and then, partly because I think that shows more passion for where we ought to be headed than does a smile and agreeable nod, but there's a fine line between fired up and uncivil—let's always stick to the good side of that fine line.

6. What would you do if you were contacted directly by a resident or business to resolve a City related problem?

Depends on the nature of the inquiry. If a resident or business had a question or were in need of a particular resource, I'd do my best to point them in the proper direction. If the inquiry pertained more to a specific issue, I'd likely offer to communicate with them in some shape or form, possibly over coffee, if we both had the time. I certainly have my own opinions about issues here in town, some more informed than others, but on all issues I appreciate hearing from anyone who takes the time to reach out with questions or comments respectfully. Just like I would hope (and sometimes expect) to be acknowledged for a thoughtful contribution to public discourse, I would intend to acknowledge and engage with residents and businesses who care enough about the city to reach out.

7. How would you work with Council colleagues who may have different perspectives than you have to ensure effective City service provision and advance community goals?

I'm a teacher who regularly assigns groupwork to my diverse, occasionally disagreeable college students. I also spend significant time participating in diverse groups here in town and elsewhere. Competing voices are a good thing. Debate is healthy. That is, as long as discourse is civil. If Council members are objectively fighting for what they think is best for the city, who can fault them? Again, disagreement can be healthy, and can even lead to useful unexplored territory and solutions neither disagreeing party would've come up with on their own. Some keys to healthy discourse include agreeing on some generally accepted ground rules, establishing some preliminary goals, regularly checking back in with those rules and goals to stay on track, and always keeping in mind that Council represents the people of Morro Bay.

8. If you are currently contracting with or providing services to the City, are you willing to suspend those specific activities?

N/A (only voluntary participation in Planning Commission sub-committee at the moment)

9. What do you see as the biggest challenges currently facing the City?

Money is always a concern here in Morro Bay, but that's partly because we want to do so much more than we are financially capable of. To combat the imbalance of funds available and funds needed to accomplish our dream slate of improvements, not only must we lower our expectations just a tad and think more like the town of ten thousand that we are, but more importantly (and way more fun), we must think creatively, as individuals and within our groups, boards, and departments, about new ways to attract tourists, hide ugly spaces, gauge public opinion, and all the other activities we do, *without paying the sticker price to make them happen*. Creative solutions exist to most problems, and cities of our size must find them. Our budget simply isn't big enough to sustain project overages, to purchase top-of-the-line equipment, to complete every sidewalk, etc. However, if every individual stakeholder can begin to think of themselves as a problem-solver, or an inventor, or an entrepreneur, or any other useful, outside-the-box job title separate from (but not unrelated to) the one on their name tag, then, collectively, we should be able to manifest creative solutions to prevailing problems. At the very least, proactivity can become optimistic, encouraging, and contagious, and that's the kind of small town municipal culture I'd be proud to join, support, and uphold.

10. What are your top three priorities for the City?

I'll give you four:

- WRF completion without significant overages or surprises. We've already asked so much of our residents these past few years. They shouldn't be asked for much more.

- Power plant cleanup and city-friendly redevelopment. Vistra has an opportunity to do right by the people and planet, as well as make some money, yet this property is far more important to Morro Bay than it is Vistra. We must always remember this. The city must not ride shotgun, but rather work equally with Vistra to create a project that allows them some freedom to accomplish their financial goals while also maximizing our public benefit. We've only got one shot to get this right.
- Improving access, functionality, and appearance of public spaces. While some minor gains to access and beauty have taken place in recent years, most of our public spaces don't feel like finished products we can be proud of. Generally speaking, our pathways are narrow, our access points are limited, our bathrooms rare (or closed), our dumpsters unattractive, our city-owned lots underutilized, etc. If we want our residents to enjoy a nightly stroll, our visitor-serving businesses to thrive, and our visitors to stay longer than 1.8 nights, we must be honest with ourselves and own up to the fact that we can do better.
- External audits of huge revenue streams that have been operating mostly on the honor system for years, sometimes decades. Whereas major revenue streams from residents (utility rate hikes, sales tax, property tax, fees) are quite easy to keep track of and are almost certainly compliant within a reasonable margin of error, major revenue streams from city lodging entities (TOT) and waterfront lease holders (percent-gross tax) have gone largely unaudited for years, sometimes decades. The great thing here is that any future city contracts with external auditors will almost certainly be financially offset by recovered revenue from past accounting periods and/or through increased compliance in future years. Plus, Morro Bay residents will appreciate the fact and appearance of shared financial burden.

11. Have you reviewed the City's budget and are you familiar with where and how the City receives its revenues?

As a former public auditor of both private sector companies and governmental entities, numbers matter to me. I understand that many residents may feel discouraged or confused by staff reports, city budgets, and the like. It would be my hope to better translate municipal jargon into everyday language that residents can understand and appreciate. That said, governmental accounting, one could argue, is almost designed to confuse. By allocating money into separate, distinct pots on an annual basis, the big picture can often get lost, even on city staff, leadership, and Council. We must spend the time and energy, especially at the leadership level, to fully understand our city's general fund activities, enterprise fund requirements, diverse revenue streams, FTE labor implications, CalPers liabilities, and deferred maintenance, to name a few. Only then can we be prepared to articulate competently to residents the pros and cons of making a given financial decision. Transparency is assumed. Clarity is the goal.

12. Have you reviewed the City's General Plan/Local Coastal Plan?

Yes. To a fault! In fact, I currently have a question in to Scot Graham regarding specific uses in R-4 zones. After doing lots and lots of reading, watching, and listening, I'm pretty well aware of where we've been, what we've gone through, and where we're headed in terms of process and vision. When I don't know, I ask someone who does.

13. Have you attended and/or participated in any civic meetings? If so, which ones and describe your participation.

Up until Covid, I regularly attended Council and Planning Commission meetings, often speaking at the podium or submitting public comments by email through the city clerk's office. I've also presented to GPAC. Since early 2020, I've somewhat enjoyed tuning into meetings via Zoom, or after-the-fact through our city's pretty well developed YouTube channel. I've also corresponded with various boards, Council, and staff through email and occasionally via public records requests. Lastly, I participated as a TBID board member at-large for a two-year period ending in 2019. I respect and follow the city's processes and protocols, where applicable, and intend to continue doing so moving forward.

