



CITY OF MORRO BAY CITY COUNCIL AGENDA

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

Regular Meeting Tuesday, December 12, 2023 – 5:30 P.M. Veterans Memorial Hall 209 Surf St., Morro Bay, CA

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 prior to the meeting. Agenda Correspondence received at 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

PRESENTATIONS

- Morro Bay in Bloom 10-year Anniversary 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.

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

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

A. CONSENT AGENDA

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

A-1 APPROVAL OF MINUTES FOR THE NOVEMBER 14, 2023, SPECIAL JOINT CITY COUNCIL/PUBLIC WORKS ADVISORY BOARD MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE NOVEMBER 15, 2023, SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-3 WINTER STORM PREPAREDNESS REPORT; (CITY MANAGER)

RECOMMENDATION: Staff recommends the City Council receive report.

A-4 SECOND READING OF ORDINANCE NO. 661: ADOPTION OF OBJECTIVE DESIGN STANDARDS (ODS) TO BE ADDED AS CHAPTER 17.31 OF THE ZONING CODE; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Ordinance No. 661 by second reading, "An Ordinance of the City Council of the City of Morro Bay, California for adoption of Objective Design Standards for inclusion as Chapter 17.31 of the Morro Bay Municipal Code, 'Residential and Mixed-Use Objective Design Standards,' and further to be an amendment to the 2022 Zoning Code with a finding that no further environmental review is required pursuant to State CEQA Guidelines Section 15162."

A-5 SECOND READING OF ORDINANCE NO. 662: ZONING CODE / COASTAL IMPLEMENTATION PLAN (IP) AMENDMENTS TO MORRO BAY MUNICIPAL CODE, TITLE 17 AND ZONING MAP; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Ordinance No. 662 by second reading, "An Ordinance of the City Council of the City of Morro Bay, California, amending the 2022 Zoning Code/Coastal Implementation Plan (IP) Title 17 (Zoning) and the zoning map which includes miscellaneous amendments to all of Division I and Division II and Chapters 17.23, 17.26, 17.27, 17.29, 17.30, 17.36, 17.38, 17.39, 17.42, 17.43, 17.44, 17.53, and 17.54 of the Morro Bay Municipal Code (MBMC)" and direct staff to submit the amended Zoning Code/Coastal Implementation Plan (IP) as an LCP amendment to the Coastal Commission for certification.

A-6 ADOPTION OF ORDINANCE NO. 663, AMENDING THE MORRO BAY MUNICIPAL CODE TO ADD CHAPTER 8.15 PERTAINING TO THE UNAUTHORIZED REMOVAL OF SHOPPING CARTS FROM RETAIL ESTABLISHMENTS AND FACILITATING RETRIEVAL OF ABANDONED SHOPPING CARTS TO TITLE 8 ("HEALTH AND SAFETY"); (POLICE DEPARTMENT/FIRE DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt, by second reading, Ordinance No. 663, "An Ordinance of the City Council of the City of Morro Bay, California, Amending Title 8 ("Health and Safety") of the Morro Bay Municipal Code to add Chapter 8.15 pertaining to the unauthorized removal of shopping carts from retail establishments and to facilitate retrieval of abandoned shopping carts."

A-7 APPROVAL OF LEASE AMENDMENT #3 FOR TLC ENTERPRISES, LEASE SITE 87-88/87W-88W, LOCATED AT 833 EMBARCADERO ROAD; (HARBOR DEPARTMENT)

RECOMMENDATION: Staff recommends Council adopt Resolution No. 75-23 approving Amendment #3 to the lease agreement extending the completion deadline for TLC Enterprises, Lease Sites 87-88/87W-88W.

A-8 FISCAL YEAR (FY) 2022-23 STATUS REPORT ON RECEIPT AND USE OF DEVELOPMENT IMPACT FEES; (ADMINISTRATIVE SERVICES DEPARTMENT)

RECOMMENDATION: Staff recommends the Council adopt Resolution No. 76-23 accepting the Fiscal Year (FY) 2022-23 status report on receipt and use of Development Impact Fees.

- A-9 CONSIDERATION OF APPROVAL OF CONTRACT WITH BUREAU VERITAS TECHNICAL ASSESSMENTS, LLC FOR PERFORMING A FACILITIES CONDITION AND NEEDS ASSESSMENT FOR THE CITY OF MORRO BAY; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council approve and authorize the City Manager to execute a contract in the amount of \$198,408.82 with Bureau Veritas Technical Assessments, LLC (BVTA), for performing a Facilities Condition and Needs Assessment (FCNA) for facilities covered by the general fund for maintenance.

- A-10 AUTHORIZATION FOR ATTENDANCE AT THE C-MANC ANNUAL WASHINGTON, D.C., "WASHINGTON WEEK" MEETINGS; (CITY MANAGER)

RECOMMENDATION: Staff recommends the City Council authorize a three-person delegation consisting of the Mayor, Harbor Director, and City Manager to attend the California Marine Affairs and Navigation Conference (C-MANC) 2024 "Washington Week" meetings in Washington, D.C. slated for February 12 – 16, 2024, and to represent the City's interests in the nation's capital.

- A-11 PROCLAMATION RECOGNIZING AND CELEBRATING 10 YEARS OF COMMUNITY SERVICE BY MORRO BAY IN BLOOM VOLUNTEERS; (ADMINISTRATION)

RECOMMENDATION: Approved as submitted.

B. PUBLIC HEARING ITEMS

- B-1 REVIEW AND ADOPT DRAFT FUNDING RECOMMENDATIONS FOR THE 2024 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council conduct a public hearing to review and adopt Resolution No. 77-23 approving draft funding recommendations for the 2024 Community Development Block Grant (CDBG) funds and forward recommendations to the San Luis Obispo County Board of Supervisors. The funding recommendation is for the two applications received: from 5 Cities Homeless Coalition and City of Morro Bay Public Works Department along with City program administration of \$3,586 for a total funding allocation of \$51,228. Additionally, staff recommends the City Council authorize 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.

C. BUSINESS ITEMS

- C-1 IRONMAN 70.3 MORRO BAY AFTER ACTION REPORT; (POLICE DEPARTMENT)

RECOMMENDATION: Receive and file.

- C-2 FOR MITIGATION OF HARMS TO PUBLIC HEALTH, SAFETY AND WELFARE: ADOPTION OF URGENCY ORDINANCE NO. 664, AND INTRODUCTION OF REGULAR ORDINANCE NO. 665, TO ADD CHAPTER 8.26 TO THE MORRO BAY MUNICIPAL CODE (MBMC) FOR REGULATION OF CAMPING AND STORAGE OF PERSONAL PROPERTY ON PUBLIC PROPERTY; AND, INTRODUCTION OF REGULAR ORDINANCE NO. 666 TO ADD CHAPTER 8.27 TO THE MBMC FOR REGULATION OF OVERNIGHT HUMAN HABITATION OF VEHICLES ON PRIVATE

PROPERTY USED FOR BUSINESS OR NONPROFIT ORGANIZATION OPERATIONS;
(POLICE DEPARTMENT/FIRE DEPARTMENT/CITY ATTORNEY)

RECOMMENDATION:

1. Adoption, by title only and with further reading waived, of Urgency Ordinance No. 664, entitled “An Urgency Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.26 to Title 8 of the Morro Bay Municipal Code Regulating Camping and Storage of Personal Property on Public Property to Mitigate Harm to Public Health, Safety and Welfare”; and
2. Introduction, by title only and with further reading waived, of regular Ordinance No. 665, entitled “An Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.26 to Title 8 of the Morro Bay Municipal Code Regulating Camping and Storage of Personal Property on Public Property to Mitigate Harm to Public Health, Safety and Welfare”; and
3. Introduction, by title only and with further reading waived, of regular Ordinance No. 666, entitled “An Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.27 to Title 8 of the Morro Bay Municipal Code Regulating Overnight Human Habitation of Vehicles on Private Property Used for Business or Nonprofit Organization Operations to Mitigate Harm to Public Health, Safety and Welfare.”
4. Direct staff to subsequently return with budget adjustments required to support the implementation of these ordinances. Eligible funding sources would include General Fund or Measure Q&E funds. Expected initial budget allocation of no less than \$50,000 to begin the cleanup and securing storage containers for the retention of personal property collected during cleanups.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, January 9, 2024 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, 595 HARBOR ST, MORRO BAY, CA 93442 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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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL JOINT CITY COUNCIL AND
PUBLIC WORKS ADVISORY BOARD
MEETING – NOVEMBER 14, 2023
VETERAN'S MEMORIAL HALL – 3:00 P.M.

AGENDA NO: A-1
MEETING DATE: December 12, 2023

PRESENT:	Carla Wixom	Mayor
	Laurel Barton	Council Member
	Cyndee Edwards	Council Member
	Jennifer Ford	Council Member
	Zara Landrum	Council Member

Laurie Beale	Chair
John Erwin	Vice Chair
Ian Gaffney	Board Member
Robert Nava	Board Member
Jan Goldman	Board Member
Doug Hill	Board Member
Joe Ingrassia	Board Member

ABSENT: None

STAFF:	Yvonne Kimball	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Greg Kwolek	Public Works Director
	Damaris Hanson	Utilities Division Manager
	Dan Heimel	Confluence Engineering Solutions
	Dave O'Rourke	Groundwater Solutions Inc. (GSI)

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom established a quorum and called the meeting to order at 3:00 p.m.

PUBLIC COMMENT FOR ITEMS ON THE AGENDA
<https://youtu.be/jZpJhaNyPoc?si=FUe92-y4zjf7dkck&t=324>

Betty Winholtz, Morro Bay, suggested the City slow things down until we know what we want and also consider Chorro Valley as a potential location. She opined the City should not sell its state water allotment and not blend Morro ground water with state water unless it's been through the brackish treatment.

Paul Donnelly, Morro Bay, questioned the minimum number of injection wells, whether the City had met various permit requirements, and status of any necessary easement agreements.

The public comment period was closed.

Mr. Heimel responded to questions raised during public comment.

SPECIAL MEETING AGENDA:

- I. PHASE 1 IMPLEMENTATION STRATEGY RECOMMENDATION FOR THE WRF RECYCLED WATER PROGRAM AND ASSOCIATED CONTRACT AMENDMENTS; (PUBLIC WORKS DEPARTMENT)

<https://youtu.be/jZpJhaNyPoc?si=r7Rv4HSnLZ0i9i6V&t=34> - Introduction

https://youtu.be/jZpJhaNyPoc?si=WeEGKhWs2a_SUxXz&t=1421 – presentation

Public Works Director Kwolek introduced the item and turned it over to Dan Heimel from Confluence Engineering Solutions and Dave O'Rourke from GSI, to present the report.

Mayor Wixom reopened public comment.

<https://youtu.be/jZpJhaNyPoc?si=A4UvYjkULsJxFf3w&t=4225>

Terry Simons, Morro Bay, opposed the approval of contract amendment and suggested the City explore potential for direct potable reuse, use of Chorro Valley water, injection sites in the San Bernardo Creek portion of Morro Valley, and consider a working relationship with the Los Osos water purveyors.

Mayor Wixom closed public comment.

Public Works Advisory Board Chair Beale confirmed a quorum of Board members were present.

MOTION: Council Member Barton moved to:

1. Direct staff to implement a phased approach to the Recycled Water Program and move forward with environmental, permitting and design for an initial phase of the program.
2. Approve Amendment No. 4 to the agreement with Kevin Merk Associates (KMA) for biological services for implementation of the Recycled Water Project for a total amount of \$39,730.00, resulting in a not to exceed amount of \$111,040.00.
3. Approve Amendment No. 8 to the agreement with Far Western Anthropological Research Group (Far Western) for archeological services for implementation of the Recycled Water Project for a total amount of \$184,568.00, resulting in a not to exceed amount of \$1,044,733.01.
4. Approve Amendment No. 1 to the agreement with Rincon Consultants (Rincon) for environmental services for implementation of the Recycled Water Project for a total amount of \$186,999.55, resulting in a not to exceed amount of \$230,531.55.
5. Approve Amendment No. 3 to the agreement with GSI Water Solutions (GSI) for hydrogeological services for implementation of the Recycled Water Project for a total amount of \$230,900.00, resulting in a not to exceed amount of \$1,311,763.00.

The motion was seconded by Council Member Ford for discussion.

Council Member Landrum requested a friendly amendment to allow this after the WRF subcommittee approves a letter prepared by staff to the lending agencies requesting written clarification of the minimum implementation requirements. Council Members Barton and Ford accepted the friendly amendment.

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

ADJOURNMENT

The meeting adjourned at 5:01 p.m.

Recorded by:

Dana Swanson
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
NOVEMBER 15, 2023 – 3:00 P.M.
CITY HALL CONFERENCE ROOM

AGENDA NO: A-2
MEETING DATE: December 12, 2023

PRESENT: Carla Wixom Mayor
Laurel Barton Council Member
Cyndee Edwards Council Member
Jennifer Ford Council Member
Zara Landrum Council Member

ABSENT: None

STAFF: Yvonne Kimball City Manager
Chris Neumeyer City Attorney
Stephen Onstot Special Counsel
John Fox Special Counsel
Ted Schiafone Harbor Director
Scot Graham Community Development Director
Amy Watkins Police Chief
Dan McCrain Fire Chief
Greg Kwolek Public Works Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom called the meeting to order at 3:00 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 Wixom opened public comment for items on the agenda.

Cherisse Hanson, TLC Family Enterprises, Inc., explained the challenges and delays faced during construction and provided a timeline for opening.

Sean Green, Morro Bay, spoke regarding Item CS-1, offering his recommendations for a profitable use of the existing structures.

Paul Gillen, Associated Pacific, provided an overview of his proposed project and public benefits.

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 49/49W and 50-51/50W-51W located at 431/451 Embarcadero
Property Negotiator: Paul Gillen
Agency Negotiators: Ted Schiafone, Harbor Director; Yvonne Kimball, City Manager; Chris Neumeyer, City Attorney
Negotiation: Price and Terms of Payment

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

Property: Lease Sites 87-88/87W-88W, Harborwalk Plaza, 833 Embarcadero
Property Negotiator: Cherise Hansson and Travis Leage, TLC Family Enterprises, Inc.
Agency Negotiators: Ted Schiafone, Harbor Director; Yvonne Kimball, City Manager; Chris Neumeyer, City Attorney
Negotiation: Price and Terms of Payment

CS-3 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code subdivision 54956.9(d)(2); Four Matters

CS-4 CONFERENCE WITH REAL PROPERTY NEGOTIATOR - GOVERNMENT CODE SECTION 54956.8:

Property: APN 066-331-032, -033, and -034; 160 and 180 Atascadero Road and 1700 Embarcadero
Property Negotiator: Cayucos Sanitary District
Agency Negotiators: Greg Kwolek, Public Works Director; Yvonne Kimball, City Manager; Chris Neumeyer, City Attorney
Negotiation: Price and Terms of Payment

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 6:32 p.m.

