



# CITY OF MORRO BAY CITY COUNCIL AGENDA

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

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## Regular Meeting Tuesday, April 12, 2022 – 5:30 P.M. Veterans Memorial Hall 209 Surf St., Morro Bay, CA

Pursuant to Assembly Bill 361 (2021-22) and Government Code section 54953 this Meeting will be conducted in a hybrid format with both in-person and virtual public participation. Ways to watch this meeting and submit public comment are provided below.

### **Public Participation:**

Public participation is allowed in the following ways:

- Community members may attend the meeting in person at the Morro Bay Veterans Hall.
- 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.

Please click the link below to join the webinar:

- <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHlRTk9xaTlmWVNWRFUQT09>

Password: 135692

- Or Telephone Attendee: 1 (408) 638-0968 or 1 (669) 900 6833 or 1 (346) 248 7799; Webinar ID: 827 2274 7698; Password: 135692; Press \* 9 to “Raise Hand” for Public Comment

- Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).
- Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the City Council at [council@morrobayca.gov](mailto:council@morrobayca.gov) prior to the meeting. Agenda Correspondence received at [council@morrobayca.gov](mailto:council@morrobayca.gov) by 10 a.m. on the meeting day will be posted on the City website.

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

PRESENTATION

- Presentation of Arbor Day Proclamation

PUBLIC COMMENT

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

A. CONSENT AGENDA

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

A-1 APPROVAL OF MINUTES FOR THE MARCH 8, 2022, CITY COUNCIL MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE MARCH 22, 2022, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE MARCH 31, 2022, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-4 ADOPTION OF RESOLUTION NO. 26-22 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA - LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 26-22 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2022/23 for the maintenance of the North Point Natural Area under the provisions of the "Landscaping and Lighting Act of 1972."**

A-5 ADOPTION OF RESOLUTION NO. 27-22 INITIATING PROCEEDINGS TO LEVY THE ANNUAL ASSESSMENT FOR THE CLOISTERS PARK AND OPEN SPACE - LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 27-22 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2022/23 for the maintenance of the Cloisters Park and Open Space under the provisions of the "Landscaping and Lighting Act of 1972."**

- A-6 ADOPTION OF RESOLUTION NO. 28-22 APPROVING A NEW TEN-YEAR COMMERCIAL BUILDING LEASE AGREEMENT WITH THREE STACKS AND A ROCK BREWING COMPANY AT LEASE SITE 69-70/69W-70W, LOCATED AT 595 EMBARCADERO ROAD; (HARBOR DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 28-22 approving a new ten-year Commercial Building Lease Agreement with Three Stacks and a Rock Brewing Company, LLC for portions of the building at Lease Site 69-70/69W-70W.**

- A-7 RESOLUTION MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY VIA REMOTE TELECONFERENCING (INCLUDING PARTIALLY REMOTE) FOR A CONTINUED 30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT AS AMENDED BY ASSEMBLY BILL NO. 361; (CITY ATTORNEY)

**RECOMMENDATION: Staff recommends Council consider adoption of attached Resolution No. 29-22 reauthorizing for public health and safety the conduct of public meetings of the legislative bodies of the City via remote teleconferencing (including partially remote) for 30 days, thereby allowing the City Council and the City's advisory bodies to meet remotely (including partially remote) through May 12, 2022.**

- A-8 WATER RECLAMATION FACILITY (WRF) PROGRAM – RECYCLED WATER FACILITIES – INJECTION WELL NO. 1 CONTRACT AWARD IN THE AMOUNT OF \$346,725.00; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council authorize the City Manager to execute a contract, subject to the City Attorney's approval as to form, with Pacific Coast Well Drilling Inc. (PCWD) in the amount of \$346,725.00 and include a \$9,900 bid alternate for a total contract amount of \$356,625.00 for the construction and injection testing of the City's Injection Well No. 1.**

- A-9 ADOPTION OF RESOLUTION NO. 30-22 CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS NECESSARY FOR A NEW LOAN AND ACCEPTING A DEED OF TRUST RELATED THERETO FOR LEASE SITE 87-88/87W-88W (TLC FAMILY ENTERPRISES, 833 EMBARCADERO ROAD); (HARBOR DEPARTMENT)

**RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 30-22 authorizing the Mayor to execute documents necessary for a new loan and accepting a deed of trust related thereto regarding the leasehold interest at Lease Site 87-88/87W-88W, with documents subject to approval of the City Attorney.**

- A-10 APPOINTMENT OF THE PUBLIC WORKS DIRECTOR AND UTILITY DIVISION MANAGER AS ALTERNATE MEMBER TO THE STATE WATER CONTRACTORS ADVISORY COMMITTEE; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 31-22 appointing the Director of Public Works and Utility Division Manager to serve as the City's representatives on the State Water Contractors Advisory Committee as member and alternate member, respectively.**

- A-11 ADOPTION OF RESOLUTION NO. 32-22 CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS NECESSARY FOR A LOAN AND ACCEPTING A DEED OF TRUST RELATED THERETO FOR LEASE SITE 124-128/124W-128W & 113W (MORRO BAY LANDING, 1213, 1215 & 1217 EMBARCADERO ROAD); (HARBOR DEPARTMENT)

**RECOMMENDATION:** Staff recommend the City Council adopt Resolution No. 32-22 authorizing the Mayor to execute documents necessary for a new loan and accepting a deed of trust secured by the leasehold interest at Lease Site 124-128/124W-128W & 113W, with documents subject to approval of the City Attorney.

- A-12 PROCLAMATION DECLARING MAY 1, 2022 AS ARBOR DAY; (ADMINISTRATION)

**RECOMMENDATION:** Approve as submitted.

B. PUBLIC HEARINGS

- B-1 AN ORDINANCE ADOPTING A MILITARY EQUIPMENT USE POLICY CONSISTENT WITH AB 481 REQUIREMENTS; (POLICE DEPARTMENT/CITY ATTORNEY)

**RECOMMENDATION:** Staff recommends the City Council: 1) Hold the public hearing; and, then 2) Introduce, for first reading by title only and with further reading waived, Ordinance No. 649, “An Ordinance of the City Council of the City of Morro Bay, California Adopting a Military Equipment Use Policy Consistent with AB 481 Requirements”

- B-2 PUBLIC HEARING AND ADOPTION OF RESOLUTION NO. 33-22, WHICH RESCINDS RESOLUTION NO. 56-21 AND ADOPTS THE FY 2022-23 MASTER FEE SCHEDULE; (ADMINISTRATIVE SERVICES DEPARTMENT)

**RECOMMENDATION:** Staff recommends that the City Council conduct the formally noticed public hearing, review the proposed Master Fee Schedule, and adopt Resolution No. 33-22 which updates the City’s Master Fee Schedule for Fiscal Year (FY) 2022-23. This Resolution also rescinds Resolution No. 56-21 that adopted the current FY 2021-22 Master Fee Schedule and replaces it in its entirety for the new fiscal year.

C. BUSINESS ITEMS

- C-1 CERTIFY RESULTS OF CITIZENS’ INITIATIVE PETITION ENTITLED “INITIATIVE MEASURE TO FUND CITY OF MORRO BAY HARBOR INFRASTRUCTURE THROUGH \$120 SPECIAL PARCEL TAX WITH REVENUES USED ONLY AND EXCLUSIVELY FOR MAINTENANCE AND IMPROVEMENTS TO CITY OF MORRO BAY OWNED HARBOR FACILITIES” AND EITHER: 1) SUBMIT THE ORDINANCE TO THE QUALIFIED VOTERS OF THE CITY AS A PROPOSED MEASURE AT A REGULAR MUNICIPAL ELECTION; OR, 2) ORDER A REPORT ON THE EFFECTS OF THE PROPOSED INITIATIVE; (CITY MANAGER/CITY CLERK/HUMAN RESOURCES MANAGER)

**RECOMMENDATION:** Staff recommends the City Council receive the report, discuss the alternatives provided by Elections Code section 9215 and described in this report, and adopt Resolution No. 34-22 calling for a General Municipal Election to be held on Tuesday, November 8, 2022, for the submission of Ordinance No. 650 to the qualified voters of the City as a proposed measure, and adopt Resolution No. 35-22 setting priorities for written argument(s) and directing the City Attorney to prepare an impartial analysis, and consider the adoption of Resolution No. 36-22 providing for the filing of rebuttal arguments.

***\*\*\*If Council desires pursuant to Election Code section 9282 to submit an argument against the proposed measure, then one or two members should be appointed for the task as provided for in section 2 of Resolution No. 35-22, as discussed further in this report. Otherwise, Council should not approve section 2 of Resolution No. 35-22.\*\*\****

- C-2 CONSIDERATION OF INTRODUCTION OF ORDINANCE NO. 651 AMENDING MORRO BAY MUNICIPAL CODE SECTION 3.26.120 TO REDUCE THE CITIZENS OVERSIGHT COMMITTEE MEMBERSHIP TO FIVE MEMBERS AND UPDATE THE TIMING OF THE ANNUAL REPORT TO CITY COUNCIL; (CITY MANAGER/ADMIN SERVICES DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council discuss and introduce for first reading by title only, with further reading waived, Ordinance No. 651, "An Ordinance of the City Council of the City Of Morro Bay, California, Amending Sections 3.26.120(B) And 3.26.120(E) of the Morro Bay Municipal Code (MBMC) regarding Citizens Oversight Committee Membership and Report Timing."**

- C-3 LICENSE AGREEMENT WITH PG&E FOR USE OF MORRO BAY COMMUNITY CENTER PARKING LOT FOR PSPS EVENTS; (CITY MANAGER/FIRE DEPARTMENT)

**RECOMMENDATION: Authorize the City Manager and Fire Chief to sign the License Agreement with Pacific Gas and Electric (PG&E) for the use of the Morro Bay Community Center parking lot to establish an Outdoor Community Resource Center (CRC) in the event of a Public Safety Power Shut-off (PSPS) event.**

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, April 26, 2022 at 5:30 p.m.**

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.

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*City Council conducted this meeting in accordance with Assembly Bill 361 (2021-22) and Government Code section 54953 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  
                  Jennifer Ford                         Council Member  
                  Jeff Heller                            Council Member

ABSENT:           None

STAFF:            Scott Collins                           City Manager  
                  Chris Neumeyer                       City Attorney  
                  Dana Swanson                        City Clerk  
                  Sarah Johnson-Rios                 Assistant City Manager/Admin Services Dir.  
                  Greg Kwolek                         Public Works Director  
                  Scot Graham                         Community Development Director  
                  Daniel McCrain                      Fire Chief  
                  Jody Cox                             Police Chief  
                  Eric Endersby                        Harbor Director

#### ESTABLISH QUORUM AND CALL TO ORDER

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

#### MOMENT OF SILENCE

#### PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

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

<https://youtu.be/vb11W0Ajq5Y?t=242>

#### CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/vb11W0Ajq5Y?t=686>

#### PRESENTATIONS

<https://youtu.be/vb11W0Ajq5Y?t=938>

- Central Coast Community Energy (CCE) Annual Update

#### PUBLIC COMMENT

<https://youtu.be/vb11W0Ajq5Y?t=2367>

Don Maruska spoke in favor of Item C-3.

Betty Winholtz, Morro Bay, requested posed questions regarding her utility bill and payment options.

Linda Winters, Morro Bay, was pleased the City would return to live meetings and shared her continued efforts in support of mobile home park residents.

Carole Truesdale, Morro Bay, spoke regarding Item C-1 and requested the measure be placed on the June ballot.

Melanie Williams-Mahan, Morro Bay, concurred with Mr. Truesdale regarding Item C-1.

Mayor Heading closed public comment.

Staff responded to issues raised during public comment.

A. CONSENT AGENDA  
<https://youtu.be/vbl1W0Ajq5Y?t=3222>

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 CONSIDERATION OF APPOINTMENT OF RAYMOND PURCELL TO THE RECREATION AND PARKS COMMISSION; (CITY CLERK)

**RECOMMENDATION: Staff recommends the City Council consider appointment of Raymond Purcell to the Recreation and Parks Commission (RPC) to complete an unexpired term through January 31, 2026.**

A-2 APPROVAL OF AMENDMENT NO. 1 TO CONTRACT WITH SUPERIOR TANK SOLUTIONS FOR FACTORY REHAB OF BLANCA TANKS 3 & 4 AND OTHER STORAGE TANK IMPROVEMENTS; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council approve in substance Amendment No. 1 to Contract with Superior Tank Solutions for Factory Rehab of Blanca Tanks 3 & 4 and other Storage Tank improvements for the amount of \$326,495 and authorize the City Manager to execute the contract amendment.**

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

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

B. PUBLIC HEARINGS

B-1 REVIEW AND ADOPT FINAL FUNDING RECOMMENDATIONS FOR THE 2022 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM; (COMMUNITY DEVELOPMENT)  
<https://youtu.be/vbl1W0Ajq5Y?t=3272>

Senior Planner Jacinth provided the report and responded to Council inquires.

Mayor Heading opened the Public Hearing.

Mayor Heading opened the Public Comment; seeing none, the public comment period was closed.

The Public Hearing was closed.

MOTION: Council Member Barton moved to adopt, Resolution No. 21-22 approving final funding recommendations for the 2022 Community Development Block Grant (CDBG) funds, authorizing the City Manager to make pro rata adjustments to the allocation based on the final funding amount from San Luis Obispo County based on the approval of the federal budget and HUD's final grant amount to the County, and forwarding recommendations to the San Luis Obispo County Board of Supervisors for inclusion with the other final funding requests from the Urban County Consortium. (The funding recommendation is for the two applications received from Peoples Self-Help Housing Corp, and 5 Cities Homeless Coalition along with City program administration of \$4,036 and a \$37,477 rollover of the remaining balance for a total 2022 funding allocation of \$57,656.). The motion was seconded by Council Member Ford and carried 5-0 by roll call vote.

C. BUSINESS ITEMS

- C-1 RECEIVE AND DISCUSS REPORT ON THE EFFECTS OF THE PROPOSED CITIZENS INITIATIVE PETITION ENTITLED "AN INITIATIVE MEASURE TO PROHIBIT TENT CAMPING AND ALL CLASSES OF VEHICLE CAMPING (DRY OR OTHERWISE) IN CERTAIN SPECIFIED AREAS OF THE CITY OF MORRO BAY" AND EITHER: 1) ADOPT THE ORDINANCE WITHOUT ALTERATION, OR 2) SUBMIT THE ORDINANCE TO THE QUALIFIED VOTERS OF THE CITY AS A PROPOSED MEASURE AT THE JUNE SPECIAL MUNICIPAL ELECTION OR NOVEMBER REGULAR MUNICIPAL ELECTION; (CITY MANAGER/CITY CLERK/HUMAN RESOURCES MANAGER/HARBOR DIRECTOR)  
<https://youtu.be/vb11W0Aiq5Y?t=3628>

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

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

<https://youtu.be/vb11W0Aiq5Y?t=5455>

Betty Winholtz, Morro Bay resident and proponent of the citizens' initiative, requested the measure be placed on the June ballot.

Dawn Beattie, Morro Bay, asked how the RV camping rates were set up when the sites were established.

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

Council Member Heller was in favor of continuing the program with the exception of the triangle parking spaces and placing the measure on the June ballot.

MOTION: Mayor Headding moved to adopt the ordinance without alteration by introducing for first reading by title only, with further reading waived, Ordinance No. 648, An Ordinance of the City Council of the City of Morro Bay, California, adding Subsection (D) to Section 8.24.010 (Prohibited at Certain Times and in Certain Places) of Chapter 8.24 (Camping) of Title 8 (Health and Safety) of the Morro Bay Municipal Code. The motion was seconded by Council Member Addis for discussion.

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

C-2 PRESENTATION AND DISCUSSION OF THE FISCAL YEAR 2020-21 ANNUAL COMPREHENSIVE FINANCIAL REPORT; (ADMINISTRATIVE SERVICES DEPARTMENT)

<https://youtu.be/vb11W0Ajq5Y?t=6343>

Assistant City Manager/Admin. Services Director Johnson-Rios and Auditor Lindsey Zimmerman from Brown Armstrong provided the report and responded to Council inquires.

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

<https://youtu.be/vb11W0Ajq5Y?t=8812>

Betty Winholtz, Morro Bay, requested clarification regarding transfers from enterprise funds to the General Fund and the spike in long-term liabilities illustrated on page 64 of the report.

Courtney Shepler, Morro Bay resident and recent appointee to the Citizens Finance Advisory Committee, appreciated the thorough report and hoped in future years the Committee would have more time for review.

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

Ms. Zimmerman and Ms. Johnson-Rios responded to questions raised during public comment.

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

C-3 ESTABLISH A CITY COUNCIL SUB-COMMITTEE TO SPEARHEAD ACTIVITIES RELATED TO THE CLIMATE EMERGENCY INITIATIVE AS ESTABLISHED BY RESOLUTION NO. 20-22; (CITY MANAGER/CITY CLERK)

<https://youtu.be/vb11W0Ajq5Y?t=9381>

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

Mayor Headding opened the Public Comment for Item C-3; seeing none, the public comment period was closed.

MOTION: Council Member Addis moved to establishing a Council sub-committee to lead community and business outreach related to the Climate Emergency Initiative as established by Resolution No. 20-22. The motion was seconded by Council Member Ford for discussion.

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

MOTION: Council Member Addis moved to appoint Council Members Barton and Ford as the Council sub-committee members. The motion was seconded by Mayor Headding and carried 4-1 by roll call vote with Council member Heller opposed.

MOTION: Mayor Headding moved to ask the sub-committee members as their first action to come back with a purpose statement for the sub-committee. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS  
<https://youtu.be/vbl1W0Aiq5Y?t=10467>

Mayor Headding shared the San Luis Obispo County Mayors were putting together a resolution of support for Ukraine they would sign as individuals and not on behalf of their respective cities. He requested and received support for a similar resolution to be brought back for Council approval.

Council Member Addis requested review and discussion of the various Council sub-committees. Mayor Headding offered the Council Policy Review Sub-committee would include this in their review.

E. ADJOURNMENT

The meeting adjourned at 8:27 p.m.

Recorded by:

Dana Swanson  
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
MARCH 22, 2022 – 4:00 P.M.  
TELECONFERENCE

AGENDA NO: A-2  
MEETING DATE: April 12, 2022

*City Council conducted this meeting in accordance with Assembly Bill 361 (2021-22) and Government Code section 54953 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  
                         Jennifer Ford                             Council Member  
                         Jeff Heller                                 Council Member

ABSENT:            None

STAFF:             Scott Collins                                City Manager  
                         Sara Johnson-Rios                        Assistant City Manager/Admin Services Director  
                         Dana Swanson                              City Clerk/HR Manager  
                         Chris Neumeyer                            City Attorney  
                         Joe Pannone                                Special Counsel  
                         Colin Tanner                                Special Labor Counsel  
                         Eric Endersby                               Harbor Director

**ESTABLISH QUORUM AND CALL TO ORDER**

Mayor Headding called the meeting to order at 4:00 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.

Bob Fowler, MMBS, Inc., provided background information regarding lease site improvements completed since 2014 and requested the Council approve a consent to encumber his leasehold interest.

The public comment period was closed.

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

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

Property:            Lease Site 124-128/124W-128W & 113W, Morro Bay Landing, 1213, 1215 & 1217 Embarcadero Road  
Property Negotiators: Robert Fowler, MMBS, Inc.  
Agency Negotiators: Eric Endersby, Harbor Director; Scott Collins, City Manager; and Chris Neumeyer, City Attorney; Joseph Pannone, Special Counsel  
Negotiation:        Price and Terms of Payment

**CS-2 CONFERENCE WITH LABOR NEGOTIATORS**

City Designated Representative: Colin Tanner, Special Labor Counsel  
Employee Organizations: Morro Bay Firefighters' Association; Morro Bay Peace Officers' Association; Service Employee's International Union - SEIU Local 620; and unrepresented Management, Confidential and Executive employees

Council Member Addis left the meeting at 4:59 p.m.

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 5:04 p.m.

Recorded by:

Dana Swanson  
City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
MARCH 31, 2022 – 5:00 P.M.  
TELECONFERENCE

AGENDA NO: A-3  
MEETING DATE: April 12, 2022

*City Council conducted this meeting in accordance with Assembly Bill 361 (2021-22) and Government Code section 54953 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  
                         Jennifer Ford                     Council Member  
                         Jeff Heller                        Council Member

ABSENT:            None

STAFF:             Scott Collins                     City Manager  
                         Sara Johnson-Rios               Assistant City Manager/Admin Services Director  
                         Dana Swanson                    City Clerk/HR Manager  
                         Chris Neumeyer                 City Attorney  
                         Colin Tanner                     Deputy City Attorney for Labor

**ESTABLISH QUORUM AND CALL TO ORDER**

Mayor Headding called the meeting to order at 5:00 p.m. with all but Council Member Addis present. Council Member Addis joined the meeting at 5:02 p.m.

**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 LABOR NEGOTIATORS**

City Designated Representative: Colin Tanner, Special Labor Counsel  
Employee Organizations: Morro Bay Firefighters' Association; Morro Bay Peace Officers' Association;  
Service Employee's International Union - SEIU Local 620; and unrepresented Management,  
Confidential and Executive employees

**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 6:02 p.m.

Recorded by:

Dana Swanson  
City Clerk

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<b>AGENDA NO:</b> A-4 <b>MEETING DATE:</b> April 12, 2022
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# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** April 4, 2022

**FROM:** Eric Riddiough, P.E. – City Engineer

**SUBJECT:** Adoption of Resolution No. 26-22 Initiating Proceedings to Levy the Annual Assessment for the North Point Natural Area - Landscaping and Lighting Maintenance Assessment District

**RECOMMENDATION**

Staff recommends the City Council adopt Resolution No. 26-22 ordering the preparation of an Engineer’s Report detailing the expenses projected for Fiscal Year 2022/23 for the maintenance of the North Point Natural Area under the provisions of the “Landscaping and Lighting Act of 1972.”

**ALTERNATIVE**

Staff does not recommend any alternative direction.

**FISCAL IMPACT**

If approved by Council, the FY2022/23 assessments are estimated to provide \$5,645 for the maintenance of the North Point Natural Area.

**BACKGROUND**

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

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

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

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

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

### **DISCUSSION**

Upon adoption of Resolution No. 26-22, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for review, modification, acceptance or rejection at the May 10, 2022 City Council meeting. At that meeting will be a resolution for consideration declaring the City Council's intent to levy and collect the assessment. That Resolution will list the improvements, names the district and gives its general location; it also refers to the proposed assessment and gives notice of the time and place for a meeting regarding the levy of the continuing assessment. The Government Code states the third and final meeting must be noticed in accordance with Sections 22500 *et seq.* of the California Streets and Highways Code and is tentatively scheduled for June 21, 2022.

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

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

### **CONCLUSION**

Resolution No. 26-22 has been prepared for City Council review and adoption. The Resolution serves as the initiation to the annual assessment proceedings and orders an Engineer's Report detailing the proposed costs for the maintenance of the North Point Natural Area, for purposes of assessing private property owners of Tract Map No. 2110 (excluding the City's property). The Resolution also gives notice of review and acceptance, modification or rejection, of the Engineer's Report, scheduled for the May 10, 2022, Council meeting.

### **ATTACHMENT**

1. Proposed Resolution No. 26-22

**RESOLUTION NO. 26-22**

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

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

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

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

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

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

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

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

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

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

2. The improvements to be subject to assessment for maintenance by the District shall include those enumerated in the conditions of approval of North Point and in Section 22525 of the Act, which were installed by the developer as a condition of approval of Tract 2110 or which are hereafter installed by developer; pursuant to the Final Improvement Plans for North Point as approved by the City.
3. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the proposed District is attached as Exhibit A which is hereby incorporated herein.
4. An Engineer's Report will be prepared for consideration at the May 10, 2022, City Council meeting and that date is set to review and accept or reject that report.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of April 2022 by the following vote:

AYES:  
NOES:  
ABSENT:

---

JOHN HEADDING, Mayor

ATTEST:

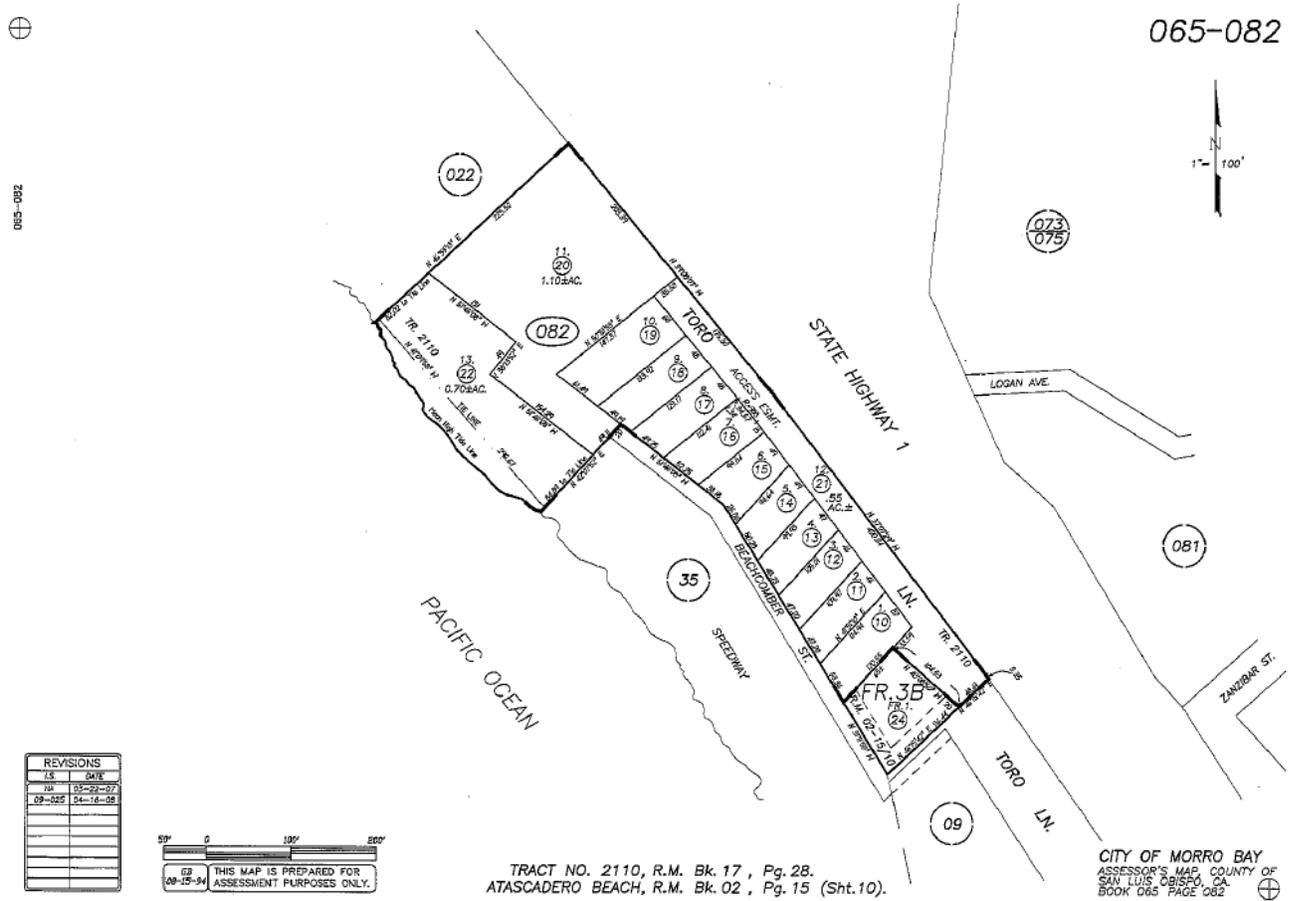
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DANA SWANSON, City Clerk

# Exhibit A

## DISTRICT BOUNDARY DIAGRAM

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



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AGENDA NO: A-5

MEETING DATE: April 12, 2022



# Staff Report

TO: Honorable Mayor and City Council

DATE: April 4, 2022

FROM: Eric Riddiough, P.E. - City Engineer

SUBJECT: Adoption of Resolution No. 27-22 Initiating Proceedings to Levy the Annual Assessment for the Cloisters Park and Open Space - Landscaping and Lighting Maintenance Assessment District

## **RECOMMENDATION**

Staff recommends the City Council adopt Resolution No. 27-22 ordering the preparation of an Engineer's Report detailing the expenses projected for Fiscal Year 2022/23 for the maintenance of the Cloisters Park and Open Space under the provisions of the "Landscaping and Lighting Act of 1972."