Thank you for your time and consideration,

Sean Green

State of California

GOVERNMENT CODE

Section 36512

36512. (a) If a vacancy occurs in an appointive office provided for in this chapter, the council shall fill the vacancy by appointment. A person appointed to fill a vacancy holds office for the unexpired term of the former incumbent.

(b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy.

(1) If the council calls a special election, the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person elected to fill a vacancy holds office for the unexpired term of the former incumbent.

(2) If the council fills the vacancy by appointment, the person appointed to fill the vacancy shall hold office pursuant to one of the following:

(A) If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general municipal election, the person appointed to fill the vacancy shall hold office until the next general municipal election that is scheduled 130 or more days after the date the council is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.

(B) If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general municipal election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent.

(c) Notwithstanding subdivision (b) and Section 34902, a city may enact an ordinance that does any of the following:

(1) Requires that a special election be called immediately to fill every city council vacancy and the office of mayor designated pursuant to Section 34902. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.

(2) Requires that a special election be held to fill a city council vacancy and the office of mayor designated pursuant to Section 34902 when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing body that has enacted such an ordinance may also call a special election pursuant to subdivision (b) without waiting for the filing of a petition.

(3) Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

(d) (1) Notwithstanding subdivision (b) and Section 34902, an appointment shall not be made to fill a vacancy on a city council if the appointment would result in a majority of the members serving on the council having been appointed. The vacancy shall be filled in the manner provided by this subdivision.

(2) The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call.

(3) If the city council does not call an election pursuant to paragraph (2), the vacancy shall be filled at the next regularly established election date.

(e) (1) If the city council of a city that elects city council members by or from districts elects to fill a vacancy on the city council by appointment as a result of a city council member resigning from office, the resigning city council member may cast a vote on the appointment if the resignation will go into effect upon the appointment of a successor. A city council member shall not cast a vote for a family member or any other person with whom the city council member has a relationship that may create a potential conflict of interest.

(2) If a city council member elects to cast a vote under this subdivision, the city council member shall be prohibited from the following actions for a period of two years after the appointment of a successor:

(A) Advocating on any measure or issue coming before the city council in which the city council member may have a personal benefit.

(B) Entering into a contract of any kind with the city or a city vendor.

(C) Accepting a position of employment with the city or a city vendor.

(D) Applying for a permit that is subject to the approval of the city council.

(3) This subdivision shall not apply to any city council member who is resigning from the city council due to charges of, or conviction for, corruption or criminal behavior, or who is subject to a recall election.

(Amended by Stats. 2015, Ch. 185, Sec. 1. (AB 952) Effective January 1, 2016.)

Morro Bay Municipal Code - 2.06.030 Council vacancy reform.

- A. Policy of Full Term Service. Election to public office in the city of Morro Bay creates a covenant to serve to the best of one's ability the full term of that office before seeking alternate public office. Without the enactment of the ordinance codified in this section when a councilmember in the middle of their term moves to an alternate office it also denies the citizens of Morro Bay the right to vote for the person who will fill the vacancy created by that move. If a councilmember wishes to run for alternate office before his or her term has expired he or she should resign from their seat so that the voters may elect their replacement in an orderly manner.
- B. How Vacancies Filled. The city council shall immediately call a special election to fill any vacant seat on the council, including the mayor's seat. The special election shall be held on the next established election date, as specified in California Elections Code, which is not less than one hundred fourteen days from the call of the special election. The city council may appoint an elector who is a registered voter in the city of Morro Bay to fill such vacancy prior to the special election. The appointee shall hold office only until the date of said special election.
 - 1. Mailed Ballots. Notwithstanding the provisions of subsection B, if the date of the special election otherwise required under subsection B would not be a consolidated election, the city council may designate the special election to be held by mailed ballot under the provisions of California Elections Code Section 4004 at the next available mailed ballot election date which is not less than one hundred fourteen days from the call of the special election.
- C. Limitation of Councilmember Who Runs for Mayor Before Completing Regular Term. A sitting councilmember is disqualified from nomination for election to the office of mayor in the next election if the remainder of their council term after the next election cannot be filled by a vote of the electors on or prior to that election date.
- D. Cost Reimbursement.
 - 1. If the special election to fill a council vacancy occurs prior to the next general municipal election and the former councilmember whose seat was vacated causing that special election accepts nomination to run for the office of council or mayor in the next general municipal election, that former councilmember shall reimburse the city for city costs incurred as a result of said special election if the term of service for the seat previously vacated would have otherwise overlapped the term being sought.
 - 2. Any mayor whose election to that office also created the premature vacancy of their council seat shall reimburse the city for city costs incurred in any future special election which must later be called to fill their prematurely vacated seat. As used in this subsection the term "future special election" means a special election that does not occur at the same time or prior to their election to the office of mayor.
- E. Severability. If one or more of the provisions of this section should be held invalid the remaining provision or provisions shall remain in full force and effect.

(Ord. 527, 2006)

(Ord. No. 573, 10-11-11)

Argument in Favor of Measure "R"

If we have a council vacancy do you want it filled in an election by voters like yourself? Or, do you prefer the current practice where three of the remaining council members appoint one of their friends to the seat?

Vote "Yes" on Measure "R" to put voters like yourself in charge.

Council vacancies most often occur when a council member runs for mayor in the middle of their council term. Measure "R" will curtail the practice of midterm "seat hopping" by requiring a midterm council member to resign his or her seat if they wish to run for mayor. The vacated seat will be filled by the voters in the same election where they run for mayor, avoiding any need for a special election.

In the extremely rare case of a legitimate vacancy, like death or incapacity, the measure provides the replacement election can be held in conjunction with other elections, or by mail, to minimize costs.