Recorded by:

Dana Swanson
City Clerk



AGENDA NO: A-3

MEETING DATE: December 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: December 7, 2023

FROM: Yvonne Kimball, City Manager

SUBJECT: Winter Storm Preparedness Report

RECOMMENDATION

Staff recommends the City Council receive report.

ALTERNATIVES

None

FISCAL IMPACT

There is no immediate fiscal impact related to the recommendation; Capital Improvement Project funding related to storm drains is addressed through the annual budget.

BACKGROUND/DISCUSSION

The City and many private properties experienced severe damages during the winter storms in January, February and March 2023. The 2023 Winter storm has resulted in a federal and state declared emergency as its impacts were statewide.

In the wake of last year's events, City staff has been working with FEMA to catalogue damages and awaiting funding for large scale repairs. The City also examined city's overall storm drainage system and identified millions of dollars of projects through the One Water Morro Bay document. Funding will continue to remain a challenge. Additionally, SLO County EMS strengthened disaster communication plan and regional collaboration. At city's request, Caltrans has been working on re-establishing the drainage along Main St. back to Morro Creek by clearing out debris and silt in several areas.

While we work on those higher-level needs and knowing a city-wide infrastructure solution is very costly, the City has put an emphasis on preventative maintenance work. City hired a new maintenance supervisor and senior engineer, which will enable the team to better respond and focus on on-going maintenance of storm drains and one-time small scale culvert improvement work. Since October, the City's maintenance crew has been seen maintaining culverts and drains throughout the city. This effort will make sure water flow easily, prevent road washes and reducing flooding during storms. Public Works has provided a detailed list in the attached memo.

City has also ramped up outreach. Public Works staff meet with some residents, businesses often to look at their particular situations and found a way to help. Public Works Director and his team also reached out to some residents in the mobile home parks by Morro Creek to increase awareness of

Prepared By: YK

Dept Review: _____

City Manager Review: YK

City Attorney Review: _____

living within flood zone locations. In reviewing the 2023 flood events, city staff identified that tide schedules need to be monitored during heavy rain events. In 2023, king tides coincided with heavy storms, which further exasperated already stressed drainage system and resulted in severe flooding. So now in 2024, we consider tide patterns when preparing for potential flooding responses.

Moreover, City's emergency management team which is led by the Fire Chief and practically contains all departments has been meeting a few times to discuss preparations and response plans during a flooding event. City follows the City's Comprehensive Emergency Management Plan in responding to emergencies. The Plan was last updated in July 2021. This Plan provides a road map for emergency responses during flood and other situations. Fire Chief McCrain prepared a memorandum to explain the typical process of flooding response, starting from pre-emergency notifications to evacuation and shelter procedures. See the attached.

It is important that residents and businesses follow information issued by official outlets, such as redyslo.org, county OES website, city social media sites. During an emergency, it is critical to stay calm and follow official orders.

CONCLUSION

The 2023 storm events caused devastating effects. They reminded us that our community is still vulnerable to flood although continued draught was the dominating emergency for many years prior to 2023. The storm events also provided opportunities for private homeowners, businesses, residents and governmental agencies to learn, assess, and become more prepared.

The City is doing the best we practically within our resource constraints to prevent or reduce flooding impacts. Homeowners and business owners should too. Ample information on how to prepare for an emergency can be found on readyslo.org. You can also contact Morro Bay Fire Department for some tips. Be prepared and be safe, everyone.

ATTACHMENTS

1. Emergency preparedness memo by Chief McCrain and Public Works Director Greg Kwolek
2. Evacuation zone press release
3. Public Works press release – winter storm preparedness



MEMORANDUM

TO: Honorable Mayor and City Council **DATE:** December 6, 2023

FROM: Daniel McCrain, Fire Chief
Gregory Kwolek, Public Works Director

SUBJECT: Fire & Public Works Departments Flood Preparedness Report

BACKGROUND

City staff has received inquiries from the public about disaster preparedness efforts in anticipation of winter storms. This report is intended to provide an overview of the City's disaster preparedness efforts, and to provide access to resources for individual disaster preparedness information to the public.

The City of Morro Bay has a Comprehensive Emergency Management Plan that is updated regularly. The latest version was approved by the Morro Bay City Council in October 2020. This Management Plan is the document that is utilized for disaster management coordination in the city. This plan is comprised of multiple parts including the Basic plan, and event specific annexes.

The Basic Plan is divided into seven sections. **Section 1, Introduction** outlines the purpose, objectives, plan organization, persons with functional and access needs, plan coordination, and emergency preparedness. **Section 2, Concept of Operations** includes basic elements of emergency response, mutual aid concepts, and San Luis Obispo County OES information. **Section 3, Hazard Identification and Analysis** defines the 12 different hazard classifications that have procedures in the annex. **Section 4, Continuity of Operations and Reconstitution of Government** provides a plan to ensure the continuity of government operations. This section provides for lines of succession, temporary city seat of government, emergency operations center and vital records. **Section 5, Emergency Management** details the utilization of a standardized emergency management system and incident command system. This section also outlines the department operating center, the city's emergency organization and responsibilities, including emergency operations center positions. **Section 6, Program Maintenance** outlines the disaster council, plan and procedure maintenance, emergency resources maintenance, training and record keeping. **Section 7, Authorities and Reference** defines the legal statutes and requirements from the Local, State, and Federal levels related to emergency management.

There are 12 annex sections dedicated to specific hazards. These annexes provided detailed plans and procedures to guide city staff in the management of disasters. These annexes include, Earthquakes, Hazardous Materials, Multiple Casualty incidents, Floods, Fires, Tsunami, Civil Disturbance, Diablo Canyon Nuclear Power Plant, Terrorism, Adverse Weather, Electrical Power Shut-off Continuity of Operations, and Pandemic Continuity of Operations.

Fire Department Emergency Preparedness

In preparation for any potential disaster that has advanced warning such as severe storms, tsunami, etc., the Morro Bay Fire Department will participate in an Operational Area conference call with the San Luis Obispo County Office of Emergency Services (OES) and other allied agencies. We will be

briefed on all available information and have an opportunity to discuss the steps being taken to prepare for the event, identify any areas of concern and discuss resource needs or actions that need to be taken that may be completed or pre-positioned before the event.

Once advised of severe storms or other potential disasters, the City Executive team will meet either in person or via conference call to discuss the information available and determine what resources are available, areas of concern, potential hazards, any resources needed, and determine what actions need to be taken. Fire Department and Police Department personnel attempt to notify residents in potential flood zones of the upcoming event to allow for time to prepare to evacuate or shelter in place. The unhoused population are notified to move out of potentially hazardous areas and are offered transportation to local shelters. The department utilizes the City [website](#) and social media to distribute information to the public. The Fire Department will pre-position apparatus to ensure that resources are available to all areas of the city if flooding is expected to occur.

In the event an evacuation warning, evacuation order or shelter in place order is necessary, the Fire Department will coordinate with Morro Bay Police Department and San Luis Obispo County OES. These warnings and orders are distributed through multiple formats including reverse 911, wireless emergency alerts, social media, the County OES website, the City website, and Zonehaven/ Genasys mobile application. The most up to date information available on any local disaster can be found on the County OES website readyslo.org.

In the event an evacuation shelter is needed, the city Emergency Operations Center (EOC) will work with the County OES and American Red Cross to establish a shelter. This can be at a facility in Morro Bay such as the Community Center, Veterans Hall or Del Mar Elementary, or at a centralized location such as Cal Poly or the San Luis Obispo Veterans building. In the event the shelter is regionalized, we can create a temporary collection point at a City facility for evacuees and coordinate transportation to the regional shelter. This shelter information will be distributed via press releases, official social media accounts, the City website, and readyslo.org. There are a total of 300 sets of shelter supplies available for distribution in the county. A set includes a cot, bedding and personal hygiene supplies for one individual. We can request a portion of this cache from County OES to be utilized to establish a local evacuation shelter if needed. The location and size of the shelter will be determined based on the impacts of the disaster and anticipated number of impacted individuals.

Public Works Emergency Preparedness

The Public Works Maintenance and Engineering Divisions have been preparing the upcoming winter season over the past year. Maintenance staff is recently conducted a crucial task of inspecting and cleaning all the storm drains. This is an important step to ensure the proper functioning of the drainage system and prevent any potential issues that could arise due to blockages or debris accumulation. The Division has also been taking necessary measures to remove sediment, overgrown vegetation, and debris accumulation from City culverts. In addition, staff has partnered with Caltrans, who has provided valuable assistance in clearing crucial culverts as well as clearing the drainage path leading to Morro Creek on Caltrans right of way. The channel is now free of any obstacles, and a path for stormwater leading to Morro Creek has been restored.

Meanwhile, the Engineering Division has begun and completed several projects to address damages from the last year's floods as well as to assist with drainage. They include:

- Temporary road rehabilitation of Preston Lane (complete)
- Construction of emergency storm drain and sewer line replacement and retaining wall project at Elena Street at Juniper (complete)
- Repair of South Bay to address shoulder of roadway washed out by storms and heavy pavement rehabilitation and dig outs in structurally failed areas (complete)

- Video assessment several critical corrugated metal pipe storm drains to determine condition and prioritization for repair and replacement
- Emergency repair of several failed storm drains and roadways at Embarcadero Road @ Beach Street, Little Morro Creek Road, and Atascadero Road at the beach access trail (complete)
- Submission of grant application for Caltrans Highway Bridge Program for Main Street Bridge to address scouring of existing structure and mitigation or possible replacement of the bridge
- Submission of grant application for CalOES Hazard Mitigation Grant Program for redesign and reconstruction of roadway drainage system in Main Street corridor including Preston Lane, Errol Street, Atascadero Road and Radcliffe
- Completion of geotechnical assessment on Main Street Bridge to examine creek channel and bridge piers
- In collaboration with Utilities Division, procurement of specialized rover for inspections using emergency storm drainage funds so that future inspections can be completed in house
- Initiation of storm drain repair of some failed areas along the 1500 block of Main Street
- Completion of design of replacement of Sequoia Court Storm drain, with construction bid forthcoming

In many cases, staff has discovered that storm drains have failed because the corrugated metal pipe, originally installed decades ago, has nearly completely deteriorated. Addressing these issues unfortunately is no longer a maintenance issue and will require more expensive capital work to replace piping.

RECOMMENDATIONS

The public is encouraged to prepare for severe weather and other natural disasters by ensuring they have taken steps for personal emergency preparedness. First, residents should learn their evacuation zone. To learn your zone, go to readyslo.org and click on the "Prepare" tab. This page will provide a link to learn your evacuation zone by inputting your address. This page also has information for family preparedness. The recommendation is to have sufficient supplies in your residence to sustain each occupant for at least 72 hours. This includes food, water, medications, clothing, batteries, flashlights, sanitation supplies, blankets or bedding for warmth, and sources for backup power such as battery packs, generators, etc. to charge cell phones and radios.

The public is also encouraged to inspect and protect their property as needed in preparation for El Nino storms. Property owners may view a checklist in the Hot Topics section of the City's website for more information.



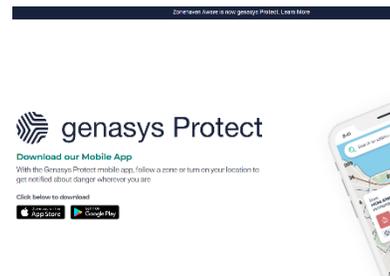
City of Morro Bay
 Fire Department
 Daniel McCrain, Fire Chief
 715 Harbor St.
 Morro Bay, CA 93442



KNOW YOUR EVACUATION ZONE PROGRAM

To save time during an emergency, it is important for residents to know your evacuation zone in advance. Each zone has a description of the zone with the name, borders, current status, and additional information. If an Evacuation Order or Warning is ordered, emergency officials will utilize [alert and notification methods](#) such as Wireless Emergency Alerts and Reverse 911 to notify residents which zones are affected. Knowing your evacuation zone will allow you to respond more quickly.

The City of Morro Bay has 13 evacuation zones labeled MRB-E001 through MRB-E013. These zone numbers will be utilized to notify residents if there are shelter in place orders, evacuation warnings, Evacuation orders, or other emergency information. To find out your evacuation zone please go to readyslo.org and click on the “Prepare” tab. On this page you can enter your address and it will identify your evacuation zone. The readyslo.org website will be the location for the most current incident information as well as information about the recovery process should a disaster occur. For mobile notifications you can download an app called “Genasys Protect” from your mobile app store. This mobile app will alert you if you are in an area that has an emergency notification issued for that zone. This application is useful for instant notifications but the readyslo.org website will provide the most information about an incident.



Daniel McCrain
 Fire Chief
 Morro Bay Fire Department



THE CITY OF MORRO BAY
PUBLIC WORKS DEPARTMENT
PRESS RELEASE

FOR IMMEDIATE RELEASE
December 7, 2023

Contact: Gregory Kwolek
Public Works Director
(805) 772-6564
gkwolek@morrobayca.gov

City of Morro Bay Offers Preparedness Information for Property Owners in Advance of Strong El Niño this Winter

MORRO BAY, California – The City of Morro Bay is offering guidance to help community members be prepared for the predicted El Niño weather patterns and potentially damaging weather conditions that it could bring to Morro Bay this winter. Morro Bay is vulnerable to the potential impacts of a strong El Niño season. The good news is, there is a lot that homeowners can do to be prepared and to reduce the impacts to their homes and properties.

According to an August 2023 ENSO forecast by the National Oceanic and Atmospheric Administration (NOAA), there is a greater than 95% chance that El Niño conditions will continue through the 2023-24 winter, and a 66% percent chance of a strong El Niño. Past strong El Niños have been characterized by extended periods of high intensity rainfall, triggering heavy runoff, floods, mudslides, debris flow, and landslides both inland and along the coast.

THE CITY OF MORRO BAY HAS PREPARED A CHECKLIST TO HELP THE COMMUNITY PREPARE FOR THE WINTER SEASON:

- Inspect slopes: Visually inspect all sloped areas for signs of erosion gullying, surface cracks, and slumping. Inspect buildings, patios, retaining walls, and garden walls for signs of cracking or rotation, which may indicate slope movement has occurred. If signs of slope movement are observed, consider contacting a California-licensed geologist or geotechnical engineer for a site inspection.
- Inspect bare ground: Large bare areas may be sources for mudflows during rain. Consider covering or vegetating bare areas before storm season. Consider covering and securing mounds of loose soil or fill material.
- Inspect drains and gutters: Visually inspect and remove debris from retaining wall drains, surface drains, culverts, and gutters before storm season. Storm water runoff should be directed into appropriate drainage control areas to avoid excessive soil saturation.
- Inspect structures: Visually inspect all structures for signs of distress, loss of material, obstructed drainage, or exposed reinforcing steel before storm season and after every rainstorm. If significant problems are observed, consider contacting a California-licensed engineer for maintenance suggestions.
- Inspect Roofs: Visually inspect roofs, or hire a roofing contractor, to check for loose tiles, holes or other signs of distress.

Contact the City for Questions or Assistance: If you have questions about slope stability, flooding, mudflows, or erosion, contact the Engineering Division during public counter hours (Monday through Thursday, 9:00 AM – 4:00 PM) or email adella@morrobayca.gov.