## **ALTERNATIVE**

Staff does not recommend any alternatives to the recommendation.

## **FISCAL IMPACT**

When approved by City Council, the FY2022/23 assessments are estimated to provide \$148,944 for the maintenance of the Cloisters Park and Open space totaling 34 acres.

## **BACKGROUND**

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

After the initial formation of the assessment district, each year thereafter, for the assessment to continue, the City must adopt a series of three resolutions to confirm the levy of assessment for the upcoming fiscal year. The first resolution, which is the one being proposed by this staff report,

Prepared By: ER

Dept Review: GK

City Manager Review: SC

City Attorney Review: CFN

initiates the annual levy process and orders the preparation of an Engineer's Report; the second resolution approves the Engineer's Report and notices the intent to levy the assessment; and the third resolution levies the assessment for the upcoming fiscal year.

### **DISCUSSION**

After the adoption of Resolution No. 27-22, which initiates the proceedings to levy the annual assessment, an Engineer's Report will be prepared for review, modification, acceptance or rejection at the May 10, 2022 City Council meeting. At that meeting there will be a resolution for consideration declaring the City Council's intent to levy and collect the assessment. That Resolution will list the improvements, name the district and give its general location; it also refers to the proposed assessment and gives notice of the time and place for a meeting regarding the levy of the continuing assessment. The Government Code states the third and final meeting must be noticed in accordance with Sections 22500 *et seq.* of the California Streets and Highways Code and is tentatively scheduled for June 21, 2022.

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

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

### **CONCLUSION**

Resolution No. 27-22 has been prepared for City Council review and adoption. The Resolution serves as the initiation of the annual assessment proceedings and orders the preparation of the Annual Engineer's Report detailing the proposed costs for the maintenance of the Cloisters Park and Open Space, for purposes of assessing property owners of lots located within the bounds of Tract Map No. 1996 (excluding the City's property). The Resolution also gives notice of review and acceptance, modification, or rejection, of the Engineer's Report by City Council, scheduled for the May 10, 2022, Council meeting.

### **ATTACHMENT**

1. Proposed Resolution No. 27-22

**RESOLUTION NO. 27-22**

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

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

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

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

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

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

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

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

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

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

3. The Assessment District is a District located in the City of Morro Bay, County of San Luis Obispo. A map showing the boundaries of the District is attached as Exhibit A which is hereby incorporated herein.
4. An Engineer's Report, detailing the proposed costs for the maintenance of the Cloisters Park and Open Space, will be prepared for consideration by the City Council at the May 10, 2022, meeting and that date is set to review and accept, modify, or reject that report.
5. This District is called the "Cloisters Landscaping and Lighting Maintenance Assessment District."

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of April 2022 by the following vote:

AYES:  
NOES:  
ABSENT:

---

JOHN HEADDING, Mayor

ATTEST:

---

DANA SWANSON, City Clerk



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AGENDA NO: A-6

MEETING DATE: April 12, 2022

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** March 31, 2022

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Adoption of Resolution No. 28-22 Approving a New Ten-Year Commercial Building Lease Agreement with Three Stacks and a Rock Brewing Company at Lease Site 69-70/69W-70W, Located at 595 Embarcadero Road

### RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 28-22 approving a new ten-year Commercial Building Lease Agreement with Three Stacks and a Rock Brewing Company, LLC for portions of the building at Lease Site 69-70/69W-70W.

### ALTERNATIVES

The City Council can direct staff other than is being recommended.

### FISCAL IMPACTS

Upon the lease's May 1, 2022 effective date, annual rent of \$23,900 will be realized. Under this lease agreement, percent gross of sales rents on the tenant's annual gross sales will not go into effect until one year after the lease's effective date.

### BACKGROUND

On August 13, 2019, the City Council approved a building lease agreement with Three Stacks and a Rock Brewing Company ("Three Stacks") at the old Morro Bay Aquarium lease site. Three Stacks occupies only the downstairs spaces of the former aquarium building, and over the past ~three years has made significant and very costly tenant improvements to those spaces to accommodate their operation, as well as significant and much-needed building improvements.

In addition, the City caused the completion of several improvements to prepare the building for occupation, including installation of a seismic shear wall, removal of the old aquariums in the building's interior, removal of the cage structure over the old outdoor seal tanks and replacement of a major section of the building's sewer lateral.

The original lease agreement term was for a one-year period with two one-year options to extend, because at the time Central Coast Aquarium (CCA) was actively working with the City on a plan to fund and build a new, modern aquarium on the site based on a request for proposals (RFP) process conducted begun in 2013. Due to the COVID-19 pandemic, in 2020 CCA suspended operations of their facility in Avila, and ceased working on the Morro Bay project, thus their agreement with the City for that project has been, in essence, terminated by mutual agreement.

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

The COVID-19 pandemic also caused significant delays for Three Stacks and the City to complete their building renovations and preparations, which resulted in Three Stacks being granted two lease term extensions to accommodate the time loss.

With the City's work done and Three Stacks' renovation and preparation work now coming to a close, and the CCA project no longer under consideration for the site, over the past ~12 months Three Stacks has negotiated a new ten-year building lease for the site to occupy it on a longer term. The price and terms of payment for that lease were brought to Council in closed session for input and negotiation directions, which resulted in the lease agreement being presented for approval.

## **DISCUSSION**

The highlights of the new building lease agreement are as-follows:

- A. Acknowledgement of significant tenant improvements of and to the site, including but not limited to:
  - Remodeling of the old aquarium tank room to accommodate beer brewing and a small kitchen
  - Addition of two restrooms and remodeling the old front retail area to accommodate guest service
  - Building a guest seating area deck over the old outdoor seal tanks
  - Installing all-new under-foundation plumbing to all areas of the building
  - Installing nearly all-new electrical service from the PG&E panel forward
  - Installing an automatic fire sprinkler system, which can be expanded to the upstairs areas in the future
  - Restoration of all ground level floors, walls, windows and ceilings to accommodate their new use
  - ADA accessibility to the building entrance and serving room, new restrooms and outdoor serving deck by way of an electric lift
  - Installation of various trade fixtures and decorations, which include artifacts from the old Morro Bay Aquarium in a nod to the building's important history
- B. Ten-year building lease term, with the option to negotiate conversion to a long-term ground lease at the five-year mark based on tenant's further redevelopment proposal for the site.
- C. Ten-year lease term commences May 1, 2022, and expires on April 30, 2032, unless otherwise terminated.
- D. \$23,900 initial annual rent, CPI-adjusted annually as in our regular ground leases.
- E. No percentage rent for the first full year after lease commencement, and agreement to negotiate in good faith starting 60 days prior to the end of that first year to add equitable percentage rents to the lease.
- F. The premises include only the ground floor spaces of the building, and use of the walk-in freezer box on the site between the building and the wharf on the bay. The wharf is excluded from this lease because it is unusable due to its deteriorated state.
- G. Standard landlord-tenant repair and maintenance responsibilities of each party as is normal in a building lease arrangement, with the City's maintenance and repair responsibilities limited to a maximum expense of the amount of rent received from the tenant.

## **CONCLUSION**

This site has been vacant of revenue-generating activity since the fall of 2018, and the City attempted to redevelop the site and seek viable tenants for several years, starting with an RFP process in 2013.

In ~2019 Three Stacks approached the City with a renovation plan for the building to move their popular North Main Street brewpub to the site while CCA pursued their longer-term plan. With the CCA plan folding and Three Stacks committed to long-term occupation, a new ten-year lease for the site is warranted in order to breathe new life into this important lease site.

Staff recommends the City Council adopt Resolution No. 28-22 approving a new ten-year Commercial Building Lease Agreement with Three Stacks and a Rock Brewing Company, LLC for this site

**ATTACHMENTS**

1. Resolution No. 28-22.
2. New ten-year Building Lease Agreement with Three Stacks and a Rock Brewing Co., LLC

**RESOLUTION NO. 28-22**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING A NEW TEN-YEAR BUILDING LEASE AGREEMENT  
FOR LEASE SITE 69-70/69W-70W BETWEEN THE CITY OF MORRO BAY  
AND THREE STACKS AND A ROCK BREWING COMPANY, LLC  
LOCATED AT 595 EMBARCADERO ROAD**

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

**WHEREAS**, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tideland leases and properties; and

**WHEREAS**, on August 13, 2019, the City approved a short-term Building Lease Agreement with Three Stacks and a Rock Brewing Company LLC (“Three Stacks”) while Three Stacks and the City completed significant improvements to enable Three Stacks to occupy and operate from the building on Lease Site 69-70/69W-70W; and

**WHEREAS**, the City has completed its improvements and Three Stacks is nearing completion of its improvements; and

**WHEREAS**, the City and Three Stacks have agreed upon a new ten-year Building Lease Agreement for Three Stacks’ occupation of the building.

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

1. The attached new ten-year Building Lease Agreement with Three Stacks and a Rock Brewing Company for the building on Lease Site 69-70/69W-70W is hereby approved.
2. The Mayor is hereby authorized to execute said Agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of April, 2022 on the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
John Headding, Mayor

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

**COMMERCIAL BUILDING LEASE AGREEMENT**

**by and between**

**CITY OF MORRO BAY,  
a municipal corporation  
“Landlord”**

**and**

**Three Stacks and a Rock Brewing Company, LLC  
a California limited liability company**

**“Tenant”**

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**Exhibit A**          Depiction of Premises

## COMMERCIAL BUILDING LEASE AGREEMENT

THIS COMMERCIAL BUILDING LEASE AGREEMENT (“this Lease”) is made effective this 1<sup>st</sup> day of May, 2022, by and between the CITY OF MORRO BAY, a municipal corporation (“Landlord”), and Three Stacks and a Rock Brewing Company, LLC., a California limited liability company (“Tenant”). Landlord and Tenant are sometimes individually referred to as a “Party” and jointly as the “Parties.”

### RECITALS:

**A.** The State of California passed certain tide and submerged lands located within the Morro Bay City Limits to the County of San Luis Obispo and to its successors, being Chapter 1076, Statutes of 1947, as amended by Chapter 413, Statutes of 1955, Chapter 1874, Statutes of 1957, and Chapter 70, Statutes of 1960, first extraordinary session; which Statutes may be amended from time to time by the Legislature of the State of California; all of which Statutes expressly recognize and agreed to be in full force and effect by the Parties hereto.

**B.** The Parties hereto recognize and agree on July 17, 1964, Landlord succeeded to all of the right, title and interest of the County of San Luis Obispo in and to all of the tide and submerged lands conveyed to said County by the State of California pursuant to the above-mentioned acts.

**C.** Judgement has been entered on October 14, 1964, in the case of the CITY OF MORRO BAY, Plaintiff, versus COUNTY OF SAN LUIS OBISPO, and STATE OF CALIFORNIA, Defendants, by the Superior Court of the State of California in and for the County of San Luis Obispo, #30417, adjudging and decreeing, among other things, that the title to said tide and submerged lands so conveyed by the State of California to the County of San Luis Obispo in trust, as set forth above, passed automatically to Landlord upon the date of its incorporation as a city on the 17<sup>th</sup> day of July, 1964.

**D.** Tenant accepts this Lease with the full knowledge there is no warranty of title in and to the Premises, as defined below, by Landlord to Tenant.

**E.** In order to develop and improve Morro Bay Harbor and to assist in carrying out the provisions of the tideland grant as aforesaid, and in order to provide facilities for the accommodation of those using Morro Bay Harbor, Landlord desires to lease to Tenant the Premises upon the terms and conditions set forth below:

The portions of the Building, as defined in Subdivision F., below, which housed the former “Morro Bay Aquarium” and identified as Spaces A, B, C and D, as described and depicted on the attached Exhibit A, is the subject of this Lease, and is also referred to as the “Premises.” In addition, an area of approximately 10’ X 8’ near the wharf and abutting the rear (ocean-side) of the Space D outside of the Building in which is located a walk-in freezer will also be included as part of the Premises (“Freezer Area”).

The upstairs second story portions of the Building, other (non-Freezer Area) outside portions of the rear (ocean-side) of the Building, wharf and boat dock (the “Remainder”) are expressly

excluded from this Lease, and Landlord retains the right (i) to rent or lease some or all of those portions of the Building to a third party(ies), or (ii) to use some of all of the Remainder for Landlord's own needs, at Landlord's option; provided, that said third party rents, leases or Landlord uses (i) do not unduly interfere with Tenant's quiet enjoyment of the Premises as stipulated in Section 26, and (ii) are not a business or entity that directly competes or conflicts with Tenant's business.

**F.** In order to develop and improve Morro Bay Harbor and to assist in carrying out the provisions of this Lease, the Premises are located in the structure (the "Building") located at 595 Embarcadero Road on Lease Site 69-70/69W-70W (the "Lease Site") on Landlord's waterfront (the "Waterfront Area").

**G.** 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, subject to the rights of Landlord to use and lease, to others, the Remainder, as provided in Recital E., above.

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 May 1, 2022 (the "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 (the "Term") shall commence upon the Effective Date for a fixed term of ten years, and terminate without notice on April 30, 2032, unless otherwise amended by the Parties pursuant to Sections 2.4, 2.5 or 29.14.
- 2.3. Right to Terminate.** Tenant shall have the right to terminate this Lease at any time, upon providing Landlord at least sixty-days' written notice to Landlord.

- 2.4. **Right to Tenant to Exercise Option.** Tenant shall have the option (the “Remainder Option”) to include the Remainder or portions of the Remainder in Tenant’s Lease at mutually-agreeable terms and conditions. Tenant and Landlord agree, in good faith, to negotiate an equitable amendment to this Lease to incorporate the Remainder or portion of the Remainder in the Lease if Tenant desires to exercise the Remainder Option. That desire must be communicated in writing to City’s Harbor Director no less than 180 days and no more than 730 days after the Effective Date, as defined below.
- 2.5. **Exclusive Right to Negotiate New Long-Term Ground Lease Agreement and Site Redevelopment Project.** Provided Tenant has not been in default of any of its obligations under this Lease, upon the fifth annual anniversary of the Effective Date, Tenant shall have the right to enter into a ninety-day period of exclusive negotiation with Landlord to redevelop the Premises, Building, Remainder and entirety of Lease Site in exchange for consideration of a long-term ground lease agreement.

### 3. RENT & PERFORMANCE STANDARD.

- 3.1. **Monthly Rent.** Tenant agrees to pay Twenty-three Thousand Dollars (\$23,000) per 12-month period on an equally-divided monthly basis, in advance, due no later than the 10<sup>th</sup> day of month for which rent is being paid (the “Monthly Rent”). The first monthly payment of the Monthly Rent shall be due upon the Effective Date. The Freezer Area rent shall be Seventy-five Dollars (\$75.00) per month.
- 3.2. **CPI Adjustment to Monthly Rent.**—Commencing on July 1, 2023, and each subsequent July 1 thereafter, (each, a ‘CPI Adjustment Date’), the Monthly Rent shall be adjusted in direct proportion to any upward or downward movement in the Consumer Price Index for January 1, 2022, which is hereby agreed to be 301.209 (Base Index). The percentage adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles – Anaheim – Riverside, California, compiled and published by the United States Department of labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the Index).

The Monthly Rent shall be adjusted as of each CPI Adjustment Date, and will remain in effect as adjusted until the next CPI Adjustment Date. As an illustration only, if the Base Index is 166.1 and the monthly average CPI for the previous year is 171.6, then the percentage increase is equal to 3.31%.

The CPI increase or decrease shall not exceed 3% in any one year; provided, that if the CPI increases or decreases over 6%, then the maximum CPI increase shall be 3% plus half the increase or decrease over 6%. As an illustration only, if the CPI increase is 8%, then the new CPI rent calculation would be one half the difference between 6% and 8%, or 1%, added to the maximum 3% for a new 4% CPI.

- 3.3. **Percentage Rent.** In partial consideration of completing the improvements stipulated in Section 3.4 of this Lease, Tenant shall have no percentage rent payment obligations for the first twelve full-calendar months of tenancy after the Effective Date. At least sixty days prior to the end of the first twelve full-calendar months of tenancy after the Effective Date, Tenant and Landlord agree, in good faith, to negotiate an equitable Percent Rent rate for any future tenancy of the Premises. If an agreement cannot be reached, then that Percentage Rent shall be the same as applicable in the City’s Harbor Department Lease Management Policy.
- 3.4. **Performance Standards - Tenant.** As material consideration for this Lease, Tenant covenants to diligently maintain and repair the Premises in compliance with Section 7.1, as well as satisfactorily complete the items listed in Sections 3.4.1 and 3.4.2 (the “Tenant Performance Standard”); provided, Tenant shall expend as least \$120,000 on actual hard construction costs for the items listed in Section 3.4.2; and provided, further, that Tenant shall provide the Harbor Director with satisfactory documentation evidencing those expenditures.

### 3. RENT & PERFORMANCE STANDARD.

- 3.1. **Monthly Rent.** Tenant agrees to pay Twenty-three Thousand Dollars (\$23,000) per 12-month period on an equally-divided monthly basis, in advance, due no later than the 10<sup>th</sup> day of month for which rent is being paid (the “Monthly Rent”). The first monthly payment of the Monthly Rent shall be due upon the Effective Date. The Monthly Rent includes Seventy-five Dollars (\$75.00) per month for the Freezer Area.
- 3.2. **CPI Adjustment to Monthly Rent.**—Commencing on July 1, 2023, and each subsequent July 1 thereafter, (each, a ‘CPI Adjustment Date’), the Monthly Rent shall be adjusted in direct proportion to any upward or downward movement in the Consumer Price Index for January 1, 2022, which is hereby agreed to be 301.209 (Base Index). The percentage adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles – Anaheim – Riverside, California, compiled and published by the United States Department of labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the Index).

The Monthly Rent shall be adjusted as of each CPI Adjustment Date, and will remain in effect as adjusted until the next CPI Adjustment Date. As an illustration only, if the Base Index is 166.1 and the monthly average CPI for the previous year is 171.6, then the percentage increase is equal to 3.31%.

The CPI increase or decrease shall not exceed 3% in any one year; provided, that if the CPI increases or decreases over 6%, then the maximum CPI increase shall be 3% plus half the increase or decrease over 6%. As an illustration only, if the CPI increase is 8%, then the new CPI rent calculation would be one half the difference between 6% and 8%, or 1%, added to the maximum 3% for a new 4% CPI.

- 3.3. **Percentage Rent.** In partial consideration of completing the improvements stipulated in Section 3.4 of this Lease, Tenant shall have no percentage rent payment obligations for the first twelve full-calendar months of tenancy after the Effective Date. At least sixty days prior to the end of the first twelve full-calendar months of tenancy after the Effective Date, Tenant and Landlord agree, in good faith, to negotiate an equitable Percent Rent rate for any future tenancy of the Premises. If an agreement cannot be reached, then that Percentage Rent shall be the same as applicable in the City’s Harbor Department Lease Management Policy.
- 3.4. **Performance Standards - Tenant.** As material consideration for this Lease, Tenant covenants to diligently maintain and repair the Premises in compliance with Section 7.1, as well as satisfactorily complete the items listed in Sections 3.4.1 and 3.4.2 (the “Tenant Performance Standard”); provided, Tenant shall expend as least \$120,000 on actual hard construction costs for the items listed in Section 3.4.2; and provided, further, that Tenant shall provide the Harbor Director with satisfactory documentation evidencing those expenditures.

3.4.1. On or before 90 days after the Effective Date, the following shall be completed:

- Remodel Space A to accommodate a beer tasting, food and retail room for guests
- Enlargement of the existing restroom under the stairs in Space A to meet the American with Disability Act (ADA) accessibility standards,
- Clean up/restoration of floors, walls and windows and supply all necessary fixtures to accomplish renovation of the Space A portion of the building,
- Construct a deck in the open-air Space C portion of the building over the old aquarium seal tanks,
- Install a power wheelchair lift for ADA access to the Space C deck, if required by the ADA,
- Complete all necessary lighting improvements,
- Complete plumbing improvements, including correction of the floor drainage in Space B to drain to the municipal sewer system,
- Complete improvements necessary to make the front entrance door ADA-compliant, if required by the ADA,
- Installation of a code-compliant automatic fire sprinkler system in the ground floor spaces of the Premises.
- Appropriate tenant improvements to realize Tenant's vision for the Premises and necessary to operate as a brewery and beer tasting/food service facility regularly open to the public.

3.4.2. On or before sixty days prior to the first twelve full months of tenancy, provide the City Manager and Harbor Director a financial report of Tenant's Gross Sales, as defined, to be used for negotiation of Percentage Rent as indicated in Section 3.2.

"Gross Sales," as used herein, shall mean (subject to the exceptions and authorized deductions as herein set forth) the total selling price and the total gross amount received by Tenant from all merchandise sold and services rendered in, on or from the Premises by Tenant, its sublessees, licensees or concessionaires, both for cash or on credit, and if on credit whether or not payment be actually made therefore, the gross amount received by Tenant for merchandise sold pursuant to orders received in the Premises, even if filled elsewhere, and the gross amount received by Tenant from any and all other sources of income derived from the business being conducted upon the Premises.

Notwithstanding the other provisions of Section 3.4.2, the term "Gross Sales" shall not include the following items, and such may be deducted from Gross Sales to the extent they have been included therein:

- Credits and refunds made to customers for merchandise returned or exchanged,
- Any sales or excise taxes otherwise includable in Gross Sales as defined in this Section because such taxes are part of the total selling price of merchandise or services rendered in, from or on the Premises, where Tenant

must account for and remit the taxes to the government entity or entities by which they are imposed,

- With respect to credit card sales, fees retained or withheld by the issuer and/or merchant bank pursuant to Tenant's credit card acceptance agreement, and
- Rental payments to Tenant from sublessees, licensees or concessionaires whose total gross sales are included in gross sales computations.

**3.5. Performance Standards – Landlord.** As material consideration for this Lease, Landlord has diligently maintained and repaired the Premises in compliance with Section 7.2, as well as satisfactorily completed the items listed in Subsection 3.5.1.

3.5.1

- Removed and disposed of the chain link fencing and support structure enclosing the open-air portion of Space C of the Premises,
- Ensured the various electrical panels and electrical components such as, but not limited to, power to light switches and power outlets are code-compliant and in working, operational condition and with all unused electrical components removed in Spaces A, B, C and D, and
- Removed the old aquarium fish tanks and tank stand structures for the fish tanks in Space B.
- Installed an interior seismic shear wall between Spaces A and B as recommended by Tenant's engineer of record.

**3.6. 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.

**3.7. 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.

**3.8. 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 brewery and beer/food tasting facility, including ancillary sales and services directly related to those uses.

**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 Waterfront Area. 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, as defined below, 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. Section 6901, *et seq.*; (iii) California Health and Safety Code Section 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. 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 and, 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 Initial Term and any Extended Term.

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 Initial Term or any Extended 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 Sections 3.4 and 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 keep the Premises in good and sanitary order on a daily basis. Upon termination of this Lease, the Premises shall be surrendered in a good, clean and sanitary "broom clean" condition, except for reasonable use and wear. Tenant agrees to surrender the Premises in the condition after all improvements or alterations, which have been approved by Landlord and installed by Tenant pursuant to Section 8.1, have been satisfactorily completed. If Landlord wants to reserve the right to require Tenant to remove any of those improvements and alterations upon the expiration or earlier termination of this Lease, then Landlord must reserve such right in its notice of approval any of those improvements or alterations. 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 necessary repairs by Landlord (the "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 7.1 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 necessary repairs. Upon commencement of necessary repairs, Landlord shall use reasonable efforts to diligently complete same. At a time and date reasonably agreed to by the Parties, the Parties shall jointly

conduct an annual inspection of the Premises 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, to the extent practicable.

Notwithstanding the foregoing and Landlord's Performance Standard obligations under Section 3.5, Landlord's repair obligations are **specifically limited** in that Landlord shall not be required to make repairs the cost of which exceeds the Rent actually received by Landlord from Tenant, as set forth below. During the Term, Landlord shall maintain a cumulative on-going record of all Rent received by Landlord ("**Landlord Repair Fund**"). Any repairs and maintenance costs incurred by Landlord under this Section 7.2 shall reduce the Landlord Repair Fund. If at any time when a repair or maintenance item, which is Landlord's responsibility under this Section 7.2, 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, outside those stipulated in Section 3.4 without the prior written consent of Landlord and in compliance with any and all necessary permits and/or entitlements. 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 or any of, its officers, directors, members, employees, agents, invitees, customers 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, unless such injury or damage is finally determined to be the result of the gross negligence or willful misconduct of Landlord or any of 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 30.6, on the amount of the mechanic's lien claim.

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

**14. UTILITIES.**

**14.1. Tenant's Responsibilities.** Tenant shall pay, before delinquency, all charges for water, gas, heat, electricity, power, sewer, telephone service, solid waste collection and all other services and utilities used in, upon, or about the Premises by Tenant or any of its subtenants, licensees, or concessionaires during the entire term of this Lease. Tenant shall pay such fees, assessments or charges as may be levied for the operation, maintenance and service of such facilities and shall comply with reasonable rules and regulations established from time to time for use thereof. Tenant shall insure that trash and debris produced by the activities on Premises do not accumulate on the Premises. Tenant shall not be responsible for any utility charges of any other tenant to whom Landlord may lease other portions of the Building, wharf or dock behind the Building; and each such tenant shall have utilities separately metered or otherwise monitored to account for utility charges to be paid by that tenant. As between Landlord and Tenant, Landlord shall be responsible for having metering and accounting provided.

**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 this Section 16, Landlord shall be obligated to reconstruct the Premises only to the extent of the condition of the Premises prior to the damage.

**16.5. Rent Abatement.** In the event any casualty to the Premises is such that operations are impossible or impractical during the reconstruction as determined by Tenant, Tenant shall be entitled to abatement of the Rent for actual number of business days closed based on a pro-rata ratio of the total days in the month.

**16.6. Termination.** Upon any termination of this Lease under any of the provisions of this Section 16, the Parties shall be released thereby without further obligations to the other Party coincident with the surrender of possession of the Premises to Landlord, except for obligations which have theretofore accrued and be then unpaid, and except for Tenant's obligations under Section 11.

**16.7. Determination of Percentage of Damage or Destruction.** If either Landlord or Tenant contends 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 any Tenant 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.

For purposes of this Section, "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 the Rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

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

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

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

**18.3. Landlord's Default.** Except as may be elsewhere expressly provided in this Lease, Landlord shall not be in default, unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty days are required for performance, then Landlord shall not be deemed in default if Landlord commences performance within the thirty-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 thirty-days' written notice if Tenant fails to meet any 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 20 shall excuse Tenant from the prompt payment of any Rent.

21. **ESTOPPEL CERTIFICATE.** Tenant shall, at any time and from time to time upon not less than twenty-days' prior notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying 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.
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. 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 or earlier termination of the Initial Term or any Extended Term, as applicable, 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 Initial Term or Extended Term, as applicable.

**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: Three Stacks and a Rock Brewing Company, LLC  
Attn: Ananda Nettnin  
400 Surf St.  
Morro Bay, California 93442

- 29.13. Not an Offer.** The submission of this Lease and any ancillary documents to Tenant shall not constitute an offer to lease, and Landlord shall have no obligation of any kind, express or implied, to lease the Premises to Tenant until Landlord has approved, executed and returned to Tenant a fully signed copy of this Lease.
- 29.14. Amendments.** This Lease may be modified or amended only in writing executed by both Parties and approved by Landlord in accordance with applicable law.
- 29.15. Exhibits.** Exhibit A is attached hereto and incorporated herein by reference.
- 29.16. Acknowledgement of Content.** Each Party acknowledges 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

\_\_\_\_\_, 2022

**ATTEST:**

\_\_\_\_\_  
Dana Swanson, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Chris F. Neumeyer, City Attorney

**TENANT:**

THREE STACKS AND A ROCK  
BREWING COMPANY, LLC., a  
California limited liability company

By: \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_, 2022

(Attach Notary Acknowledgements for  
Tenant)

**EXHIBIT A**

**DEPICTION OF PREMISES**

The Premises consist of Spaces A, B, C and D as depicted on the figure following.