Too often Morro Bay voters sit on the sidelines while three people determine the balance of power for the next two years by appointing one of their friends to a vacant seat they themselves created. **This practice must stop.** A "Yes" vote on Measure "R" will do just that.

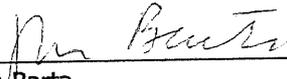
Morro Bay has a \$20,000,000 annual budget. Citizens deserve to have confidence that all of our council members were placed in office by the voters, not appointed because of a special relationship or obligation to the other council members.

When voters elect a council member a covenant of full term service is created. If the council member will not keep that covenant then the power to fill that office must be returned to the voters.

Put voters like yourself in charge.

Vote "Yes" on Measure "R".

Learn more at www.imfedup.us



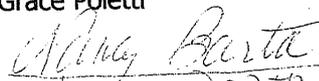
John Barta



John Lemons



Grace Poletti

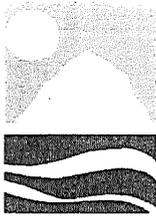


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City of Morro Bay
2005-08-02



City of Morro Bay

City Attorney Department
955 Shasta Avenue
Morro Bay, CA 93442
805-772-6568

IMPARTIAL ANALYSIS BY CITY ATTORNEY MEASURE R

Measure "R", if approved by the voters, would amend the Morro Bay Municipal Code to require that vacancies on the City Council be filled by a vote of the people at the earliest possible election date instead of the current practice that allows vacancies to be appointed by the remaining members of the City Council. Under Measure "R" the City Council would be authorized to appoint for the vacated seat a temporary replacement who would serve only until the date of the special election.

City Council members are elected to four-year terms and the mayor is elected every two years. Under current law it is possible for council members to run for the office of mayor in the middle of their four-year term while still retaining their council seat if they should not be successfully elected mayor. If the council member is successfully elected to the office of mayor, then the remaining two years of his or her council term become vacant. Current law allows the City Council to appoint someone to fill the remaining two-year term. Measure "R" would amend the Morro Bay Municipal Code to require that council members who would seek to serve in the office of mayor before the normal expiration of their term must resign from their council seat at a time that allows their replacement to be elected by the people no later than the same election wherein the mayoral election would occur.

Measure "R" would also amend the Morro Bay Municipal Code to allow the City to recover election costs in those circumstances where a council seat is vacated and the election of the replacement council member cannot occur in a regularly scheduled municipal election, and the former council member then runs for alternate office, the term of which would begin before his or her original term would have expired. Measure "R" also provides that, if the timing of the special election to fill a vacancy cannot occur in conjunction with other elections, the election may be carried out by mailed ballots to reduce City costs.

Robert Schultz
City Attorney

ADMINISTRATION
595 Harbor Street

CITY ATTORNEY
955 Shasta Avenue

FINANCE DEPARTMENT
595 Harbor Street

FIRE DEPARTMENT
715 Harbor Street

HARBOR DEPARTMENT
1275 Embarcadero Road

POLICE DEPARTMENT
870 Morro Bay Boulevard

PUBLIC SERVICES
955 Shasta Avenue

RECREATION & PARKS
1001 Kennedy Way



AGENDA NO: C-2

MEETING DATE: September 14, 2021

Staff Report

TO: Honorable Mayor and City Council

DATE: September 9, 2021

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: **Local Firearm Safety and Regulation: Community Education on Firearm Safety and Gun Violence Restraining Orders; Introduce for First Reading by Title Only with Further Reading Waived, Ordinance No. 644, An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 9.36 (Safe Storage of Firearms) to Title 9 (Health and Safety) of the Morro Bay Municipal Code, to Require Safe Storage of Firearms Located in a Residence; Firearm “Buy-Back” Program; Supplemental MBPD Officer Mass/Active Shooter Training; and, Legislative Advocacy Letter from Council**

RECOMMENDATION

Staff recommends Council consider action and associated budget direction on below local firearm safety and regulation. These are items that Council requested at the April 13, 2021 regular meeting be developed further by staff, however there is not yet any budget allocations for these items.

1. Community education on firearm safety and gun violence restraining orders (“red flag” laws)
 - a. Two annual in-person Morro Bay Police Department (“MBPD”) firearm safety trainings at Community Center; and/or
 - *At Council direction, trainings could also (or instead) be held at Morro Bay High School for teachers and staff and potentially also students*
 - *At Council direction, in-person training / educational meetings on “Active Shooter Response” (and other topics) could also be held by the MBPD*
 - b. 74 minute “Firearms Educational Series” video produced by the MBPD covering firearm safety components, gun violence restraining orders (“red flag” laws), and active shooter response; or, 8 minute video on *only* gun violence restraining orders; or, some but not all of the components of proposed “Firearms Educational Series”

Prepared By: CFN Dept Review: _____
City Manager Review: SC City Attorney Review: CFN

2. Firearm safe storage local law
 - a. Introduce for First Reading by Title Only with Further Reading Waived, Ordinance No. 644, An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 9.36 (Safe Storage of Firearms) to Tile 9 (Health and Safety) of the Morro Bay Municipal Code, To Require Safe Storage of Firearms Located in a Residence
3. Firearm “buy-back” program under direction of Morro Bay Police Department
 - ***If*** Council directs staff to proceed with a firearm buy-back program, should there be a geographical limitation on who firearms are bought-back from (e.g., City of Morro Bay, San Luis Obispo County)?
4. Supplemental MBPD Officer mass/active shooter training
 - a. POST Certified Mass/Active Shooter Response training (16 officers); and/or
 - b. 1 hour of overtime monthly for off duty firearms training (16 officers); and/or
 - c. Supplemental ammunition for MBPD mass/active shooter incident training
5. Legislative advocacy for firearm safety and regulation - authorize letter from Council to elected federal officials supporting some or all of following proposals from President Biden:
 - a. Close loopholes in the federal gun background check system; and/or
 - b. Ban assault weapons and high-capacity magazines; and/or
 - c. Repeal gun manufacturers’ immunity from civil liability; and/or
 - d. Invest in evidence-based community violence interventions; and/or
 - e. National gun violence restraining order legislation (“red flag” laws) and incentivize states to pass “red flag” laws of their own.
6. If Council directs staff to pursue one or more of the above measures, staff recommends that Council direct staff to return at Midyear with budget increases necessary to implement (eligible funding sources would include General Fund and Measure Q&E funds).