Sandbags: The City will make available mounds of sand for sandbagging in the library parking lot before major storms. The City does not provide the sandbags or a shovel.

Be prepared: The public is also encouraged to prepare for severe weather and other natural disasters by ensuring they have taken steps for personal emergency preparedness. The recommendation is to have sufficient supplies in your residence to sustain each occupant for at least 72 hours. This includes food, water, medications, clothing, batteries, flashlights, sanitation supplies, blankets or bedding for warmth, and sources for backup power such as battery packs, generators, etc. to charge cell phones and radios.



AGENDA NO: A-4

MEETING DATE: December 12, 2023

Staff Report

TO: Honorable Mayor and City Council DATE: November 22, 2023

**FROM: Scot Graham, Community Development Director
Cindy Jacinth, Planning Manager**

SUBJECT: Second Reading of Ordinance No. 661: Adoption of Objective Design Standards (ODS) to be added as Chapter 17.31 of the Zoning Code.

RECOMMENDATION

Staff recommends the City Council adopt Ordinance No. 661 by second reading, “An Ordinance of the City Council of the City of Morro Bay, California for adoption of Objective Design Standards for inclusion as Chapter 17.31 of the Morro Bay Municipal Code, ‘Residential and Mixed-Use Objective Design Standards,’ and further to be an amendment to the 2022 Zoning Code with a finding that no further environmental review is required pursuant to State CEQA Guidelines Section 15162.”

DISCUSSION / BACKGROUND

At the November 14, 2023, meeting, the City Council held a public hearing to review Planning Commission recommendation for adoption of Objective Design Standards (ODS) to be included as Chapter 17.31 of the City’s Zoning Code and voted to introduce Ordinance No. 661 for adoption and first reading. The ODS are not part of the City’s Coastal Implementation Plan (IP) of the Local Coastal Program (LCP) and therefore would become effective 30 days after Ordinance adoption.

CONCLUSION

Staff recommends the City Council adopt Ordinance No. 661 “An Ordinance of the City Council of the City of Morro Bay, California for adoption of Objective Design Standards for inclusion as Chapter 17.31 of the Morro Bay Municipal Code, ‘Residential and Mixed-Use Objective Design Standards,’ and further to be an amendment to the 2022 Zoning Code with a finding that no further environmental review is required pursuant to State CEQA Guidelines Section 15162” by second reading and by title only with further reading waived.

ATTACHMENT(S)

1. Ordinance No. 661

Prepared By: CJ

Dept Review: SG

City Manager Review: YK

City Attorney Review: LNL

ORDINANCE NO. 661

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
FOR ADOPTION OF OBJECTIVE DESIGN STANDARDS FOR INCLUSION AS
CHAPTER 17.31 OF THE MORRO BAY MUNICIPAL CODE, "RESIDENTIAL AND
MIXED-USE OBJECTIVE DESIGN STANDARDS," AND FURTHER TO BE AN
AMENDMENT TO THE 2022 ZONING CODE WITH A FINDING THAT NO FURTHER
ENVIRONMENTAL REVIEW IS REQUIRED PURSUANT TO STATE CEQA
GUIDELINES SECTION 15162**

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

WHEREAS, the City Council of the City of Morro Bay (the "City") conducted a public hearing on October 10, 2023, conducted in a hybrid format with both an in-person meeting at the Morro Bay Veterans Memorial Building, 209 Surf Street, Morro Bay, CA 93442 as well as through virtual public participation provided telephonically through Zoom, for the purpose of considering the approval of "Objective Design Standards" for various development case types in the City, which resulted from a policy goal in the adopted Housing Element update 2020-2028; and

WHEREAS, the City Council of the City of Morro Bay (the "City") conducted a public hearing on November 14, 2023, conducted in a hybrid format with both an in-person meeting at the Morro Bay Veterans Memorial Building, 209 Surf Street, Morro Bay, CA 93442 as well as through virtual public participation provided telephonically through Zoom, for the purpose of considering the approval of "Objective Design Standards" for various development case types in the City, which resulted from a policy goal in the adopted Housing Element update 2020-2028; and

WHEREAS, California Government Code Section 65300 requires the City adopt a comprehensive, long-term general plan for the physical development of the City' and

WHEREAS, Government Code Section 65860 requires that the City's zoning regulations be consistent with its General Plan and that in the event that zoning regulations become inconsistent with the General Plan by reason of amendment to the General Plan, the zoning shall be amended so that it is consistent with the General Plan as amended; and

WHEREAS, in May 2021 the City adopted a comprehensive update to its General Plan and Local Coastal Program Coastal Land Use Plan (LCP) known as Plan Morro Bay; and

WHEREAS, on November 22, 2022 the City Council adopted Ordinance 654, which repealed and replaced Title 17 of the Morro Bay Municipal Code (MBMC) in its entirety and adopted the 2022 Zoning Code / Coastal Implementation Plan (IP); and

WHEREAS, amendments to the MBMC, including its zoning regulations, are necessary to provide consistency with the 2021 General Plan/LCP Update; and

WHEREAS, the City determined that the General Plan /LCP Update, including the Plan Morro Bay's Zoning Code/ Coastal Implementation Plan (IP) Update was a project requiring review pursuant to the California Environmental Quality Act (CEQA),

Public Resources Code 21000 et seq., and that an Environmental Impact Report (EIR) should be prepared to evaluate the potential environmental effects of such updates; and

WHEREAS, on May 26, 2021, the City Council adopted Resolution 20-21, certifying the EIR for the General Plan Update (State Clearinghouse Number SCH#2021111026), adopting Findings of Fact and Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program; and

WHEREAS, the Planning Commission reviewed the ordinance setting Objective Design Standards, attached hereto as Exhibit A as a new proposed MBMC Chapter 17.31, in four public hearings, resulting in the presented version of the ordinance at Exhibit A; and

WHEREAS, in its August 15, 2023 public hearing, Planning Commission voted 4-1 to forward a favorable recommendation for City Council adoption of the proposed new Chapter 17.31 of the MBMC, "Residential and Mixed Use Objective Design Standards," at Exhibit A hereto; and

WHEREAS, notice of the public hearing was provided at the time and in the manner required by law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA FINDS AND ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS. Based upon all the evidence, the Council makes the following findings:

- (a) California Environmental Quality Act. No further environmental review is required pursuant to State CEQA Guidelines Section 15162. To this end:
 - i. The proposed Objective Design Standards to be added as amendment to the 2022 Zoning Code implements the General Plan/LCP, which was considered through the General Plan /LCP Update Environmental Impact Report (EIR) (SCH No. 2021111026). That document provides a programmatic review of the potential impacts associated with implementation of the overall General Plan/LCP. The EIR is comprised of a Draft EIR (Draft EIR) and Final EIR (Final EIR). The Final EIR was released for public review on October 19, 2020 and certified by the City Council on May 25, 2021.
 - ii. The proposed Objective Design Standards as a Zoning Code amendment are consistent with the analysis presented in the EIR and, pursuant to State CEQA Guidelines Section 15162, no subsequent analysis is required.
 - iii. Therefore, there are no substantial changes in the project analyzed in the EIR, there are no substantial changes with respect to the circumstances under which such project is undertaken, and no new information of substantial importance, which was not known and could not have been known at the time of certification of the EIR, and no further environmental review is required.
- (b) Municipal Code (Zoning Code Update) Amendment. The proposed municipal code amendment is consistent with the General Plan goals, policies, and implementation programs and are necessary in order to provide consistency with the 2021 General Plan. This action is supported by the findings in Section 2(a)

above, and is further supported by all findings of fact presented at the City Council hearing, including without limitation those facts stated in the accompanying staff report and exhibits thereto, and all evidence, determinations and direction of the City's Planning Commission, all of which evidence is incorporated herein by this reference.

SECTION 2. FINDINGS. The City Council does hereby adopt the Objective Design Standards, new Chapter 17.31 of the MBMC, "Residential and Mixed Use Objective Design Standards," provided as Exhibit A hereto, which includes the Planning Commission recommended changes and serves as an amendment to the 2022 Zoning Code for the Plan Morro Bay Update.

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

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

SECTION 5. 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 held on the 14th day of November 2023, by motion of Council Member Ford and seconded by Council Member Edwards.

PASSED AND ADOPTED on the _____ day of _____ 2023 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance No. 661 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____ 2023, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

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

DANA SWANSON, City Clerk

Chapter 17.31: Residential and Mixed Use Objective Design Standards

17.31.010	Introduction
17.31.020	Site Design Standards
17.31.030	Building Design Standards
17.31.040	Additional Mixed Use Standards
17.31.050	Parking Structures
17.31.060	Utilitarian Elements

17.31.010 Introduction

- A. **Purpose.** The purpose of these design standards is to provide the public, building and design professionals, and decision-makers with objective, clear, and measurable criteria for eligible residential and mixed use development in Morro Bay.
1. State housing laws have established eligibility for various types of residential and mixed use development, which must be evaluated on the basis of objective standards adopted by the city.
 2. The intent of such State legislation is to facilitate and expedite the construction of housing, contribute to the Regional Housing Needs Allocation, and address the local shortage of housing. The State finds that lack of homes has resulted in the following across California:
 - a. Workers, public safety employees, healthcare providers, educators moving to lower-cost homes farther away from the communities they serve;
 - b. Employers facing increasing difficulty in securing and retaining a workforce;
 - c. Increased pressure to develop farmlands, open space, and rural areas into lower-cost homes, with longer commute times, greenhouse gas emissions, and higher exposure to fire hazard;
 - d. Increased poverty and homelessness;
 - e. Lower income residents moving into crowded and unsafe homes; and
 - f. Families and individuals moving out of their communities and ultimately out of the State of California.
 3. The intent of this Chapter is to provide clear design direction and an expedited planning process for these eligible residential projects. Unless otherwise indicated herein, all references to State statutes refer to the California Government Code.
- B. **Eligible Projects.** The provisions of this chapter apply to projects made eligible by, but not limited to, the following State housing laws:
1. ***Senate Bill 35 Projects (California Government Code §65913.4).*** SB 35 establishes eligible residential development in cities where the number of residential units built is less than the Regional Housing Needs Allocation for the reporting period. Eligible

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projects are subject to a ministerial, streamlined approval process, consistent with objective standards, if the following conditions are met.

- a. The proposed project contains two or more residential units, and at least two-thirds of the square footage of the development is designated for residential use;
 - b. The proposed project is located on a site that satisfies the following:
 - i. The site is a legal parcel or parcels located in city boundaries;
 - ii. 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses (parcels that are only separated by a street or highway shall be considered to be adjoined); and
 - iii. The site is zoned for residential use or residential mixed use development;
 - c. The proposed site is not located any of the following:
 - i. A coastal zone (defined in Division 20 and commencing with Section 30000 of the Public Resources Code);
 - ii. Prime farmland or farmland of statewide importance (as defined by the United States Department of Agriculture);
 - iii. Wetlands (as defined in the United States Fish and Wildlife Service Manual);
 - iv. Very high fire hazard severity zone (as defined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the California Government Code);
 - v. Hazardous waste sites (defined by the Department of Toxic Substances Control and pursuant to Section 65962.5);
 - vi. Delineated earthquake fault zone (defined by the State Geologist);
 - vii. Floodplains (defined by the Federal Emergency Management Agency);
 - viii. Floodways (defined by the Federal Emergency Management Agency);
 - ix. Lands identified for conservation in an adopted natural community conservation plan (pursuant to the Natural Community Conservation Planning Act);
 - x. Habitat for protection species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protect species, or species protected by the federal Endangered Species Act of 1973;
 - xi. Lands under conservation easement;
 - d. The proposed project is required to record land use deed restrictions for any units that are subsidized;
 - e. The proposed project would not require the demolition of housing and is not located on a site that is governed under the Mobilehome Residency Law.
2. **Senate Bill 330 Projects (California Government Code §65589.5 and §65920).** SB 330 establishes eligible affordable residential development in cities where the number of residential units built is less than the Regional Housing Needs Allocation for the

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reporting period. Eligible residential development is subject to a preliminary application process pursuant to Sections 65589.5 and 65920, and must be consistent with objective standards.

3. ***Assembly Bill 2011 Projects (California Government Code §65400, §65585, and §65912).*** AB 2011 establishes eligible 100 percent affordable residential and mixed use development along commercial corridors (where office, retail, or parking is the principal use), subject to specific affordability, labor, and environmental criteria. AB 2011 projects are subject to a ministerial, streamlined approval process, if the following conditions are met.
 - a. The proposed project meets the following affordability criteria:
 - i. 100 percent of the units within the development project, excluding managers' units, shall be dedicated to lower income households at an affordable cost, as defined by Section 50052.5 of the Health and Safety Code; and
 - ii. The units shall be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units;
 - b. The proposed site satisfies the following:
 - i. The proposed project is located in a zoning district where office, retail, or parking are a principally permitted use;
 - ii. The proposed project is located on a legal parcel or parcels located in city boundaries; and
 - iii. The proposed project is located on a site where 75 percent of the perimeter adjoins parcels that are developed with urban uses (parcels that are only separated by a street or highway shall be considered to be adjoined);
 - c. The proposed site is not located in any of the following:
 - i. Prime farmland or farmland of statewide importance (as defined by the United States Department of Agriculture);
 - ii. Wetlands (as defined in the United States Fish and Wildlife Service Manual);
 - iii. Very high fire hazard severity zone (as defined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the California Government Code);
 - iv. Hazardous waste sites (defined by the Department of Toxic Substances Control and pursuant to Section 65962.5);
 - v. Delineated earthquake fault zone (defined by the State Geologist);
 - vi. Floodplains (defined by the Federal Emergency Management Agency);
 - vii. Floodways (defined by the Federal Emergency Management Agency);
 - viii. Lands identified for conservation in an adopted natural community conservation plan (pursuant to the Natural Community Conservation Planning Act);

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- ix. Habitat for protection species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protect species, or species protected by the federal Endangered Species Act of 1973;
 - x. Lands under conservation easement; or
 - xi. A site where more than one-third of the square footage on the site is dedicated to industrial use;
- d. The proposed project would not require the demolition of housing and is not located on a site that is governed under the Mobilehome Residency Law; and
- e. If vacant, the proposed site does not contain tribal cultural resources (as defined by Section 21074 of the Public Resources Code) found pursuant to a consultation.
4. **Assembly Bill 2162 Projects (California Government Code §65583 and §65650).** AB 2162 establishes eligible supportive housing by-right in zones where multi-unit and mixed use development is permitted. Eligible projects are subject to a ministerial, streamlined approval process, consistent with objective standards, if the following conditions are met.
- a. Units within the proposed development are subject to a recorded affordability deed restriction for 55 years;
 - b. 100 percent of the units within the development project, excluding managers' units, shall be dedicated to lower income households at an affordable cost, as defined by Section 50052.5 of the Health and Safety Code; and
 - c. At least 25 percent of the total units, or 12 units, whichever is greater, are restricted to residents in supportive housing who meet target criteria.
5. **Senate Bill 6 Projects (California Government Code §65913.4 and §65852.24).** SB 6 establishes eligible residential development along commercial corridors (where office, retail, or parking is the principal use), subject to specific labor and environmental criteria, in cities where the number of residential units built is less than the Regional Housing Needs Allocation for the reporting period. Eligible projects are subject to a ministerial, streamlined approval process, consistent with objective standards, if the following conditions are met.
- a. The proposed project contains two or more residential units, and at least two-thirds of the square footage of the development is designated for residential use;
 - b. The proposed project is located on a site that satisfies the following:
 - i. The site is a legal parcel or parcels located in city boundaries;
 - ii. 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses (parcels that are only separated by a street or highway shall be considered to be adjoined); and
 - iii. The site is zoned for residential use, residential mixed use development, office commercial use, or retail commercial use;
 - c. The proposed site is not located any of the following:
 - i. A coastal zone (defined in Division 20 and commencing with Section 30000 of the Public Resources Code);