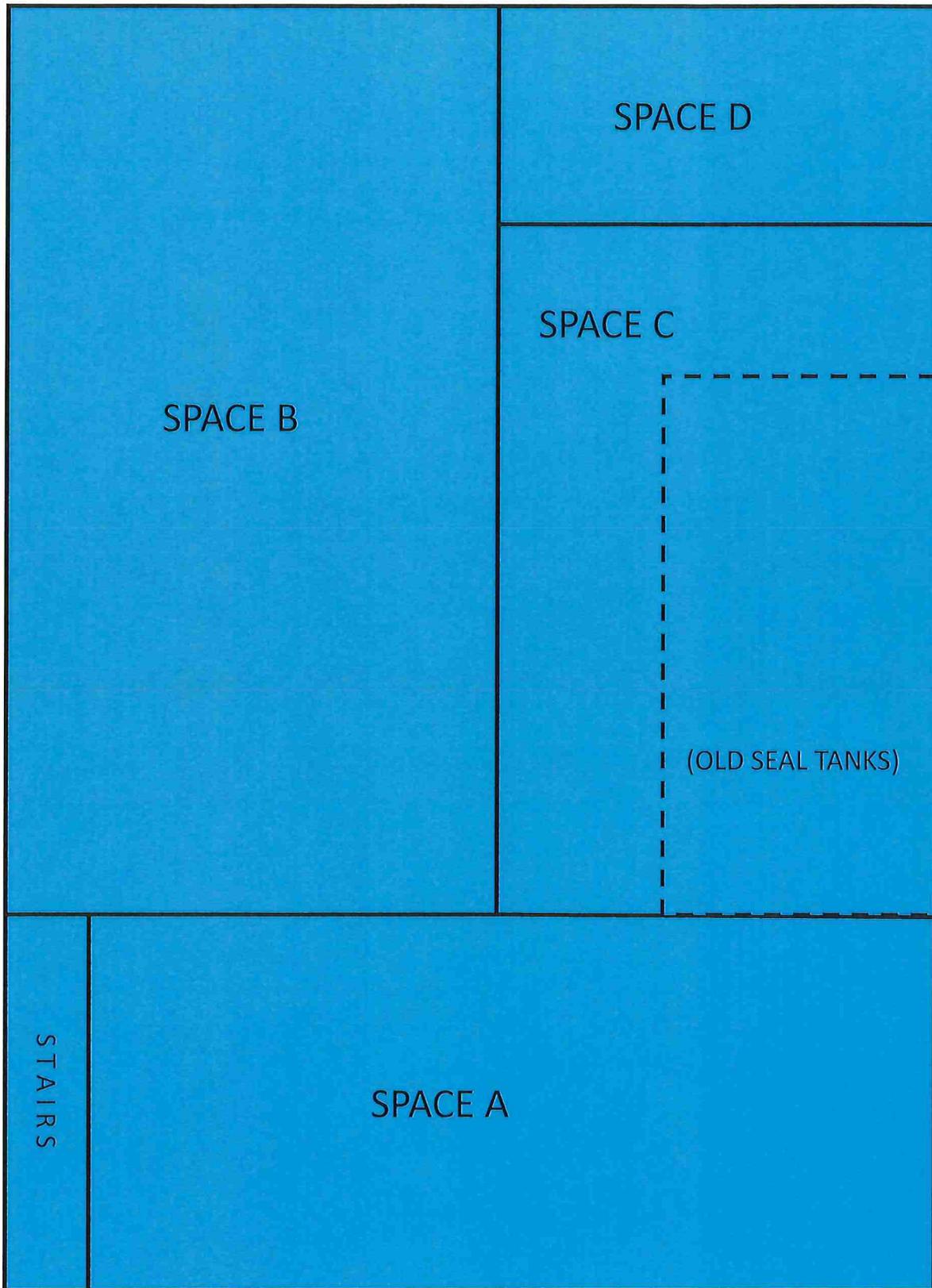
(The Building on Lease Site 69-70/69W-70W)

EXHIBIT A



Freezer

(BAY)



NOT TO SCALE. DOORS, WIN-  
DOWS NOT SHOWN.

(EMBARCADERO)

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AGENDA NO: A-7

MEETING DATE: April 12, 2022

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 4, 2022

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

**SUBJECT:** Resolution Making Findings Related to the Continued Existence of a State of Emergency Due to COVID-19 and Re-Authorizing for Public Health and Safety the Conduct of Public Meetings of the Legislative Bodies of the City via Remote Teleconferencing (including partially remote) for a Continued 30-Day Period Pursuant to the Ralph M. Brown Act as Amended by Assembly Bill No. 361

## RECOMMENDATION

Staff recommends Council consider adoption of attached Resolution No. 29-22 reauthorizing for public health and safety the conduct of public meetings of the legislative bodies of the City via remote teleconferencing (including partially remote) for 30 days, thereby allowing the City Council and the City’s advisory bodies to meet remotely (including partially remote) through May 12, 2022.

## ALTERNATIVES

Do not consider adoption of the attached resolution and/or provide further direction to staff.

## FISCAL IMPACT

No immediate fiscal impact.

## BACKGROUND

On March 4, 2020, the Governor proclaimed a State of Emergency to exist in California because of the spread of COVID-19. Beginning in March, 2020 the Governor also issued a number of Executive Orders (e.g., N-25-20, N-29-20, N-35-20) (the “Brown Act Orders”) for the public health and safety that waived requirements in the Brown Act that expressly or impliedly required the physical presence of City Councilmembers, staff, or the public at meetings of the City Council, Planning Commission and other City boards, commissions and committees (“legislative bodies”) that are subject to the Brown Act. The Brown Act Orders allowed City legislative bodies that are subject to the Brown Act to modify how meetings were conducted to protect the health and safety of staff and the public while ensuring transparency and accessibility for open and public meetings. The most recent Brown Act Order expired on September 30, 2021.

On September 16, 2021, Governor Newsom signed Assembly Bill 361 (“AB 361”) into law. AB 361 was made effective on October 1, 2021, on an urgency basis, to correspond to the timing of expiration of the Brown Act Orders. AB 361 provides for the ability to continue teleconferencing (whether completely or hybrid) Brown Act meetings of City legislative bodies for public health and safety

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

reasons under certain conditions, akin to the authority to do so under the Brown Act Orders.

## **DISCUSSION**

Assembly Bill 361 allows City legislative bodies to continue to utilize remote/virtual platforms for public meetings (consistent with certain statutory requirements) during a state of emergency proclaimed by the Governor that includes the City if certain conditions are met.

On October 26, 2021, the City Council adopted Resolution No. 70-21 making findings related to the continued existence of a state of emergency due to COVID-19 and re-authorizing for public health and safety the conduct of public meetings of City's legislative bodies via remote teleconferencing for an initial 30-day period pursuant to the Ralph M. Brown Act as amended by Assembly Bill No. 361. On November 9, 2021, and no later than every 30 days thereafter, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted resolutions authorizing such meetings for an additional thirty days.

If a state of emergency remains active, or State or local officials have imposed or recommended measures to promote social distancing, AB 361 imposes certain requirements to continue use of its provisions after the initial 30-day period, or a 30-day period thereafter, has elapsed.

Government Code section 54953(e)(3) provides that "not later than 30 days after teleconferencing for the first time pursuant" to AB 361, "and every 30 days thereafter," the City Council shall make the following findings by majority vote for the City to continue using the teleconferencing provisions of AB 361:

1. The City Council has reconsidered the circumstances of the state of emergency; **and**
2. Either of the following circumstances exist:
  - a. The state of emergency continues to directly impact the ability of the members to meet safely in person, **or**
  - b. State or local officials continue to impose or recommend measures to promote social distancing.

At the March 22, 2022 Meeting, the City Council directed staff to bring back timely subsequent AB 361 resolutions to provide a remote option for Council Members and Advisory Board members should the need occur.

## **CONCLUSION**

Staff recommends Council consider adoption of the proposed Resolution No. 29-22 making the findings required to re-authorize use of AB 361. Doing so will allow meetings of the City Council, City boards and City commissions to continue to occur by teleconference (including under a hybrid format) for the public health and safety. Continued reliance on AB 361 will require adoption of a new resolution making the required findings every 30 days thereafter.

## **ATTACHMENT**

1. Resolution No. 29-22

**RESOLUTION NO.29-22**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF  
EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND  
SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE  
CITY VIA REMOTE TELECONFERENCING FOR A CONTINUED  
30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT  
AS AMENDED BY ASSEMBLY BILL NO. 361**

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

**WHEREAS**, the City Council of the City of Morro Bay (“City”) is committed to preserving and nurturing public access and participation in meetings of the Legislative Bodies (as that term is defined in Government Code §54952, including the City Council, commissions, boards and committees subject to the Brown Act) of the City; and

**WHEREAS**, all meetings of the Legislative Bodies are open and public as required by the Ralph M. Brown Act, codified as Government Code §§ 54950 *et seq.*, so that any member of the public may attend, participate, and observe the Legislative Bodies conduct their business; and

**WHEREAS**, the Brown Act, at Government Code § 54953(e), as amended by Assembly Bill (AB) 361 effective October 1, 2021, makes provision for remote teleconferencing participation in public meetings by members of a Legislative Body without compliance with the provisions of Government Code § 54953(b)(3), subject to the existence of certain conditions; and

**WHEREAS**, a required condition under Government Code § 54953(e) for its initial use is that the meeting is held during a state of emergency that has been declared by the Governor pursuant to Government Code § 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code § 8558; and

**WHEREAS**, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the City’s boundaries, caused by natural, technological, or human-caused disasters

**WHEREAS**, a required condition under Government Code § 54953(e) for its initial use is that state or local officials have imposed or recommended measures to promote social distancing, or that the legislative body is meeting to determine or has previously determined that meeting in person would present imminent risks to the health or safety of attendees; and

**WHEREAS**, starting in March 2020, in response to the spread of COVID-19 in the State of California, the Governor proclaimed a state of emergency for the State of California and thereafter issued a number of executive orders aimed at containing COVID-19; and

**WHEREAS**, on March 19, 2020, the City Council adopted Resolution No. 23-20, proclaiming and affirming the existence of a local emergency, and confirming and ratifying proclamation by City's Director of Emergency Services of Existence of a Local Emergency, in response to COVID-19 (Coronavirus). The Legislative Bodies have since conducted meetings via remote teleconferencing consistent with the declaration of local emergency and executive orders issued by the Governor; and

**WHEREAS**, the executive orders issued by the Governor, among other things, for the public health and safety waived requirements of the Brown Act expressly or impliedly requiring the physical presence of members of the legislative body, the clerk or other personnel of the body, or of the public as a condition of participation in or for the purpose of establishing a quorum for a public meeting; and

**WHEREAS**, on June 11, 2021, the Governor issued Executive Order N-08-21, which rescinded the modifications made by the aforementioned executive orders, effective September 30, 2021. On September 16, 2021, the Governor signed AB 361, creating a modified set of provisions for local agencies for compliance with the Brown Act relative to remote meetings. AB 361 was made effective on October 1, 2021; and

**WHEREAS**, on October 26, 2021, the City Council adopted Resolution No. 70-21 making findings related to the continued existence of a state of emergency due to COVID-19 and re-authorizing for public health and safety the conduct of public meetings of City's legislative bodies via remote teleconferencing for an initial 30-day period pursuant to the Ralph M. Brown Act as amended by Assembly Bill No. 361; and

**WHEREAS**, On November 9, 2021, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 78-21 authorizing such meetings for an additional thirty days; and

**WHEREAS**, On November 18, 2021, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 81-21 authorizing such meetings for an additional thirty days; and

**WHEREAS**, On December 14, 2021, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 84-21 authorizing such meetings for an additional thirty days; and

**WHEREAS**, On January 11, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 03-22 authorizing such meetings for an additional thirty days; and

**WHEREAS**, On January 25, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 07-22 authorizing such meetings for an additional thirty days; and

**WHEREAS**, On February 22, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 16-22 authorizing such meetings for an additional thirty days; and

**WHEREAS**, On March 22, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 25-22 authorizing such meetings for an additional thirty days; and

**WHEREAS**, the Governor's proclaimed state of emergency and the City's proclaimed local emergency related to COVID-19 remain in effect and encompass the jurisdictional boundaries of the City; and

**WHEREAS**, the California Department of Public Health continues to impose or recommend measures to promote social distancing, and the Centers for Disease Control and Prevention ("CDC") continues to impose or recommend measures to promote social distancing; and

**WHEREAS**, Government Code Section 54953(e)(3) requires that the City Council review the need and make findings for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing as authorized by AB 361 at least once every thirty days until the Governor terminates the state of emergency; and

**WHEREAS**, for the public health and safety the Council wishes to affirm the need and findings necessary for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing as authorized by AB 361; and

**WHEREAS**, the City Council does hereby intend that, as a consequence of the persisting state of emergency and the imposed or recommended social distancing measures, the Legislative Bodies shall be authorized to continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code § 54953, as authorized by subdivision (e) of Government Code § 54953, and that the Legislative Bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of Government Code § 54953; and

**WHEREAS**, consistent with AB 361, during the effectiveness of this Resolution, the Legislative Bodies meeting pursuant to the requirements of Government Code § 54953(e)(2) and their staff will give notice of the manner by which members of the public may access the Legislative Bodies' meetings and offer public comment; identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option; and allow members of

the public to access the meeting, and the agenda shall include an opportunity for members of the public to address the Legislative Body directly.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** The foregoing recitals are true and correct and are incorporated herein by reference.

**SECTION 2.** The City Council hereby acknowledges and affirms the continued effectiveness of the Governor's proclaimed state of emergency and the City's proclaimed local emergency (as may have been amended since their initial proclamation) which encompass their jurisdictional boundaries.

**SECTION 3.** The City Council finds as follows: 1) they have reconsidered the circumstances of the state of emergency; 2) the state of emergency remains active within their jurisdictional boundaries; 3) the state of emergency continues to directly impact the ability of the City Council, the City's Legislative Bodies, City staff and the public to meet safely in person; and 4) State officials continue to impose or recommend measures to promote social distancing.

**SECTION 4.** The Legislative Bodies and staff are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting all open and public meetings of the Legislative Bodies in accordance with Government Code § 54953(e) and other applicable provisions of the Brown Act.

**SECTION 5.** This Resolution shall take effect immediately upon its adoption by the City Council and shall be effective for until the earlier of (i) May 12, 2022, or (ii) such time as the City Council adopts a subsequent resolution in accordance with Government Code § 54953(e)(3) to extend the time during which the Legislative Bodies may continue to teleconference without compliance with paragraph (3) of subdivision (b) of Government Code § 54953.

**SECTION 6.** Should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

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**SECTION 7.** The City Clerk shall certify to the adoption of this Resolution and enter it into the book of original Resolutions.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of April 2022 by the following vote:

AYES:  
NOES:  
ABSENT:

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

ATTEST:

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

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AGENDA NO: A-8

MEETING DATE: April 12, 2022

# Staff Report

**TO:** Honorable Mayor & City Council

**DATE:** April 4, 2022

**FROM:** Greg Kwolek – Public Works Director  
Paul Amico – Water Reclamation Facility (WRF) Program Manager

**SUBJECT:** Water Reclamation Facility (WRF) Program – Recycled Water Facilities – Injection Well No. 1 Contract Award in the amount of \$346,725.00.

## RECOMMENDATION

Staff recommends the City Council authorize the City Manager to execute a contract, subject to the City Attorney’s approval as to form, with Pacific Coast Well Drilling Inc. (PCWD) in the amount of \$346,725.00 and include a \$9,900 bid alternate for a total contract amount of \$356,625.00 for the construction and injection testing of the City’s Injection Well No. 1.

## DISCUSSION

The injection well No. 1, also known as the Pilot Injection Well, will be constructed to be a full-scale groundwater injection well that will be used initially to perform a pilot injection study. The pilot study will determine injection performance to further characterize the Morro groundwater basin, and the data obtained during the pilot injection study will allow the City to finalize the locations and design characteristics of the other wells that will be included the recycled water facilities component of the WRF Program.

## FISCAL IMPACT

The base costs for the injection well No. 1 scope of work is \$346,725. One bid alternate was listed on the bid documents for a total value of \$9,900. Including this bid alternate in the scope of work for PCWD results in a total contract amount of \$356,625.00. This falls within the WRF program budget for the pilot injection well and will not need to utilize contingency.

## CONCLUSION

The Program Management Team and City staff have thoroughly reviewed PCWD bid and scope of work. It is recommended City council authorize the City Manager to execute a Contract with PCWD to complete the Injection Well No. 1 scope of work and progress the Recycled Water Facility component of the WRF Program.

## ATTACHMENT

None

01181.0001/743380.1	
Prepared By: <u>AC</u>	Dept Review: <u>GK</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>JWP</u>

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AGENDA NO: A-9

MEETING DATE: April 12, 2022

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** March 31, 2022

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Adoption of Resolution No. 30-22 Conditionally Authorizing the Mayor to Execute Documents Necessary for a New Loan and Accepting a Deed of Trust Related Thereto for Lease Site 87-88/87W-88W (TLC Family Enterprises, 833 Embarcadero Road)

## RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 30-22 authorizing the Mayor to execute documents necessary for a new loan and accepting a deed of trust related thereto regarding the leasehold interest at Lease Site 87-88/87W-88W, with documents subject to approval of the City Attorney.

## ALTERNATIVES

Do not approve Resolution No. 30-22.

## FISCAL IMPACT

There is no fiscal impact to this action.

## BACKGROUND

On December 11, 2018, the City Council approved a new 50-year master lease agreement with TLC Family Enterprises (TLC) in exchange for a complete redevelopment of Lease Site 87-88/87W-88W. TLC's redevelopment proposal was vetted through a request for proposals process in 2017/2018.

In January this year, the Council approved a Consent to Encumbrance for lending in the amount of \$3.2M from Community West Bank to fund the project, and TLC received all the necessary approvals and City Building permits to begin construction. Because earlier this year two of TLC's primary contractors were scheduled to move on to other projects, in order not to lose them and prior to being funded by Community West, TLC completed demolition of the existing building and all improvements, and began some work of the new improvements.

Unfortunately, the funding from Community West did not come to fruition, and TLC was compelled to seek alternative funding.

## DISCUSSION

TLC is now requesting City Council approval of a new Consent to Encumbrance for lending with Artes Capital REIT I, LLC (Artes) against the leasehold interest, in a maximum amount of \$3,200,000, which

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

will enable the redevelopment project.

TLC is a tenant in good standing, and the lease agreement for Lease Site 87-88/87W-88W stipulates such funding approval will not be unreasonably withheld by the City. In addition, the lease agreement stipulates all loan proceeds be used for leasehold improvements and/or to refinance existing lending on the Lease Site. This lending complies with these stipulations.

**CONCLUSION**

Completion of the redevelopment of this lease site in the heart of the Embarcadero will modernize and upgrade this key property. TLC has secured the funding necessary from Artes for this project with the proposed loan, and staff recommends the City Council adopt Resolution No. 30-22 authorizing the Mayor to execute all necessary documents for the Artes loan and deed of trust requested by TLC, as approved by the City Attorney.

**ATTACHMENT**

1. Resolution No. 30-22

**RESOLUTION NO. 30-22**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS  
NECESSARY FOR A NEW LOAN AND ACCEPTING A DEED OF TRUST  
RELATED THERETO WITH TLC FAMILY ENTERPRISES  
FOR LEASE SITE 87-88/87W-88W,  
LOCATED AT 833 EMBARCADERO ROAD, MORRO BAY**

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

**WHEREAS**, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tidelands leases and properties; and

**WHEREAS**, since December, 2018 TLC Family Enterprises has been the lessee of Lease Site 87-88/87W-88W, located at 833 Embarcadero Road and is a tenant in good standing; and

**WHEREAS**, TLC Family enterprises is requesting approval of loan documents and a deed of trust with Artes Capital REIT I, LLC to secure the financing necessary for the complete redevelopment of the lease site using the lease agreement and project improvements as security; and

**WHEREAS**, lease site lending can only be used to purchase a lease site, to refinance existing lending on the lease site and/or for leasehold improvements.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, the Mayor is hereby directed to execute, as necessary, any and all documents, as approved by the City Attorney, necessary to consummate the loan and deed of trust desired by TLC Family Enterprises.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of April, 2022 on the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
John Headding, Mayor

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

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AGENDA NO: A-10

MEETING DATE: April 12, 2022

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 4, 2022

**FROM:** Scott Collins, City Manager  
Gregory Kwolek, Public Works Director

**SUBJECT:** Appointment of the Public Works Director and Utility Division Manager as alternate member to the State Water Contractors Advisory Committee

## **RECOMMENDATION**

Staff recommends the City Council adopt Resolution No. 31-22 appointing the Director of Public Works and Utility Division Manager to serve as the City's representatives on the State Water Contractors Advisory Committee as member and alternate member, respectively.

## **ALTERNATIVES**

1. The Council may appoint other City Staff or Council member to represent the City on this Committee.
2. The Council may choose to appoint no member or alternate member to this Committee at this time; provide staff with direction on how to proceed.

## **FISCAL IMPACT**

There is no fiscal impact associated with this action.

## **BACKGROUND and DISCUSSION**

The County of San Luis Obispo Flood Control and Water Conservation District (County) is one of twenty-nine (29) State Water contractors, five (5) of which primarily use the water for agricultural purposes while the remaining twenty-four (24) use the water primarily for municipal purposes. The County's contract is for 25,000 acre-feet (AF) per year and it subcontracts with ten (10) agencies, as shown in Table 1. The allocation that each subcontractor contracts with the County for is commonly referred to as "Table A" water, and is the maximum delivery each agency may have delivered in a single year.

The California Department of Water Resources (DWR) sets a percentage of the Table A water that will be delivered each year, and periodically adjusts that delivery based upon several factors, including but not limited to: impact to protected species, amount of precipitation, and snow pack and reservoir levels. In addition to Table A allocations, some agencies have a contract with the County for Drought Buffer, which is water that can be delivered to help increase the reliability of State Water resources. Drought Buffer water is also delivered at the same percentage as Table A water. The Table A and Drought Buffer amounts for each of the ten (10) subcontractors are shown below.

Prepared By: GK

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

City Manager Review: SC

City Attorney Review: JWP

**Table 1. State Water Subcontractor Delivery and Drought Buffer Contracted Amounts**

Agency	Table A (AF)	Drought Buffer (AF)
City of Morro Bay	1,313	2,290
California Men's Colony	400	400
County Operations Center	425	425
Cuesta College	200	200
City of Pismo Beach	1,240	1,240
Oceano CSD	750	0
San Miguelito	275	275
Avila Beach CSD	20	60
San Luis Coastal	7	7
Shandon	100	0
Total	4,830	4,897

The State Water Subcontractors Advisory Committee is an advisory body to the County Board of Supervisors made up of technical advisors from each subcontracting agency. Its purpose is to share information and help make decisions to effectively utilize the State Water resources the City and other subcontractors have invested in, both water and infrastructure. Staff also uses information gathered at these meetings to inform future water supply reports and presentations, which are expected to be brought to City Council later this year. Because the State Water Subcontractors Advisory Committee is a Brown Act Committee appointed by the County Board of Supervisors (i.e. subject to the open meeting laws set forth in California Government Code §54950 et seq.), the County has requested that the members be formally appointed by each agency's governing body. Because the Committee is technical in nature, it is staff's recommendation the Director of Public Works be appointed as member and the Utility Division Manager appointed as alternate member of the State Water Subcontractors Advisory Committee.

**ATTACHMENT**

1. Resolution No. 31-22

**RESOLUTION NO. 31-22**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
APPOINTING THE DIRECTOR OF PUBLIC WORKS TO SERVE AS  
MEMBER AND THE UTILITY DIVISION MANAGER TO SERVE AS  
ALTERNATE MEMBER TO THE STATE WATER SUBCONTRACTORS  
ADVISORY COMMITTEE**

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

**WHEREAS**, the County of San Luis Obispo Flood Control and Water Conservation District (County) is one of twenty-nine (29) State Water contractors; and

**WHEREAS**, the County's contract is for 25,000 acre-feet (AF) per year and it subcontracts with ten (10) agencies; and

**WHEREAS**, the County formed a State Water Contractors Advisory Committee made up of technical advisors from each agency; and

**WHEREAS**, the purpose of this Committee is to share information and help make decisions to help fully utilize the State Water resources the City and other subcontractors have invested in, both water and infrastructure; and

**WHEREAS**, because the Committee is technical in nature, it is staff's recommendation that the Director of Public Works be appointed as member and the Utility Division Manager be appointed as alternate member to the Committee.

**NOW, THEREFORE, BE IT RESOLVED** the City Council of the City of Morro Bay, California hereby appoints the Director of Public Works as member and the Utility Division Manager as alternate member to the State Water Subcontractors Advisory Committee.

**PASSED AND ADOPTED**, by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 12<sup>th</sup> day of April, 2022, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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JOHN HEADDING, Mayor

ATTEST:

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DANA SWANSON, City Clerk



AGENDA NO: A-11

MEETING DATE: April 12, 2022

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 4, 2022

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Adoption of Resolution No. 32-22 Conditionally Authorizing the Mayor to Execute Documents Necessary for a Loan and Accepting a Deed of Trust Related Thereto for Lease Site 124-128/124W-128W & 113W (Morro Bay Landing, 1213, 1215 & 1217 Embarcadero Road)

## RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 32-22 authorizing the Mayor to execute documents necessary for a new loan and accepting a deed of trust secured by the leasehold interest at Lease Site 124-128/124W-128W & 113W, with documents subject to approval of the City Attorney.

## ALTERNATIVES

Do not approve Resolution No. 32-22.

## FISCAL IMPACT

There is no fiscal impact to this action.

## BACKGROUND

The 50-year lease for the Morro Bay Landing site, currently owned and operated by Bob Fowler doing business as MMBS, LLC (MMBS), was originally executed by Darby Neil and Virg's Landing in 2011. Mr. Fowler acquired the lease and site in mid-2012. This lease was predicated on a complete redevelopment of the combined lease sites, both land and water, and in approximately 2014 Mr. Fowler embarked on a phased approach on the redevelopment to replace the entirety of the site's infrastructure, starting with the water. The final phase of the project, the building, was completed in early 2020.

To fund the redevelopment, MMBS took out a \$500K construction loan from a traditional bank, but the Fowler Family Trust (Trust) made capital investments in MMBS to fund the remainder of the ~\$3.3M total costs by selling their personal residence and other investments to come up with the cash over time to complete the combined project phases (and pay-off the construction loan) without further bank lending. The Family Trust anticipated MMBS would repay some of that capital investment.

MMBS is now requesting approval for using its lease site and leasehold interest as collateral for traditional bank lending in the amount of \$1.2M, which funding would be used by the Trust to purchase a new home.

01181.0024/781096.1

Prepared By: EE

Dept Review: EE

City Manager Review: \_\_\_\_\_

City Attorney Review: JWP

Per all of our master leases, leaseholders must obtain City Council approval by Resolution for any financing that uses a lease or leasehold interest as collateral. MMBS is a tenant in good standing, as-defined.

## **DISCUSSION**

Regarding lease financing, the City's lease management policy stipulates:

*While there is need to foster financing, refinancing and investment on the waterfront, while protecting the City's interests and fiduciary responsibility, the City will not approve financing related to or using the lease site, or leasehold interest as collateral, unless such financing is for the sole investment upon the Tidelands Trust Lands, or City-requested public improvements or benefits in the Tidelands Trust Lands or to reduce the interest rate of existing debt secured by the lease.*

MMBS could have chosen to secure traditional lending to complete the project, and thus made the Trust or Mr. Fowler's personal capital available for non-Tidelands investment, but they chose the opposite and sold the Trust personal residence and investments to complete the redevelopment with the funding that was held by the Trust. The Trust could have more formally loaned that money to MMBS at the time that transaction was consummated and that lending would have been acceptable, per the City's current harbor lease policy, as well as per the terms of the master lease. That being true, the current request from MMBS can be approved by the Council while still meeting the intent of the City's policy and Tidelands regulations.

This method would be to have a loan taken out by MMBS to pay back the money from the Trust that was used to pay back MMBS's construction loan of ~\$500K, and a portion (\$900K) of the construction costs, with documentary evidence from Mr. Fowler indicating how the money flowed from the Trust to the contractor, in addition to evidence of documentation between MMBS and the Trust indicating MMBS would pay back or is otherwise in debt to or paying back the Trust.

Finally, the loan currently being requested by Mr. Fowler in the amount of a \$1.2M from Del Toro Loan Servicing as trustee and Provident Trust Group as Beneficiary, using the leasehold interest as collateral, requires the standard City approvals of the Deed of Trust and other documents.

## **CONCLUSION**

Mr. Fowler has presented the necessary documentary evidence to the City Attorney and Harbor Director to enable the funding method proposed. Due to the uniqueness of the above facts, legal staff do not believe this approach would create a precedent that could be used to circumvent the City policy or Tidelands regulations.