ALTERNATIVES

Council could receive and file this report and take no action, and/or Council could provide further direction to staff concerning the subject of firearm regulation and safety.

FISCAL IMPACT

Below are substantive fiscal impacts that have been identified as of the writing of this report. None of these items are currently included in the FY 2021-22 Adopted Budget. If directed to pursue one or more items below, Council should also direct staff to return at Midyear with budget increases required to support these measures. Eligible funding sources would include General Fund or Measure Q&E funds.

1. Community education on firearm safety and gun violence restraining orders
 - a. 2 in-person MBPD firearm safety trainings at Community Center: **\$4,727** (annual cost)
 - i. Trainings could be held for teachers/students at Morro Bay High School: a single training session would cost **\$2,364** (one time cost)
 - ii. In-person training / educational meetings on “Active Shooter Response” at Council direction could be held: one training/meeting would cost **\$2,364** (one time cost)
 - b. 74 minutes “Firearms Educational Series” videos produced by the MBPD covering firearm safety components, gun violence restraining orders (“red flag” laws), and active shooter response: **\$77,362** (one-time cost to record, edit and produce); or, 8 minute video on *only* gun violence restraining orders (“red flag” laws): **\$10,000** (one-time cost); or some but not all of the components of proposed “Firearms Educational Series” which would be at roughly a pro rata cost (with additional sunk costs for production)
2. Annual firearm “buy-back” program - \$5,000 (for up to 50 firearms) and \$7,375 (for staffing) in immediate costs, plus additional \$2,500 in costs for conducting advance outreach and advertising, for a total of **\$14,875**.
3. Supplemental MBPD Officer mass/active shooter training
 - a. POST Certified Mass/Active Shooter Response training (16 officers): **\$45,808**
 - b. 1 hour of overtime monthly for off duty firearms training (16 officers): **\$2,500 one month / \$30,000 annually**
 - c. Supplemental ammunition for mass/active shooter incident training: **\$2,000 (annual)**

BACKGROUND

At Council’s request, an extensive and detailed staff report and presentation was provided to Council on April 13, 2021 concerning local firearm safety and regulation. (See Attachment 1.) That report in detail discussed recent mass shootings and other firearm-related deaths, federal Second Amendment rights as well as State firearm laws (which both act to substantially preempt many areas of local firearm regulation), and current City law and policies concerning firearms and mass shootings.

Council at that meeting also considered multiple local action items for firearm safety and regulation. On April 13, 2021 the Council directed staff to bring back a subsequent staff report with possible action items on: 1) a firearms safety education program and a local educational campaign on gun violence restraining orders; 2) a firearm safe storage local law; 3) a firearm “buy-back” program; 4) supplemental MBPD Officer mass/active shooter training; and 5) legislative advocacy for firearm safety and regulation.

DISCUSSION

I. Community Education on Firearm Safety and Gun Violence Restraining Orders

The Council requested details and costs for implementing a local education program on firearm safety and gun violence restraining orders.

Chief Jody Cox of the Morro Bay Police Department advises the MBPD can provide both biannual in-person training on firearms safety, as well as produce a video “firearms educational series” to be made available on internet platforms, on firearms safety, gun violence restraining orders, and active shooter response.

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A. In-Person Training on Firearms Safety by MBPD

The MBPD has offered to provide biannual in-person training on firearms safety, storage, state laws, and local ordinances. Officers on the MBPD Range Team are available to teach courses at the Morro Bay Community Center on firearms safety and awareness classes.

The program would necessitate funding by the City (with the potential for private donations and non-profit support to offset City funding). Estimated annual cost to hold in-person training twice a year is \$4,727 (based on the MBPD Range Team fully loaded overtime rate).

Firearms safety training potentially could also be offered for teachers and staff and potentially students at Morro Bay High School at Council direction and in collaboration with the MBPD.

B. “Firearms Educational Series” on Firearm Safety, Gun Violence Restraining Orders and Active Shooter Response

The MBPD has offered to prepare and produce a series of informational and educational videos on firearm safety, gun violence restraining orders and active shooter response. The videos can be prepared by MBPD Training Division, Range Master and Range Safety Officers.

Chief Cox proposes a “Firearms Educational Series” as follows, with an additional component concerning “active shooter response”:

1. Firearms Safety Educational Program

- a) *Basic Introduction to Firearms Safety*: with additional links for more in-depth information if needed. (8 minutes)
- b) *Introduction to Firearms - Fact Check*: information on functionality and firearm types/descriptions, handgun/revolver/shotgun/rifle, what is an assault rifle? etc. (10 minutes)
- c) *Firearms and Suicides*: Facts, gun safety, and suicide prevention information. (5 minutes)
- d) *Firearms - Keeping it Legal*: To address buying/selling firearms, “ghost guns” - what are they? possession and transportation of firearms. (30 minutes, likely broken down into a series)
- e) *Concealed Carry - Legalities and Liabilities*: Information on legal concealed carry laws with applicable links to policy and state laws. (8 minutes)

2. **Red Flag Laws and Gun Violence Restraining Orders (GVRO)**: What is the law? How they work and links to policy/penal code applications. (8 minutes)

3. **Active Shooter Response**: What our community should know and MBPD preparation/training, with links to applicable information and statistics on mass/active shooter incidents and police shootings. (5 minutes)

The videos are proposed to be made accessible to the community through posting on websites hosted by the City (main and/or MBPD) and also potentially made available through a YouTube platform. Videos would vary in length depending on the depth of the topic.