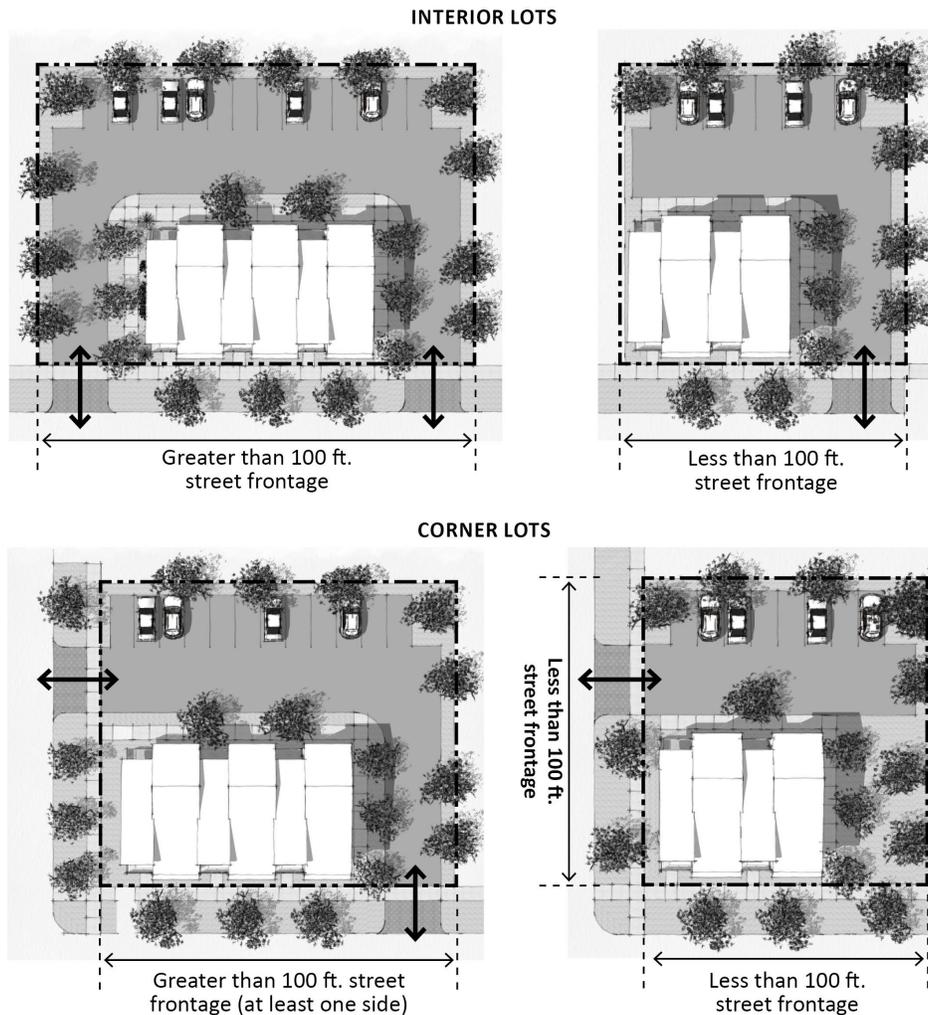
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- ii. Prime farmland or farmland of statewide importance (as defined by the United States Department of Agriculture);
 - iii. Wetlands (as defined in the United States Fish and Wildlife Service Manual);
 - iv. Very high fire hazard severity zone (as defined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the California Government Code);
 - v. Hazardous waste sites (defined by the Department of Toxic Substances Control and pursuant to Section 65962.5);
 - vi. Delineated earthquake fault zone (defined by the State Geologist);
 - vii. Floodplains (defined by the Federal Emergency Management Agency);
 - viii. Floodways (defined by the Federal Emergency Management Agency);
 - ix. Lands identified for conservation in an adopted natural community conservation plan (pursuant to the Natural Community Conservation Planning Act);
 - x. Habitat for protection species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protect species, or species protected by the federal Endangered Species Act of 1973; or
 - xi. Lands under conservation easement;
- d. The proposed project is required to record land use deed restrictions for any units that are subsidized.
6. All other residential or mixed use projects made eligible by State law and which are required to meet objective standards.
- C. **Compliance with Other Standards.** In addition to meeting objective standards in this chapter, eligible residential projects shall comply with other objective standards as established in the Morro Bay Municipal Code, other adopted City plans, and the California Building Code (CBC).
- D. **Conflicting Standards.** If there is any conflict between the objective design standards of this Chapter and other City requirements, the less restrictive objective design standard applicable to the project shall apply. If there is any conflict between City requirements stated in this chapter and State law, the State law requirement shall apply.
- E. **Exceptions, Waivers, or Modifications.** The City's non-streamlined, discretionary review process shall be required for any project that seeks exceptions, waivers, variances or other modifications to the objective standards of this Chapter.

17.31.020 Site Design Standards

- A. **Purpose.** Site planning refers to the arrangement of - and relationships between - buildings, parking areas, common and private open space, landscaping, and pedestrian connections. The site planning topics in this section include site layout and building placement, vehicular surface parking and access, pedestrian circulation and access, landscaping, and common and private open space.
- B. **Building Placement and Orientation.** Building placement and orientation shall comply with the provisions of Chapter 17.07, Residential Districts, or Chapter 17.08, Commercial and Mixed Use Districts. In addition, if buildings on the same block establish a contiguous street wall along at least 50 percent of the primary street frontage, new buildings shall be located to maintain the contiguous street wall.
- C. **Vehicular Parking and Access.** Off-street vehicular parking and access shall comply with the provisions of Chapter 17.27, Parking and Loading. For properties in Commercial and Mixed Use Districts, projects shall also comply with Section 17.08.040, Supplemental Regulations. In addition, projects shall comply with the following:
1. **Primary Access.** Side street or alley access shall serve as the primary vehicular access to off-street parking areas, if available. If not available, the primary street shall serve vehicular access. See Section 17.27.100, Driveways and Drive Approaches, for detailed standards related to driveway location, site layout, limits to driveway width and design.
 2. **Number of Access Points.**
 - a. For interior lots with less than 100 linear feet of street frontage, a maximum of one vehicle access point from the street is permitted. For interior lots with 100 linear feet or more of street frontage, a maximum of two vehicular access points from the street is permitted.
 - b. For corner lots, one vehicular access point is permitted where both street frontages are less than 100 linear feet. Two vehicular access points are permitted for lots where at least one street frontage is 100 linear feet or more.
 - c. The above standards assume that an access point can be a two-way connection (both ingress and egress) or a one-way connection (either ingress or egress).

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FIGURE 17.31.020(C)(2): VEHICULAR ACCESS POINTS



3. **Parking Location.** Parking areas shall not be located within any front or street side setback, or between any residential/mixed use structure and the primary street.
 - a. **Parking Area Gates.** Parking areas with gates to control access are allowed. Gates shall be located a minimum of 20 feet from the back of sidewalk, or edge of pavement where there is no sidewalk.
4. **Loading and Service Areas.** The provision, layout and design of loading and service areas shall comply with Section 17.27.090, Loading, as well as the following standards:
 - a. All required loading and service areas shall be located adjacent to a façade other than the primary building frontage.
 - b. Loading and service areas shall not be located adjacent to residential dwelling units or common open space areas. Loading areas shall be screened from public view by building walls and/or uniformly solid fencing or walls, not less than six feet in height, or evergreen trees at least 10 feet in height.
5. **Avoid Vehicle Light Intrusion into Ground-Floor Units.** Vehicle parking areas shall be located, oriented, and/or screened to prevent visual intrusion of vehicle lights into

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interior residential spaces, including residential units on neighboring properties. Where parking areas are located within 15 feet of a residential unit, they shall be located within a garage, carport, or parking structure, or screened by a solid wall, fence, or landscaping a minimum of six feet in height.

D. **Pedestrian Circulation and Access.** On-site pedestrian circulation and access shall be provided according to the following standards.

1. **Internal Connections.** A system of pedestrian walkways shall connect all buildings on a site to each other, to on-site automobile and bicycle parking areas, and to any on-site open space areas or pedestrian amenities.
2. **To Circulation Network.** Regular connections between on-site walkways and the public sidewalk shall be provided. An on-site walkway shall connect the primary building entry or entries to a public sidewalk on each street frontage. Such walkway shall be the shortest practical distance between the main entry and sidewalk, generally no more than 125 percent of the straight line distance.
3. **To Neighbors.** Direct and convenient access shall be provided from commercial and mixed-use projects to adjoining residential and commercial areas to the maximum extent feasible while still providing for safety and security.
4. **To Transit.** Safe and convenient pedestrian connections shall be provided from transit stops to building entrances.
5. **Pedestrian Walkway Design.**
 - a. Walkways shall be a minimum of five feet wide, shall be hard-surfaced, and paved with concrete, stone, tile, brick, or comparable material.
 - b. Where a required walkway crosses parking areas or loading areas, it must be clearly identifiable through the use of a raised crosswalk, a different paving material, or similar method.
 - c. Where a required walkway is parallel and adjacent to an auto travel lane, it must be raised or separated from the auto travel lane by a raised curb at least four inches high, bollards, or other physical barrier.
6. **Pedestrian Design in Parking Areas.** See Section 17.27.110, Parking Area Design and Development Standards, for requirements involving pedestrian access to vehicle parking areas.

E. **Common and Private Open Space.** Common and private open spaces shall be provided according to the base zoning district regulations in Chapter 17.07, Residential Districts, or Chapter 17.08, Commercial and Mixed Use Districts. Section 17.23.100, Open Space, contains objective standards regarding minimum dimensions, usability, and accessibility for both private and common open space. In addition, the following standards apply:

1. **Common Open Space.** Common open space shall be provided according to Section 17.23.100, Open Space, and shall comply with the following:
 - a. **Amenity Types.** Where required by the base zoning district, projects shall provide at least one common open space through the following amenities: play areas, common courtyards, patios, gathering spaces, multi-use paths and trails, athletic/recreational facilities, dog runs and enclosures; pools and spas, rooftop decks, and community gardens. An applicant may provide common open space

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through an amenity not on this list if it is readily accessible by all residents for recreation and social purposes.

- b. *Location.* Common open space shall be located to fulfill at least one of the following:
 - i. Avoid Building Shadow. The common open space shall not be located within the winter shadow line of the north-facing side of any building.
 - ii. Proximity to Multiple Homes. The common open space(s) is within 250 feet of the pedestrian entrances to at least 20 percent of the residential homes.
 - iii. Rooftop. The common open space is located on a building rooftop and is a minimum of 15 feet away from any property line.
 - c. *Visibility.* Common open space shall be located and arranged to allow visibility into the space from pedestrian walkways within the development. Fencing or barriers shall be designed with opaque, nontransparent materials for a maximum of 80 percent of the surface area, to allow some visual transparency between the common open space and pedestrian walkways.
2. **Private Open Space.** Private open space shall be provided according to Section 17.23.100, Open Space, and shall be screened with one of the following options:
 - a. *Screening with Structural Elements.* A private open space screened by a fence or wall shall comply with Section 17.23.060, Fences and Freestanding Walls.
 - b. *Screening with Landscaping and Structural Elements.* A private open space screened by landscaping shall provide a landscape buffer or dense evergreen shrubs/vines of minimum 5 feet width and minimum 4 feet height. If a ground-level private open space is visible from a public right-of-way or common open space, a landscape buffer is required.

F. **Landscaping.** Landscaping shall be utilized for all outdoor areas that are not specifically used for parking, driveways, walkways, or open space. Refer to Chapter 17.25, Landscaping, for regulations applicable to all new development. In addition, projects within the Coastal Resource Protection (CRP) Overlay District shall comply with relevant regulations in Chapter 17.14, Coastal Resource Protection Overlay District. For landscaping requirements in vehicular parking areas, refer to Section 17.27.110, Parking Area Design and Development Standards. In addition, the following standards apply:

1. **Number of Plants.** A minimum of one 15-gallon tree or equivalent box size and 10 five-gallon shrubs shall be planted for every 1,000 square feet of required landscape area.
2. **Plant Selection.** Projects shall comply with water efficient planting standards of Section 17.25.050, General Requirements. Plants shall be selected from plants that are native to California, or plants included on the City's Street Tree List. Artificial or synthetic plants, except for turf, are prohibited. In addition, tree and plant species that attract and provide habitat for local fauna (e.g., birds and pollinators such as bees and butterflies) are encouraged.
3. **Privacy.** Landscaping shall be provided as a buffer between adjacent individual units. Landscaping shall obscure direct sight lines, and may be used in combination with walls, fencing, and/or trellises to screen views. Plant selection and landscape screening

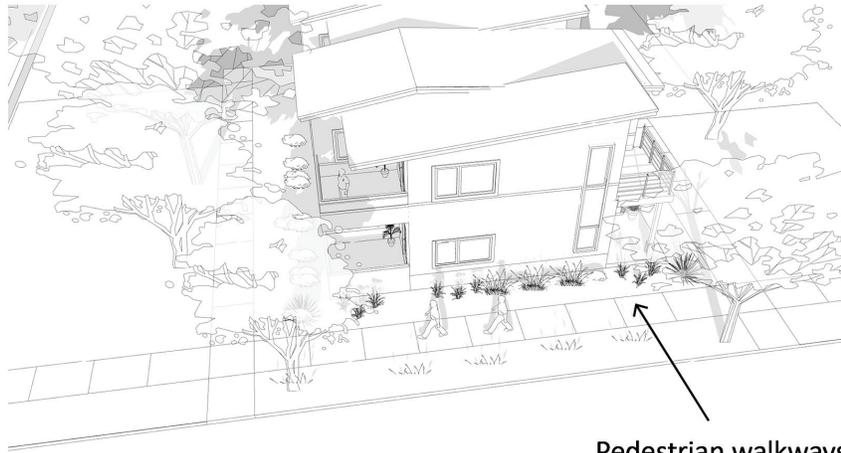
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container size shall be selected to achieve at least 50 percent of this height within three years of installation.

4. ***Pedestrian Walkways.*** Pedestrian walkways shall be adjacent to landscaping, on at least one side and may include a mix of turf, groundcover, or shrubs. Trees provided within 20 feet of pedestrian walkways shall be placed a maximum of 30 feet apart on center, in order to provide some shade.