Therefore, staff recommend the Council approve Resolution No. 32-22, authorizing the Mayor to execute all necessary documents for the Del Toro Loan Servicing/Provident Trust Group loan and deed of trust requested by Bob Fowler and MMBS, as-approved by the City Attorney.

## **ATTACHMENT**

1. Resolution No. 32-22

**RESOLUTION NO. 32-22**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS  
NECESSARY FOR A LOAN AND ACCEPTING A DEED OF TRUST  
RELATED THERETO WITH MMBS, LLC,  
FOR LEASE SITES 124-128/124W-128W & 113W,  
LOCATED AT 1213, 1215 & 1217 EMBARCADERO ROAD, MORRO BAY**

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

**WHEREAS**, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tidelands leases and properties; and

**WHEREAS**, since July, 2012 MMBS, LLC (owned and operated by Robert Fowler) has been the lessee of Lease Sites 124-128/124W-128W & 113W, located at 1213, 1215 and 1217 Embarcadero Road, and is a tenant in good standing; and

**WHEREAS**, MMBS, LLC is requesting approval of loan documents and a deed of trust, with Del Toro Loan Servicing, as Trustee and Provident Trust Group as Beneficiary, to secure the financing necessary to refinance existing lending on the Lease Site that was used to complete the redevelopment of the lease site using the lease agreement and project improvements as security; and

**WHEREAS**, lease site lending can only be used to purchase a lease site, to refinance existing lending on the lease site and/or for leasehold improvements.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, the Mayor is hereby directed to execute, as necessary, any and all documents, as approved by the City Attorney, necessary to consummate the loan and deed of trust desired by MMBS, LLC.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of April, 2022 on the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
John Headding, Mayor

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

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**A PROCLAMATION OF THE CITY OF COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
DECLARING MAY 1, 2022 AS ARBOR DAY**

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

**WHEREAS**, in 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and,

**WHEREAS**, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and,

**WHEREAS**, Arbor Day is now observed throughout the nation and the world; and,

**WHEREAS**, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen, and provide habitat for wildlife; and,

**WHEREAS**, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products; and,

**WHEREAS**, trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community; and,

**WHEREAS**, trees, wherever they are planted, are a source of joy and spiritual renewal; and,

**WHEREAS**, Morro Bay has been recognized for the past twenty-five (25) years as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting ways.

**NOW, THEREFORE BE IT RESOLVED**, that the Morro Bay City Council does hereby proclaim May 1, 2022, as ARBOR DAY in the City of Morro Bay, and urges all citizens to support efforts to protect our trees and forests and encourage them to continue their planting ways.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 12th day of April 2022.

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JOHN HEADDING, MAYOR  
City of Morro Bay, California

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AGENDA NO: B-1

MEETING DATE: April 12, 2022

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 7, 2022

**FROM:** Police Chief Jody Cox

**SUBJECT: AN ORDINANCE ADOPTING A MILITARY EQUIPMENT USE POLICY CONSISTENT WITH AB 481 REQUIREMENTS**

## **RECOMMENDATION**

Staff recommends the City Council:

1. Hold the public hearing; and, then
2. Introduce, for first reading by title only and with further reading waived, Ordinance No. 649, "An Ordinance of the City Council of the City of Morro Bay, California Adopting a Military Equipment Use Policy Consistent with AB 481 Requirements"

## **ALTERNATIVES**

There are no currently available alternatives prior to taking certain actions relating to the funding, acquisition, or use of "military equipment" as defined by AB 481.

## **FISCAL IMPACT**

No current fiscal impacts and there are no new financial considerations for existing/currently owned equipment and/or munitions.

## **BACKGROUND**

Assembly Bill 481 (AB 481 or the Bill), codified in Government Code sections 7070 through 7075, requires a law enforcement agency (LEA) to obtain approval from the applicable governing body, via adoption of a "Military Equipment" use policy (the Policy) by ordinance (the Ordinance), prior to the LEA funding, acquiring, or using military equipment. The Morro Bay Police Department (MBPD) seeks City Council adoption of the attached Military Equipment Use Policy – MBPD Policy #707 (Exhibit "A"), in order to allow MBPD to continue to use the vital equipment specified therein, as well as continue to use equipment operated through our Regional S.W.A.T. (Special Weapons and Tactics) Team and allied agencies as would be requested in emergency situations.

Items deemed to be "military equipment" by AB 481 are used as a component of overall best practices for Law Enforcement Agencies (LEAs) throughout the country. These tools have been tested in the field and are used by LEAs to enhance citizen and officer safety. Loss of these items would jeopardize the welfare of citizens and peace officers within the City of Morro Bay and surrounding communities.

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

The term “military equipment”, as used in AB 481, in fact does not necessarily indicate equipment that has been used by the military. Pursuant to AB 481, items deemed to be “military equipment” include, but are not limited to, unmanned aerial or ground vehicles, armored vehicles, command and control vehicles, pepper balls, less lethal shotguns, less lethal 40mm projectile launchers, long range acoustic devices, and flashbangs.

MBPD is committed to using the most up to date tools and equipment to safeguard the citizens of Morro Bay. Many of the items deemed to be “military equipment” by AB 481 are in fact employed by MBPD, and LEAs across the country, in order to specifically reduce risk to community members. These items provide peace officers with the ability to safely resolve volatile situations which otherwise might rise to the level of a lethal force encounter. To that end, the items at issue in this report, and accompanying Military Equipment Use Policy, also provide MBPD’s peace officers with vital tools that facilitate compliance with its stringent use of force policy.

Other items deemed to be “military equipment” via AB 481 include foundational equipment such as certain rifles. These rifles allow peace officers to address lethal threats from a greater distance and with greater precision.

Along with seeking authorization to use preexisting equipment, the MBPD also seeks authorization to continue to partner with and utilize (by request) the assistance of our Regional SWAT team and allied agencies, and the equipment owned/utilized by these agencies as members of this regional team travel between our communities to provide emergency law enforcement assistance (as outlined in AB481).

## **DISCUSSION**

There is significant interest in ensuring that law enforcement continues to have access to equipment that will provide peace officers as many options as possible to safeguard lives, ensure safety, and protect civil liberties. The use of the tools/equipment identified in the attached MBPD Equipment Inventory List (Exhibit “B”) are vital to MBPD’s mission and will continue to be strictly regulated through internal processes and oversight.

The proposed ordinance seeks to approve the new MBPD Military Equipment Use Policy (#707, Exhibit “A”). This policy (and its accompanying attachment, Equipment Inventory List, Exhibit “B”) outlines each item identified in Government Code section 7070, that is currently owned by the City. The policy also includes the current use and cost of each item (as required). These particular items, and their stated uses, have been in place prior to the implementation of AB 481. Future acquisitions of any item deemed to be “military equipment” not currently owned/deployed by the MBPD will require a further public meeting, policy update, and council approval.

The proposed policy (#707) safeguards the public’s welfare, safety, civil rights and civil liberties. The policy ensures that there are safeguards, including transparency, oversight, and accountability measures in place. For instance, Policy #707 requires that MBPD’s Operations Commander will ensure that MBPD complies with Policy #707. MBPD will conduct an annual audit of military equipment. Any noted violations of policy will be corrected immediately when discovered. Members of the public are provided direction per the policy on how to register complaints for any alleged violations. All items which result in a use of force will be investigated, as is already required by existing MBPD policy.

There are no reasonable alternatives to the items listed in the attached “Equipment List.” MBPD has not discovered alternative items that can achieve the same objectives of officer and civilian safety.

Each item's necessity is further described in the Equipment Inventory List.

### **CONCLUSION**

Assembly Bill 481, codified at California Government Code sections 7070 through 7057, requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance adopting a "military equipment" use policy, at a regular meeting held pursuant to open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment. The Term "military equipment" is defined in California Government Code section 7070.

Per the current legislation, agencies seeking to continue using military equipment (as defined by AB 481) acquired prior to Jan. 1, 2022, have until May 1, 2022 to commence the governing body approval process described by the statute, and then have 180 days from submission of the proposed policy to approve the policy.

### **ATTACHMENTS**

1. Proposed MBPD Policy #707 "Military Equipment" (Exhibit "A")
2. Proposed MBPD Equipment Inventory (Exhibit "B")
3. Proposed Ordinance No. 649

**ORDINANCE NO. 649**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
ADOPTING A MILITARY EQUIPMENT USE POLICY  
CONSISTENT WITH AB 481 REQUIREMENTS**

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

**WHEREAS**, On September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies; and

**WHEREAS**, Assembly Bill 481, codified at California Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance adopting a “military equipment” use policy, at a regular meeting held pursuant to open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment. The term “military equipment” is defined in California Government Code section 7070; and

**WHEREAS**, Assembly Bill 481 allows the governing body of a city to approve the funding, acquisition, or use of defined military equipment within its jurisdiction only if it makes specified determinations; and

**WHEREAS**, The proposed military equipment use policy is found within Morro Bay Police Department Policy #707 (Exhibit “A”) (“Policy”); and

**WHEREAS**, Morro Bay Police Department (proposed) Policy #707 was published on the Morro Bay Police Department’s internet website on March 11, 2022. The Morro Bay Police Department Policy was presented to City Council on April 12, 2022, and

**WHEREAS**, this ordinance and the Morro Bay Police Department Policy #707 (exhibit “A”) and the Attachment “Morro Bay Police Department Military Equipment Inventory List” (exhibit “B”) meets the requirements of California Government Code section 7070, subdivision (d) and 7071 subdivision (a) (1).

**WHEREAS**, once adopted, the Policy will be made publicly available on the MBPD’s website for as long as the covered military equipment is available for use; and

**WHEREAS**, in accordance with AB 481, the Policy is being agendaized as an open session item at a regular meeting of the City Council, and public comment on the item will be allowed in accordance with the Brown Act; and

**WHEREAS**, this ordinance shall be reviewed by the City Council at least annually, and based on an annual military equipment report that will be submitted to the City Council pursuant to AB 481, the City Council shall determine whether each type of military equipment identified in the report has complied with the standards for continued approval.

**NOW, THEREFORE, the City Council of the City of Morro Bay does ordain as follows:**

**SECTION 1. DETERMINATIONS**

The foregoing recitals are true and correct and incorporated herein by this reference. Based on the foregoing recitals, in addition to information provided to the City Council at the public meeting to consider the same, the City Council determines as follows:

1. The military equipment identified in Morro Bay Police Policy #707 (and Attachment “Morro Bay Police Department Military Equipment Inventory List”) is necessary, because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.
2. Morro Bay Police Policy # 707 will safeguard the public’s welfare, safety, civil rights, and civil liberties.
3. The military equipment identified in Morro Bay Police Policy #707 (and attached “Military Equipment Inventory List”) is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
4. The City did not previously have a prior military equipment use policy but as to any prior uses that do not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.
5. The City Council, therefore, hereby approves and adopts the attached Morro Bay Police Military Equipment Use Policy #707 (exhibit “A”) (and attached “Military Equipment Inventory List”, exhibit “B”).

**SECTION 2. SEVERABILITY**

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

**SECTION 3. EFFECTIVE DATE**

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

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**SECTION 4. CERTIFICATION**

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

**INTRODUCED** at a regular meeting of the City Council of Morro Bay, held on the 12<sup>th</sup> day of April 2022 by motion of Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_.

**PASSED AND ADOPTED** on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:  
NOES:  
ABSENT:

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CHRISTOPHER F. NEUMEYER, City Attorney

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

I, Dana Swanson, City Clerk for the City of Morro Bay, California, do hereby certify that the foregoing Ordinance No. 649 was duly passed and adopted by the City Council of the City of Morro Bay at the regular meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_ 2022, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
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 \_\_\_\_\_, 2022.

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

# Military Equipment

## 707.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, funding, use and reporting requirements of military equipment as the term is defined in Government Code § 7070; Government Code § 7071 and Government Code § 7072. This policy is provided to fulfill the obligations set forth in Assembly Bill No. 481 (2021-22). These obligations include but are not limited to seeking approval on specific items deemed to be military equipment and requirements related to compliance, annual reporting, cataloging, and complaints regarding these items.

### 707.1.1 PHILOSOPHY

The acquisition of military equipment and its deployment in our communities may impact the public's safety and welfare. The public has a right to know about any funding, acquisition, or use of military equipment by local government officials, as well as a right to participate in any government agency's decision to fund, acquire, or use such equipment. Decisions regarding whether and how military equipment is funded, acquired, or used should give strong consideration to the public's welfare, safety, civil rights, and civil liberties, and should be based on meaningful public input.

### 707.1.2 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

**Governing body** – The elected or appointed body that oversees the Department.

**Military equipment** – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms and ammunition of less than .50 caliber.

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- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

#### **707.2 POLICY**

It is the policy of the Morro Bay Police Department that members of this department comply with the provisions of Government Code § 7070-7075 with respect to military equipment.

#### **707.3 MILITARY EQUIPMENT COORDINATOR**

The Chief of Police will designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Morro Bay Police Department (Government Code § 7071). (ie; Regional S.W.A.T. Team)
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
  1. Publicizing the details of the meeting.
  2. Preparing for public questions regarding the department's funding, acquisition, and use of military equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

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### **707.4 MILITARY EQUIPMENT INVENTORY**

The following constitutes a list of qualifying equipment for the Department:

\* See Attachment of defined Military Equipment Inventory List.

### **707.5 APPROVAL**

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

#### **707.5.1 MILITARY EQUIPMENT USE CONSIDERATIONS**

1. The military equipment acquired and authorized by the Department is:

- a. Necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
- b. Reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.

2. Military equipment shall only be used by a Department employee only after applicable training, including any course required by the Commission on Peace Officer Standards and Training, has been completed, unless exigent circumstances arise.

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#### **707.6 COORDINATION WITH OTHER JURISDICTIONS**

Military equipment used by any member of this agency shall be approved for use and in accordance with this Department policy. The Morro Bay Police Department participates in the San Luis Obispo County Regional Special Weapons and Tactics (SWAT) team and works closely with other local, county, state and federal law enforcement partners in specific events which may include natural disasters, civil unrest, or high-risk criminal incidents. In planned or exigent circumstances, and with the approval of the Chief of Police or their designee, military equipment may be deployed by these law enforcement partners to promote the safety and security of the Morro Bay community. Military equipment used by other agencies/jurisdictions that are providing mutual aid to this jurisdiction shall comply with their respective AB481 compliant and approved military equipment use policies in rendering mutual aid. The Chief of Police or their designee will provide information during the annual report on the use of military equipment within the city limits of Morro Bay by other law enforcement partners.

#### **707.7 ANNUAL REPORT**

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

The annual military equipment report shall, at a minimum, include the following information:

- a. A summary of how the military equipment was used and the purpose of its use.
- b. A summary of any complaints or concerns received concerning the military equipment.
- c. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
- d. The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
- e. The quantity possessed for each type of military equipment.
- f. If MBPD intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

##### **707.7.1 CATALOGING OF MILITARY USE EQUIPMENT**

All military use equipment kept and maintained by the Morro Bay Police Department shall be cataloged in a way which addresses each of the following requirements:

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- (a) The manufacturers description and/or general description of the equipment.
- (b) The capabilities of the equipment.
- (c) The purposes and authorized uses for which the Department proposes to use the equipment.
- (d) The expected lifespan of the equipment.
- (e) The fiscal impact of the equipment, both initially and for on-going maintenance.
- (f) The quantity of the equipment, whether maintained or sought.
- (g) The legal and procedural rules that govern each authorized use.
- (h) The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer of this agency is allowed to use each specific type of military equipment to ensure the full protection of the public's welfare, safety, civil rights and civil liberties and full adherence to the military equipment use policy.

#### 707.7.2 COMPLIANCE

- (a) The Department Operations Commander will ensure that all Department members comply with this policy. The Commander will conduct an annual audit with the assistance of the Training Division and Range Master. The Chief of Police or designee will be notified of any policy violations and, if needed, the violation(s) will be referred to the Internal Affairs Division and handled in accordance with Dept. Policy. All instances of non-compliance will be reported to City Council via the annual military equipment report.
- (b) Any member of the public can register a question or concern regarding military use equipment by contacting the Morro Bay Police Department via phone, email or in person. A response to the question or concern shall be completed by the Department in a timely manner.
- (c) 3. Any member of the public can submit a complaint to any member of the Department and in any form (i.e. in person, telephone, email, etc.). Once the complaint is received, it should be routed to the Operations Commander in accordance with Dept. Policy #1012 (Personnel Complaints).

#### 707.7.3 FUNDING

The Department shall seek council approval for military equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

1. The Department has authority to apply for funding prior to obtaining council approval in the case of exigent circumstances. The Department shall obtain council approval as soon as practicable.

#### **707.8 COMMUNITY ENGAGEMENT**

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which

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the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.



## CITY OF MORRO BAY

POLICE DEPARTMENT

850 Morro Bay Boulevard  
Morro Bay, CA 93442

### **MBPD Military Equipment Use Policy/Inventory List**



The Morro Bay Police Department does not possess any tactical equipment that it has obtained from the military, nor does it possess any equipment that was designed for military use.

Regardless, California Assembly Bill No. 481 and Government Code §7071(b) requires that law enforcement agencies submit a proposed Military Equipment Use Policy to their governing body for approval.

California Government Code §7070 provides a list of equipment types that are considered to be “military equipment” for purposes of this policy requirement, and this Military Equipment Use Policy includes information for any such equipment types that are possessed by the Morro Bay Police Department, or reasonably likely to be deployed in Morro Bay by other law enforcement partners.

California Government Code §7070(d) describes a Military Equipment Use Policy as a publicly released, written document that includes, at a minimum, all of the following:

1. A description of each type of Military Equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the Military Equipment.
2. The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of Military Equipment.
3. The fiscal impact of each type of Military Equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.
4. The legal and procedural rules that govern each authorized use.
5. The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of Military Equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the Military Equipment use policy.
6. The mechanisms to ensure compliance with the Military Equipment use policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.
7. For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

California Government Code § 7070(c) defines Military Equipment as any of the following:

1. Unmanned, remotely piloted, powered aerial or ground vehicles.
2. Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.
3. High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.

4. Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
5. Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
6. Weaponized aircraft, vessels, or vehicles of any kind.
7. Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.
8. Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.
9. Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.
10. Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.
11. Any firearm or firearm accessory that is designed to launch explosive projectiles.
12. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.
13. Taser Shockwave, microwave weapons, water cannons, and the Long-Range Acoustic Device (LRAD).
14. The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.
15. Any other equipment as determined by a governing body or a state agency to require additional oversight.
16. Notwithstanding paragraphs (1) through (15), "Military Equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.

Pursuant to California Government Code §7070(d)(6), and in accordance with California Government Code §7072, the Morro Bay Police Department will submit to the Morro Bay City Council an Annual Military Equipment Report and will make that report publicly available on its internet website. The Annual Military Equipment Report will include the following information for the immediately preceding calendar year for each type of military equipment:

1. A summary of how the military equipment was used and the purpose of its use.
2. A summary of any complaints or concerns received concerning the military equipment.
3. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
4. The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
5. The quantity possessed for each type of military equipment.
6. If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

The Morro Bay City Council will use the Annual Military Equipment Report as a mechanism to ensure the Morro Bay Police Department’s compliance with this Military Equipment Use Policy, and to help it determine whether to approve, revise, or revoke components of the Military Equipment Use Policy for the subsequent year.

Pursuant to California Government Code §7070(d)(7), members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment in this policy by any of the following means:

1. Via email to: [mbpdmedia@morrobayca.gov](mailto:mbpdmedia@morrobayca.gov)
2. Via phone call to: (805) 772-6284
3. Via mail sent to:
  - Morro Bay Police Department
  - Attn: Military Equipment Use Coordinator
  - 850 Morro Bay Blvd.
  - Morro Bay CA. 93442

The Morro Bay Police Department is committed to responding to complaints, concerns and/or questions received through any of the above methods in a timely manner.

The remainder of this Military Equipment Use Policy is divided into two sections. Section One lists qualifying equipment that is owned and/or utilized by the Morro Bay Police Department. Section Two lists qualifying equipment that is not owned or regularly utilized by the Morro Bay Police Department, but which is known to be owned and/or utilized by certain law enforcement agencies/units with which the Morro Bay Police Department collaborates and/or participates for law enforcement purposes.

**Section One: Qualifying Equipment Owned/Utilized by the Morro Bay Police Department**

<b>Equipment Type:</b> Unmanned Aircraft Systems (UAS/Drones) – CA Gov’t Code §7070(c)(1)	
<b>Quantity Owned/Sought:</b> 3 owned	<b>Lifespan:</b> Approximately 5 years
<b>Equipment Capabilities:</b> Remotely piloted aerial vehicles capable of providing live and recorded video images captured from aerial positions, including images enhanced by Forward Looking Infrared (FLIR) and optical zoom lenses.	
<b>Manufacturer Product Description:</b>	
<p><b>DJI Inspire:</b> The DJI Inspire 1 is a powerful, quadcopter flight platform capable of capturing 4K video and transmitting an HD signal to multiple devices. It is equipped with retractable landing gear to allow capture of an unobstructed 360-degree view from its camera. The built-in camera has an integrated gimbal to maximize stability and weight efficiency while minimizing space. When no GPS signal is available or is lost, Vision Positioning technology provides hovering precision for maximum safety. The DJI Inspire 1 also has an attachable Zenmuse XT FLIR Longwave Thermal Imaging Camera System which provides high-sensitivity infrared imaging for enhanced performance during search and rescue operations, locating missing persons, assisting on fire responses and other emergency situations. The Inspire 1 weighs approx. 6.74 lbs. fully equipped, can reach speed of approx. 16 ft/s, and has an approx. 25-30 min. flight time.</p> <p><b>DJI Phantom 4:</b> The DJI Phantom 4 Pro is an extremely smart sUAS flying camera with multi-directional collision avoidance technology made up of vision and infrared sensors, making it intelligently avoid obstacles during flight. Its camera system offers unprecedented image quality with greater clarity, lower noise, higher resolution photos and videos. Dual frequency support in the remote controller makes the HD video downlink more efficient and more stable. The Phantom 4 Pro features a more efficient propulsion system allowing a 4db (60%) operational noise reduction. The</p>	

Phantom 4 Pro weighs approx. 1375g, has a max. speed of approx. 40mph and an Intelligent Flight battery system allows for approx. 25 min. flight time.

**Mavic II Enterprise:** The DJI Mavic II Enterprise features omnidirectional Vision Systems and Infrared Sensing Systems and comes with a fully stabilized 3-axis gimbal camera with an equivalent 24-48 mm 2x optical enterprise lens capable of shooting 4k videos and 12-megapixel photos that support up to 6x FHD zoom. DJI signature technologies such as Obstacle Sensing and the Advanced Pilot Assistance System, help you capture complex shots effortlessly. Additional features like the built in AirSense make you aware of your surrounding airspace, and password protection helps you maintain secure access to your aircraft and protect your data. The Mavic II Enterprise also has attachable modular accessories like the M2E spotlight, M2E Beacon, and M2E Speaker that are purpose built for various applications. The Mavic II Enterprise boasts a maximum flight speed of 44.7 mph and a maximum flight time of 31 minutes.

**Purpose/Authorized Uses:** UAS/Drones may be utilized to enhance the Department's mission of protecting lives and property when other means and resources are not available or are less effective. Uses may include but are not limited to: search and rescue; suspect apprehension; crime scene documentation; tactical operations; scene security; hazard monitoring, identification and mitigation; response to emergency calls; crisis communications; legally authorized surveillance.

**Fiscal Impacts:** The initial costs of equipment, licensing, software and training was approximately \$20,000 which was funded with SLESF COPS Grant Funds. Ongoing cost associated with UAS operation, maintenance and training is estimated to be approximately \$5,000 per year.

**Legal/Procedural Rules Governing Use:** Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations. The use of the UAS potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to FAA altitude regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure). Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy. Reasonable precautions can include, for example, deactivating or turning imaging devices away from such areas or persons during UAS operations.

**Training Required:** Prior to piloting any UAS/Drone staff members must secure an FAA Remote Pilot License and complete all training required by our FAA COA.

**Other Notes:** None.

**Equipment Type:** Semiautomatic Rifles and Ammunition - CA Gov't Code §7070(c)(10)

**Quantity Owned/Sought:** 18 owned

**Lifespan:** Approximately 15 years

**Equipment Capabilities:** The Aero Precision X15 semiautomatic rifle is capable of firing 5.56mm projectile bullet.

**Manufacturer Product Description:** The Aero Precision X15 rifle features the Atlas R-ONE 10.5" barrel, front and rear folding aluminum sights, Aimpoint Red Dot Laser sight system, Inforce WMLX Tactical light, Blue Force Vickers Sling system and Magpul Gen. 2 (30 rd.) magazine.

**Purpose/Authorized Uses:** Officers may deploy the patrol rifle in any circumstance where the officer can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include but are not limited to:

1. Situations where the officer reasonably anticipates an armed encounter.

<p>2. When an officer is faced with a situation that may require accurate and effective fire at long range.</p> <p>3. Situations where an officer reasonably expects the need to meet or exceed a suspect's firepower.</p> <p>4. When an officer reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.</p> <p>5. When an officer reasonably believes that a suspect may be wearing body armor.</p> <p>6. When authorized or requested by a supervisor.</p>
<p><b>Fiscal Impacts:</b> The initial cost of equipment was approximately \$18,000 funded by SLESF COPS Grant. The ongoing costs for ammunition will vary and maintenance is conducted by departmental staff and/or certified armorer.</p>
<p><b>Legal/Procedural Rules Governing Use:</b> All applicable State, Federal and Local laws governing police use of force. Various Morro Bay Police Department Policies on Use of Force and Firearms.</p>
<p><b>Training Required:</b> Officers must successfully complete a CA POST certified 24-hour patrol rifle course as well as regular department firearms training and qualifications as required by law and policy.</p>
<p><b>Other Notes:</b> These rifles are standard issue service weapons for our officers and therefore exempted from this Military Equipment Use Policy per CA Gov't Code §7070 (c)(10). They have been included in this document in an abundance of caution and in the interest of transparency.</p>

<p><b>Equipment Type:</b> 40mm Less Lethal Launchers and Kinetic Energy Munitions – CA Gov't Code §7070(c)(14)  12 Ga. Less-Lethal Shotgun and bean bag munitions- CA Gov't Code §7070(c)(14)  Pepperball Gas powered Launchers- CA Gov't Code §7070(c)(12)</p>	
<p><b>Quantity Owned/Sought:</b> 40 mm Launchers (2) (back ordered). 12 Ga. Less-Lethal shotguns (5), Pepper ball gas powered launchers (2)</p>	<p><b>Lifespan:</b> Approximately 10-15 years</p>
<p><b>Equipment Capabilities:</b> The 40mm Less Lethal Launcher is capable of firing 40mm Kinetic Energy Munitions, which are essentially rubber, foam, pepper ball or bean bag projectiles, Smoke grenades and/or Gas.  The Remington 12 GA. Less-Lethal shotgun can fire a bean bag munition.  The Pepperball FTC launcher is capable of firing pepper balls.</p>	
<p><b>Manufacturer Product Description:</b>  <b>40mm Single Tube Launcher, DT-LMT 1425:</b> Manufactured exclusively for Defense Technology®, the 40LMTS is a tactical single shot launcher that features an expandable ROGERS Super Stock and an adjustable Integrated Front Grip (IFG) with light rail. The ambidextrous Lateral Sling Mount (LSM) and QD mounting systems allow both a single- and two-point sling attachment. The 40LMTS will fire standard 40mm less lethal ammunition, up to 4.8 inches in cartridge length. The Picatinny Rail Mounting System will accept a wide array of enhanced optics/sighting systems.  <b>40mm Multi Tube Launcher, DT-LMT 1440:</b> Designed for riot and tactical situations, the Defense Technology® 1440 40mm Tactical 4-Shot Launcher is low-profile and lightweight, providing multi-shot capability in an easy to carry launcher. It features the Rogers Super Stoc™ expandable gun stock, an adjustable Picatinny mounted front grip, and a unique direct-drive system to advance the magazine</p>	

cylinder. These launchers are light weight, versatile and used worldwide by police and corrections officers.

**Remington 870 12 GA. Less-Lethal shotgun:** Pump action shotgun manufactured by Remington Arms for sport shooting, hunting and self-defense and used by law enforcement organizations worldwide. These firearms are distinctively marked with orange and designated solely as less-lethal force options.

**Pepperball FTC Gas powered Launcher:** Pepper Ball is the most versatile non-lethal system available, allowing officers to deploy it in a wide range of situations. The pepper ball FTC launcher is a high-capacity, semi-automatic launcher. It weighs 2.95 lbs., operates at 3000 psi with an accuracy range of approx. 65 feet and holds approx. 180 rounds. It has full mechanical operation, front and rear sights and an electronic anti-jam loading feature. These launchers are distinctly yellow in color for easy identification as a less/non-lethal use of force option.