The MBPD estimates that a total video shoot time of 74 minutes would take approximately 80 hours. Based on the MBPD Range Team fully loaded overtime rate the one time-cost would be \$47,272 for shooting the entire 74 minutes. Editing is estimated to take approximately 250 hours which at the same overtime rate would be a one-time cost of \$30,090. Total one-time cost for the full "Firearms Educational Series" video is \$77,362. Council could also choose some, but not all, of the proposed sections of the series to be produced.

Furthermore, at the direction of Council, Chief Cox has offered that the MBPD could potentially conduct in-person training / educational meetings on the "Active Shooter Response" topic to allow interaction with the community, and possibly other topics.

II. Firearm Safe Storage Local Law

Council directed staff to bring back an ordinance on firearm safe storage that has been ruled constitutional by the courts. The United States Court of Appeals, Ninth Circuit, held in 2014 that a San Francisco firearm safe storage ordinance was consistent with the federal Second Amendment. (*Jackson v. City & Cty. of San Francisco* (2014) 746 F.3d 953.)

Attached for Council consideration is an ordinance to add a firearm safe storage law to the Morro Bay Municipal Code modeled on the San Francisco law determined to be constitutional by the U.S. Court of Appeals, Ninth Circuit in 2014. The proposed ordinance provides that:

No person shall keep a firearm within a residence unless the firearm is:

- 1. Stored in a locked container or disabled with a trigger lock; or*
- 2. Carried on the person of the owner, or other lawfully authorized user of the firearm; or*
- 3. Within close enough proximity and control that the owner, or other lawfully authorized user of the firearm, can readily retrieve and use the firearm as if carried on that person.*

The original law found constitutional by the courts only had items 1 and 2 above. Adding item 3 above will not impact the constitutionality of the proposed ordinance in regards to the federal Second Amendment, however review concludes that adding item 3 may provide for a more practical local law, and, for example, a firearm safe storage law adopted in 2019 by the City of Los Angeles included similar language. And, the same original law provided for a misdemeanor violation, while the proposed ordinance allows, if the situation warrants, prosecution as an infraction rather than as a misdemeanor.

As discussed in the April 13, 2021 report to Council, a number of cities have adopted local firearm safe storage laws. Cities that have adopted such local laws include Los Angeles, San Francisco, Santa Cruz, Solana Beach, Sunnyvale, Tiburon, Palm Springs, Oakland and San Diego.

As related in the prior report to Council there is a wide range of opinions about such local laws. Gun

rights advocates claim such local regulations infringe on Second Amendment rights and are not effective anyways. Proponents of these laws argue they save lives.

MBPD Chief Cox has advised that he does not support a local law on firearm safe storage, for reasons including Penal Code § 25100 already requires safe storage if a child can access without permission or someone who is prohibited from possessing firearms can access, such a law can prove difficult to enforce, and in the end Chief Cox does not believe such a law would have much of an impact for a community like Morro Bay. If the Council does support a local firearm safe storage law, Chief Cox recommends that the ordinance include "item no 3" as discussed above, as well as the authority provided to prosecute violations as an infraction, as the situation may warrant, rather than always as a misdemeanor.

III. Annual Firearm "Buy-Back" Program

Council asked staff to bring back a proposal for a "buy-back" program for firearms in the community. The MBPD has advised it can conduct such a program and recommends a flat rate of \$100 offered for any relinquished firearm. The cost for fifty actual "buy-backs" of firearms at that flat rate would be \$5,000 (if that many firearms were bought-back).

Pursuant to the MBPD, firearms bought-back 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.

Event staffing for conducting a buy-back program has been determined by the MBPD to require four officers and one sergeant for 10 hours at a fully loaded overtime rate that amounts to \$7,125. Specifically, two officers for security, a two-officer team for firearm collection, and one sergeant for oversight. The MBPD would also seek volunteer assistance as appropriate. The 10 hours would consist of 6 hours for the active program and 4 hours for processing and potential destruction. And, 10 hours of intake documentation amounts to \$250. These total immediate costs to buy-back fifty firearms and provide staffing are \$12,375.

In order to facilitate a gun buyback program, an outreach / media campaign is recommended by Chief Cox to precede the event by at least one month. This would require staff time and expense to publicize and is estimated to cost approximately \$2,500, for print media, banners, mail inserts from City Hall, and social media.

While firearm buy-back programs are popular with many jurisdictions, MBPD Chief Cox is of the opinion the benefits of such a program are more limited than one may think upon initial review. He believes that, unfortunately, the persons turning in firearms are generally the law-abiding population, and not the criminal element whose guns are used in violent crimes. And Chief Cox states that typically there is an offer of "no questions asked" anonymity that accompanies gun buy-backs (otherwise the program may not work), which precludes law enforcement from asking questions or taking action. This allows weapons used in crimes to potentially be turned in and destroyed without knowing the weapon history.

Chief Cox is also concerned of an inherent potential for abuse. A significant number of the surrendered weapons can be of questionable operability at best. And, Chief Cox states that in other cities' operations, it has been either suspected or determined that persons from outside of the hosting

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jurisdiction bring weapons to turn in.

In light of the above, Chief Cox has proposed that if Council does indeed move forward with this program, the Council should at least consider limiting the buy-back program to Morro Bay residents (or some defined general region encompassing Morro Bay). Otherwise, the City may be funding a program that does not remove firearms from the local community. Note, however, that if this approach is taken, then proof of address would eliminate at least some element of the anonymity that is a common aspect of many firearm buy-back programs.

IV. Supplemental MBPD Officer Mass/Active Shooter Training

The total cost to send sixteen MBPD officers to an advanced POST Certified Mass/Active Shooter Response training course is estimated to be \$45,808 (or \$2,863 per officer). This includes course costs, lodging, meals/incidentals, travel time/mileage, and training time. This estimate could change depending on location and final cost of training classes.

The benefits of MBPD officers attending an advanced POST Certified Mass/Active Shooter Response training course are to prepare officers to respond/react to an immediate critical incident, increased weapon familiarization and proficiency, enhanced marksmanship, quicker threat detection and target acquisition resulting in saved lives, a safer community and reduced liability. Chief Cox reports that San Luis Obispo County has witnessed five active shooter situations in the last 18 months and this training would enhance the preparation of the MBPD for handling such an event.