FIGURE 17.31.020(F)(4): PEDESTRIAN WALKWAYS



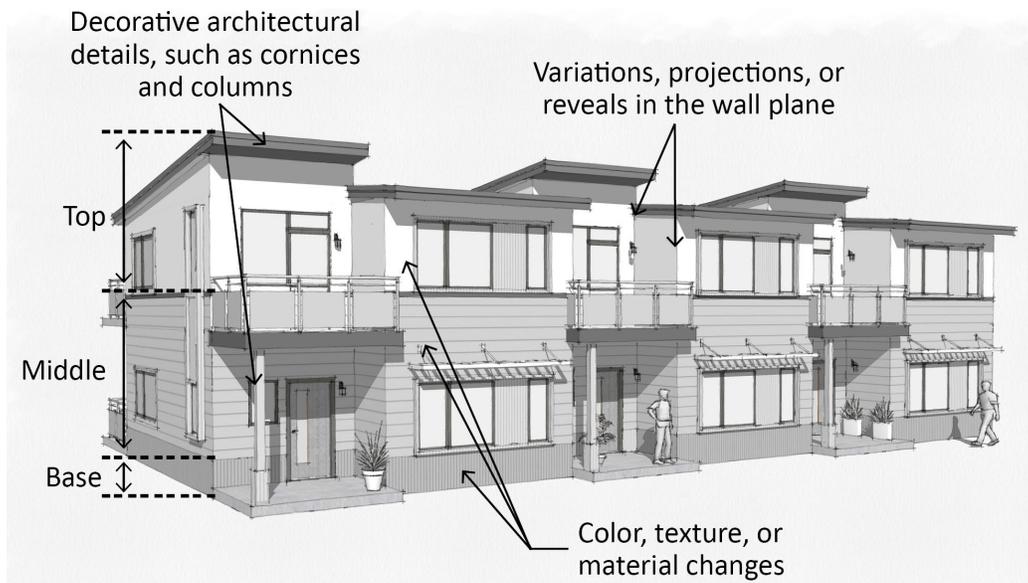
Pedestrian walkways
adjacent to landscaping
on at least one side

17.31.030 Building Design Standards

A. **Building Form, Massing, and Façade Articulation.** Building form, massing and façade articulation facilitate the distinction of individual units, or groups of units, through varied heights, projections, setbacks, and recesses. Materials and colors emphasize changes and hierarchy in building form.

1. **Building Form and Vertical Hierarchy.** Buildings shall be designed to differentiate between a defined base; a middle or body; and a top, cornice, or parapet cap. Buildings two stories or less shall include a defined base and a top, cornice, or parapet cap. This effect shall be achieved through incorporating at least two of the following design elements for all buildings:
 - a. Color, texture, or material changes.
 - b. Variations, projections, or reveals in the wall plane.
 - c. Variations in fenestration size or pattern.
 - d. Decorative architectural details such as cornices and columns.

FIGURE 17.31.030(B)(1): BUILDING FORM AND VERTICAL HIERARCHY



2. **Four-sided Architecture.** Buildings shall be designed and articulated with common details, articulation, materials, and elements on all sides.
3. **Massing.**
 - a. **Upper Floor Area Reduction.**
 - i. **Main Street and Morro Bay Boulevard.** The floor area for upper floors shall be reduced through one of the following options:
 - (1) The second floor shall have a maximum floor area that is 90 percent of the ground floor area, and the third and higher floors

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shall have a maximum floor area that is 80 percent of the ground floor area.

- (2) The second and higher floors shall provide that 50 percent of every elevation is set back a minimum of 3 feet in addition to the required setback area.

ii. All Other Locations.

- (1) The second floor shall have a maximum floor area that is 90 percent of the ground floor area.
- (2) The third floor shall have a maximum floor area that is 80 percent of the ground floor area.
- (3) Floors above the third floor shall have a maximum floor area that is 70 percent of the ground floor area.

- b. *Upper Floor Cantilever.* Upper floor uncovered decks a minimum of 6 feet by 8 feet in dimension shall be allowed to cantilever and protrude into front or street side setbacks or public-right-of-way, provided that there is a minimum of 12 feet of vertical clearance and that the cantilever does not encroach more than 2 feet into the setback or public right-of-way. Right-of-way encroachment shall obtain an Encroachment Permit in accordance with Title 12 of the Morro Bay Municipal Code.

4. ***Façade Articulation.*** All street-facing facades shall have at least one horizontal or vertical projection or recess at least two feet in depth for every 25 horizontal feet of wall. If located on a building with two or more stories, the articulated elements must be greater than one story in height, and may be grouped rather than evenly spaced in 25-foot modules. Building entrances and front porches and projections into required yards such as stoops, bays, overhangs, fireplaces, and trellises may count towards meeting this requirement.

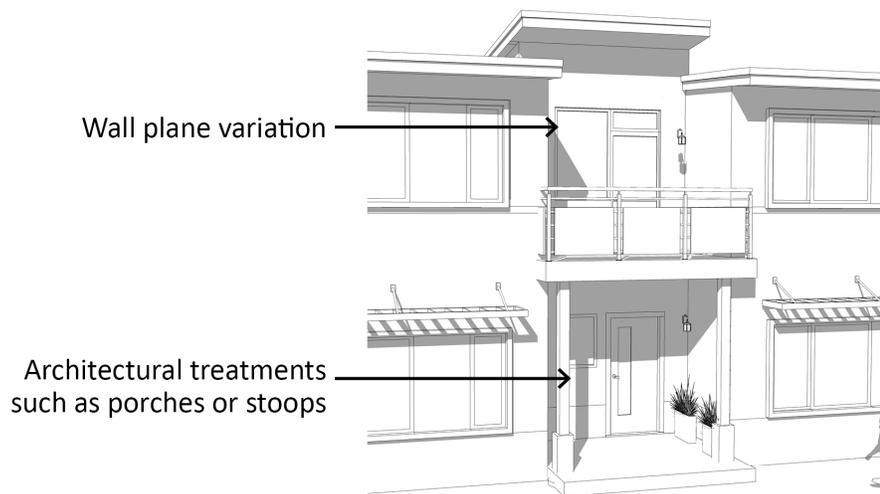
5. ***Roofs.***

- a. *Roof Line Variation.* Roof lines shall not extend more than a length of 40 feet without at least one prominent change as described below:
- i. Provide variation in roof form, such as hip, gable, shed, and flat with parapet.
 - ii. Provide variation of roof height of at least 18 inches (as measured from the highest point of each roof line).

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- i. Roof above the entry incorporating a change in roof line of at least 18 inches in height.
 - ii. Entry incorporating a variation of wall plane (recessed or projected) a minimum of 2 feet from the adjacent wall planes.
 - iii. Entry incorporating architectural treatments that vary from those on the general facade (e.g., window and/or door trim with substantial depth and detail, decorative siding, decorative fascia, porches, stoops).
- c. *Porch Requirements.* A porch serving more than one unit shall be a minimum of 6 feet by 8 feet in dimension.
- d. *Enhanced Paving for Building Entrances.* Primary building entryways shall provide decorative and accent paving that contrast in color and texture from any adjacent pedestrian walkway surfaces. Allowed materials include stamped concrete, stained concrete painted concrete, concrete pavers, brick, stone, flagstone, and tile. Decomposed granite, pea gravel, and other types of crushed rock are prohibited.

FIGURE 17.31.030(B)(1)(B): PRIMARY BUILDING ENTRY ARCHITECTURAL TREATMENTS



2. ***Individual Unit Entrances.***

- a. *Upper-Floor Unit Entry.* Exterior entries to individual units on upper floors are permitted; however, in order to avoid a “motel-style” appearance, no exterior access corridor located above the ground floor may provide access to five or more upper-floor units.
- b. *Non Street-Adjacent Buildings.* Buildings not located adjacent to a street shall have unit front entryways oriented to face common open space areas such as landscaped courtyards, plazas, or paseos.
- c. *Porch Requirements.* A porch serving an individual unit shall be a minimum of 5 feet by 8 feet in dimension.
- d. *Stoop Requirements.* A stoop serving an individual unit shall be a minimum of 4 feet by 4 feet in dimension. The stoop adjacent to the door shall be a maximum

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of 5 feet in height above the adjacent walkway, and stairs or ramps from the stoop lead directly to the public right-of-way, or a parallel to the public right-of-way.

C. **Windows.**

1. **Privacy.** Where a residential building is located within 10 feet of a neighboring property line, windows facing neighboring buildings shall be offset a minimum of 5 feet from closest edge to edge. Where this offset cannot be provided, the window design on the building facades facing each other shall avoid unfiltered/direct views into interiors and shall be designed with one or more of the following:
 - a. Utilize non-transparent or obscured glazing, such as frosted/patterned glass, glass block, or non-operable opaque windows. Reflective glazing is not permitted.
 - b. Provide permanent architectural screens or affixed louvers at windows.
 - c. Utilize clerestory windows with the bottom edge of the window a minimum height of 6 feet from the ground.
2. **Window Treatment.** All windows shall either be recessed at least 2 inches from the plane of the surrounding exterior wall or shall have trim at least 1/2 inch in depth and 2 inches in width.
 - a. *Windows Facing a Public Street.* Windows facing a public street shall feature enhanced window treatments, such as decorative architectural brackets, trim, shutters, awnings, and/or trellises.
 - b. *Window Shutters.* Functional and decorative shutters shall be one-half-width of the associated window glazing (for paired shutters), or matching window width for a single shutter.

D. **Materials and Colors.** Exterior building materials and colors shall comply with the provisions of Section 17.07.040, Supplemental Regulations (Residential Districts), or Section 17.08.040, Supplemental Regulations (Commercial and Mixed Use Districts).

1. **Wall Material.** The primary exterior siding material for buildings shall be stone, brick, stucco, concrete block, painted wood clapboard, fiber cement clapboard, or painted metal clapboard.
2. **Window Material.** Window materials, color, and style shall be consistent on all elevations, unless used at an entry way or as an accent feature.
3. **Material Transition.** Changes in material shall occur at inside corners of intersecting walls or at architectural features that break up the wall plane, such as columns.
4. **Awnings.** Glossy finish vinyl awning material is not allowed.

17.31.040 Additional Mixed Use Standards

- A. **Façade Articulation.** Building façades visible from the primary street shall not extend more than 50 feet in length without at least one of the following: a 5-foot variation in depth in the wall plane, architectural element, or other prominent feature that provides visual interest. Building entrances, front porches, upper-story setbacks, and projections such as stoops, bays, overhangs, fireplaces, upper-story decks and trellises count towards this requirement.

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- B. **Ground Floor Height.** In order to retain the small-scale building character of Morro Bay, the ground floor height of commercial portions of mixed use projects shall be a maximum of 12 feet, measured floor to floor.
- C. **Ground Floor Transparency.** Exterior walls of buildings or portions of buildings containing non-residential uses facing and within 20 feet of a front or street side lot line shall include windows, doors, or other openings for at least 50 percent of the building wall area located between 2.5 and seven feet above the level of the sidewalk. Such walls may run in a continuous plane for no more than 30 feet without an opening.
- D. **Street-Facing Setbacks.** Where a front setback or street-facing side setback is provided for a mixed use building, it shall be designed for pedestrian orientation with hard surface and amenities. The setback area on each lot shall contain at least two amenities per 50 linear feet such as benches, drinking fountains, shade structure, or other design element (e.g. art or sculpture, planters, and kiosks).
- E. **Entrances.**
 - 1. **Residential Street-Adjacent Entry.** Mixed use buildings located adjacent to the primary street shall incorporate at least one residential building entrance that directly fronts the public sidewalk or right-of-way and complies with the requirements of Subsection 17.31.030(B)(1).
 - 2. **Commercial Storefronts.** Commercial entrances adjacent to the sidewalk shall be recessed from the façade by a minimum of 2 feet from the rest of the building, creating an alcove.

17.31.050 Parking Structures.

- A. **Wall Plane Variation.** Façades visible from the primary street shall not extend more than 50 feet in length without at least one of the following: a 3-foot variation in depth in the wall plane, architectural element, or other prominent feature that provides visual interest.
- B. **Materials and Colors.** The parking structure shall utilize the same colors and materials as the primary buildings.
- C. **Articulation.** The exterior of the parking structure shall apply at least one of the following as articulation:
 - 1. Applied materials such as brick, stone, and/or siding which extend at least two inches from the face of the structure to the face of the applied materials. Painted concrete, smooth concrete, or stucco walls shall not be considered sufficient articulation.
 - 2. Decorative architectural features such as cut metal screens, awnings, trellises, louvers, and/or decorative security grills shall be used on openings facing a public street or open space.
- D. **Landscaping.** Vertical plantings shall be located between openings, entrances, and architectural accent features. At least one tree shall screen the building façade per 50 feet. Trees shall be selected from California native plants or from the City's Street Tree list. Trees shall be selected to grow to 40 feet in height at maturity, and shall grow to at least 15 feet in height within two years from time of installation.

17.31.060 Utilitarian Elements

- A. **Bicycle Parking.** Bicycle parking shall comply with the provisions of Section 17.27.080, Bicycle Parking. Additionally, long-term bicycle parking areas shall be required to provide one 110 voltage wall outlet per every 10 long-term bicycle parking spaces for residents with electric bicycles.
- B. **Refuse Storage and Collection Areas.** Trash, recycling, and green waste container enclosures are required for residential and mixed use developments. They shall be located within a service section of the primary building, incorporated into the exterior building design, or located within a detached and locked enclosure designed and placed as follows:
 - 1. **Location.** The enclosure shall be located to the rear or side of the building and located outside of view from a public right-of-way.
 - 2. **Screening.** The enclosure shall include a solid wall a minimum of 6 feet in height and a roof structure that fully shields the top of the container, and be located on the site in an area where the screening height required is allowed.
 - 3. **Materials.** The enclosure shall use materials that are consistent with exterior colors and materials of the primary building.
- C. **Fences and Walls.** Fences and walls shall comply with the provisions of Section 17.23.060, Fences and Freestanding Walls. In addition, where fences and walls of different materials or finishes intersect, a column or pilaster shall be provided.
- D. **Lighting.** Lighting shall comply with the provisions of Section 17.23.080, Lighting and Illumination. Projects within the Coastal Resource Protection (CRP) Overlay Zone District shall comply with additional provisions of Section 17.14.090, Visual Resource Protection. Lighting in parking areas shall also comply with Section 17.27.110, Parking Area Design and Development Standards.
- E. **Screening of Mechanical Equipment.** Equipment and utilities shall comply with the provisions of Section 17.23.130, Screening.
- F. **Vents and Exhaust.** All wall-mounted elements shall be located at interior corners of building walls or behind building or screening elements that conceal them from public view. All flashing, sheet metal vents, exhaust fans/ventilators, and pipe stacks shall be painted to match the adjacent roof or wall material and/or color.