**Purpose/Authorized Uses:** The 40mm Less Lethal Launchers, 12 GA. Less-Lethal shotguns and Pepperball Launchers and Kinetic Energy Munitions are intended for use as a less lethal use of force options.

**Fiscal Impacts: 40mm-** initial cost of this equipment was approx. \$3,000 purchased through SLESF COPS Grant funds.

**Remington 870 12 Ga.-** initial cost of this equipment was approx. \$5,000 (general fund).

**Pepper Ball FTC Gas Launcher-** initial cost of this equipment was approx. \$2,362 purchased through SLESF COPS Grant funds.

The ongoing costs for munitions will vary (based on use/training) and maintenance is conducted by departmental staff and/or a certified armorer.

**Legal/Procedural Rules Governing Use:** All applicable State, Federal and Local laws governing police use of force. Various Morro Bay Police Department Policies on Use of Force and Crowd Control.

**Training Required:** Officers must complete a department approved/certified 40mm course, 12 GA. Less-lethal course and specified Pepperball training as well as regular firearms training and qualifications as required by law and policy.

**Other Notes:** None.

**Section Two: The following list of Qualifying Equipment may be owned and/or utilized by law enforcement units with which the Morro Bay Police Department collaborates and/or participates for law enforcement purposes; to include but not limited to: SLO Regional SWAT, SLO County Sheriff Dept., CHP, State Parks, Calif. Dept. of Fish and Wildlife. \*(Not all agencies own/utilize each of these equipment items).**

**Equipment Type:** Unmanned, remotely piloted, powered ground vehicles - CA Gov't Code §7070(c)(1)

**Quantity Owned/Sought:** None (outside owned) | **Lifespan:** Estimate approx. 15 years

**Equipment Capabilities:** Vehicles are capable of being remotely navigated to provide scene information and intelligence in the form of video and still images transmitted to first responders.

**Manufacturer Product Description/General Description:** Remote vehicle to be operated on the ground without need/requirement of human presence on board.

**Purpose/Authorized Uses:** To enhance the safety of potentially dangerous situations by providing first responders with the ability to capture video and still images of hazardous areas prior to, or in lieu of, sending in personnel.

<b>Fiscal Impacts:</b> MBPD contributes approx. \$6,000 annually to SLO Regional SWAT for equip/maint.
<b>Legal/Procedural Rules Governing Use:</b> The use of unmanned, remotely piloted, powered ground vehicles potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to all applicable privacy laws and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure).
<b>Training Required:</b> The San Luis Obispo Regional SWAT Team provides internal training for staff members prior to allowing them to pilot these vehicles.
<b>Other Notes:</b> The Morro Bay Police Department participates in the San Luis Obispo Regional SWAT Team (SLO Reg. SWAT). This equipment may be owned and operated by SLO Regional SWAT through the San Luis Obispo Police Department. While the Morro Bay Police Department does not own or operate this equipment, it could be used in Morro Bay by SLO Regional SWAT (or an allied agency) if they are requested/deployed to an incident within city limits.

<b>Equipment Type:</b> Mine Resistant Ambush Protected Vehicles (MRAP) - CA Gov't Code §7070(c)(2)	
<b>Quantity Owned/Sought:</b> None (outside owned)	<b>Lifespan:</b> Estimate approx. 15 yrs.
<b>Equipment Capabilities:</b> Capable of transporting personnel and equipment while providing them with armored protection from gunfire.	
<b>Manufacturer Product Description/General Description:</b> Commercially produced wheeled armored personnel vehicle utilized for law enforcement purposes.	
<b>Purpose/Authorized Uses:</b> To move personnel and/or resources in support of tactical operations in which there is reason to expect potential armed resistance requiring protection.	
<b>Fiscal Impacts:</b> MBPD contributes approx. \$6,000 annually to SLO Regional SWAT for equip/maint.	
<b>Legal/Procedural Rules Governing Use:</b> The MRAP can be deployed any time tactical operators determine that there is a need to move personnel and/or resources into areas in which they have reason to expect potential armed resistance requiring its protection.	
<b>Training Required:</b> The San Luis Obispo Regional SWAT Team provides internal training for staff members prior to allowing them to drive MRAP vehicles.	
<b>Other Notes:</b> The Morro Bay Police Department participates in the San Luis Obispo Regional SWAT Team (SLO Reg. SWAT). This equipment may be owned and operated by SLO Regional SWAT through the San Luis Obispo Police Department. While the Morro Bay Police Department does not own or operate this equipment, it could be used in Morro Bay by SLO Regional SWAT (or an allied agency) if they are requested/deployed to an incident within city limits.	

<b>Equipment Type:</b> Wheeled vehicles that have a breaching apparatus attached - CA Gov't Code §7070(c)(3)	
<b>Quantity Owned/Sought:</b> None (outside owned)	<b>Lifespan:</b> Estimate approx. 15 yrs.
<b>Equipment Capabilities:</b> Capable of breaching doors, gates, and other points of entry.	
<b>Manufacturer Product Description/General Description:</b> The breaching vehicle/apparatus is a mobile armored breaching system to allow safe and effective entry methods into high-risk or fortified locations to maximize officer and civilian safety.	
<b>Purpose/Authorized Uses:</b> Breaching doors, gates, and other points of entry.	
<b>Fiscal Impacts:</b> MBPD contributes approx. \$6,000 annually to SLO Regional SWAT for equip/maint.	
<b>Legal/Procedural Rules Governing Use:</b> Breaching vehicles can be deployed any time tactical operators determine that it is necessary to complete a lawful breaching. For a breaching to be lawful, it will generally need to be supported by a search or arrest warrant, or exigent circumstances.	
<b>Training Required:</b> The San Luis Obispo Regional SWAT Team provides internal training for staff members prior to allowing them to drive breaching vehicles.	
<b>Other Notes:</b> The Morro Bay Police Department participates in the San Luis Obispo Regional SWAT Team (SLO Reg. SWAT). This equipment may be owned and operated by SLO Regional SWAT through the San Luis Obispo Police Department. While the Morro Bay Police Department does not own or operate this equipment, it could be used in Morro Bay by SLO Regional SWAT (or an allied agency) if they are requested/deployed to an incident within city limits.	

<b>Equipment Type:</b> Battering rams, slugs, and breaching apparatus that are explosive in nature - CA Gov't Code §7070(c)(7)	
<b>Quantity Owned/Sought:</b> None (outside owned)	<b>Lifespan:</b> Estimate approx. 15 yrs.
<b>Equipment Capabilities:</b> Capable of breaching doors, gates, windows, and other points of entry.	
<b>Manufacturer Product Description/General Description:</b> Explosive breaching tools that are used to conduct an explosive breach to create an entry or exit point during a high-risk or tactical situation.	
<b>Purpose/Authorized Uses:</b> Breaching doors, gates, windows, and other points of entry.	
<b>Fiscal Impacts:</b> MBPD contributes approx. \$6,000 annually to SLO Regional SWAT for equip/maint.	
<b>Legal/Procedural Rules Governing Use:</b> Breaching apparatus that are explosive in nature can be deployed any time tactical operators determine that it is necessary to complete a lawful breaching, and non-explosive breaching methods are not tactically practicable. For a breaching to be lawful, it will generally need to be supported by a search or arrest warrant, or exigent circumstances.	
<b>Training Required:</b> The San Luis Obispo Regional SWAT Team provides internal training for staff members prior to allowing them to use explosive breaching apparatus.	
<b>Other Notes:</b> The Morro Bay Police Department participates in the San Luis Obispo Regional SWAT Team (SLO Reg. SWAT). This equipment may be owned and operated by SLO Regional SWAT through the San Luis Obispo Police Department. While the Morro Bay Police Department does not own or operate this equipment, it could be used in Morro Bay by SLO Regional SWAT (or an allied agency) if they are requested/deployed to an incident within city limits.	

<b>Equipment Type:</b> Flashbang grenades, explosive breaching tools, tear gas and pepper balls - CA Gov't Code §7070(c)(12)	
<b>Quantity Owned/Sought:</b> None (outside owned)	<b>Lifespan:</b> Estimate 3-5 yrs.
<b>Equipment Capabilities:</b> Capable of breaching doors, gates, windows, and other points of entry, creating explosive distractions, and/or deploying tear gas or pepper chemical.	
<b>Manufacturer Product Description/General Description:</b> A distraction device is used to distract dangerous suspects during assaults, hostage rescues, room entry, or other high-risk arrest situations.	
<b>Purpose/Authorized Uses:</b> breaching doors, gates, windows, and other points of entry, creating explosive distractions, and/or deploying tear gas or pepper chemicals.	
<b>Fiscal Impacts:</b> MBPD contributes approx. \$6,000 annually to SLO Regional SWAT for equip/maint.	
<b>Legal/Procedural Rules Governing Use:</b> Breaching apparatus that are explosive in nature can be deployed any time tactical operators determine that it is necessary to complete a lawful breaching, and non-explosive breaching methods are not tactically practicable. For a breaching to be lawful, it will generally need to be supported by a search or arrest warrant, or exigent circumstances. Tear gas and pepper balls can only be deployed in accordance with all applicable State, Federal and Local laws governing police use of force, crowd control, etc.	
<b>Training Required:</b> The San Luis Obispo Regional SWAT Team provides internal training for staff members (as required) prior to allowing them to use any of these items.	
<b>Other Notes:</b> The Morro Bay Police Department participates in the San Luis Obispo Regional SWAT Team (SLO Reg. SWAT). This equipment may be owned and operated by SLO Regional SWAT through the San Luis Obispo Police Department. While the Morro Bay Police Department does not own or operate this equipment, it could be used in Morro Bay by SLO Regional SWAT (or an allied agency) if they are requested/deployed to an incident within city limits.	

<b>Equipment Type:</b> Long Range Acoustic Device (LRAD) - CA Gov't Code §7070(c)(13)	
<b>Quantity Owned/Sought:</b> None (outside owned).	<b>Lifespan:</b> Estimate approx. 20-25 yrs.
<b>Equipment Capabilities:</b> LRAD systems are a type of Acoustic Hailing Device (AHD) used to send messages over long distances. LRAD systems produce much higher sound levels (volume) than normal loudspeakers or megaphones. Over shorter distances, LRAD signals are loud enough to cause pain in the ears of people in their path.	
<b>Manufacturer Product Description/General Description:</b> LRAD systems are a type of Acoustic Hailing Device (AHD) used to send messages over long distances. LRAD systems produce much higher sound levels (volume) than normal loudspeakers or megaphones. Over shorter distances, LRAD signals are loud enough to cause pain in the ears of people in their path.	
<b>Purpose/Authorized Uses:</b> Can be used to disperse unlawful crowds and/or to disrupt the activities of person(s) who represent an immediate threat to others.	
<b>Fiscal Impacts:</b> MBPD contributes approx. \$6,000 annually to SLO Regional SWAT for equip/maint.	
<b>Legal/Procedural Rules Governing Use:</b> LRADs can only be deployed in accordance with all applicable State, Federal and Local laws governing police use of force, crowd control, etc.	
<b>Training Required:</b> The San Luis Obispo Regional SWAT Team provides internal training for staff members prior to allowing them to use any of these items.	
<b>Other Notes:</b> The Morro Bay Police Department participates in the San Luis Obispo Regional SWAT Team (SLO Reg. SWAT). This equipment may be owned and operated by SLO Regional SWAT through the San Luis Obispo Police Department. While the Morro Bay Police Department does not own or operate this equipment, it could be used in Morro Bay by SLO Regional SWAT (or an allied agency) if they are requested/deployed to an incident within city limits.	

<b>Equipment Type:</b> Mobile Incident Command (MIC)- CA Gov't Code §7070(c)(5)	
<b>Quantity Owned/Sought:</b> None (outside owned)	<b>Lifespan:</b> Estimate 10-15 yrs.
<b>Equipment Capabilities:</b> On-site platform for command, control and communications during a critical incident, natural disaster, etc.	
<b>Manufacturer Product Description/General Description:</b> A mobile office that provides shelter, access to police department computer systems, radio communications, and restroom facilities on extended events.	
<b>Purpose/Authorized Uses:</b> Vehicle/trailer used as a main workspace and storage area to operate as mobile command center to support management of incidents and planned events by providing interior and exterior workspaces as well as command and control capabilities.	
<b>Fiscal Impacts:</b> MBPD contributes approx. \$6,000 annually to SLO Regional SWAT for equip/maint.	
<b>Legal/Procedural Rules Governing Use:</b> Mobile Command Centers are deployed in accordance with all applicable State, Federal and Local laws governing police emergency use during critical incidents, natural disasters, emergency management operations and planned events.	
<b>Training Required:</b> The San Luis Obispo Regional SWAT Team provides internal training for staff members prior to allowing them to utilize Command Center vehicles and equipment.	
<b>Other Notes:</b> The Morro Bay Police Department participates in the San Luis Obispo Regional SWAT Team (SLO Reg. SWAT). This equipment may be owned and operated by SLO Regional SWAT through the San Luis Obispo Police Department. While the Morro Bay Police Department does not own or operate this equipment, it could be used in Morro Bay by SLO Regional SWAT (or an allied agency) if they are requested/deployed to an incident within city limits.	

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AGENDA NO: B-2

MEETING DATE: April 12, 2022

# Staff Report

**TO: Mayor and City Council**

**DATE: April 1, 2022**

**FROM: Sarah Johnson-Rios, Assistant City Manager/Admin Services Director**

**SUBJECT: Public Hearing and Adoption of Resolution No. 33-22, which Rescinds Resolution No. 56-21 and Adopts the FY 2022-23 Master Fee Schedule**

## **RECOMMENDATION**

Staff recommends that the City Council conduct the formally noticed public hearing, review the proposed Master Fee Schedule, and adopt Resolution No. 33-22 which updates the City’s Master Fee Schedule for Fiscal Year (FY) 2022-23. This Resolution also rescinds Resolution No. 56-21 that adopted the current FY 2021-22 Master Fee Schedule and replaces it in its entirety for the new fiscal year.

## **BACKGROUND**

Annually, the City reviews and revises the adopted Master Fee Schedule, which specifies what charges are approved for various City provided services. “Fee” activities are services and functions provided by the City to individuals who receive some direct material benefit above and beyond services offered to residents at general taxpayer expense. Council has directed this annual process be revised to have one consolidated fee schedule brought forward in late Spring. This format allows staff to implement any revised fees into budget preparations for the upcoming fiscal years.

The Morro Bay Municipal Code Chapter 3.34, Master Fee Schedule, stipulates how the City shall move forward with amending the Master Fee Schedule. Relevant sections of that chapter are included below for reference.

### 3.34.010 – Established

The City Master Fee Schedule is established, which shall set forth a consolidated listing of fees as fixed and adopted by the City Council, in accordance with all applicable provisions of state and city laws.

### 3.34.020 – Fee Revisions and Reviews

Any fees included in the Master Fee Schedule may be reviewed and revised annually by the City Council. The City’s cost of providing the services shall be computed and reflected in these fees. The fees shall then be enumerated, and the revised Master Fee Schedule adopted by resolution of the City Council.

In recent years, Council directed a phased approach to certain fee increases, and fee deferrals related to the COVID-19 pandemic. In FY 2021-22, the City had reached the end of the phased-in approach

Prepared By: \_\_\_\_\_ SJR

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

City Manager Review: SC

City Attorney Review: LNL

and Council implemented fees that began to more completely recover costs in most areas. A link to the FY 2021-22 Master Fee Schedule is provided in the Attachment list for reference.

On July 14, 2015, City Council adopted Resolution No. 55-15, specifying the month of December as the determinate for retrieving San Francisco-Oakland-Hayward Consumer Price Index (CPI) and Engineering News Record (ENR) Construction Cost Index adjustment factors. In late 2021, City Council directed staff to evaluate the specified CPI index.

## **DISCUSSION**

### **Indices used for Increases:**

Staff determined that the majority of cities in San Luis Obispo County that regularly update their fee schedule based on CPI use the Los Angeles-Long Beach-Anaheim CPI published by the Bureau of Labor Statistics rather than the San Francisco-Oakland-Hayward Index. In addition, Morro Bay's Municipal Code specifies that the Los Angeles region CPI must be used to update the Business Tax annually. Recently, Morro Bay has also used the Los Angeles region CPI in certain lease agreements. While there is no official requirement to use the same index in all cases, staff recommends using the Los Angeles region CPI for the Master Fee Schedule for consistency with the Business Tax, recent lease agreements, and other local cities' practices.

Staff also recommends clarifying which construction index to use for construction-related fees. Staff recommends using the California Construction Cost Index (CCCI) that is produced by the California Department of General Services and freely available online on the DGS web site, unlike the individual ENR indices for each City, which require a subscription to view. The CCCI is based on the Engineering New Record for Los Angeles and San Francisco. Staff recommends using these two indices going forward to update the Master Fee Schedule. These indices are specified in the attached resolution and the fee schedule itself for clarity.

### **Effective Date**

Development related fees cannot be implemented any earlier that 60 days after City Council adoption. Thus, all proposed fees (including development fees) in the Master Fee Schedule would be effective July 1, 2022.

### **Changes for FY 2022-23**

Unless otherwise noted in the fee schedule, proposed fees are adjusted annually by the All-Urban Consumer Price Index (CPI), Los Angeles area, based on the December 2021 12-month change. This represents 6.6% for the FY 22-23 Fee Schedule. Impact fees are adjusted annually by the California Construction Cost Index (CCCI) rate, based on the December 2021 12-month change. This represents 13.4% for the FY 22-23 Fee Schedule. All fees of \$1.00 or greater that are not in per foot or square footage units are rounded to the nearest dollar. Fees that are limited by State law or were already at 100% cost recovery were not increased.

The more significant actions being recommended in the Proposed Master Fee schedule include the following:

- A new skiff permit fee to recoup the cost of the Harbor Department's staff time to manage the skiffs and dinghies serving the moored vessels that use City facilities to tie-up; mooring holders in non-commercial mooring zones may receive one free permit per year.

- A permit reinstatement fee to allow reinstatement of expired permits.
- A clearer detailed breakdown of existing Accessory Dwelling Unity impact fees.
- An additional fee for a third resubmittal for plan review (both for Planning and Public Works review) to recoup costs for projects that take more than three reviews in plan check.
- Increase to the Vacation Rental Administration and Monitoring Annual Permit Fee, which will now be \$685 and will cover the costs associated with implementing the recently approved Short-Term Rental (STR) Ordinance, including monitoring, code enforcement and Community Development STR program administration as well as revenue processing and financial administration costs. STRs will also be required to have a valid business tax certificate and to get regular fire inspections, so the total annual cost to operate an STR will be approximately \$925-950 in FY 2022-23 once CPI escalators are applied.
- Listing a fee that is currently charged for new memorial plaque(s) on an existing memorial bench to cover the actual cost of labor and parts.
- A new fee for inspections of sidewalk, curb, gutter, driveway approach, curb ramps, cross-gutter, and spandrel in excess of 20 feet of frontage length, as the existing fee does not cover costs for larger projects.
- A new fee for commencing construction in the public right-of-way without an encroachment permit, to recoup the staff time required to enforce these situations, which also put the City at risk for liability.
- A new traffic control plan check or inspection fee, to cover staff time and/or consultant time if those are contracted out.
- A new inspection fee for post-construction stormwater requirements (PCRs) to cover the cost of staff time for inspections, which are currently completed without cost recovery.
- A new fee for trench/asphalt resurfacing inspection after utility cuts or other repairs in the public right-of-way are required. The fee would be based on the number of square feet of public right-of-way requiring inspection to cover staff time to inspect.
- A new fee to allow the Police Department to recoup staff time associated with renting out the electronic message boards for traffic diversion associated with special events.
- An expedited permit fee to cover Recreation staff time needed to accommodate permits requested within 14 days of an event.

There are a number of fees for which no increase is proposed because the increase would be immaterial, and the staff decided to “round down” instead of up, or market rates did not warrant an increase.

Several fees were eliminated this year for fees that were redundant, or programs that were eliminated. These fees are shown with strikethrough text in the proposed FY 2022-23 Master Fee Schedule attached.

#### Exceptions to Cost Recovery

While Council may elect to recover the full cost of providing a service that offers direct benefits to an individual, Council may also elect to forgo full cost recovery. There are a couple of instances where full cost recovery is not being sought in the Proposed FY 2022-23 Master Fee Schedule, as follows:

*Appeal Fee* – The 2019 Fee Study by Revenue and Cost Specialist, LLC identified that the cost to appeal a City decision at that time was \$6,994. That amount would have been escalated by CPI since to be well over \$7,000 today. In prior years, Council elected to set the fee at a much lower rate, around \$300, and less than 10% of cost recovery. The proposed fee schedule continues that prior

direction, applying CPI and resulting in a \$326-dollar fee. The cost recovery in FY 2022-23 is estimated to be less than 5%. Council may direct staff to increase that fee if desired.

*Commercial Fishing Slip Fee* - Consistent with Council direction last year regarding the Commercial Fishing Slip Fee, full cost recovery recommended by the study conducted by Revenue and Cost Specialists, LLC, was not implemented at the time. Instead, the fee is schedule to increase to \$8/foot in October 2022 and to increase only by CPI for the subsequent ten years. In return, the Morro Bay Commercial Fishermen's Organization agreed to provide \$100,000 in grant funds awarded by the Central California Joint Cable Fisheries to the City once a construction project on the docks and piers moves forward.

### **FISCAL IMPACTS**

Most fees are increasing by CPI or the construction cost index. Given that the intent of the fee schedule is to maintain but not exceed cost recovery, and City costs to provide services are also continuing to increase, there should not be a significant net change to City revenues over expenditures in FY 22-23.

### **ATTACHMENTS**

1. Resolution No. 33-22
  - a. [Link](#) to Proposed FY 2022-23 Master Fee Schedule
2. [Link](#) to existing FY 2021-22 Adopted Master Fee Schedule from Resolution No. 56-21.

**RESOLUTION NO. 33-22**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
ADOPTING FISCAL YEAR 2022-23 MASTER FEE SCHEDULE**

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

**WHEREAS**, the City Council finds fees and charges for City services are annually in need of review for possible updating to reflect changes in the cost of providing those services; and

**WHEREAS**, pursuant to the California Constitution, with certain exceptions, if a City Fee exceeds the City's cost for providing the service covered by that fee, that fee is considered a tax; and

**WHEREAS**, the City has reviewed the attached fees, and finds they do not exceed the actual costs of providing related services when that limitation is applicable; and

**WHEREAS**, on July 14, 2015, City Council adopted Resolution No. 55-15, specifying the month of December as the determinate for retrieving San Francisco-Oakland-Hayward Consumer Price Index (CPI) and Engineering News Record (ENR) Construction Cost Index adjustment factors; and

**WHEREAS**, City Council directed staff to evaluate the specified CPI index and staff determined that the majority of local cities utilized the Los Angeles-Long Beach-Anaheim CPI published by the Bureau of Labor Statistics and that the State's Construction Cost Index that is produced by the Department of General Services and freely available online is based on the Engineering New Record for Los Angeles and San Francisco and staff recommends using these two indices going forward to update the Master Fee Schedule; and

**WHEREAS**, the City Council adopted Resolution 56-21 approving revisions to the Fiscal Year (FY) 2021-22 Master Fee Schedule on August 10, 2021; and

**WHEREAS**, based upon continuing economic impacts due to the COVID-19 Pandemic and other factors, commercial fishing slip fees shall increase from \$7.10/foot to \$8/foot on October 1, 2022, and annual increases will be instituted on this fee annually for the next 10 years following 2022 using the December to December Los Angeles-Long Beach-Anaheim CPI. Moreover, in consideration for this reduced (compared to market) commercial fishing slip fee schedule, Morro Bay Commercial Fishermen's Organization agrees to provide a \$100,000 in grant funds awarded by Central California Joint Cable Fisheries to the City once a construction project on the docks and piers move forward; and

**WHEREAS**, the City has reviewed the attached amended FY 2022-23 Master Fee Schedule, and finds the fees therein do not exceed actual costs of providing related services when that limitation is applicable; and

**WHEREAS**, California Government Code sections 66000, *et seq.*, mandate numerous

detailed and stringent requirements for all development fees levied by local government on new construction projects; and

**WHEREAS**, Section 66017 of the California Government Code requires a 60-day “waiting period” before any development fee increase can become effective; and

**WHEREAS**, pursuant to government Code section 66016, *et seq.*, specific fees to be charged for services must be adopted by City Council resolution or ordinance, after providing notice and holding a public hearing; and

**WHEREAS**, the City’s Municipal Code Section 3.34.020 (Fee revisions and reviews), states: “Any fees, included in the Master Fee Schedule, may be reviewed and revised annually by the city council. The City’s cost of providing the services shall be completed and reflected in these fees. The fees shall then be enumerated, and the revised Master Fee Schedule adopted by resolution of the City Council.”

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

**SECTION 1.** Effective July 1, 2022, Resolution No. 56-21 shall be rescinded.

**SECTION 2.** Effective July 1, 2022, the Fiscal Year 2022-23 Master Fee Schedule, attached hereto and incorporated herein by reference, is hereby amended and readopted.

**SECTION 3.** Resolution No. 55-15 is hereby rescinded and replaced by this Resolution No. 33-22, which, in part, replaces the formerly-utilized annual adjustment indices applicable to the Master Fee Schedule with the Los Angeles-Long Beach-Anaheim CPI published by the Bureau of Labor Statistics and the State’s Construction Cost Index that is produced by the Department of General Services.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of April 2022, by the following vote:

AYES:  
NOES:  
ABSENT:

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

ATTEST:

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



AGENDA NO: C-1

MEETING DATE: April 12, 2022

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 6, 2022

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

**SUBJECT:** Certify Results of Citizens' Initiative Petition entitled "Initiative Measure To Fund City Of Morro Bay Harbor Infrastructure Through \$120 Special Parcel Tax With Revenues Used Only And Exclusively For Maintenance And Improvements To City Of Morro Bay Owned Harbor Facilities" and either: 1) Submit the Ordinance to the Qualified Voters of the City as a Proposed Measure at a Regular Municipal Election; or, 2) Order a Report on the Effects of the Proposed Initiative

## RECOMMENDATION

Staff recommends the City Council receive the report, discuss the alternatives provided by Elections Code section 9215 and described in this report, and adopt Resolution No. 34-22 calling for a General Municipal Election to be held on Tuesday, November 8, 2022, for the submission of Ordinance No. 650 to the qualified voters of the City as a proposed measure, and adopt Resolution No. 35-22 setting priorities for written argument(s) and directing the City Attorney to prepare an impartial analysis, and consider the adoption of Resolution No. 36-22 providing for the filing of rebuttal arguments.

*\*\*\*If Council desires pursuant to Election Code section 9282 to submit an argument against the proposed measure, then one or two members should be appointed for the task as provided for in section 2 of Resolution No. 35-22, as discussed further in this report. Otherwise, Council should not approve section 2 of Resolution No. 35-22.\*\*\**

## ALTERNATIVES

Direct the City Manager to evaluate on a Citywide basis, the effects of the proposed initiative measure in accordance with Elections Code section 9212, and prepare a report to be presented to the Council within 30 days. (Note: the California Constitution precludes the City Council from adopting an ordinance that would impose a parcel tax without approval by the qualified voters of the City.)

## FISCAL IMPACT

Should the Council submit the ordinance to the qualified voters of the City as a proposed ballot measure at the November 2022 General Municipal Election, the estimated cost is \$1,500 - \$2,500.

If the initiative measure was approved by the qualified voters of the City, a parcel (Special) tax of \$120.00 per year would be levied, yielding approximately \$680,000 per year, which would be dedicated to Harbor major maintenance and capital improvement projects.

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

## **BACKGROUND**

On March 10, 2022, pursuant to authority provided by the California Constitution and the State Elections Code, an initiative petition was presented for filing entitled "Initiative Measure To Fund City Of Morro Bay Harbor Infrastructure Through \$120 Special Parcel Tax With Revenues Used Only And Exclusively For Maintenance And Improvements To City Of Morro Bay Owned Harbor Facilities." The Notice of Intent to Circulate an Initiative Petition is provided as Attachment 1, and the Ballot Title and Summary prepared by the City Attorney for the proposed initiative measure is provided as Attachment 2.