Officers could also be authorized up to 1 hour of overtime per month for off duty firearms training to hone officer skills for response to a mass/active shooter incident. Total costs for all officers would be approximately \$2,500 monthly (or \$30,000 annually).

Additional funding also could be used to supply the MBPD with a higher amount of training ammunition in preparation for law enforcement response to a mass/active shooter incident. The MBPD proposes that a substantial potential difference could be made through additional funding of \$2,000 annually for supplemental MBPD training ammunition to be used specifically for active shooter incident training.

V. Legislative Advocacy for Firearm Safety and Regulation

Review of potential legislation concerning firearm safety and regulation at both the federal and state level indicates that substantial proposals with a potential for passage are at the federal level.

President Biden has proposed a number of legislative proposals to Congress addressing firearm safety and regulation.¹

Council could authorize a letter from the Council to elected federal officials supporting some or all of the following proposals from President Biden:

- A. Close loopholes in the gun background check system.

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-biden-harris-administration-announces-initial-actions-to-address-the-gun-violence-public-health-epidemic/>

- B. Ban assault weapons and high-capacity magazines (similar to the federal ban in place from 1994-2004).
- C. Repeal gun manufacturers' immunity from liability (which protects firearm manufacturers from being held civilly liable for their products).
- D. Invest in evidence-based community violence interventions.
- E. Pass an appropriate national "red flag" law, as well as legislation incentivizing states to pass "red flag" laws of their own.

At the request of Council further details about these proposals from President Biden can be brought back to Council for further review and consideration.

CONCLUSION

Staff recommends that the City Council consider the above firearm safety and regulation proposals and direct staff accordingly, including directing staff to return at Midyear with necessary budget increases associated with any implemented measures.

ATTACHMENTS

1. April 13, 2021 staff report entitled "Discuss Local Firearm Safety and Regulation; Provide Direction to Staff"
2. Ordinance No. 644, An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 9.36 (Safe Storage of Firearms) to Title 9 (Health and Safety) of the Morro Bay Municipal Code, To Require Safe Storage of Firearms Located in a Residence



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.”¹ 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.

¹ 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.”²

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.³ Data also indicates that access to a firearm increases the risk of death by suicide by three times.⁴

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

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

³ 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.

⁴ 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.

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

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

⁵ 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.”⁶ 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.”⁷

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.)

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."⁸

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."⁹

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.

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

⁹ <https://sanjosespotlight.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.¹⁰

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.

¹⁰ <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.”¹¹ 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.”¹²

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

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.”¹³

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

¹³ <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.'"¹⁴

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."¹⁵

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

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.¹⁶ (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

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

ORDINANCE NO. 644

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
ADDING CHAPTER 9.36 (SAFE STORAGE OF FIREARMS) TO
TITLE 9 (HEALTH AND SAFETY) OF THE MORRO BAY
MUNICIPAL CODE, TO REQUIRE SAFE STORAGE OF
FIREARMS LOCATED IN A RESIDENCE**

**THE CITY OF MORRO BAY
City of Morro Bay, California**

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

WHEREAS, firearm injuries, deaths and suicides have a significant public health impact both nationally and locally; and

WHEREAS, firearm deaths from preventable, intentional and undetermined causes totaled 39,773 in 2017, a 2.9% increase from 38,658 deaths in 2016, according to the National Safety Council, and suicide deaths are the most common firearm related fatalities, accounting for 60% of deaths related to firearms, according to Centers for Disease Control and Prevention, National Center for Injury Prevention and Control; and

WHEREAS, data indicates that access to a firearm increases the risk of death by suicide by three times (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); and

WHEREAS, compared with people who stored their firearms unlocked and/or loaded, those who stored their firearms safely were less likely to die by firearm suicide (Edmond D. Shenassa, Michelle L. Rogers, Kirsten L. Spalding, and Mary B. Roberts, “Safer Storage of Firearms at Home and Risk of Suicide: a Study of Protective Factors in a Nationally Representative Sample,” *Journal of Epidemiology & Community Health* 58, no. 10 (2004): 841–848); and

WHEREAS, nationally representative survey data suggests that approximately 380,000 guns are stolen from individual gun owners each year, and firearm owners who do not safely store their firearms are significantly more likely to have their guns stolen (David Hemenway, Deborah Azrael, and Matthew Miller, “Whose Guns are Stolen? The Epidemiology of Gun Theft Victims,” *Injury Epidemiology* 4, no. 1 (2017)); and

WHEREAS, more than half of all gun owners store at least one gun without any locks or other safe storage measures, and nearly a quarter of all gun owners report storing all of their guns in an unlocked location in the home (Cassandra K. Crifasi, et al., “Storage Practices of US Gun Owners in 2016,” *American Journal of Public Health* 108, no. 4 (2018): 532–537); and

WHEREAS, Safe storage behavior can help to mitigate the risks of unsecured guns, with studies showing that these practices can prevent both firearm injuries and gun thefts (Michael C.

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Ordinance No. 644

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Monuteaux, Deborah Azrael, and Matthew Miller, "Association of Increased Safe Household Firearm Storage With Firearm Suicide and Unintentional Death Among US Youths," *JAMA Pediatrics* (2019)); and

WHEREAS, safe storage laws can help increase compliance with safe storage behaviors, and states with a law in place that required handguns to be locked at least in certain circumstances experienced reduced rates of firearm suicide (Michael D. Anestis and Joye C. Anestis, "Suicide Rates and State Laws Regulating Access and Exposure to Handguns," *American Journal of Public Health* 105, no. 10 (2015): 2049–2058); and

WHEREAS, keeping a firearm locked or disabled with a trigger lock, when the firearm is not being carried by or under the control of an authorized user, prevents unauthorized users from accessing and using firearms, which can reduce tragedies due to suicide, unintentional discharges, and firearm theft; and

WHEREAS, requiring firearms in a residence, when not being carried by, or in the immediate control of, an authorized user, to be either disabled with trigger locks or stored in a locked container ("safe storage requirements"), is consistent with Second Amendment rights and is constitutional (*Jackson v. City & Cty. of San Francisco* (9th Cir. 2014) 746 F.3d 953); and

WHEREAS, safe storage requirements apply only to firearms that are not being lawfully carried or within the immediate control of a lawful user, and allow lawful firearm owners to carry loaded and unlocked firearms in their home at any time.