AGENDA NO: A-5

MEETING DATE: December 12, 2023

Staff Report

TO: Honorable Mayor and City Council **DATE:** November 22, 2023

FROM: Scot Graham, Community Development Director
Cindy Jacinth, Planning Manager

SUBJECT: Second Reading of Ordinance No. 662: Zoning Code / Coastal Implementation Plan (IP) Amendments to Morro Bay Municipal Code, Title 17 and Zoning Map

RECOMMENDATION

Staff recommends the City Council adopt Ordinance No. 662 by second reading, "An Ordinance of the City Council of the City of Morro Bay, California, amending the 2022 Zoning Code/Coastal Implementation Plan (IP) Title 17 (Zoning) and the zoning map which includes miscellaneous amendments to all of Division I and Division II and Chapters 17.23, 17.26, 17.27, 17.29, 17.30, 17.36, 17.38, 17.39, 17.42, 17.43, 17.44, 17.53, and 17.54 of the Morro Bay Municipal Code (MBMC)" and direct staff to submit the amended Zoning Code/Coastal Implementation Plan (IP) as an LCP amendment to the Coastal Commission for certification.

DISCUSSION / BACKGROUND

At the November 14, 2023, meeting, the City Council held a public hearing to review Planning Commission recommendations for various Zoning Code/ IP amendments and voted to introduce Ordinance 662 for adoption and first reading. Those portions of the Zoning Code that are part of the IP will be legally effective upon certification by the Coastal Commission. Changes to the Zoning Code will become effective 30 days after Ordinance adoption.

The City Council motion included language changes to the fence height at Sections 17.23.060 A.1.a and 17.23.060 A.1.b which adds "**Fence heights in existence as of date of adoption of Ordinance 662 shall be considered legal, non-conforming and allowed to remain to the maximum height of 6.5 feet**" to both of these sections. The final Zoning Code/Implementation Plan reflects the Council action and is available at the link below.

CONCLUSION

Adopt Ordinance No. 662 by second reading and direct staff to submit the amended Zoning Code as an LCP amendment to the California Coastal Commission for certification.

ATTACHMENT(S)

1. Ordinance No. 662

ONLINE LINKS

1. Final amended Zoning Code with track changes shown: <https://www.morrobayca.gov/DocumentCenter/View/18211/2023-Zoning-Code-IP-Council-Amendment-Adoption-Draft-with-track-changes>
2. Final amended 2022 Zoning Code and Zoning Map: www.morrobayca.gov/planmb

Prepared By: CJ

Dept Review: SG

City Manager Review: YK

City Attorney Review: LNL

ORDINANCE NO. 662

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AMENDING THE 2022 ZONING CODE/COASTAL IMPLEMENTATION PLAN (IP)
TITLE 17 (ZONING) AND THE ZONING MAP WHICH INCLUDES MISCELLANEOUS
AMENDMENTS TO ALL OF DIVISION I AND DIVISION II AND CHAPTERS 17.23,
17.26, 17.27, 17.29, 17.30, 17.36, 17.38, 17.39, 17.42, 17.43, 17.44, 17.53, and
17.54 OF THE MORRO BAY MUNICIPAL CODE (MBMC)**

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

WHEREAS, duly noticed public hearings for the Zoning Code / Coastal Implementation Plan (IP) Amendments and Zoning Map Amendments were held by Planning Commission on September 19, 2023, October 3, 2023, and November 7, 2023; and

WHEREAS, the Planning Commission of the City of Morro Bay conducted a hybrid public hearing both in-person at 209 Surf Street, Morro Bay, and via video conference on September 19, 2023 and October 3, 2023 for the purpose of considering a favorable recommendation to the Morro Bay City Council for adoption of the Zoning Code /IP Amendments as part of the Plan Morro Bay project, and forwarded a favorable recommendation with adoption of Planning Commission Resolution No. 15-23; and

WHEREAS, the Planning Commission of the City of Morro Bay conducted a hybrid public hearing both in-person at 209 Surf Street, Morro Bay, and via video conference on November 7, 2023 for the purpose of considering a favorable recommendation to the Morro Bay City Council for adoption of the Zoning Map Amendments as part of the Plan Morro Bay project, and forwarded a favorable recommendation with adoption of Planning Commission Resolution No. 18-23; and

WHEREAS, pursuant to State CEQA guidelines, a Program Environmental Impact Report (EIR) for the Plan Morro Bay project was prepared, released for a 45-day public review process on October 19, 2020 to December 4, 2020 and certified by the City Council on May 25, 2021 (State Clearinghouse number 2021111026); and

WHEREAS, the proposed Zoning Code/IP Amendments and Zoning Map Amendments implement the General Plan/Local Coastal Plan (LCP) Coastal Land Use Plan which was considered through a programmatic EIR review and that document provides a programmatic review of the potential impacts associated with implementation of the overall Plan Morro Bay project; and

WHEREAS, State CEQA Guidelines Section 15162 provides that no further review is required under CEQA when there are no substantial changes in the Project, and there are no substantial changes with respect to the circumstances under which the Project is undertaken, and there is no new information of substantial importance, which was not known and could not have been known at the time of certification of the EIR; and

WHEREAS, the proposed Zoning Code/ IP Amendments and Zoning Map Amendments

are consistent with and implements the General Plan / LCP Coastal Land Use Plan and is consistent with the analysis presented in the EIR and therefore, pursuant to State CEQA Guidelines Section 15162, no subsequent analysis is required; and

WHEREAS, the City Council of the City of Morro Bay (the “City”) conducted a hybrid public hearing both in-person at the Morro Bay Veteran’s Hall at 209 Surf Street and via video conference on November 14, 2023, for the purpose of considering the favorable recommendation by the Planning Commission and for purposes of adoption of the Zoning Code / Coastal Implementation Plan (IP) Amendments and Zoning Map Amendments and finding that no further environmental review is necessary pursuant to CEQA State Guidelines Section 15162; and

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

SECTION 1. The City Council of the City of Morro Bay finds:

A. The above referenced recitals are true and correct and material to the adoption of this Ordinance and are incorporated herein by reference.

B. The proposed Zoning Ordinance Amendments and Zoning Map Amendments will not be injurious or detrimental to the health, safety, comfort, general welfare, or well-being of the persons residing or working in the neighborhood.

C. The Local Coastal Plan Implementation Plan Amendments are intended to further the goals of the California Coastal Act, as set forth in Section 30001.5 of the Public Resources Code, to:

1. Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.

2. Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

3. Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

4. Assure priority for coastal-dependent and coastal-related development over other development on the coast.

5. Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

D. Pursuant to Morro Bay Municipal Code Section 17.64.080, no amendment to the Zoning Ordinance shall be legally effective in the coastal zone until the amendment is certified by the Coastal Commission. If the Coastal Commission certifies this Ordinance conditioned on substantive changes being made, then the Council will consider the introduction and adoption of another ordinance to incorporate those substantive changes. If the Coastal Commission certifies this Ordinance conditioned on non-substantive changes being made to this Ordinance, then the City Clerk is authorized to amend this Ordinance to reflect those non-substantive changes.

SECTION 2. Title 17 (Zoning) of the Morro Bay Municipal Code is hereby amended upon both final certification by the California Coastal Commission, as well as the effective date as an operation of law, of an amended Title 17 of the Morro Bay Municipal Code, in a form substantially

similar to the Zoning Code / IP and the Zoning Map located on the City’s Plan Morro Bay website at www.morrobayca.gov/planmb. Non-substantive/typographical changes to the Zoning Code replacement and Zoning Map at www.morrobayca.gov/planmb may be authorized by the City Attorney; no material changes beyond typographical corrections may be made prior to second reading.

SECTION 3. CEQA Findings. Pursuant to State CEQA guidelines, a Program EIR for the Plan Morro Bay project was prepared, released for a 45-day public review process on October 19, 2020 to December 4, 2020 and certified by the City Council on May 25, 2021 (State Clearinghouse number 2021111026). The proposed Zoning Code / Coastal Implementation Plan update project implements the General Plan/ LCP which was considered through the programmatic EIR review referenced above. That document provides a programmatic review of the potential impacts associated with implementation of the overall Plan Morro Bay project. State CEQA Guidelines Section 15162 provides that no further review is required under CEQA when there are no substantial changes in the Project, there are no substantial changes with respect to the circumstances under which the Project is undertaken, and there is no new information of substantial importance, which was not known and could not have been known at the time of certification of the EIR. The proposed Zoning Code/ IP Update Amendment is consistent with and implements the General Plan/ LCP Coastal Land Use Plan and is consistent with the analysis presented in the EIR and therefore, pursuant to State CEQA Guidelines Section 15162, no subsequent analysis is required.

SECTION 4. Severability. If any section, subsection, phrase, or clause of this ordinance or any part thereof is for any reason held to be unconstitutional or otherwise unenforceable, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional or otherwise unenforceable.

SECTION 5. Effective Date. This Ordinance shall take effect 30 days after its adoption and upon certification required as an operation of law.

SECTION 6. Certification. The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause the same to be posted at the designated locations in the City of Morro Bay.

INTRODUCED at a regular meeting of the City Council held on the 14TH day of November 2023, by motion of Council Member Ford and seconded by Council Member Edwards.

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PASSED AND ADOPTED on the ____ day of _____, 2023, by the following
vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, City Clerk for the City of Morro Bay, California, do hereby certify that the foregoing Ordinance No. 662 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 _____, 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this _____ day of _____, 2023.

DANA SWANSON, City Clerk



AGENDA NO: A-6

MEETING DATE: December 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: November 30, 2023

**FROM: Amy Watkins, Police Chief
Dan McCrain, Fire Chief**

SUBJECT: Adoption of Ordinance No. 663, amending the Morro Bay Municipal Code to add Chapter 8.15 pertaining to the Unauthorized Removal of Shopping Carts from Retail Establishments and Facilitating Retrieval of Abandoned Shopping Carts to Title 8 (“Health and Safety”)

RECOMMENDATION

Staff recommends the City Council adopt, by second reading, Ordinance No. 663, “An Ordinance of the City Council of the City of Morro Bay, California, Amending Title 8 (“Health and Safety”) of the Morro Bay Municipal Code to add Chapter 8.15 pertaining to the unauthorized removal of shopping carts from retail establishments and to facilitate retrieval of abandoned shopping carts.”

DISCUSSION

At the November 14, 2023, the City Council received a staff presentation regarding an ordinance to address abandoned shopping carts which constitute a nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic on streets, sidewalks, and private property. This proposed ordinance maintains primary responsibility for managing cart service with the owner of the cart and sets requirements for the prompt retrieval of carts that have been taken off business premises.

Enacted in 1997, Chapter 19 of the California Business and Professions Code (sections 22435 to 22435.13) known as the “California State Shopping Cart and Laundry Cart Law,” limits cities in the manner by which shopping cart abatement and impoundment is conducted. Nevertheless, the California Business and Professions Code does permit cities to develop an ordinance with regulations to eliminate the accumulation of abandoned shopping carts within city limits so long as it does not conflict with State law.

The proposed ordinance is consistent with State law in making it unlawful to remove a shopping cart from business premises or to possess it after it has been removed and following all notification and impoundment guidelines. Furthermore, the ordinance prohibits a shopping cart owner to allow one of their cart(s) to be abandoned or remain unattended on public or private property other than the business premises of the shopping cart owner. The proposed ordinance also requires shopping cart owners to secure their carts during hours when their business is closed and conspicuously mark and

Prepared By: AW

Dept Review: _____

City Manager Review: YK

City Attorney Review: LNL

identify each cart with the name, address, and telephone number of the owner as well as placing a notification on the cart that provides that the removal of the cart from the business premise is a violation of State and municipal law.

This ordinance also requires shopping cart owners to submit an annual abandoned shopping cart prevention plan. Business owners must submit their abandoned shopping cart prevention plan to the Morro Bay Fire Department within 60 days of this ordinance or if the business opens after the date of the ordinance that implements this chapter becomes effective, then within 30 days after a business that uses carts commences operations. Failure to submit a plan can subject cart owners to administrative penalties under Chapter 8.15.100 of the Morro Bay Municipal Code. With this plan, the shopping cart owners must provide the following:

- Permanent identification on the carts.
- Loss prevention measures.
- Inventory of carts including type and color.
- A description of an employee training program designed to prevent carts from being taken off business premises.
- Mandatory retrieval if the carts are removed from the business site.
- Community outreach of notification regarding removal of shopping carts from the premises to customers and community.

There are several types of cart containment options that shopping cart owners may choose, including physical barrier systems or electronically operated wheel locking systems. Owners may choose which method of cart containment or control will work best for their particular store. The ordinance allows designated City staff to review the plans for compliance and to make necessary corrections to plans before approval.

The ordinance also permits the City to retrieve carts immediately when it is in a location that could impede emergency services or when the cart does not identify the shopping cart owner as required. However, when the location of the cart is not impeding emergency services and the cart identifies the owner, then pursuant to State law, the City may only remove the abandoned cart 72 hours after giving notice to its owner.

In the event that a cart has been impounded and the identity of the owner is discernable, the City will provide notice to the owner as to the cart's location, how the cart may be retrieved, and a warning that the failure to retrieve the cart may result in the cart's sale or destruction after 30 days per State law and the new Morro Bay Municipal Code chapter. The City would not be required to provide notice if the identity of the shopping cart's owner is not provided for on the cart.

CONCLUSION

The overall objective of this ordinance is to establish a foundation with the retail industry to ensure that the abandoned shopping cart prevention plan is responsive to the needs of the community for a clean and safe environment. If adopted, the Ordinance will take effect 30 days thereafter.

ATTACHMENT

1. Ordinance No. 663

ORDINANCE NO. 663

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AMENDING TITLE 8 (“HEALTH AND SAFETY”) OF THE MORRO BAY MUNICIPAL CODE
TO ADD CHAPTER 8.15 PERTAINING TO THE UNAUTHORIZED
REMOVAL OF SHOPPING CARTS FROM RETAIL ESTABLISHMENTS AND TO
FACILITATE RETRIEVAL OF ABANDONED SHOPPING CARTS**

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

WHEREAS, the City has a fundamental interest in promoting the public health, safety and welfare of its residents, visitors and businesses, and the aesthetic qualities of the City; and

WHEREAS, abandoned or unattended shopping carts off the premises of retail establishments can interfere with pedestrian and vehicle traffic; the use of public streets, sidewalks, public areas, and public rights-of-way; can constitute a hazard to streams, riparian areas and other natural areas; and contribute substantially to litter, clutter and visual blight; and

WHEREAS, the purpose of this ordinance is to promote the public health, safety and welfare, and the aesthetic qualities of the City by regulating and prohibiting the removal of shopping carts from the premises of retail establishments, including designated parking areas, without the authorization or consent of the cart’s owner, and to regulate the retrieval and disposition of abandoned or unattended shopping carts that are found off the premises of retail establishments so as to:

1. Provide for pedestrian and vehicle safety;
2. Ensure that the flow of pedestrian or vehicle traffic, including ingress into or egress from any residence, place of business, street, sidewalk, public area, public right-of-way, or any legally parked or stopped vehicle, is not unreasonably interfered with;
3. Help protect streams, creeks, riparian areas, and other natural areas within the City;
4. Reduce litter, clutter, and visual blight associated with abandoned or unattended shopping carts;
5. Divert cart waste from the landfill; and
6. Balance the rights and interests of those engaged in commercial activities that provide shopping carts for use by customers with the rights and interests of those who do not want to be disturbed by abandoned or unattended shopping carts on private and public property.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, HEREBY FINDS AND ORDAINS AS FOLLOWS:

SECTION 1. Recitals. The above Recitals are true and correct and are hereby incorporated by this reference.