Elections Code Section 9215 provides in part that an initiative petition qualifies if it "is signed by not less than 10 percent of the voters of the city." As of the August 30, 2021, voter registration report to the Secretary of State, there were 8,268 registered voters in the City of Morro Bay. Pursuant to Elections Code section 9210, the initiative petition was examined by the City Clerk and it was determined the number of signatures prima facie, was in excess of 10% (827) of the registered voters of the City and the petition was accepted for filing. The City Clerk's office coordinated with the County Registrar of Voters' to examine signatures and, in accordance with Election Code Sections 9114-9115, the initiative petition was determined to contain 1,047 valid signatures and deemed sufficient on April 4, 2022. The results of the petition signature verification are being certified to the Council as presented in Attachment 3.

Elections Code Section 9215 also provides in part that when a city council is presented with a qualified petition, the Council shall either:

(a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented; or,

(b) Submit the ordinance, without alteration, to the voters pursuant to Section 1405; or,

(c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to subdivision (b).

The California Constitution precludes the City Council from exercising the first option under Election Code section 9215 of adopting the ordinance. Article XIII C (Voter Approval for Local Tax Levies) was added to the California Constitution by Proposition 218 and requires voter approval for local taxes. The City Council cannot adopt the proposed tax ordinance without approval by the voters.

Elections Code Section 1405 provides the election for a qualified initiative petition shall be held at the next regular election occurring not less than 88 days after the date of the order of the election. If the governing body calls a special election, the election shall not be held less than 88 days nor more than 103 days after the order of the election.

## **DISCUSSION**

The initiative petition presented seeks voter approval of a tax that shall be levied on all Parcels of Taxable Real Property in the City at a rate of One Hundred and Twenty Dollars (\$120.00) per parcel per year. The new level of parcel taxes, as provided in the measure would be imposed commencing in the 2023-24 tax year, and each year thereafter. As written, the Parcel Tax Rate would be adjusted for inflation by the change in the "Consumer Price Index Or All Urban Consumers California"

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published by the U.S. Department of Labor, Bureau of Labor Statistics.

If approved by a majority of registered voters in the City of Morro Bay, the funds collected would be used solely for maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City owned properties including public restrooms along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures.

**Recommended Action – Submit the Ordinance without alteration, to the voters at the November General Municipal Election**

The Council may send the ordinance to the voters for approval at the next regular municipal election to be held in not less than 88 days (Morro Bay's next regular municipal election is November 8, 2022).

To send Ordinance No. 650 to the voters at the general municipal election on November 8, 2022, three election resolutions are presented for consideration by the City Council.

The first resolution orders the submission of the ordinance to the voters at the November 8, 2022, General Municipal Election and requests from the County a consolidation of that election with the Statewide General Election scheduled for the same date. (See Attachment No. 5)

*Ballot Label.* The first resolution includes a "ballot label" which describes the proposed ordinance and which is the question actually presented to the voters. Ballot labels are limited to 75 words or less. The Council may revise the language used for the ballot label within the following state law restrictions: "The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure." (Election Code section 13119(c).)

The second resolution is concerned with written arguments (both pro and con) about the initiative measure, as well as directing the City Attorney to prepare an impartial analysis of the initiative measure. (See Attachment No. 6.) The second resolution establishes priorities under state law for choosing among multiple arguments. In consultation with the City Clerk the second resolution sets a deadline for written arguments (pro and con) of Tuesday, July 22, 2022, at the close of business.

*Argument Authorization.* Pursuant to Election Code section 9282, for measures placed on the ballot by petition, the persons filing an initiative petition may file a written argument in favor of the ordinance, and the legislative body may submit an argument against the ordinance. The second resolution authorizes - if Council so desires - one or two councilmembers to write an argument against the ballot measure. If three or more Councilmembers jointly write a ballot argument then the Brown Act will require the collaboration to occur at a noticed public meeting. As such, staff suggests, if Council desires to submit an argument against the ordinance, the Council appoint one or two councilmembers to write an authorized argument.

**\*\*\*If Council desires to appoint one or two Councilmembers to write an argument against the ballot measure, then Section 2 in the second resolution should have name(s) added to it for the drafter(s). If Council does not desire to submit an argument against the measure, then Section 2 in the second resolution should be taken out of the resolution before approval.**

The third resolution provides for the filing of rebuttal arguments to the primary written arguments. (See Attachment No. 7.) The rebuttal arguments are prepared by the opposite authors of the primary

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written arguments. In consultation with the City Clerk the third resolution sets a deadline for rebuttals of Tuesday, August 2, 2022, at the close of business. Rebuttal arguments are optional under state law and are allowed at the discretion of the City Council. Disallowing rebuttal arguments will result in lowering the total cost for placing the initiative measure on the ballot (as extra pages in the voter books cost more money). The exact amount of cost savings is unknown at the present. If the City Council does not desire to authorize rebuttal arguments, then Council should not approve this third election resolution.

### **Alternative Action – Request a Report of effect of proposed initiative**

Elections Code Section 9212 provides the City Council may request a report on any or all of the following that must be presented to the Council within 30 days:

- (1) Its fiscal impact.
- (2) Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under [Section 65008 of the Government Code](#) and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with [Section 65915 of Division 1 of Title 7 of the Government Code](#).
- (3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs.
- (4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
- (5) Its impact on the community's ability to attract and retain business and employment.
- (6) Its impact on the uses of vacant parcels of land.
- (7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
- (8) Any other matters the legislative body requests to be in the report.

The Council could direct the City Manager to evaluate the impacts of the initiative measure on a Citywide basis and prepare a report to be brought back to Council at the May 10, 2022, Regular Meeting at which time the Council may consider the information provided and then submit the ordinance to the voters at the November 8, 2022 General Election.

### **CONCLUSION**

Staff recommends the City Council receive the report, discuss the alternatives provided by Elections Code section 9215 and described in this report, and adopt Resolution No. 34-22 calling for a General Municipal Election to be held on Tuesday, November 8, 2022, for the submission of Ordinance No. 650 to the qualified voters of the City as a proposed measure, and adopt Resolution No. 35-22 setting priorities for written argument(s) and directing the City Attorney to prepare an impartial analysis, and consider the adoption of Resolution No. 36-22 providing for the filing of rebuttal arguments.

### **ATTACHMENTS**

1. October 8, 2021 Notice of Intent to Circulate a Petition
2. November 9, 2021 Ballot Title and Summary for proposed Initiative Measure
3. January 28, 2022 Certificate of Sufficiency of Petition
4. Ordinance No. 650 Morro Bay Harbor Infrastructure Act of 2022

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5. Resolution No. 34-22 Calling for a General Municipal Election for the Submission of Ordinance No. 650 to the Qualified Voters of the City
6. Resolution No. 35-22 Setting Priorities for Filing Written Argument(s) and Directing the City Attorney to Prepare an Impartial Analysis regarding Ordinance No. 650
7. Resolution No. 36-22 Providing for the Filing of Rebuttal Arguments Regarding Ordinance No. 650



October 8, 2021

Dana Swanson  
City Clerk-City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

**Request for Ballot Title and Summary**

Dear Ms. Swanson,

In accordance with Sections 9202 and 9203 of the California Elections Code, the undersigned proponents of the Morro Bay Harbor Infrastructure Initiative submit a copy of the text of that measure and a Notice of Intent to Circulate Petition for that measure. We request that a ballot title and summary be prepared for the measure.

In accordance with Section 9202(b) of the California Elections Code and the City of Morro Bay's Fee Schedule, a payment of \$200.00 is attached to this statement. Please send copies of the title and summary to each of the listed proponents and to the address listed above.



Bill Luffee  
170 Bradley  
Morro Bay, CA 93442  
805-550-9250  
[bill@promoplus.com](mailto:bill@promoplus.com)



Ron Reisner  
1300 Clarabelle  
Morro Bay, CA 93442  
206-399-0690  
[rmreisner@comcast.net](mailto:rmreisner@comcast.net)



Homer Alexander  
340 Bernardo Ave  
Morro Bay, CA 93442  
805-772-8004  
[homeralexander@charter.net](mailto:homeralexander@charter.net)

## Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Morro Bay for the purpose of a parcel tax to improve Morro Bay's Harbor Infrastructure. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

A parcel (Special) tax of one hundred and twenty dollars (\$120.00) per annum is needed to fund maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City owned properties including public restrooms along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures. Revenue from the proposed parcel tax would not be applied to City employee salaries or benefits. All revenue from the special Tax shall be used solely for purposes related to the maintenance of and improvements of City owned harbor related infrastructure. In addition, to ensure the special tax proceeds collected by this measure are spent as authorized, the expenditures will be subject to an annual financial audit by an independent citizens committee appointed by the City Council.

The Friends of the Morro Bay Harbor Department recognize that such funding is necessary due to the inability of the City of Morro Bay's General Fund to provide revenue for critical Harbor major maintenance and capital improvement projects (the City's General Fund is used to support other City services such as public safety, streets, parks, and recreation). Also, while operations of the Harbor Department are funded from Tidelands Trust lease site revenues, those revenues are insufficient to fund harbor infrastructure needs.

Currently, the unfunded liability for needed maintenance and improvements to City owned harbor infrastructure is estimated to be in the multi-million dollars. Our residents, our businesses, our commercial fishing industry and our tourism guests all benefit from a well-maintained and user-safe Harbor infrastructure.

  
Bill Luffee  
170 Bradley  
Morro Bay, CA 93442  
805-550-9250  
[bill@promoplus.com](mailto:bill@promoplus.com)

  
Ron Reisner  
1300 Clarabelle Drive  
Morro Bay, CA 93442  
206-399-0690  
[rmreisner@comcast.net](mailto:rmreisner@comcast.net)

  
Homer Alexander  
340 Bernardo Ave  
Morro Bay, CA 93442  
805-772-8004  
[homeralexander@charter.net](mailto:homeralexander@charter.net)

## **FULL BALLOT TEXT**

### **Section 1. Title.**

This measure shall be known and may be cited as the " Morro Bay Harbor Infrastructure Act of 2022."

**Chapter 3.27 of the Morro Bay Municipal Code is hereby added to read as follows:**

### **ARTICLE 3.27 MORRO BAY HARBOR INFRASTRUCTURE ACT**

#### **3.27.010. PUROPSE AND FINDINGS.**

This chapter is intended to achieve the following purposes, among others, and the provisions hereof shall be interpreted in order to accomplish such purposes and the voters of the City of Morro Bay make the following findings and resolve:

- A. The voters of the City of Morro Bay ("City") are committed to supporting the Morro Bay Harbor ("Harbor ") in its mission to provide preventative maintenance and capital improvement to City Harbor facilities; and
- B. The voters of the City of Morro Bay, our businesses, our commercial fishing industry and our tourism guests all benefit from a well-maintained and user-safe Harbor infrastructure; and
- C. The operations of the Harbor Department are funded from Tidelands Trust lease site revenues, those revenues are insufficient to fund harbor infrastructure needs; and
- D. Funding is necessary due to the inability of the City of Morro Bay's General Fund to provide revenue for critical Harbor major maintenance and capital improvement projects (the City's General Fund is used to support other City services such as public safety, streets, parks, and recreation); and
- E. Funding is needed for maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City owned properties including public restrooms along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures; and
- F. Revenue from the proposed parcel tax would not be applied to City employee salaries or benefits. All revenue from the special Tax shall be used solely for purposes related to the maintenance of and improvements of City owned harbor related infrastructure; and
- G. Currently, the unfunded revenue needed maintenance and improvements to City owned harbor infrastructure is estimated to be in the multi-million dollars; and
- H. The voters of the City are empowered to do something about that by supporting this local funding measure, which will help maintain a high quality and safe harbor in the City of Morro Bay ("City") the City shall collect and authorized to appropriate, as specified below, an annual \$120 parcel tax,

adjusted for inflation, raising approximately \$ 680,000 annually. None of the proceeds from this measure shall be used for City employee salaries or benefits.

- I. Pursuant to the California Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, that Section 4 of Article XIII A and Section 2 of Article XIII C of the California Constitution and Sections 50075, 50076, 50077, 50079 and 53722 et seq. of the California Government Code authorizes the City to have a special tax, upon approval of a majority (more than 50% percent) of the electorate voting on the measure, to levy a qualified special tax for specified purposes as stated herein; and
- J. The voters have successfully conducted a voter signature petition, as required by law, on the question of whether or not to request the City's voters to authorize funding for the purposes identified below.

### **3.27.020. TAX RATE.**

By this parcel tax measure, the City seeks voter approval of a tax that shall be levied on all Parcels of Taxable Real Property in the City at a rate of One Hundred and Twenty Dollars (\$120.00) per parcel ("Parcel Tax Rate") per year. The new level of parcel taxes, as provided in this measure, will be imposed commencing in the 2023-24 tax year, and each year thereafter.

To account for the impact of inflation on the cost of infrastructure and maintaining a high quality and safe Harbor, the Parcel Tax Rate as set forth above, shall be automatically adjusted annually, unless otherwise directed by the City, commencing as of the 2025- 26 tax year, for inflation by the change in the "Consumer Price Index for all Urban Consumers California" published by the U.S. Department of Labor, Bureau of Labor Statistics. In the event this index is no longer published, the City shall adopt a comparable index of general price levels, as it shall reasonably determine.

"Parcel of Taxable Real Property" is defined as any unit of real property in the City that receives a separate tax bill for ad valorem property taxes from the San Luis Obispo Tax Collector's Office, as applicable, depending on parcel location. All property that is otherwise exempt from or upon which no ad valorem property taxes are levied in any year shall also be exempt from the special tax in such year.

If more than one adjacent Assessor parcel constitutes a single parcel under the Subdivision Map Act (California Government Code section 66410 *et seq.*), then the parcel will be treated as a single Parcel of Taxable Real Property for purposes of the amount of tax due, and a claim for refund may be made by the property owner pursuant to the claim procedures outlined below.

### **3.27.030. TAX ALLOCATIONS, APPROPRIATIONS, AND ACCOUNTABILITY.**

Pursuant to California Constitution Article XIII B and applicable laws, the appropriations limit for the City will be adjusted periodically by the aggregate sum collected by levy of this special tax. Notwithstanding any other provision of law, or this measure, the proceeds of this tax measure shall be allocated and appropriated as follows: to fund maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City

owned properties including public restrooms along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures.

The proceeds of the special tax shall be applied only to the specific purposes identified above. The proceeds of the special tax shall be deposited into a fund, which shall be kept separate and apart from other funds of the City. No later than January 1 of each year while the tax is in effect, the City shall prepare a report detailing the amount of funds collected and expended, and the status of any project authorized to be funded by this measure.

In addition, an independent Citizen's Oversight Committee shall be appointed by the City Council to ensure that the special tax proceeds collected pursuant to this measure are spent for their authorized purposes, and to report annually to the City Council and to the public regarding the expenditure of such funds at a noticed public hearing.

### **3.27.040. LEGAL AUTHORITY.**

- A. **Severability.** The voters hereby declare, and a majority of the voters approving this measure concur, that every section and part of this measure has independent value, and the City and the voters would have adopted each provision hereof regardless of every other provision hereof. Upon approval of this measure by the voters, should any part of the measure or taxing formula be found by a court of competent jurisdiction to be invalid for any reason, all remaining parts of the measure or taxing formula hereof shall remain in full force and effect to the fullest extent allowed by law.
- B. **Protection of Funding.** Current law forbids any decrease in State or Federal funding to the City because of the City's adoption of a parcel tax. However, if any such funds are reduced because of the adoption of this parcel tax, then the amount of the special taxes will be reduced annually as necessary in order to restore such State or Federal funding.
- C. **Vote Requirement.** The voters hereby declare that in accordance with the California Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, that Section 4 of Article XIII A and Section 2 of Article XIII C of the California Constitution and Sections 50075, 50076, 50077, 50079 and 53722 et seq. of the California Government Code this citizen initiative special tax shall become effective upon approval of a majority (over 50% percent) of the electorate voting on the measure, to levy a qualified special tax for specified purposes stated above.
- D. **Home Rule.** The authority to pass this measure is derived from the City's home rule powers that are provided in Article XI, sections 7 and 11 of the California Constitution. The People of the City of Morro Bay declare their intent that this citizen initiative be enacted, and the parcel tax be collected for the entire uninterrupted time period described herein, if this measure is approved by a simple majority of the voters pursuant to the California Supreme Court case of *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924. To the extent that the California Constitution or state law is amended, on the same date as the passage of this measure, or after, to change or create additional voting requirements to implement or to continue to implement this measure, the People of the City of Morro Bay declare their intent that such amendments should be applied prospectively only and not apply to, or in any way affect this measure.
- E. **Legal Defense.** The People of the City of Morro Bay desire this measure, if approved by the voters and thereafter challenged in court, be defended by the City. The People, by approving this measure,

hereby declare that the proponents of this measure have a direct and personal stake in defending this measure from constitutional or statutory challenges to the measure's validity or implementation. In the event the City fails to defend this measure, or the City fails to appeal an adverse judgment against the constitutionality, statutory permissibility or implementation of this measure, in whole or in part, in any court of law, the measure's proponents shall be entitled to assert his, her or their direct personal stake by defending the measure's validity and implementation in any court of law and shall be empowered by the People through this measure to act as agents of the People. The City shall indemnify the proponents for reasonable expenses and other losses incurred by the proponents, as agents, in defending the validity and/or implementation of the challenged measure. The rate of indemnification shall be no more than the amount it would cost the City to perform the defense itself.



## CITY OF MORRO BAY

CITY HALL

595 Harbor Street  
Morro Bay, CA 93442

### VIA EMAIL & FIRST CLASS MAIL

November 9, 2021

Bill Luffee  
Ron Reisner  
Homer Alexander  
340 Bernardo Ave  
Morro Bay, CA 93442

Subject: Ballot Title and Summary for Proposed Initiative Measure

Dear Bill, Ron & Homer,

The City Attorney has prepared the following title and summary pursuant to State law, including Election Code section 9203, for the proposed measure submitted to my office:

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### BALLOT TITLE

INITIATIVE MEASURE TO FUND CITY OF MORRO BAY HARBOR INFRASTRUCTURE THROUGH \$120 SPECIAL PARCEL TAX WITH REVENUES USED ONLY AND EXCLUSIVELY FOR MAINTENANCE AND IMPROVEMENTS TO CITY OF MORRO BAY OWNED HARBOR FACILITIES

### SUMMARY

The citizen ballot measure adds the “Morro Bay Harbor Infrastructure Act” to Chapter 3.27 of the Morro Bay Municipal Code. The measure proposes the funding of preventative maintenance and capital improvements for City of Morro Bay harbor infrastructure through an annual special parcel tax of \$120, adjusted for inflation, on all Parcels of Taxable Real Property in the City starting in 2023-24 tax year. The measure estimates annual revenues from the special parcel tax of \$680,000.

The measure strictly provides as a matter of law that the new revenues can only be legally used for maintenance and improvements to City owned harbor related infrastructure.

Harbor infrastructure projects eligible include, but are not limited to: City owned properties including public restrooms along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures. Revenues would not be applied to City employee salaries or benefits, or any other project or matter, other than maintenance of and improvements to City owned harbor related infrastructure.

An independent Citizen’s Oversight Committee is to be appointed by the City Council to ensure that the special tax proceeds collected are spent for their authorized purposes, and to report annually to the City Council and to the public regarding the expenditure of such funds at a noticed public hearing.

The proceeds of the special parcel tax will be deposited into a fund, which will be kept separate and apart from other funds of the City. No later than January 1 of each year the City will prepare a report detailing the amount of funds collected and expended, and the status of any project authorized to be funded by this measure.

“Parcel of Taxable Real Property” is defined as any unit of real property in the City that receives a separate tax bill for ad valorem property taxes from the San Luis Obispo Tax Collector's Office, as applicable, depending on parcel location. All property that is otherwise exempt from or upon which no ad valorem property taxes are levied in any year shall also be exempt from the special tax in such year.

The measure provides the City is obligated to defend the measure against any constitutional or statutory challenges to the measure’s validity or implementation. If the City fails to do so, the measure provides the City shall indemnify proponents for reasonable expenses and other losses incurred by the proponents, as agents, in defending the validity and/or implementation of the challenged measure. The rate of indemnification shall be no more than the amount it would cost the City to perform the defense itself.

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As proponents of the initiative measure, I encourage you to carefully review California Elections Code Chapter 3, Article 1, to educate yourselves with the legal requirements of circulating an initiative measure. **This letter is being provided consistent with the requirements of State law and is not intended to provide legal advice. I strongly encourage you to seek legal counsel as needed.**

Elections Code section 9203(b) provides:

“The elections official shall furnish a copy of the ballot title and summary to the person filing the proposed measure. The person proposing the measures shall, prior to its circulation, place upon each section of the petition, above the text of the proposed measure and across the top of each page of the petition on which signatures are to appear, in roman boldface type not smaller than 11 point, the ballot title prepared by the city attorney. The text of the measure shall be printed in type not smaller than 8 point. The heading of the proposed measure shall be in a boldface type in substantially the following form:

INITIATIVE MEASURE TO BE DIRECTLY SUBMITTED TO THE VOTERS

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the city attorney. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)”

Elections Code section 9205 provides:

“A notice of intention and the title and summary of the proposed measure shall be published or posted or both as follows:

(a) If there is a newspaper of general circulation, as described in Chapter 1 (commencing with Section 6000) of Division 7 of Title 1 of the Government Code, adjudicated as such, the notice, title, and summary shall be published therein at least once.

(b) If the petition is to be circulated in a city in which there is no adjudicated newspaper of general circulation, the notice, title, and summary shall be published at least once, in a newspaper circulated within the city and adjudicated as being of general circulation within the county in which the city is located and the notice, title, and summary shall be posted in three (3) public places within the city, which public places shall be those utilized for the purpose of posting ordinances as required in Section 36933 of the Government Code.

(c) If the petition is to be circulated in a city in which there is no adjudicated newspaper of general circulation, and there is no newspaper of general circulation adjudicated as such within the county, circulated within the city, then the notice, title, and summary shall be posted in the manner described in subdivision (b).

This section does not require the publication or posting of the text of the proposed measure.”

Elections Code section 9206 provides:

“Within 10 days after the date of publication or posting, or both, of the notice of intention and title and summary, the proponents shall file a copy of the notice and title and summary as published or posted together with an affidavit made by a representative of the newspaper in which the notice was published or, if the notice was posted, by a voter of the city, certifying to the fact of publication or posting.

If the notice and title and summary are both published and posted pursuant to subdivision (b) of Section 9205, the proponents shall file affidavits as required by this section made by a representative of the newspaper in which the notice was published certifying to the fact that the notice was published and by a voter of the city certifying to the fact that the notice was posted.

These affidavits, together with a copy of the notice of intention and title and summary, shall be filed with the elections official of the legislative body of the city in his or her office during normal office hours as posted.”

Elections Code section 9207 provides:

“The proponents may commence to circulate the petitions among the voters of the city for signatures by any registered voter of the city after publication or posting, or both, as required by Section 9205, of the title and summary prepared by the city attorney. Each section of the petition shall bear a copy of the notice of intention and the title and summary prepared by the city attorney.”

If you have any questions, please feel free to contact me.

Sincerely,



Dana Swanson  
City Clerk/Human Resources Manager

Enc. Notice of Intent to Circulate Petition

## Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Morro Bay for the purpose of a parcel tax to improve Morro Bay's Harbor Infrastructure. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

A parcel (Special) tax of one hundred and twenty dollars (\$120.00) per annum is needed to fund maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City owned properties including public restrooms along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures. Revenue from the proposed parcel tax would not be applied to City employee salaries or benefits. All revenue from the special Tax shall be used solely for purposes related to the maintenance of and improvements of City owned harbor related infrastructure. In addition, to ensure the special tax proceeds collected by this measure are spent as authorized, the expenditures will be subject to an annual financial audit by an independent citizens committee appointed by the City Council.

The Friends of the Morro Bay Harbor Department recognize that such funding is necessary due to the inability of the City of Morro Bay's General Fund to provide revenue for critical Harbor major maintenance and capital improvement projects (the City's General Fund is used to support other City services such as public safety, streets, parks, and recreation). Also, while operations of the Harbor Department are funded from Tidelands Trust lease site revenues, those revenues are insufficient to fund harbor infrastructure needs.

Currently, the unfunded liability for needed maintenance and improvements to City owned harbor infrastructure is estimated to be in the multi-million dollars. Our residents, our businesses, our commercial fishing industry and our tourism guests all benefit from a well-maintained and user-safe Harbor infrastructure.

  
Bill Luffee  
170 Bradley  
Morro Bay, CA 93442  
805-550-9250  
[bill@promoplus.com](mailto:bill@promoplus.com)

  
Ron Reisner  
1300 Clarabelle Drive  
Morro Bay, CA 93442  
206-399-0690  
[rmreisner@comcast.net](mailto:rmreisner@comcast.net)

  
Homer Alexander  
340 Bernardo Ave  
Morro Bay, CA 93442  
805-772-8004  
[homeralexander@charter.net](mailto:homeralexander@charter.net)

## **FULL BALLOT TEXT**

### **Section 1. Title.**

This measure shall be known and may be cited as the " Morro Bay Harbor Infrastructure Act of 2022."

**Chapter 3.27 of the Morro Bay Municipal Code is hereby added to read as follows:**

### **ARTICLE 3.27 MORRO BAY HARBOR INFRASTRUCTURE ACT**

#### **3.27.010. PUROPSE AND FINDINGS.**

This chapter is intended to achieve the following purposes, among others, and the provisions hereof shall be interpreted in order to accomplish such purposes and the voters of the City of Morro Bay make the following findings and resolve:

- A. The voters of the City of Morro Bay ("City") are committed to supporting the Morro Bay Harbor ("Harbor ") in its mission to provide preventative maintenance and capital improvement to City Harbor facilities; and
- B. The voters of the City of Morro Bay, our businesses, our commercial fishing industry and our tourism guests all benefit from a well-maintained and user-safe Harbor infrastructure; and
- C. The operations of the Harbor Department are funded from Tidelands Trust lease site revenues, those revenues are insufficient to fund harbor infrastructure needs; and
- D. Funding is necessary due to the inability of the City of Morro Bay's General Fund to provide revenue for critical Harbor major maintenance and capital improvement projects (the City's General Fund is used to support other City services such as public safety, streets, parks, and recreation); and
- E. Funding is needed for maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City owned properties including public restrooms along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures; and
- F. Revenue from the proposed parcel tax would not be applied to City employee salaries or benefits. All revenue from the special Tax shall be used solely for purposes related to the maintenance of and improvements of City owned harbor related infrastructure; and
- G. Currently, the unfunded revenue needed maintenance and improvements to City owned harbor infrastructure is estimated to be in the multi-million dollars; and
- H. The voters of the City are empowered to do something about that by supporting this local funding measure, which will help maintain a high quality and safe harbor in the City of Morro Bay ("City") the City shall collect and authorized to appropriate, as specified below, an annual \$120 parcel tax,

adjusted for inflation, raising approximately \$ 680,000 annually. None of the proceeds from this measure shall be used for City employee salaries or benefits.

- I. Pursuant to the California Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, that Section 4 of Article XIII A and Section 2 of Article XIII C of the California Constitution and Sections 50075, 50076, 50077, 50079 and 53722 et seq. of the California Government Code authorizes the City to have a special tax, upon approval of a majority (more than 50% percent) of the electorate voting on the measure, to levy a qualified special tax for specified purposes as stated herein; and
- J. The voters have successfully conducted a voter signature petition, as required by law, on the question of whether or not to request the City's voters to authorize funding for the purposes identified below.

### **3.27.020. TAX RATE.**

By this parcel tax measure, the City seeks voter approval of a tax that shall be levied on all Parcels of Taxable Real Property in the City at a rate of One Hundred and Twenty Dollars (\$120.00) per parcel ("Parcel Tax Rate") per year. The new level of parcel taxes, as provided in this measure, will be imposed commencing in the 2023-24 tax year, and each year thereafter.

To account for the impact of inflation on the cost of infrastructure and maintaining a high quality and safe Harbor, the Parcel Tax Rate as set forth above, shall be automatically adjusted annually, unless otherwise directed by the City, commencing as of the 2025- 26 tax year, for inflation by the change in the "Consumer Price Index for all Urban Consumers California" published by the U.S. Department of Labor, Bureau of Labor Statistics. In the event this index is no longer published, the City shall adopt a comparable index of general price levels, as it shall reasonably determine.

"Parcel of Taxable Real Property" is defined as any unit of real property in the City that receives a separate tax bill for ad valorem property taxes from the San Luis Obispo Tax Collector's Office, as applicable, depending on parcel location. All property that is otherwise exempt from or upon which no ad valorem property taxes are levied in any year shall also be exempt from the special tax in such year.