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

SECTION 1. CHAPTER 9.36 (SAFE STORAGE OF FIREARMS) IS HEREBY ADDED TO TITLE 9 OF THE MORRO BAY MUNICIPAL CODE, TO READ AS FOLLOWS:

"Chapter 9.36 - SAFE STORAGE OF FIREARMS

9.36.010 - Purpose and Intent.

9.36.020 - Definitions.

9.36.030 - Prohibition.

9.36.040 - Violation and Penalty.

9.36.010 - Purpose and Intent.

This law is intended to reduce firearm violence and firearm injuries and make the City safer. Having an unsecured firearm in the home is associated with an increased risk of firearm-related injury, death and suicide. Applying trigger locks or using locked containers when storing firearms in the home reduces the risk of firearm injury and death. Keeping a firearm locked or stored safely when it is not being carried or within immediate control ensures that it cannot be accessed and used by others without the owners' knowledge or permission. This simple measure significantly

decreases the risk that the firearm will be used to commit suicide, homicide or inflict injury, whether intentionally or unintentionally.

9.36.020 - Definitions.

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

- A. "Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion, as defined in California Penal Code section 16520, as amended from time to time.
- B. "Locked container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock or similar locking device, as defined in California Penal Code section 16850, as amended from time to time, and is listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices.
- C. "Residence" means any structure intended or used for human habitation, including, but not limited to, houses, condominiums, rooms, accessory dwelling units, motels, hotels, vacation rentals, single room occupancies, time-shares, and recreational and other vehicles where human habitation occurs.
- D. "Trigger lock" means a trigger lock that is listed on the California Department of Justice's roster of approved firearm safety devices and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm or to the physical characteristics of the firearm that match those listed on the roster for use with the device under Penal Code section 23655(d), as amended from time to time.

9.36.030 - Prohibition.

No person shall keep a firearm within a residence unless the firearm is:

- 1. Stored in a locked container or disabled with a trigger lock; or
- 2. Carried on the person of the owner, or other lawfully authorized user of the firearm; or
- 3. Within close enough proximity and control that the owner, or other lawfully authorized user of the firearm, can readily retrieve and use the firearm as if carried on that person.

9.36.040 - Violation and Penalty.

Failure to comply with any of the requirements of this chapter is a misdemeanor punishable by imprisonment in the city or county jail for a period not exceeding six months or by fine not exceeding one thousand dollars, or by both. Where the city attorney has determined that such action would be in the best interests of justice, the city attorney may specify in the accusatory pleading that the violation shall be an infraction and the violation shall be prosecuted as an infraction."

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining

portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

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

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

INTRODUCED at a regular meeting of the City Council held on the 14th day of September 2021, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the ____ day of _____ 2021, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 644 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____, 2021, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

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

DANA SWANSON, City Clerk

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AGENDA NO: C-3

MEETING DATE: September 14, 2021

Staff Report

TO: Honorable Mayor and City Council **DATE:** September 8, 2021

FROM: Scot Graham, Community Development Director

SUBJECT: Status Update on City efforts to improve the Development Review Process

RECOMMENDATION

Staff recommends the Council receive the report for informational purposes only; no action is being requested.

ALTERNATIVES

None

FISCAL IMPACT

None

BACKGROUND

One of the action items approved by Council as part of the 2019-2020 goal setting process included "Review and make improvements, where feasible, to the planning permit process."

The Morro Bay Chamber of Commerce (Chamber) completed a survey of key stakeholders in fall of 2020. Staff presented the survey results and related recommendations to Council on a process to review the planning and building function in November 2020. Planning Commission has formed a sub-committee to assist with this endeavor and staff is in the process of implementing improvements to the City Project tracking software (Cityworks) to facilitate online submittals and electronic plan checks to reduce turnaround times. The General Plan and Local Coastal Program were approved by the City Council and certified by the Coastal Commission this summer. The update of the City's zoning code is ongoing, and staff is working on streamlining the permitting process for multiunit housing developments as part of Housing Element implementation.

DISCUSSION

What is the development review process?

The development review process consists of two permit procedures, one for planning applications and one for building permit applications.

The development review process for planning applications implements the review processes defined in the City of Morro Bay Zoning Code and California State statutes such as the California Environmental Quality Act (CEQA) and the Subdivision Map Act. The process commences with

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

submittal of a Planning Application. Submittal requirements are listed on the application form. Once the application is submitted, it is assigned to a planner and routed to other departments (typically Fire, Public Works, and Harbor; and other departments participate irregularly) for review and comments. Responses from other departments often take the form of conditions of approval that are then applied to planning permits when they are issued.

Projects are evaluated for compliance with the City's General Plan, Zoning Ordinance, applicable Specific Plans and other related City standards. The development review process varies depending on the size and complexity of the new development or use under consideration, and the level of compatibility with the current land use designation of the subject parcel(s). The size and location of the project also plays into the determination of whether a project is reviewed ministerially at the staff level or on a discretionary basis at Planning Commission or City Council. Typically, single family homes and additions to single family homes are reviewed at the staff level and larger residential or commercial projects trigger review by Planning Commission and possibly City Council.

Projects that do not require one of the following entitlements are reviewed for consistency with development standards during the Building Permit plan review process.

- Conditional use permit
- Coastal Development Permit
- Rezoning
- Subdivision
- Sign permit

The development review process for building permits is triggered if you plan to build, enlarge, alter, move, replace, repair, improve, convert, demolish or change the occupancy of a building or structure. A permit is also required if you plan to move more than 50 cubic yards of dirt or build a retaining wall taller than 4 feet from the bottom of the footing.