SECTION 2. Adoption. A new Chapter 8.15, entitled “Unauthorized Removal of Shopping Carts from Retail Establishments” is hereby added to Title 8 of the Morro Bay Municipal Code (“Health and Safety”) to read in its entirety as follows:

“UNAUTHORIZED REMOVAL OF SHOPPING CARTS FROM RETAIL ESTABLISHMENTS

8.15.010 Authority and Purpose; Findings

This chapter is adopted pursuant to Business and Professions Code Sections 22435 through 22435.8 and the city’s general police powers for the purpose of regulating and prohibiting the removal of shopping carts from the premises of retail establishments, including designated parking areas, without the authorization or consent of the shopping cart’s owner, and to regulate the retrieval and disposition of abandoned or unattended shopping carts that are found off the premises of retail establishments.

The presence of abandoned or unattended carts, or parts thereof, on private or public property is found to create a condition tending to reduce the value of private property, to create blight and deterioration, interfere with pedestrian and vehicular traffic, to be injurious to health, safety, and general welfare, and contributes to landfill waste. The presence of abandoned or unattended carts, or parts thereof, on private or public property, except as expressly hereinafter permitted, is declared a public nuisance which may be abated as such in accordance with the provision of this chapter.

This chapter is intended to implement, and operate in consistency with, the California Business and Professions Code (sections 22435 to 22435.13) known as the “California State Shopping Cart and Laundry Cart Law.” In the event of inconsistency between the terms of this chapter and the California Business and Professions Code, which inconsistency cannot be reasonably harmonized, the terms of the Business and Professions Code shall control.

8.15.020 Applicability

This chapter applies to all businesses located in the city that provide shopping carts for customer use and to all shopping carts on and off the premises of businesses within the city.

8.15.030 Administration

The director is authorized to administer this chapter which includes, without limitation, the ability to promulgate administrative policies and procedures to interpret, implement and enforce this chapter.

8.15.040 Definitions

“Abandoned or unattended shopping cart” means any shopping cart which is left unattended, discarded or abandoned upon any public property other than the premises from which the shopping cart was removed, without the authorization or consent of the cart’s owner.

“Abandoned shopping cart prevention and retrieval plan” shall mean a document required to be submitted by the responsible business owner, pursuant to this chapter.

“Agent” means the person or persons designated by the owner of a shopping cart authorized to perform or provide retrieval services on behalf of the owner. The agent may be the owner, store manager, employee or a private cart retrieval company.

“Director” shall mean the Assistant City Manager, or Director of Public Works, or the Fire Chief, or the Director of Community Development for the City of Morro Bay, or such other director or designee thereof as designated by the City Manager, to administer the appropriate sections of this chapter.

“Occurrence” means the retrieval or impoundment by the city pursuant to this chapter of all shopping carts of an owner in a one-day period.

“Owner” means a person who owns or provides shopping carts for use by customers in connection with the operation of a business.

“Person” includes, without limitation, individuals, corporations, partnerships, and all other legal entities, and officers, employees, and authorized agents of an owner.

“Premises” means the entire area owned and utilized by a retail establishment that provides shopping carts for use by customers, including any parking lot or other off-street area provided by an owner, or shared with other retail establishments, for use by customers for parking automobiles or other vehicles.

“Public property” means the outdoor common area of any building, business premises, apartment building or complex, or other premises or portion thereof which is adjacent to public property, open to the public, and which contains a shopping cart or shopping carts visible at street or ground level from the adjacent public property.

“Retail establishment,” with regard to shopping carts, means any business located in the city of Morro Bay which offers or provides shopping carts for the use by customers of such business regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of whether such business is open to the general public, is a private club or business, or is a membership store.

“Shopping cart” means a basket mounted on wheels or a similar device generally used by a customer for the purpose of transporting goods of any kind within a retail establishment or designated parking or loading area of that business establishment.

"Physical containment system" means one of the following, as approved by the director:

1. Disabling devices on all shopping carts which prevent them from being removed from the business premises by locking the wheels or otherwise preventing the movement of the carts.
2. Any other system of equipment approved by the director that physically contains shopping carts on the premises.

8.15.050 Declaration of a Public Nuisance

It is hereby declared that the removal from ownership premises and abandonment of shopping carts constitutes a public nuisance that could impede emergency services, interfere with pedestrian and vehicular traffic, reduce property values, promote blight and property deterioration,

comprise an attractive nuisance and create other hazards to health, safety, and general welfare of the community.

8.15.060 Required Signs and Identification

Cart Identification and Removal Warning Signs Required. Pursuant to Section 22435.1 of the Business and Professions Code, every shopping cart owned or provided by an owner shall have a sign permanently affixed to the shopping cart that includes the following information:

1. The owner's name, business address and phone number.
2. Notice of the procedure to be utilized for authorized removal of the shopping cart from the premises.
3. Notice that unauthorized removal of the shopping cart from the premises or parking area of a retail establishment, or the unauthorized possession of the shopping cart, is a violation of state law and this chapter.

8.15.070 Prohibitions

A. Unauthorized Removal Unlawful. It shall be unlawful for any person, either temporarily or permanently, to remove a shopping cart from a business premises or be in possession of a shopping cart with a permanently affixed sign as provided in Section 8.15.060, or that has been removed from a premises without written consent of the cart owner as authorized by this chapter; excepting removal for the purpose of repair, maintenance, or disposal of a cart as authorized by this chapter.

A cart owner may permit customer off-premises use of a shopping cart for transportation of purchased items. The authorization must be in writing with date(s) and time(s) of such authorized use. Any shopping cart taken off premises must be returned to the owner's premises within seventy-two hours.

B. Abandonment Prohibited. It shall be unlawful and a public nuisance for any person to cause or permit any shopping cart to be abandoned or remain unattended on or upon any sidewalk, street, alley or other area other than the premises of the owner of such shopping cart.

8.15.080 Cart Containment and Retrieval by Owners

A. Mandatory Secure Containment of Shopping Carts After Hours. Every shopping cart owner must lock or otherwise securely contain all shopping carts of the owner after business hours in a manner that reasonably prevents theft or removal from the premises. All shopping carts located on the premises of a retail establishment, other than an establishment open for business twenty-four hours per day, must be collected at the end of each business day by the owner, employees, or authorized agents of the retail establishment and be collectively confined in a secured manner in a designated cart confinement area on the premises until the commencement of the next business day.

All shopping carts located on the premises of any retail establishment open for business twenty-four hours per day, other than carts then currently in use by a customer, must be collected by the owner, employees, or authorized agents of the retail establishment and returned to a designated cart confinement area on the premises at least twice per calendar day between the hours of 12:00

p.m. (noon) and 12:00 a.m. (midnight) on each day the retail establishment is open for business. This section does not apply to:

1. Shopping carts located within an enclosed building.
2. Shopping carts removed from the premises of a retail establishment for purposes of repair or maintenance that are in the possession or custody of the party to whom removal has been authorized in writing by the shopping cart owner.
3. Shopping carts being transported by the owner, or an officer, employee, or authorized agent of the owner, to or from a business location of the owner.

B. **Mandatory Retrieval of Carts.** All abandoned shopping carts of a retail establishment that are found off the premises of the retail establishment must be retrieved as soon as practicable by the owner, or an authorized agent of the owner, including a cart retrieval service retained by the owner. The city shall notify the owner of an abandoned shopping cart when such shopping cart is located in a place that can be accessed safely by the owner. Such notice may be given by telephone, email or text message to the owner or owner's agent designated in the abandoned shopping cart prevention and retrieval plan, if an approved plan is in place, and shall include the cart's location. Within three business days from the date the owner of the cart is provided with notice by the city that an abandoned shopping cart of the owner has been located, the owner or agent shall cause the identified shopping cart(s) to be retrieved.

C. **Retrieval Services.** Persons retained to perform shopping cart retrieval services must carry written authorization from the owner to be presented upon request by the director. Vehicles used by retrieval services must bear conspicuous signs identifying the name of the cart retrieval service.

8.15.090 Impoundment and Retrieval of Abandoned Shopping Carts

A. The director may immediately retrieve and impound any shopping cart, in accordance with the provisions outlined in Business and Professions Code Section 22435.7.

B. **Impoundment Following Three-Day Notice.** A shopping cart that has a sign affixed to it in accordance with the provisions of this chapter and Business and Professions Code Section 22435.1 may be impounded by the city provided both of the following conditions are met:

1. The shopping cart is located outside the premises or parking area of a retail establishment; and
2. Except as provided in subsection C of this section (Impoundment Without Three-Day Notice), the shopping cart is not retrieved within three business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the city of the shopping cart's discovery and location.

C. **Impoundment Without Three-Day Notice.**

1. The city may retrieve and impound any abandoned shopping cart without first giving three days' notice provided:
 - a. The director provides actual notice to the owner, or his or her agent, of the impoundment of the shopping cart within twenty-four hours following the impound;

- b. The notice informs the owner, or his or her agent, of the location where the shopping cart may be claimed;
- c. Any shopping cart reclaimed by the owner, or his or her agent, within three business days after the date of actual notice to the owner, or his or her agent, of the impound, must be released and surrendered to the owner, or his or her agent, at no charge, including the waiver of any impound and storage fees or fines which otherwise would be applicable; and
- d. The shopping cart is held at a location that is both:
 - i. Reasonably convenient to the owner of the shopping cart; and
 - ii. Open for business at least six hours of each business day.

D. Immediate Retrieval and Impoundment by City for Impeding Emergency Services. The director may immediately retrieve and impound any shopping cart from public or private property if the location of the shopping cart impedes emergency services.

E. Any cart reclaimed by the owner or their agent within three business days from the date the owner of the shopping cart, or their agent, is given actual notice by the city of the shopping cart's discovery and location, or impoundment, shall not be deemed a violation for purposes of this chapter.

F. The owner of any shopping cart that is not reclaimed within three business days after the date the owner has been given actual notice by the city of the shopping cart's discovery and location, or impoundment, is subject to prosecution or the imposition of administrative costs, fees, fines, interest and other penalties applicable under this chapter commencing four business days after the date of notice.

G. Following the city having retrieved more than ten (10) carts in any thirty (30)-day period or the issuance of more than ten (10) administrative citations in any twelve (12)-month period from one business, the City's Director of Community Development may require the owner to install a physical containment system.

8.15.100 Abandoned Shopping Cart Prevention and Retrieval Plan

A. Abandoned Shopping Cart Prevention and Retrieval Plan Required. Every owner who provides shopping carts to customers shall develop, implement and comply with the terms and conditions of an approved abandoned shopping cart prevention and retrieval plan to prevent the unauthorized removal of shopping carts from a premises and, if removed, to retrieve the shopping cart within three business days after knowing of the cart's removal from the premises or after receiving notice from the city that the shopping cart has been abandoned.

To be effective, an abandoned shopping cart prevention and retrieval plan must be approved by the director. To be eligible for approval, an abandoned shopping cart prevention and retrieval plan shall include the following elements:

1. Name. The name of the owner and the business name, the physical address where the business is conducted, name, address and phone number(s) of the on-site and off-site owner, if different.
2. Inventory of Carts. A complete list of all shopping carts maintained on or in the premises.

3. Community Outreach. A description of a community outreach process under which the owner shall cause notice to be provided to customers that the removal of shopping carts from the premises is prohibited and is a violation of state and city ordinance. This notice may include, but is not limited to, flyers distributed at the premises, warnings on shopping bags, signs posted in prominent places near door and parking lot exits, direct mail, announcements using intercom systems at the premises, website or other means demonstrated to be effective to the reasonable satisfaction of the director.

4. Cart Identification. Signs and shopping cart identification requirements which conform to state law. Owners shall attach an example of the proposed shopping cart ownership identification sign which shall conform to California Business and Professions Code Section 22435.1.

5. Loss Prevention Measures. A description of the specific measures that the owner shall implement to prevent shopping cart removal from the owner's premises. These measures may include, but are not limited to, electronic or other disabling devices on the shopping carts so they cannot be removed from the premises, effective management practices, use of courtesy clerks to accompany customers and return the shopping carts to the store, use of security personnel to prevent removal, security deposit for use of shopping cart, or other demonstrable measures acceptable to the director that are likely to prevent shopping cart removal from the premises. Cart owners shall conduct regular maintenance to ensure disabling devices and/or security deposit systems are working properly. If at any time, a cart owner determines the disabling device installed on a cart is not working properly, the cart shall be pulled from circulation until it is repaired. The cart owner shall inspect, test, and repair all abandoned carts returned to the owner prior to making the returned carts available for use.

6. Employee Training. A description of an ongoing employee training program that shall be implemented by the owner and that shall be designed to educate new and existing employees on the abandoned shopping cart prevention plan and conditions contained therein at least annually.

7. Mandatory Cart Retrieval. A plan for retrieval of abandoned shopping carts by the owner within three business days after knowing of a cart's removal from the owner's premises or after receiving notice from the city that the shopping cart has been abandoned.

B. Failure to Submit Plan. The plan must be submitted to the director within sixty days after this chapter becomes effective or alternatively, if a business opens after the date this chapter becomes effective, then within thirty days after a business that uses carts commences operations. Any owner who fails to provide the abandoned shopping cart prevention and retrieval plan shall be required to pay the city one hundred dollars for each calendar month the plan is not provided, as a penalty for not complying with this Section 8.15.100.

8.15.110 Recovery of Fines and Costs by City

A. Pursuant to Business and Professions Code Section 22435.7(f), any owner that fails to retrieve the owner's shopping cart or shopping carts within three business days from the date of being given notice of the cart's or carts' discovery and location, or impoundment, by the city, is guilty of a violation of this chapter and may be punished with an administrative fine of fifty dollars for each occurrence in excess of three during the six-month period starting January 1st and ending on June 30th or the six-month period starting July 1st and ending December 31st of each calendar year.

B. In addition to the fines imposed above, the owner shall pay the city's actual costs for retrieving and storing the owner's shopping cart or carts except when the owner, or their authorized agent, reclaims their cart or carts within three business days from being given notice of the cart's or carts' discovery and location, or impoundment, by the city, in which case all fines, costs and fees shall be waived.

C. Any fines recovered, or proceeds derived from such sale or disposal shall be used to pay the costs of removal, storage, and related administrative procedures. Surplus proceeds derived from such sale or disposal shall be deposited in the general fund of the city.

8.15.120 Disposal of Abandoned Shopping Carts

The city may sell or otherwise dispose of any shopping cart:

A. That is not reclaimed from the city within thirty (30) days of receipt by the owner, or the owner's agent, of actual notice from the city of the cart's discovery and location, or impoundment.