If more than one adjacent Assessor parcel constitutes a single parcel under the Subdivision Map Act (California Government Code section 66410 *et seq.*), then the parcel will be treated as a single Parcel of Taxable Real Property for purposes of the amount of tax due, and a claim for refund may be made by the property owner pursuant to the claim procedures outlined below.

### **3.27.030. TAX ALLOCATIONS, APPROPRIATIONS, AND ACCOUNTABILITY.**

Pursuant to California Constitution Article XIII B and applicable laws, the appropriations limit for the City will be adjusted periodically by the aggregate sum collected by levy of this special tax. Notwithstanding any other provision of law, or this measure, the proceeds of this tax measure shall be allocated and appropriated as follows: to fund maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City

owned properties including public restrooms along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures.

The proceeds of the special tax shall be applied only to the specific purposes identified above. The proceeds of the special tax shall be deposited into a fund, which shall be kept separate and apart from other funds of the City. No later than January 1 of each year while the tax is in effect, the City shall prepare a report detailing the amount of funds collected and expended, and the status of any project authorized to be funded by this measure.

In addition, an independent Citizen's Oversight Committee shall be appointed by the City Council to ensure that the special tax proceeds collected pursuant to this measure are spent for their authorized purposes, and to report annually to the City Council and to the public regarding the expenditure of such funds at a noticed public hearing.

### **3.27.040. LEGAL AUTHORITY.**

- A. **Severability.** The voters hereby declare, and a majority of the voters approving this measure concur, that every section and part of this measure has independent value, and the City and the voters would have adopted each provision hereof regardless of every other provision hereof. Upon approval of this measure by the voters, should any part of the measure or taxing formula be found by a court of competent jurisdiction to be invalid for any reason, all remaining parts of the measure or taxing formula hereof shall remain in full force and effect to the fullest extent allowed by law.
- B. **Protection of Funding.** Current law forbids any decrease in State or Federal funding to the City because of the City's adoption of a parcel tax. However, if any such funds are reduced because of the adoption of this parcel tax, then the amount of the special taxes will be reduced annually as necessary in order to restore such State or Federal funding.
- C. **Vote Requirement.** The voters hereby declare that in accordance with the California Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, that Section 4 of Article XIII A and Section 2 of Article XIII C of the California Constitution and Sections 50075, 50076, 50077, 50079 and 53722 et seq. of the California Government Code this citizen initiative special tax shall become effective upon approval of a majority (over 50% percent) of the electorate voting on the measure, to levy a qualified special tax for specified purposes stated above.
- D. **Home Rule.** The authority to pass this measure is derived from the City's home rule powers that are provided in Article XI, sections 7 and 11 of the California Constitution. The People of the City of Morro Bay declare their intent that this citizen initiative be enacted, and the parcel tax be collected for the entire uninterrupted time period described herein, if this measure is approved by a simple majority of the voters pursuant to the California Supreme Court case of *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924. To the extent that the California Constitution or state law is amended, on the same date as the passage of this measure, or after, to change or create additional voting requirements to implement or to continue to implement this measure, the People of the City of Morro Bay declare their intent that such amendments should be applied prospectively only and not apply to, or in any way affect this measure.
- E. **Legal Defense.** The People of the City of Morro Bay desire this measure, if approved by the voters and thereafter challenged in court, be defended by the City. The People, by approving this measure,

hereby declare that the proponents of this measure have a direct and personal stake in defending this measure from constitutional or statutory challenges to the measure's validity or implementation. In the event the City fails to defend this measure, or the City fails to appeal an adverse judgment against the constitutionality, statutory permissibility or implementation of this measure, in whole or in part, in any court of law, the measure's proponents shall be entitled to assert his, her or their direct personal stake by defending the measure's validity and implementation in any court of law and shall be empowered by the People through this measure to act as agents of the People. The City shall indemnify the proponents for reasonable expenses and other losses incurred by the proponents, as agents, in defending the validity and/or implementation of the challenged measure. The rate of indemnification shall be no more than the amount it would cost the City to perform the defense itself.



## CITY OF MORRO BAY

CITY HALL

595 Harbor Street  
Morro Bay, CA 93442

April 4, 2022

I, Dana Swanson, City Clerk of the City of Morro Bay, County of San Luis Obispo, State of California, hereby certify:

That the petition entitled "INITIATIVE MEASURE TO FUND CITY OF MORRO BAY HARBOR INFRASTRUCTURE THROUGH \$120 SPECIAL PARCEL TAX WITH REVENUES USED ONLY AND EXCLUSIVELY FOR MAINTENANCE AND IMPROVEMENTS TO CITY OF MORRO BAY OWNED HARBOR FACILITIES" was filed with the City Clerk's office on March 10, 2022;

That said petition consists of 121 sections;

That each section contains signatures purporting to be signatures of qualified electors of the City of Morro Bay, California;

That said petition, at the time it was filed, included affidavits purporting to be affidavits of the persons who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her own information and belief, each signature to that section was the genuine signature of the person whose name it purports to be;

That after proponents filed this petition, based on the County of San Luis Obispo Registrar of Voters' Signature Verification Certificate, and in compliance with the California Elections Code, I have determined the following facts regarding this petition:

1. Total number of signatures filed by proponent raw count: 1,092
2. Total number of signatures verified as sufficient: 1,047
3. Number of signatures found insufficient (non-duplicate): 41
4. Number of signatures found insufficient because of duplication: 4
5. Total number of signatures required to qualify (10% of 8,268 registered voters): 827

Based on the above, the petition is deemed to be sufficient.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Morro Bay this 4<sup>th</sup> day of April 2022.

Dana Swanson, City Clerk  
City of Morro Bay

**ORDINANCE NO. 650**

**AN ORDINANCE OF THE PEOPLE  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
ADDING CHAPTER 3.27 “MORRO BAY HARBOR INFRASTRUCTURE ACT OF 2022”  
TO TITLE 3 OF THE MORRO BAY MUNICIPAL CODE**

**WHEREAS**, on March 10, 2022, an initiative petition entitled “Initiative Measure To Fund City Of Morro Bay Harbor Infrastructure Through \$120 Special Parcel Tax With Revenues Used Only And Exclusively For Maintenance And Improvements To City Of Morro Bay Owned Harbor Facilities” (initiative petition) was presented to the City Clerk for filing; and

**WHEREAS**, the initiative petition adds the “Morro Bay Harbor Infrastructure Act of 2022” to Chapter 3.27 of the Morro Bay Municipal Code to fund preventative maintenance and capital improvements for the City of Morro Bay harbor infrastructure through an annual special parcel tax of \$120, adjusted for inflation, on all Parcels of Taxable Real Property in the City starting in 2023-24 tax year; and

**WHEREAS**, Elections Code section 9215 provides in part that an initiative petition qualifies if it “is signed by not less than 10 percent of the voters of the city,” and as of the August 30, 2021, voter registration report to the Secretary of State, there were 8,268 registered voters in the City of Morro Bay; and

**WHEREAS**, pursuant to Elections Code section 9210, the initiative petition was examined by the City Clerk and it was determined the number of signatures prima facie, was in excess of 10% (827) of the registered voters of the City, and the petition was accepted for filing; and

**WHEREAS**, the City Clerk’s office coordinated with the County Registrar of Voters to examine signatures and, in accordance with Election Code sections 9114-9115, the initiative petition was determined to contain 1,047 valid signatures and deemed sufficient on April 4, 2022; and

**WHEREAS**, Elections Code section 9215 provides in part that when a city council is presented with a qualified petition, the Council shall do one of the following: (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented; or, (b) Submit the ordinance, without alteration, to the voters pursuant to Election Code section 1405; or, (c) Order a report pursuant to Election Code section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to option (b) above; and

**WHEREAS**, The California Constitution in Article XIIC (Voter Approval for Local Tax Levies) precludes the City Council from exercising the first option under Election Code section 9215 of adopting the ordinance, because the City Council cannot pursuant to the California Constitution adopt a proposed tax ordinance without voter approval; and

**WHEREAS**, consistent with the law requires the City Council to choose one of the options provided by Election Code section 9215, and the first option under the election codes of adopting the ordinance - without voter approval - is not available pursuant to the California Constitution, the City Council decided to submit the ordinance, without alteration, to the voters; and

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF MORRO BAY, CALIFORNIA FIND AND ORDAIN AS FOLLOWS:**

**SECTION 1. RECITALS.** The recitals set forth above are all true and correct and are incorporated herein by this reference.

**SECTION 2. CODE AMENDMENT.** A new Chapter 3.27 "Morro Bay Harbor Infrastructure Act of 2022" is added to Title 3 (Revenue and Finance) of the Morro Bay Municipal Code, to read as follows:

**Section 1. Title.**

This measure shall be known and may be cited as the " Morro Bay Harbor Infrastructure Act of 2022."

**Chapter 3.27 of the Morro Bay Municipal Code is hereby added to read as follows:**

**ARTICLE 3.27 MORRO BAY HARBOR INFRASTRUCTURE ACT**

**3.27.010. PURPOSE AND FINDINGS.**

This chapter is intended to achieve the following purposes, among others, and the provisions hereof shall be interpreted in order to accomplish such purposes and the voters of the City of Morro Bay make the following findings and resolve:

- A. The voters of the City of Morro Bay ("City") are committed to supporting the Morro Bay Harbor ("Harbor ") in its mission to provide preventative maintenance and capital improvement to City Harbor facilities; and
- B. The voters of the City of Morro Bay, our businesses, our commercial fishing industry and our tourism guests all benefit from a well-maintained and user-safe Harbor infrastructure; and
- C. The operations of the Harbor Department are funded from Tidelands Trust lease site revenues, those revenues are insufficient to fund harbor infrastructure needs; and
- D. Funding is necessary due to the inability of the City of Morro Bay's General Fund to provide revenue for critical Harbor major maintenance and capital improvement projects (the City's General Fund is used to support other City services such as public safety, streets, parks, and recreation); and
- E. Funding is needed for maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City owned properties including public restrooms

along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures; and

- F. Revenue from the proposed parcel tax would not be applied to City employee salaries or benefits. All revenue from the special Tax shall be used solely for purposes related to the maintenance of and improvements of City owned harbor related infrastructure; and
- G. Currently, the unfunded revenue needed maintenance and improvements to City owned harbor infrastructure is estimated to be in the multi-million dollars; and
- H. The voters of the City are empowered to do something about that by supporting this local funding measure, which will help maintain a high quality and safe harbor in the City of Morro Bay ("City") the City shall collect and authorized to appropriate, as specified below, an annual \$120 parcel tax, adjusted for inflation, raising approximately \$ 680,000 annually. None of the proceeds from this measure shall be used for City employee salaries or benefits.
- I. Pursuant to the California Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, that Section 4 of Article XIII A and Section 2 of Article XIII C of the California Constitution and Sections 50075, 50076, 50077, 50079 and 53722 et seq. of the California Government Code authorizes the City to have a special tax, upon approval of a majority (more than 50% percent) of the electorate voting on the measure, to levy a qualified special tax for specified purposes as stated herein; and
- J. The voters have successfully conducted a voter signature petition, as required by law, on the question of whether or not to request the City's voters to authorize funding for the purposes identified below.

### **3.27.020. TAX RATE.**

By this parcel tax measure, the City seeks voter approval of a tax that shall be levied on all Parcels of Taxable Real Property in the City at a rate of One Hundred and Twenty Dollars (\$120.00) per parcel ("Parcel Tax Rate") per year. The new level of parcel taxes, as provided in this measure, will be imposed commencing in the 2023-24 tax year, and each year thereafter.

To account for the impact of inflation on the cost of infrastructure and maintaining a high quality and safe Harbor, the Parcel Tax Rate as set forth above, shall be automatically adjusted annually, unless otherwise directed by the City, commencing as of the 2025- 26 tax year, for inflation by the change in the "Consumer Price Index for all Urban Consumers California" published by the U.S. Department of Labor, Bureau of Labor Statistics. In the event this index is no longer published, the City shall adopt a comparable index of general price levels, as it shall reasonably determine.

"Parcel of Taxable Real Property" is defined as any unit of real property in the City that receives a separate tax bill for ad valorem property taxes from the San Luis Obispo Tax Collector's Office, as applicable, depending on parcel location. All property that is otherwise exempt from or upon which no ad valorem property taxes are levied in any year shall also be exempt from the special tax in such year.

If more than one adjacent Assessor parcel constitutes a single parcel under the Subdivision Map Act (California Government Code section 66410 *et seq.*), then the parcel will be treated as a single Parcel of Taxable Real Property for purposes of the amount of tax due, and a claim for refund may be made by the property owner pursuant to the claim procedures outlined below.

### **3.27.030. TAX ALLOCATIONS, APPROPRIATIONS, AND ACCOUNTABILITY.**

Pursuant to California Constitution Article XIIB and applicable laws, the appropriations limit for the City will be adjusted periodically by the aggregate sum collected by levy of this special tax. Notwithstanding any other provision of law, or this measure, the proceeds of this tax measure shall be allocated and appropriated as follows: to fund maintenance of and improvements to City owned harbor related infrastructure, including but not limited to: City owned properties including public restrooms along the waterfront; docks; piers; sea walls; revetments; the Tidelands Park launch ramp, the Harbor Walk and City owned harbor structures.

The proceeds of the special tax shall be applied only to the specific purposes identified above. The proceeds of the special tax shall be deposited into a fund, which shall be kept separate and apart from other funds of the City. No later than January 1 of each year while the tax is in effect, the City shall prepare a report detailing the amount of funds collected and expended, and the status of any project authorized to be funded by this measure.

In addition, an independent Citizen's Oversight Committee shall be appointed by the City Council to ensure that the special tax proceeds collected pursuant to this measure are spent for their authorized purposes, and to report annually to the City Council and to the public regarding the expenditure of such funds at a noticed public hearing.

### **3.27.040. LEGAL AUTHORITY.**

- A. **Severability.** The voters hereby declare, and a majority of the voters approving this measure concur, that every section and part of this measure has independent value, and the City and the voters would have adopted each provision hereof regardless of every other provision hereof. Upon approval of this measure by the voters, should any part of the measure or taxing formula be found by a court of competent jurisdiction to be invalid for any reason, all remaining parts of the measure or taxing formula hereof shall remain in full force and effect to the fullest extent allowed by law.
- B. **Protection of Funding.** Current law forbids any decrease in State or Federal funding to the City because of the City's adoption of a parcel tax. However, if any such funds are reduced because of the adoption of this parcel tax, then the amount of the special taxes will be reduced annually as necessary in order to restore such State or Federal funding.
- C. **Vote Requirement.** The voters hereby declare that in accordance with the California Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, that Section 4 of Article XIII A and Section 2 of Article XIII C of the California Constitution and Sections 50075, 50076, 50077, 50079 and 53722 *et seq.* of the California Government Code this citizen initiative special tax shall become effective upon approval of a majority (over 50% percent) of the electorate voting on the measure, to levy a qualified special tax for specified purposes stated above.
- D. **Home Rule.** The authority to pass this measure is derived from the City's home rule powers that are provided in Article XI, sections 7 and 11 of the California Constitution. The

People of the City of Morro Bay declare their intent that this citizen initiative be enacted, and the parcel tax be collected for the entire uninterrupted time period described herein, if this measure is approved by a simple majority of the voters pursuant to the California Supreme Court case of *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924. To the extent that the California Constitution or state law is amended, on the same date as the passage of this measure, or after, to change or create additional voting requirements to implement or to continue to implement this measure, the People of the City of Morro Bay declare their intent that such amendments should be applied prospectively only and not apply to, or in any way affect this measure.

E. **Legal Defense.** The People of the City of Morro Bay desire this measure, if approved by the voters and thereafter challenged in court, be defended by the City. The People, by approving this measure, hereby declare that the proponents of this measure have a direct and personal stake in defending this measure from constitutional or statutory challenges to the measure's validity or implementation. In the event the City fails to defend this measure, or the City fails to appeal an adverse judgment against the constitutionality, statutory permissibility or implementation of this measure, in whole or in part, in any court of law, the measure's proponents shall be entitled to assert his, her or their direct personal stake by defending the measure's validity and implementation in any court of law and shall be empowered by the People through this measure to act as agents of the People. The City shall indemnify the proponents for reasonable expenses and other losses incurred by the proponents, as agents, in defending the validity and/or implementation of the challenged measure. The rate of indemnification shall be no more than the amount it would cost the City to perform the defense itself.

**SECTION 3. EFFECTIVE DATE.** Pursuant to Election Code Section 9217, this Ordinance shall be considered as adopted on the date that the City Council declares that the voters of the City of Morro Bay have approved the Ordinance by a vote of no less than a majority of the votes cast by the electors voting on the Measure, and shall go into effect ten (10) days thereafter.

**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.

**SECTION 5. AMENDMENT OR REPEAL ONLY BY VOTERS.** As provided for by California Elections Code section 9217, "No ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance."

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**SECTION 6. EXECUTION.**

The Mayor of the City of Morro Bay is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City of Morro Bay by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED and APPROVED and ADOPTED by the People of the City of Morro Bay, California voting on the \_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**RESOLUTION NO. 34-22**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION  
TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, FOR THE SUBMISSION OF ORDINANCE  
NO 650 TO THE QUALIFIED VOTERS OF THE CITY AS A PROPOSED MEASURE;  
AND, REQUESTING THE BOARD OF SUPERVISORS OF SAN LUIS OBISPO COUNTY  
TO CONSOLIDATE SAID ELECTION WITH THE STATEWIDE GENERAL ELECTION  
TO BE HELD IN THE COUNTY ON TUESDAY, NOVEMBER 8, 2022 PURSUANT TO  
SECTION 10403 OF THE ELECTION CODE; AND, OTHER ELECTION MATTERS  
AS REQUIRED BY LAW**

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

**WHEREAS**, the City Council of the City of Morro Bay, under the provisions of the laws related to general law cities in the State of California, has called for the holding of a General Municipal Election to be held on November 8, 2022 to consider a ballot measure concerning Ordinance No. 650, and further desires that this election be consolidated with the Statewide General Election to be held on the same date; and

**WHEREAS**, pursuant to authority provided by the California Constitution and the State Elections Code, on March 10, 2022, an initiative petition was presented for filing entitled, "Initiative Measure To Fund City Of Morro Bay Harbor Infrastructure Through \$120 Special Parcel Tax With Revenues Used Only And Exclusively For Maintenance And Improvements To City Of Morro Bay Owned Harbor Facilities"; and

**WHEREAS**, Election Code Section 9215 provides in part that an initiative petition qualifies if it "is signed by not less than 10 percent of the voters of the city,"; and

**WHEREAS**, in accordance with Election Code Section 9210, it was determined that the County Clerk's last official report of City of Morro Bay voter registration to the Secretary of State was 8,268 registered voters and that 10% of said registration would require 827 valid signatures to qualify the initiative petition; and

**WHEREAS**, on March 10, 2022, pursuant to the provisions of Election Code section 9210, the initiative petition was examined by the City's Elections Official and it was determined the number of signatures, prima facie, was in excess of the number of signatures required, and the City's Elections Official accepted the petition for filing; and

**WHEREAS**, based on the County of San Luis Obispo Registrar of Voters' Signature Verification Certificate and, in accordance with Election Code Sections 9114 – 9115, the initiative petition was determined to contain 1,047 valid signatures and deemed to be sufficient on April 4, 2022; and

**WHEREAS**, in accordance with Election Code Section 9215, the Elections Official certified the results of the examination to the City Council at the next regular meeting held on April 12, 2022; and

**WHEREAS**, Election Code Section 9215 provides in part that when a city council is presented with a qualified initiative petition, the City Council “shall do one of the following: (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification was presented. (b) Submit the ordinance, without alteration, to the voters pursuant to Section 1405. (c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented.”; and

**WHEREAS**, the City Council desires to have the voters consider this measure at the next statewide general election to be held on November 8, 2022; and

**WHEREAS**, it is desirable that said General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City of Morro Bay the precincts, polling places and election officers of the two elections be the same, and that the County Election Department of the County of San Luis Obispo canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** That pursuant to the requirements of the laws of the State of California relating to General Law Cities, including California Elections Code Sections 306, 9222 and 1301, there is called and ordered to be held in the City of Morro Bay, California, on Tuesday, November 8, 2022, a General Municipal Election for the purpose of submitting to the voters of the City of Morro Bay a ballot measure. Pursuant to Elections Code Section 9222, it is the intent of the City Council the measure be submitted to the voters of Morro Bay at the aforementioned General Election. The full text of the measure is attached hereto and marked as Exhibit A. The San Luis Obispo County Registrar of Voters is requested to print the Full Text of the Measure contained on Exhibit A in the sample ballot pamphlet. As required by Elections Code Section 13247, the abbreviated form of the measure to appear on the ballot is specified below in Section 2. The City Clerk is hereby authorized and directed to make any changes to the text of the proposition or this resolution as required to conform to any requirements of the San Luis Obispo County Registrar of Voters.

**SECTION 2.** That the City Council hereby orders the following measure be submitted to the voters at the aforementioned General Election:

Shall the measure, to exclusively fund City of Morro Bay owned harbor infrastructure (such as docks, piers, Harbor Walk, sea walls, public restrooms, revetments, launch ramps) through preventative maintenance and capital improvements, revenues used only for these purposes and unable to be used for any other purpose, providing approximately \$680,000 annually, through annual \$120 special parcel tax on all parcels of taxable real property, adjusted for inflation, until ended by voters, be adopted?	YES
	NO

**SECTION 3.** That the text of Ordinance No. 650 to be submitted to the voters as a proposed measure is attached as Exhibit “A” to this resolution.

**SECTION 4.** That the ordinance shall not take effect unless and until the ordinance receives the approval of a majority of the votes cast by the qualified voters of the City voting upon the ballot measure on the proposed ordinance at the November 8, 2022 General Municipal Election.

**SECTION 5.** That the vote requirement for the ballot measure to pass is a majority (50% + 1) of the votes cast.

**SECTION 6.** That the ballots to be used at the election shall be in form and content as required by law.

**SECTION 7.** That the City Clerk is authorized, instructed and directed to coordinate with the County of San Luis Obispo Clerk-Recorder to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

**SECTION 8.** That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code Section 10242, except as provided in Section 14401 of the Elections Code of the State of California.

**SECTION 9.** That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding a General Municipal Election consolidated with a Statewide General Election.

**SECTION 10.** That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.

**SECTION 11.** That pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of San Luis Obispo is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 8, 2022, for the purpose of submitting to the voters a ballot measure concerning City of Morro Bay Ordinance No. 650.

**SECTION 12.** That the County Election Department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

**SECTION 13.** That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

**SECTION 14.** That the City of Morro Bay recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs incurred by reason of this consolidation.

**SECTION 15.** That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the County Election Department of the County of San Luis Obispo.

**SECTION 16.** That the City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

**SECTION 17.** That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

**SECTION 18.** That this Resolution is effective on the day of its adoption.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of April 2022 following vote:

AYES:  
NOES:  
ABSENT:

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

ATTEST:

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

**RESOLUTION NO. 35-22**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
SETTING PRIORITIES FOR FILING WRITTEN ARGUMENT(S)  
AND DIRECTING THE CITY ATTORNEY TO PREPARE AN  
IMPARTIAL ANALYSIS, REGARDING THE SUBMISSION  
OF ORDINANCE NO 650 TO THE QUALIFIED VOTERS  
OF THE CITY AS A PROPOSED MEASURE**

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

**WHEREAS**, a General Municipal Election is to be held in the City of Morro Bay, California, on November 8, 2022, at which there will be submitted to the voters a ballot measure to consider adopting Ordinance No 650 adding Chapter 3.27 “Morro Bay Harbor Infrastructure Act of 2022” to Title 3 of the Morro Bay Municipal Code

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1.** That pursuant to Elections Code § 9282, for measures placed on the ballot by petition, the persons filing the initiative petition may file a written argument in favor of the ordinance.

**Section 2.** That pursuant to Elections Code § 9282, for measures placed on the ballot by petition, the City Council may submit an argument against the proposed ordinance, and the City Council hereby authorizes the following Councilmember(s) to prepare a written argument against the foregoing measure:

1. Council Member
2. Council Member

**Section 3.** That in the event that more than one argument for or against the foregoing measure is timely submitted, then consistent with Elections Code § 9282, the City’s elections official shall give preference and priority first, to arguments submitted by member(s) of the City Council, and second, to individual voters, or bona fide associations of citizens, or a combination thereof, in the order set forth at California Elections Code § 9287.

**Section 4.** That in accordance with the requirements of Division 9, Chapter 3, Article 4 of the California Elections Code, all written arguments for or against the foregoing measure: (1) shall not exceed three hundred (300) words in length; (2) shall be filed with the City’s elections official; (3) shall be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of the principal officers who is the author of the argument; and (4) shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. **All written arguments may be changed or withdrawn until and including the date fixed by the City’s elections official,**

being the close of business on **Tuesday, July 22, 2022**, after which time no arguments for or against the foregoing measure may be submitted to the elections official.

**Section 5.** That the City Council hereby directs the City's elections official to transmit a copy of the foregoing measure to the City Attorney. In accordance with California Elections Code § 9280, the City Attorney is hereby directed to prepare an impartial analysis of the measure, not to exceed five hundred (500) words in length, showing the effect of the measure on the existing law and the operation of the measure. The analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the city. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows: "The above statement is an impartial analysis of Ordinance or Measure \_\_\_\_ (letter to be determined by the County Clerk Recorder). If you desire a copy of the ordinance or measure, please call the elections official's office at (805) 772-6205 and a copy will be mailed at no cost to you." The impartial analysis shall be filed by the date set by the City's elections official for the filing of primary arguments.

**Section 6.** That the City's elections official shall cause the City Attorney's Impartial Analysis, and duly selected arguments, to be printed and distributed to voters in accordance with State law regarding same.

**Section 7.** That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. This Resolution shall be effective immediately upon passage and adoption.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Morro Bay, California, at a regular meeting held on the 12th day of April 2022.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

\_\_\_\_\_  
JOHN HEADING, Mayor

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

**RESOLUTION NO. 36-22**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS  
REGARDING THE SUBMISSION OF ORDINANCE NO. 650 TO THE  
QUALIFIED VOTERS OF THE CITY AS A PROPOSED MEASURE**

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

**WHEREAS**, a General Municipal Election is to be held in the City of Morro Bay, California, on November 8, 2022, at which there will be submitted to the voters a ballot measure to consider adopting Ordinance No 650 adding Chapter 3.27 “Morro Bay Harbor Infrastructure Act of 2022” to Title 3 of the Morro Bay Municipal Code”; and

**WHEREAS**, California Elections Code § 9285 authorizes the City Council, by majority vote, to adopt provisions to provide for the filing of rebuttal arguments regarding city measures submitted at municipal election;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1.** That pursuant to Elections Code § 9285, when the City’s elections official has selected the arguments for and against the foregoing measure which will be printed and distributed to the voters, the City’s elections official shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The author or a majority of the authors of an argument relating to the foregoing city measure may prepare and submit a rebuttal argument not to exceed two hundred and fifty (250) words in length. A rebuttal argument may not be signed by more than five (5) authors. The rebuttal arguments shall be filed with the City Clerk not more than ten (10) days after the final date for filing direct arguments. The final date for filing direct arguments is July 22, 2022, and as **such rebuttal arguments shall be filed with the City Clerk no later than the close of business on August 2, 2022**. The rebuttal arguments shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

**Section 2.** That all previous resolutions providing for the filing of rebuttal arguments for city measures are repealed.

**Section 3.** That the provisions of Section 1 of this Resolution shall apply only to the General Municipal Election to be held on November 8, 2022, and shall then be repealed.

**Section 4.** That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. This Resolution shall be effective immediately upon passage and adoption.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Morro Bay, California, at a regular meeting held on the 12<sup>th</sup> day of April 2022.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

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

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

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quorum for a seven-member Committee. This is concerning as we move through the budget cycle. Staff recommends that Council consider reducing the Committee membership from seven to the pre-2016 level of five and direct staff to begin a recruitment to fill the one remaining vacancy.

The Committee provides an annual report to Council on activities funded with the additional general purpose local sales tax monies. Staff believes that for purposes of efficiency and to provide for a more thorough review, the Committee should be authorized to provide its annual report no later than the last day of the eighth month following the end of each City fiscal year. Currently the code requires the report to be provided no later than the last day of the sixth month. Staff believes a more comprehensive review toward or at the end of the year-end close process could be based on audited numbers or as close to final numbers as possible, would be advisable and could be conducted with this additional time. Staff presents the report on prior year expenditures to CFAC prior to the CFAC Chair reporting to Council, which requires additional lead time. Based on this process and timing, staff recommends Council consider allowing an extra two months for the submission of the annual report to Council.