The process begins with submittal of a building permit application which can be obtained from the City's website. City building permit applications include minimum submittal requirements. Some building permits can be issued over the counter and others require plan check review which is either conducted by the City Building Inspector/Plans Examiner or may be sent out for outside consultant plan check. Building permit applications that involve a significant amount of construction or demolition will also be routed to other City departments for review.

To ensure efficiency of the permitting process, the City created the Development Review Team (DRT) several years ago. The DRT consists of staff from all departments involved in the process (Planning, Building, Public Works, Fire and Harbor) and meets every Tuesday morning to discuss projects that are actively making their way through either the planning or building permit processes. The DRT is used as forum where building and planning permit application issues are discussed or where department representatives can get questions answered from the group in relation to outside public inquiries. The Chamber CEO also participates in this process to offer the applicant's perspective in the discussion and to help communicate issues back to applicants to help smooth the

process.

UPDATE OF CITY PLANS

General Plan & Zoning

The City's General Plan, Local Coastal Land Use Plan and Zoning Code were out of date and difficult for both the development community and Morro Bay citizens to use. The Council approved the City's GP/LCP update in May of this year and the Coastal Commission certified the document in August, which means the updated GP/LCP is now in use. As for the zoning code, staff met with the Miller Planning Consultants (Martha Miller) on September 7th to continue moving forward with update of the City's zoning code. Staff anticipate starting review of the final draft zoning code with the Planning Commission in November/December of 2021.

Housing Element Implementation

The City Council adopted the 2020-2028 Housing Element on August 25, 2020 and the State Department of Housing and Community Development (HCD) certified the document on September 4, 2020. The Housing Element includes several implementation items geared toward removing barriers related to the construction of housing and more particularly affordable housing. As the City was completing review of the draft Housing Element the State released several grant opportunities to assist in the production of housing. The City submitted applications for both the Local Early Action Planning (LEAP) and Regional Early Action Planning (REAP) grants, receiving an award of approximately \$160,000. With grant funds in hand, staff entered into a contract with RRM Design Group to assist the City in development of the following programs/policies to facilitate the development of housing:

- **Development of a by right housing policy.** Program will identify areas in Morro Bay where higher density project could be located. Program will allow for approval of several housing units (example 10) without need for a public hearing, thereby reducing the processing time.
- **Development of Objective Design standards.** The objective design standards are meant to work with the by right housing policy to facilitate the approval of housing in the City. Once the design standards are developed a project that comes in and meets the design standards and complies with the other housing by right policies could receive administrative (Staff level) approval.
- **Update the City's Accessory Dwelling Unit (ADU) ordinance to align with state law.** Process may involve development of incentives to encourage new development to include ADU's.
- **Develop ADU prototype plans.** The City is working with the Cities of Arroyo Grande, Atascadero and Grover Beach to develop four prototype plans for ADU's. Once the prototype plans are complete the City will make the plans available free of charge to citizens looking to build an ADU.
- **Update the City's density bonus and inclusionary housing requirements.**

Improvements to City online Project Tracking Software

The City has moved Cityworks, the City's project tracking, asset management and workorder system, off City servers and on to Amazon webservice, a cloud based solution with greater security and

better back up and restoring capabilities. Staff is in the process of working with a consultant (Centricity) on configuration of the Cityworks web portal to allow applicants to submit planning and building permit applications electronically. Centricity is also assisting in the development of reporting tools that will allow staff to better monitor application processing and turnaround times. This will further allow staff to develop realistic performance targets, as was directed by City Council in November 2020.

Improvement of the overall plan check process is also underway. Staff is in the process of implementing DigEplan an electronic web-based solution that will allow staff to conduct electronic plan checks of building and planning plans. DigEplan will be fully integrated with Cityworks, which will allow the City to move toward a paperless solution for both the building and planning application and permit processes. It is anticipated that DigEplan will be implemented, and training complete, by November 2021. Once DigEplan implementation and training is complete, the City will start accepting online applications for both planning and building. Staff are currently testing the online portal and allowing the portal to be used for over the counter electrical, plumbing and mechanical permits.

Cityworks and DigEplan improvements are being paid for as part of the \$160,000 in grants noted in the housing element implementation section above.

Staffing

As a result of the economic impact from COVID the Community Development Department lost a full-time assistant planner, and a part time office assistant. The loss of these two positions impacted the Department's ability to process both planning and building permit applications. The assistant planner position was the primary point of contact for the public and the position also processed a majority of the administratively issued permits. The part time office assistant position was predominately working with the building division to assist with the processing of applications.

The FY 2021/2022 Adopted Budget includes reinstatement of both the assistant planner and part-time office assistant positions. In August of this year, the Department hired both a planning intern (Alison MacCarley) and a fulltime assistant planner (Saba Asghary). Training makes up a good portion of their days currently, but both planners have hit the ground running and are doing a great job. As for the office assistant position, the Community Development and Public Works Departments will share the part time position and interviews are currently underway. We anticipate filling the position within the next couple of weeks.

In addition, the budget includes funds to support filling vacant engineer positions. The Engineering section of Public Works plays a vital role in permit processing. Council is reviewing one such position as part of the consent agenda of the September 14, 2021 Council meeting. Staff anticipate recruiting for the Senior Engineer position this fall. In the meantime, the City has utilized contract services to assist with Engineering Division review of permit applications.

Planning Commission subcommittee

The Planning Commission formed a subcommittee (Commissioner Joe Ingraffia & Vice-chairperson Bill Roschen) to assist with improvement of the development review process. The subcommittee has met once, and staff is working with the subcommittee on a date for a second meeting to be scheduled over the next couple of weeks. The subcommittee will assist the Community Development Director in forming a stakeholder group made up of local developers, contractors, project representatives and

possibly someone from the real estate field to aid in identifying areas in the process where further improvements can be made.

CONCLUSION

The City is actively working on improvements to the development review process and it is anticipated that this effort will continue well into 2022.

ATTACHMENT

None