MBMC section 3.26.135 (City amendments) provides “The city council has the right and authority to amend this chapter, to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the city council), in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, pursuant to Section 9217 of the California Elections Code.” Staff believes both of the recommended amendments will further the purposes and intent of the Committee and provide for more efficient administration.

### **CONCLUSION**

Staff recommends the City Council discuss and introduce for first reading by title only, with further reading waived, Ordinance No. 651, An Ordinance of the City Council of the City Of Morro Bay, California, Amending Sections 3.26.120(B) and 3.26.120(E) of the Morro Bay Municipal Code (MBMC) regarding Citizens Oversight Committee Membership and Report Timing.

### **ATTACHMENT**

1. Ordinance No. 651

**ORDINANCE NO. 651**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MORRO BAY, CALIFORNIA, AMENDING  
SECTIONS 3.26.120(B) AND 3.26.120(E)  
OF THE MORRO BAY MUNICIPAL CODE (MBMC) REGARDING  
CITIZENS OVERSIGHT COMMITTEE MEMBERSHIP AND REPORT TIMING**

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

**WHEREAS**, the City of Morro Bay currently has a general transactions and use tax (commonly known as a “sales tax”) pursuant to the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code (commencing with Section 7251) and Chapter 2.3 of Part 1.7 of Division 2 of the Revenue and Taxation Code (commencing with Section 7285.9), with a rate of 1 ½ percent (1.5%), as approved by the voters and established in Chapter 3.26 of the Morro Bay Municipal Code (“MBMC”); and

**WHEREAS**, MBMC Section 3.26.120 currently provides for a seven citizen-member Citizens Oversight Committee which shall semi-annually review revenues and expenditures from the collection of the sales tax imposed by this chapter, and provide an annual report to Council on its findings and conclusions; and

**WHEREAS**, a five citizen-member Citizens Oversight Committee (“Committee”) was established in 2006 following the passage of Measure “Q” which imposed a .5% sales tax; and

**WHEREAS**, in 2016 the City Council adopted Ordinance No. 602 in response to the Committee’s request to increase its membership from five to seven members to assist with additional duties and sub-committee work it had been assigned when acting in the capacity of the Citizens Finance Advisory Committee; and

**WHEREAS**, MBMC section 3.26.135 (City amendments) provides “The city council has the right and authority to amend this chapter, to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the city council), in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, pursuant to Section 9217 of the California Elections Code.”; and

**WHEREAS**, the need for sub-committee work has greatly diminished and the City has been unable to maintain seven active Committee members, this inability to maintain seven active Committee members hinders the purposes and intent of the Committee, and the City Council determines for purposes of efficient administration the Committee membership should be reduced to its original size of five members; and

**WHEREAS**, to provide for a more thorough and complete annual report from the Committee that is based on prior year expenditures after the year-end close is almost or entirely complete, and to allow time for Committee review prior to presentation to the City Council, the City Council determines that for purposes of efficient administration and consistent with the purposes and intent of the Committee, the Committee should be authorized to provide no later than the last day of the eighth month (rather than the sixth month) following the end of each city fiscal year, findings and conclusions to the City Council for review, pursuant to MBMC section 3.26.120(E), so as to provide more time for review; and

**NOW, THEREFORE, the City Council of the City of Morro Bay does ordain as follows:**

**SECTION 1:** The City Council hereby finds that the recitals set forth above are all true and correct and are incorporated herein by this reference.

**SECTION 2:** Subdivision 3.26.120(B) of the MBMC is hereby amended, in its entirety, to read, as follows:

**3.26.120 B.** Committee Membership. The committee shall have five citizen-members appointed by the city council for staggered four-year terms. Appointees shall be residents of the city; however, no member of the committee shall be an elected official. Each unanticipated vacancy shall be filled only for the duration of the unexpired term for that vacancy.

**SECTION 3:** Subdivision 3.26.120(E) of the MBMC is hereby amended, in its entirety, to read, as follows:

**3.26.120 E.** Semi-Annual Report. The committee shall review a semi-annual expense report of the city relative to activities funded with the additional general purpose local sales tax monies. Not later than the last day of the eighth month following the end of each city fiscal year, the committee will present its findings and conclusions to the city council for its review.

**SECTION 4.** 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 5.** This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

**INTRODUCED** at a regular meeting of the City Council of Morro Bay, held on the 12<sup>th</sup> day of April 2022, by motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_.

**PASSED AND ADOPTED** on the \_\_\_ day of \_\_\_\_\_ 2022, by the following vote:

AYES:  
NOES:  
ABSENT:

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CHRIS NEUMEYER, City Attorney

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

I, Dana Swanson, City Clerk for the City of Morro Bay, California, do hereby certify that the foregoing Ordinance No. 651 was duly passed and adopted by the City Council of the City of Morro Bay at the regular meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_ 2022, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- 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 \_\_\_\_\_, 2022.

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

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AGENDA NO: C-3

MEETING DATE: April 12, 2022

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** April 12, 2022

**FROM:** Scott Collins, City Manager  
Daniel McCrain, Fire Chief

**SUBJECT:** LICENSE AGREEMENT WITH PG&E FOR USE OF MORRO BAY COMMUNITY CENTER PARKING LOT FOR PSPS EVENTS

## **RECOMMENDATION**

Authorize the City Manager and Fire Chief to sign the License Agreement with Pacific Gas and Electric (PG&E) for the use of the Morro Bay Community Center parking lot to establish an Outdoor Community Resource Center (CRC) in the event of a Public Safety Power Shut-off (PSPS) event.

## **ALTERNATIVES**

1. Direct staff to identify an alternate location suitable to establish the CRC.
2. Take No Action.

## **FISCAL IMPACT**

No identified fiscal impact beyond staff time required to review contract, prepare staff report, and otherwise provide minor administrative services associated with any needed emergency use of the CRC.

## **BACKGROUND**

PG&E has instituted a program designed to mitigate the risks of wildfire when weather forecasts are predicting dry, windy conditions combined with a high fire risk. This program is known as a Public Safety Power Shut-off (PSPS) event. When these PSPS events are identified, PG&E will turn off power distribution to specific areas to prevent electrical distribution equipment from igniting a fire. To lessen the impacts of these events on community members, PG&E created a program to set up Community Resource Centers (CRCs) in affected areas. These CRCs provide an area that community members have access to for ADA-accessible restrooms and hand washing stations, medical equipment, charging stations, device charging, Wi-Fi, access to drinking water and snacks. PG&E has requested a license agreement to use the parking lot of the Morro Bay Community Center located at 1001 Kennedy Way as a pre-designated location to establish a CRC in the event a PSPS

Prepared By: DM

Dept Review:

City Manager Review: SC

City Attorney Review: LNL

event is initiated affecting Morro Bay.

## **DISCUSSION**

Since PSPS events are planned based on forecasted weather, PG&E shall provide at least eight (8) hours notification to the City that a CRC will need to be established. In the event the Community Center is not available for utilization for this purpose, the City must notify PG&E within four (4) hours after receipt of PG&E's notice. PG&E requests use of the facility for 1-2 days before initiation of the PSPS to set up and 1 day after restoration of electrical service to demobilize, with potential length of use anticipated to be 2 to 7 days. PG&E would supply on site security guards, all required supplies and equipment, and proof of self-insurance. Notification of a PSPS initiating event by PG&E will include:

- Estimated start time of a potential event.
- Forecasted weather duration.
- Estimated time range to full restoration.
- Number of medical baseline customers in the affected area.
- Maps that include boundaries of the area subject to de-energization and affected circuits will be posted at [www.pge.com/pspsportal](http://www.pge.com/pspsportal)

The City of Morro Bay Emergency Management Plan Annex K (Plan) outlines the City's response to electrical PSPS events for continuity of operations. Within this Plan, section 4.1 (Management Objectives) subsection (h), states: "If needed due to weather or longevity of power shut-off, ensure that Resource Centers are identified and can be supported". The license agreement now proposed supports that management objective by pre-identifying the location for a CRC, ensuring liability concerns are mitigated, and the process for implementation is outlined.

## **CONCLUSION**

PSPS events have become a frequently utilized method of mitigating fire risk in California. Continued drought and changing weather conditions, coupled with development into wildland areas, has necessitated additional measures to limit ignition sources in hopes of preventing future catastrophic wildfires as seen in recent history. The establishment of CRCs is a way for PG&E to lessen the impacts of a PSPS event on their customers by providing access to water and restroom facilities and access to generator power to charge medical equipment, and personal devices.

## **ATTACHMENTS**

1. PG&E License Agreement
2. Staff Presentation

**LICENSE AGREEMENT**  
**(PUBLIC SAFETY POWER SHUTOFF)**

This License Agreement ("**License Agreement**") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2022 (the "**Effective Date**") by City of Morro Bay 964, hereinafter called "**LICENSOR**," and PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called "**PG&E**." PG&E and LICENSOR are sometimes hereinafter each singularly referred to as "PARTY" and collectively as "PARTIES".

R E C I T A L S:

A. LICENSOR owns that certain real property commonly known as Morro Bay Community Center, located at 1001 Kennedy Way, Assessor's Parcel Number 066-280-023, hereinafter called the "**Property**," located in the City of Morro Bay, County of San Luis Obispo, State of California.

B. PG&E desires to partner with LICENSOR in connection with a Public Safety Power Shutoff Event ("**PSPS Event**") as defined in Section 3 below, and to that end PG&E is required to secure this License Agreement for access to a portion of the Property.

C. The PARTIES desire to memorialize this mutual understanding and agreement for making the Property available to PG&E in connection with a PSPS Event

NOW, THEREFORE, for good and valuable consideration, LICENSOR and PG&E agree as follows:

1. License Area. The portion of the Property that is the subject of this License Agreement is more specifically described in **EXHIBIT A** (the "**License Area**").

2. Grant of License. Subject to the terms and conditions set forth in this License Agreement, LICENSOR grants PG&E, PG&E's Representatives, and PG&E's customers, a non-transferrable, right to use the License Area in connection with a PSPS Event, together with rights of ingress and egress to and from the License Area. PG&E shall give LICENSOR at least 8 hours' prior written notice (or if written notice is not reasonably possible at the time, then such notice as may be reasonably issued) of the date and time that PG&E needs to access and use the License Area. If the License Area is not available for access and use by PG&E on the date and time specified in PG&E's notice (e.g., the License Area was previously scheduled or reserved for another use, in which case PG&E may only use the License Area to the extent that such use does not interfere with the previously scheduled or planned use, and provided that LICENSOR's representatives may enter the License Area at any time to inspect PG&E's activities), LICENSOR must so notify PG&E within 4 hours after receipt of PG&E's notice if PG&E's notice is given during regular business hours.

3. Use of License Area. During Use Days (as defined in Section 4 below), PG&E and its employees, contractors, agents, and representatives ("**PG&E's Representatives**") may enter the License Area at reasonable times for purposes of establishing and operating a customer resource center in the case of a PSPS Event. LICENSOR acknowledges that PG&E's activities may include the following: setting up tents with tables and seating where PG&E customers can

obtain water and snacks, charge phones, and get up-to-date information on outages; installing trailers, portable toilets, portable back-up generators, and temporary fencing; parking mobile vehicle units and other vehicles. For purposes of this License Agreement, a "**PSPS Event**" means the existence of one or more environmental conditions creating extreme fire danger that results in, or necessitates, the shutoff of power for public safety. Examples of PSPS Events include red flag warnings issued by the United States National Weather Service, low humidity levels, high winds, and dry vegetation that poses an imminent or severe threat of power shut-off.

(a) Personnel. During Use Days PG&E shall have the exclusive right to use the License Area, up to twenty-four (24) cumulative hours per day immediately before, during and after a PSPS Event; otherwise, the license herein is non-exclusive in nature. Hours for use to PG&E customers shall be from 8:00 am to 10:00 pm. on Use Days, the License Area shall be fully staffed by PG&E and its representatives, at PG&E's sole cost and expense. PG&E shall provide uniformed unarmed security at its cost and expense to ensure the protection of its equipment, the safety of the public and to prevent any damage to the Property.

4. Term. This License Agreement shall be for a term of one (1) year, commencing on \_\_\_\_\_, 2022 (the "**Commencement Date**"), and expiring May \_\_, 2022 (the "**Termination Date**"). The license granted herein shall be revocable at the option of either LICENSOR or PG&E, provided that the revoking party provides at least one hundred eighty (180) days' written notice of the revocation to the other party, provided that LICENSOR may revoke this License Agreement immediately if PG&E's activities hereunder create a threat to health and safety or damage to the Property, as reasonably determined by LICENSOR, or if PG&E fails to cure a breach of this License Agreement within the time specified in a written notice from LICENSOR to PG&E describing the breach and a time period within which to cure the breach. Notwithstanding the term of this License Agreement, PG&E anticipates that it will use the License Area on an occasional basis, if at all, for periods of two (2) to ten (10) days at a time. The days (including any partial days) during which any of PG&E's activities are occurring in or on the License Area are referred to herein as "**Use Days**."

5. Use of License Area.

(a) As Is. To LICENSOR'S current actual knowledge, the Property complies with all laws, including the Americans with Disabilities Act and other accessibility laws. PG&E accepts the License Area "AS-IS," "WHERE-IS" and "WITH ALL-FAULTS," subject to all applicable zoning, municipal, county and state laws, ordinances, and regulations governing and regulating the use of the License Area. PG&E may request LICENSOR to perform alterations, repairs, or improvements to the License Area, but PG&E understands and agrees that LICENSOR shall not be obligated to make any such alterations, repairs or improvements at any time.

(b) Restoration. PG&E shall exercise reasonable care in the conduct of PG&E's activities in the License Area. Upon PG&E's ceasing to use the License Area in connection with a particular PSPS Event, PG&E shall remove all vehicles and personal property of PG&E and PG&E's Representatives, remove all debris and waste material resulting from PG&E's activities, and repair and restore the License Area as nearly as possible to the condition

that existed prior to PG&E's entry thereto, minus normal wear and tear, within the twenty-four (24) hour period commencing from the start of the PSPS Event.

(c) Water Discharge. PG&E's activities may require potable water-filled equipment, such as barrels or water barriers to weigh down tents or other equipment, or to delineate outside areas on the Property. All potable water-filled equipment shall be cleaned prior to use and filled with water from a potable water source only. Any water discharged from the water-filled equipment shall be discharged to onsite unpaved land (i.e., soil) only. PG&E and PG&E's representatives shall ensure best management practices are implemented including but not limited to ensuring water is observed for any potential sediments, trash or other contaminants; the discharge area selected is 100 feet from a water body; and the discharge is done to avoid ponding and erosion. If the water needs to be discharged to a storm drain, PG&E will obtain local stormwater agency approval. This License Agreement authorizes the discharge of potable water from water-filled equipment on to the Property as described above. PG&E shall notify LICENSOR if water discharge is necessary.

(d) Safe Condition. PG&E, at PG&E's sole cost and expense, shall maintain the License Area in a good, clean, safe and sanitary condition during Use Days.

(e) Lawful Use Only. PG&E shall not use the License Area (or Property) or permit anything to be done in or about the License Area (including Property) during Use Days that will in any way conflict with any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirement relating to the use or occupancy of the License Area. During Use Days, PG&E shall not allow the License Area or Property to be used for any unlawful or objectionable purpose, nor shall PG&E cause, maintain or permit any nuisance in, on or about the License Area or Property.

(f) Mechanic's Liens. PG&E shall keep the Property free and clear of all mechanic's liens arising, or alleged to arise, in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by PG&E or at PG&E's request or for PG&E's benefit. If any mechanic's liens are placed on the Property in connection with PG&E's use or PG&E's activities, PG&E shall diligently pursue all necessary actions to remove such liens from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 8424 or any successor statute.

6. Notices. All notices under this License Agreement shall be sent by email to the addresses set forth in **EXHIBIT B**. In addition, LICENSOR will provide PG&E with telephone or cellphone numbers of staff in calling order to contact in an emergency as set forth in **EXHIBIT B**. **EXHIBIT B** shall be updated as needed to reflect current names and contact information.

7. Indemnity. PG&E shall indemnify, defend and hold harmless LICENSOR and its governing body, officers, agents, and employees from and against all claims, losses, actions, demands, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees and court costs) (collectively, "**Claims**") which arise from or are connected with PG&E's activities hereunder, or the entry on, occupancy or use of, the Property by PG&E or PG&E's Representatives under this License Agreement, including, but not limited to, Claims arising out

of (i) injury to or death of persons, including, but not limited to, employees of LICENSOR or PG&E; (ii) injury to property or other interest of LICENSOR and (iii) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances by PG&E or PG&E's Representatives. The indemnification obligations of PG&E under this Section 7 shall survive the expiration or earlier termination of this License Agreement.

8. PG&E acknowledges all Claims arising out of or in any way connected with releases or discharges of a Hazardous Substance (defined below) occurring as a result of or in connection with PG&E's use or occupancy of the Property pursuant to this License Agreement, then any and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any laws relating to the environment or human health, are expressly within the scope of the indemnity set forth above. For purposes hereof, the term "**Hazardous Substances**" means any hazardous or toxic material or waste which is or becomes regulated by State or Federal agencies as "hazardous" or "toxic" as relating to the protection of human health or the environment, including, but not limited to, laws, requirements and regulations pertaining to reporting, licensing, permitting, investigating and remediating emissions, discharges, releases or threatened releases of such substances into the air, surface water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of such substances. Insurance. PG&E shall at all times during the Term of this License Agreement self-insure for PG&E's activities pursuant to this License Agreement in accordance with **EXHIBIT C**.

9. Miscellaneous.

(a) Governing Law. This License Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California.

(b) Attorneys' Fees. Should either party bring an action against the other party, by reason of or alleging the failure of the other party with respect to any or all of its obligations hereunder, whether for declaratory or other relief, and including any appeal thereof, then the party which prevails in such action shall be entitled to its reasonable attorneys' fees and expenses related to such action, in addition to all other recovery or relief.

(c) No Waiver. Any waiver with respect to any provision of this License Agreement shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver of any provision of this License Agreement by a party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this License Agreement.

(d) Counterparts. This License Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

(e) Authority. Each party to this License Agreement warrants to the other that it has the right and authority to enter into and to perform its obligations under this License

Agreement, without the consent of any third party, and that the person signing below is authorized to bind such party.

(f) Exhibits. Exhibits A, B, and C attached to this License Agreement are a part hereof and incorporated herein by this reference.

(g) Electronic Signatures. This License Agreement may be executed by electronic signatures (e.g., using DocuSign or e-SignLive) or signatures transmitted in portable document format ("pdf"), and copies of this License Agreement executed and delivered by means of electronic or pdf signatures shall have the same force and effect as copies hereof executed and delivered with original manually executed signatures. The parties may rely upon electronic and pdf signatures as if such signatures were manually executed originals and agree that an electronic or pdf signature page may be introduced into evidence in any proceeding arising out of or related to this License Agreement as if it were an original manually executed signature page.

(h) Successors and Assigns. This License Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of each party.

(i) No Assignment or Transfer: PG&E shall not assign any of its rights or obligations under this License Agreement without the written consent of LICENSOR. Any unauthorized transfer or assignment is void.

(j) Entire Agreement. This License Agreement supersedes all previous oral and written agreements between and representations by or on behalf of the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This License Agreement may not be amended, except by a written agreement executed by both parties.

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the date set forth below each signature, effective upon the Effective Date first written above.

"PG&E"

"LICENSOR"

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

City of Morro Bay 964

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Scott Collins

Its: \_\_\_\_\_

Its: City Manager and Emergency Service Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Daniel McCrain

Its: Fire Chief and Deputy Emergency  
Service Director

Date: \_\_\_\_\_

**EXHIBIT A**

**Yellow: License Area (1,990 sq ft)**  
**Blue: Parking**



**EXHIBIT B**

**NOTICES**

**TO LICENSOR:**

Any notice to Licensor, including the notice to be given pursuant to Section 7 of the License Agreement, shall be sent to Daniel McCrain at the following:

Email address: dmccrain@morrobayca.gov Phone Number: 805-772-6242

In addition, in the event of an emergency, PG&E shall contact the following persons in the order set forth below:

Daniel McCrain Phone (work): 805-772-6242

Phone (cell): 805-635-5216

Scott Collins Phone (work): 805-772-6206

Phone (cell): 805-440-2546

Email: scollins@morrobayca.gov

Weekends and After Hours: 805-440-4544

**TO PG&E:**

Any notice to PG&E, including the notice pursuant to Section 7 of the License Agreement shall be sent to Samantha Tan at the following email address:

Samantha.Tan@pge.com, cc'ing [CRCHelp@pge.com](mailto:CRCHelp@pge.com).

EXHIBIT C



EORM & Insurance Department  
245 Market Street / N4S  
4<sup>th</sup> Floor  
San Francisco, CA 94105

STATEMENT OF SELF-INSURANCE PROGRAM

April 1, 2021

**Issued to:** Whom it May Concern

**Re:** Insurance requirements for Pacific Gas and Electric Company (PG&E) to use property for the purposes of establishing and operating a Community Resource Center in the case of a Public Safety Power Shutoff Event (PSPS).

This letter certifies PG&E is insured under a major risk management program with large self-insured retentions. The program provides coverage for the insurance types and limits reflected in the agreement which includes:

- Commercial General Liability: \$5,000,000 each occurrence / \$10,000,000 aggregate
- Employer's Liability: \$1,000,000 each accident
- Business Auto Liability: \$1,000,000 each accident

Further, PG&E has qualified as a self-insurer under the laws of the State of California with respect to Workers' Compensation. Our identification number for this purpose is 2-0012-01-099.

\*Please note a certificate of insurance is not applicable when an entity is self-insured, such as PG&E.

*Stephen J Cairns*

Stephen Cairns  
Vice President and Chief Audit Officer



SI Certification Letter  
File: PGE-248.01

# Public Safety Power Shutoff Agreement

Cooperative use agreement between  
PG&E and the City of Morro Bay

# What is a Public Safety Power Shutoff (PSPS)





- After the devastating wildfires in 2017 and 2018 PG&E implemented a program to shut off power lines proactively based on fire danger forecasts.

How is a PSPS determined?

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**Low Humidity Levels**-generally 30% or below

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**High Winds**-forecasted above 20mph

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**Dry Fuel Conditions**

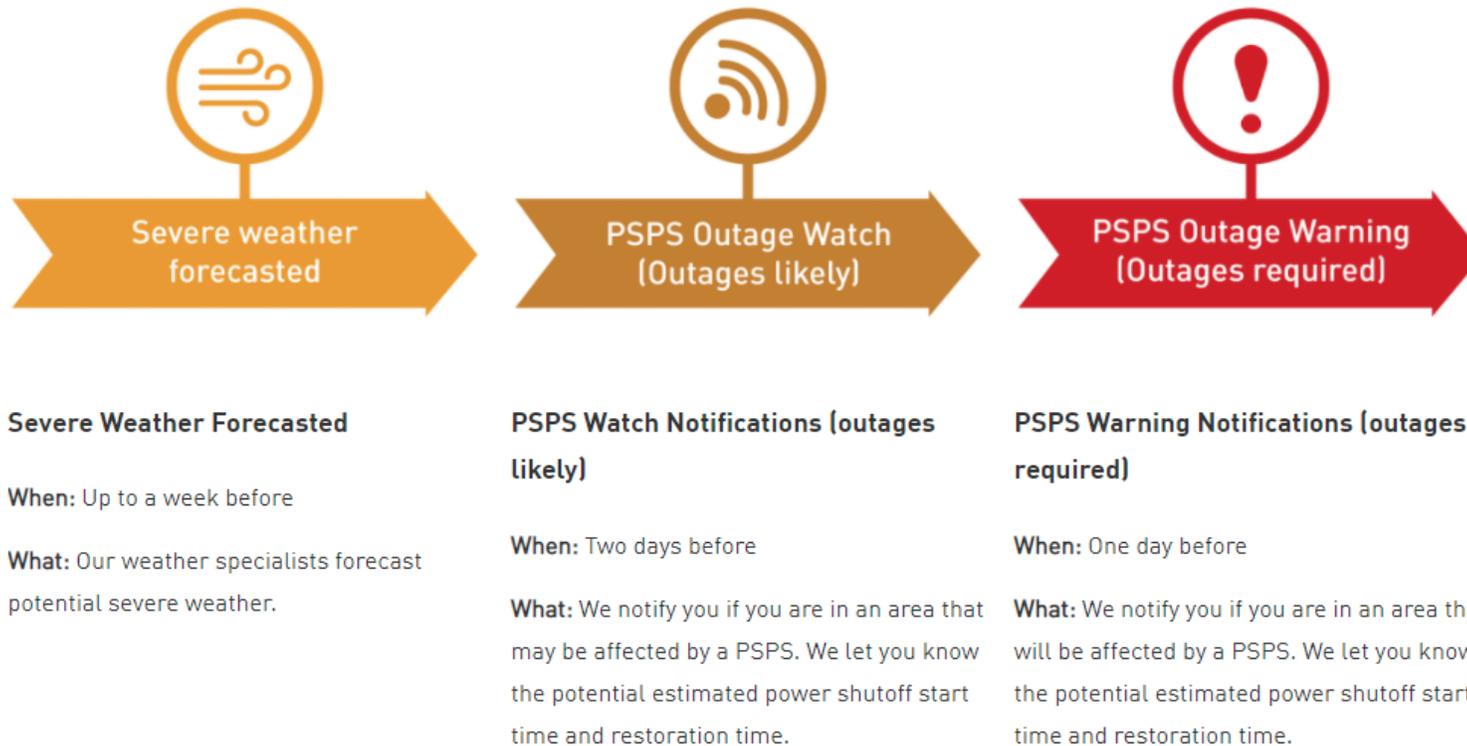
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**Red Flag Warning**-issued by National Weather Service

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**Observations**- real-time, on the ground observations about hazards

# Timeline of a PSPS event



# Timeline of a PSPS event



## Power Shutoff

**When:** During severe weather

**What:** Power is shut off to affected areas to prevent wildfire.

## Inspections and repairs

**When:** After weather has improved

**What:** Our crews inspect electric lines to restore power to affected communities as quickly and safely as possible. We notify you daily about the estimated time of power restoration through notifications, social media, local news, radio and our website.

## PSPS Power Restored

**When:** Within 24 hours after severe weather has passed

**What:** Power is restored to affected communities.

[Learn more in the "PSPS Restoration" video.](#)

How can the  
City of Morro  
Bay reduce  
the impacts  
of a PSPS  
event?

- PG&E has requested a partnership with the City of Morro Bay to utilize the Community Center parking lot to establish a Community Resource Center during a PSPS event.

# City of Morro Bay Emergency Management Plan

- Annex K –Electrical Power Shutoff
- Provides an outline of actions to take during PSPS
- Section 3.4 subsection a. “Pre-identified resource centers should be considered for use in providing resources and limited shelter to displaced individuals during an extended outage”.
- Section 11.1- **Funding PSPS Events** – “The City of Morro Bay has limited resources to address a major power outage for consecutive days and the community must recognize the logistical costs to support a PSPS could be substantial to the City”.

# What is a Community Resource Center?

An ADA accessible area with restrooms and hand washing stations.

Medical and personal device charging stations.

Wi-Fi access.

Access to drinking water and snacks

Up to date information about the PSPS

Area for shade and or cooling as needed

# Sprinter/Trailer CRC Sample Lay Out



A	B	Trailer				Both Signs to be placed on						C

All signs are Mounted on Plastic A Frames

# Proposed Area

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- 1001 Kennedy Way- Morro Bay Community Center
- Yellow line- CRC area for community access
- Blue line- parking for equipment to support CRC



# Duration of use and what PG&E provides.



PG&E anticipates use of property 2-7 days.



1-2 days before PSPS event to set up.



1 day after PSPS event to clean up.



PG&E supplies on site security, All required supplies and equipment, proof of self insurance.

# Cost of agreement to the City of Morro Bay



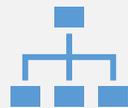
No direct fiscal impact.



No use of Community Center parking lot for City needs during PSPS event.



May impact planned events at Community Center.



Staff time coordinating with PG&E

# Summary

- PG&E would provide at least 8 hours notification to City staff.
- City has 4 hours to agree or reject request. May provide alternate location to PG&E.
- Lessens impact of PSPS event on citizens of Morro Bay by providing access to electrical service.
- Agreement is inline with the Morro Bay Emergency Management Plan annex K “Electrical Power Shut Off “ guidelines.

Questions?