B. If the owner of the cart cannot be determined.

C. If the cart is rendered unusable (e.g., mangled or destroyed).

8.15.130 Enforcement

Every cart owner who violates any provision of such owner's effective cart nuisance abatement program, and every person who violates any provision of this chapter, shall be subject to enforcement procedures for each violation by any lawful means available to the city, including, but not limited to, those set forth in California Business and Professions Code Sections 22435.3 and 22435.5, Section 8.15.010 of this code, and chapters 1.16 of the Morro Bay Municipal."

SECTION 3. CEQA EXEMPTION. Pursuant to the California Environmental Quality Act (CEQA), it can be seen with certainty that there is no possibility that the proposed Municipal Code Amendment regarding the security of shopping carts will have any effect on the environment (General Rule Exemption CEQA Guidelines Sec. 15061(b)(3)) and the proposed Ordinance would be exempt per CEQA Section 15301 Existing Facilities, as there would be negligible or no expansion of use; CEQA Section 15308 Actions by Regulatory Agencies for the Protection of the Environment, as the proposed ordinance is intended to assure the maintenance and protection of the environment; and 15311 Accessory Structures, regarding potential placement on-premise signage needed for public notification associated with the proposed ordinance.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

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

SECTION 6. 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 held on the 14th day of November 2023, by motion of Council Member Barton and seconded by Council Member Edwards.

PASSED AND ADOPTED on the _____ day of _____, 2023 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance No. 663 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the _____ day of _____ 2023, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

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

DANA SWANSON, City Clerk



AGENDA NO: A-7

MEETING DATE: December 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: November 28, 2023

FROM: Ted Schiafone, Harbor Director

SUBJECT: Approval of Lease Amendment #3 for TLC Enterprises, Lease Site 87-88/87W-88W, located at 833 Embarcadero Road

RECOMMENDATION

Staff recommends Council adopt Resolution No. 75-23 approving Amendment #3 to the lease agreement extending the completion deadline for TLC Enterprises, Lease Sites 87-88/87W-88W.

FISCAL IMPACT

A cost recovery fee of \$1,680 will be charged to TLC Enterprises to reimburse the Harbor Department for resources used to facilitate this lease amendment.

BACKGROUND

City Council approved a new 50-year lease agreement on December 11, 2018, with TLC Family Enterprises (TLC) in exchange for a complete redevelopment of Lease Sites 87-88/87W-88W. The project had multiple delays due to the COVID 19 pandemic and the supply chain issues that followed. Due to continued supply chain issues and most notably PG&E's inability to meet new service demand, this project will need additional time to complete.

DISCUSSION

TLC has diligently pursued the completion of their project and has sustained additional costs due to these unforeseen circumstances. Not allowing an extension would penalize both TLC Enterprises and Morro Bay Harbor.

CONCLUSION

Charging a cost recovery fee of \$1,680 will reimburse staff time in providing for the amendment to extend the completion deadline.

Staff recommends Staff recommends Council adopt Resolution No. 75-23 approving Amendment #3 to the lease agreement for TLC Enterprises, Lease Sites 87-88/87W-88W.

ATTACHMENTS

1. Lease Amendment #3
2. Resolution No. 75-23

Prepared By: TS

Dept Review: TS

City Manager Review: YK

City Attorney Review: JWP

**AMENDMENT #3 TO THE MASTER LEASE AGREEMENT FOR
LEASE SITE 87-88/87W-88W,
LOCATED AT 833 EMBARCADERO**

This Amendment ("Amendment #3") is made and entered into as of this ____ day of _____, 2023, by and among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and TLC Family Enterprises, a California corporation, hereinafter called "Tenant." (Collectively, City and Tenant are sometimes referred to herein as the "Parties.")

WHEREAS, this Amendment is to that certain lease, which was signed on behalf of the Parties and is effective as of December 11, 2018, and was amended on January 12, 2021 and December 16, 2021 (hereinafter collectively, the "Amended Lease"); and

WHEREAS, the Amended Lease approved a new 50-year agreement with Tenant in exchange for Tenant's complete redevelopment of Lease Sites 87-88/87W-88W with an amended project completion date of May 14, 2023 (the "Project"); and

WHEREAS, the Project has had multiple delays due to the COVID 19 pandemic and supply chain issues, most notably Pacific Gas & Electric ("PG&E") note being able to meet new service demands; and

WHEREAS, the Parties agree to amend the project completion date of May 14, 2023, due to these unforeseen circumstances, along with charging a cost recovery fee of \$1,680 for reimbursement of staff time in providing this Amendment #3.

NOW THEREFORE, Tenant and City hereby agree to amend the Amended Lease as follows:

1. Subsection 13.02 (l) of the Amended Lease is replaced in its entirety, thereto to read as follows:

I. Completion of all components of the Project no later than 120 days after PG&E completes electrical service. Completion shall mean when the Project is entitled to be issued a final Certificate of Occupancy.

2. Except as expressly stated herein, all provisions of the Amended Lease shall remain in full force and effect.

3. The effective date of this Amendment #3 is the date first written above.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date written above.

CITY OF MORRO BAY

TLC Family Enterprises,
a California Corporation

By: _____
Carla Wixom, Mayor

By: _____
Cherise Hansson, President

APPROVED AS TO FORM:

By: _____
Travis Leage, Secretary

Chris F. Neumeyer, City Attorney

ATTEST:

Dana Swanson, City Clerk

RESOLUTION NO. 75-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AMENDMENT #3 TO THE MASTER LEASE AGREEMENT FOR
LEASE SITE 87-88/87W-88W, BETWEEN THE CITY OF MORRO BAY AND TLC FAMILY
ENTERPRISES, LOCATED AT 833 EMBARCADERO**

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

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

WHEREAS, TLC Family Enterprises, a California corporation (Tenant) is the current master leaseholder at Lease Site 87-88/87W-88W pursuant to that certain Master Lease as previously amended twice (the "Amended Lease"); and

WHEREAS, the Amended Master Lease approved a new 50-year lease agreement with Tenant in exchange for Tenant's complete redevelopment of Lease Sites 87-88/87W-88W with an amended project completion date of May 14, 2023; and

WHEREAS, City and Tenant agree to amend the project completion date of May 14, 2023, due to these unforeseen circumstances, along with charging a cost recovery fee of \$1,680 for reimbursement of staff time in providing the amendment; and

WHEREAS, City and Tenant agree to amend the project completion date no later than 120 days after PG&E completes electrical service. Completion shall mean when the Project is entitled to be issued a final Certificate of Occupancy, and

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

1. The attached Amendment #3 to the amended Master Lease Agreement with TLC Family Enterprises for Lease Site 87-88/87W-88W is hereby approved.
2. The Mayor is hereby authorized to execute that Amendment #3.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of December 2023 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

Carla Wixom, Mayor

ATTEST:

Dana Swanson, City Clerk



AGENDA NO: A-8

MEETING DATE: December 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: November 27, 2023

FROM: Steve Conway, Interim Asst City Manager/Administrative Services Director
Emily Conrad, Finance Manager

SUBJECT: Fiscal Year (FY) 2022-23 Status Report on Receipt and Use of Development Impact Fees

RECOMMENDATION

Staff recommends the Council adopt Resolution No. 76-23 accepting the Fiscal Year (FY) 2022-23 status report on receipt and use of Development Impact Fees.

FISCAL IMPACT

There is no fiscal impact associated with the requested action.

BACKGROUND/DISCUSSION

To ensure that mitigation fees associated with development are spent in a timely manner and on projects for which they were being collected, the State Legislature passed a bill known as "AB 1600" or the "Mitigation Fee Act." This bill applies to developer fees which were increased or imposed on or after January 1, 1989.

The Mitigation Fee Act (California Government Code, Section 66000 et seq.) requires local agencies that impose Development Impact Fees (DIFs) to present an annual, consolidated report showing the receipt and use of those fees. The Annual Status Report (Attachment 1) must be available for review by the Council within 180 days after the close of the fiscal year represented. The AB 1600 report is required to be accessible to the public for viewing at least 15 days prior to the public meeting. In accordance with this legal requirement the report for FY 2022-23 (July 1, 2022 to June 30, 2023) was posted to the City's website November 27, 2023.

The City collects the following DIFs that meet the AB 1600 reporting requirements:

- Government Impact Fees (Fund 900)
 - General Government (Administration)
 - Police
 - Fire
 - Traffic (Streets)
 - Storm Drain
 - Parks
- Affordable Housing In-Lieu Fees (Fund 941)
- Water Impact Fees (Fund 921)
- Sewer Impact Fees (Fund 922)
- Miscellaneous Impact Fees (Fund 515)
 - Highway 41/Main Impact
 - Traffic Impact
 - Sewer Master Plan Impact
 - Flood Hazard Plan Impact

Prepared By: EC

Dept Review: SC

City Manager Review: YK

City Attorney Review: LNL

- Calvary Baptist Drain Impact

Separate balances exist for each of these fees either as individual accounts or separate funds. As required by AB 1600, as of June 30, 2023, all accounts or funds with unspent balances have been credited interest revenue at the City's current interest rate earned on its total investment portfolio.

AB 1600 requires that a status report be prepared annually which must include a brief description of the fee and the fund into which the fee was deposited; the associated fund's beginning and ending balances for the fiscal year; the total amount of the fees collected and interest earned; each public improvement on which impact fees were expended and amount of the expenditure on each improvement; and other information about the public improvement projects or interfund loans, if applicable.

Government Code section 66001, subdivision (d), of the Mitigation Fee Act mandates the requirement that beginning with the fifth fiscal year following deposit of DIFs into a designated account, and each fifth fiscal year thereafter, the City must make specified findings regarding any portion of the fees that remain unexpended. The last fiscal year a five-year report was made was Fiscal Year 2021-22.

The information is presented in the attached FY 2022-23 Annual Status Report on Receipt and Use of Development Impact Fees and resolution of specified findings.

CONCLUSION

Staff recommends Council adopt Resolution No. 76-23 and accept the FY 2022-23 Annual Status Report on Receipt and Use of Development Impact Fees as required under the Mitigation Fee Act (AB 1600).

ATTACHMENT

1. Resolution No. 76-23 making findings for unexpended Development Impact Fees and accepting the FY 2022-23 Annual Status Report on Receipt and Use of Development Impact Fees

RESOLUTION NO. 76-23

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
MAKING FINDINGS FOR UNEXPENDED DEVELOPMENT FEES IN ACCORDANCE
WITH GOVERNMENT CODE SECTION 66000 AND REVIEWING AND ACCEPTING ANNUAL
DEVELOPMENT FEE DISCLOSURE INFORMATION**

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

WHEREAS, the Mitigation Fee Act, Government Code Section 66000 *et seq.*, authorizes the City to impose, collect, and expend mitigation fees to offset the impacts of development within the City; and

WHEREAS, among the procedural requirements mandated by the Mitigation Fee Act is a requirement that beginning with the fifth fiscal year following deposit of development fees into a designated account, and each fifth fiscal year thereafter, the City make specified findings regarding any portion of the fees that remain unexpended; and

WHEREAS, the City has deposited all development impact fees that it has received in a separate non-commingled capital facilities fund established for such a purpose, pursuant to Government Code Sections 66006(a) and (b); and

WHEREAS, a portion of the fees currently deposited in the City's Development Impact Funds for: General Government (Administration), Traffic (Streets), Parks, Highway 41/Main Street, Traffic Impact, Storm Drain, Calvary Baptist Drain, Sewer Master Plan, and Flood Hazard Plan were collected over five years ago, and therefore the City wishes to make the findings required by Government Code Section 66001(d); and

WHEREAS, the City also wishes to memorialize that it has made public certain information, pursuant to the annual information disclosure requirements of Government Code Section 66006(b), including but not limited to the amount of the fee, the beginning and ending balance of the fee account or fund, and the interest earned thereon, available to the public at least fifteen (15) days before the City Council considers this matter. The information required by Government Code Sections 66001 and 66006 is set forth in the FY 2022-23 AB1600 Annual and Five-Year Report: City of Morro Bay ("Development Impact Fee Report") considered concurrently herewith; and

WHEREAS, on November 27, 2023, the information in the above-referenced recital was made available to the public as required by Government Code Section 66006(b); and

WHEREAS, on December 12, 2023, the above-referenced recitals were presented to City Council at a duly noticed, regularly scheduled public meeting.

NOW, THEREFORE, the City Council of the City of Morro Bay hereby finds, determines, and resolves as follows:

Section 1. The recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. The City Council has considered the full record before it, which may include

but is not limited to the staff report, the Development Impact Fee Report, testimony by staff and the public, and other materials and evidence submitted or provided.

Section 3. The City Council finds that the General Government (Administration) Development Impact Fee Fund currently contains \$333,285.01 in unexpended Development Impact Fees collected more than five years ago. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:

- A. Additional funds are needed to design and construct updated City Administration facilities and to renovate the Veteran's Memorial Hall.
- B. There exists a reasonable relationship between the unexpended funds described above and the purpose for which they were generated because expanded City facilities are required to accommodate the additional service needs associated with the properties that paid these fees.
- C. The estimated total cost of expanded administrative facilities such as City Hall will be updated in the forthcoming capital needs assessment. The City's funding sources will include unexpended Development Impact Fees of \$333,285.01, future fees, and other available capital funding sources.
- D. The unexpended fees were deposited in the Administration Development Impact Fees Fund, which is the appropriate fund to finance administrative facilities. All future fees will also be deposited into this fund. The approximate date by which the above Development Impact Fee funds will be deposited into the appropriate account or fund for expenditure is 2025.

Section 4. The City Council finds that the Traffic (Streets) Development Impact Fee Fund currently contains \$66,467.15 in unexpended Development Impact Fees collected more than five years ago. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:

- A. Additional funds are needed to complete streets maintenance projects.
- B. There exists a reasonable relationship between the unexpended funds described above and the purpose for which they were generated because improvements will be made to mitigate impacts to streets associated with the properties that paid these fees.
- C. The estimated total cost of the Highway 41/Main Street Intersection Project as of the FY 2023-24 budget is \$7,316,000.00. The City's funding sources will include unexpended Traffic (Streets) Development Impact Fees of \$597,950.00 collected as of June 30, 2023, \$228,050.00 in unexpended Highway 41/Main Development Impact Fees, \$600,000.00 in Measure E District Transaction Tax, and \$5,890,000.00 in grant funding.
- D. The unexpended fees were deposited in the Traffic (Streets) Development Impact Fees Fund, which is the appropriate fund to finance street maintenance projects. All future fees will also be deposited into this fund. The approximate date by which the above Development Impact Fee funds will be deposited into the appropriate account or fund for expenditure is 2024.

Section 5. The City Council finds that the Parks Development Impact Fee Fund currently contains \$62,245.84 in unexpended Development Impact Fees collected more than five years

ago. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:

- A. Additional funds are needed to complete all park maintenance projects.
- B. There exists a reasonable relationship between the unexpended funds described above and the purpose for which they were generated because the parks improvements will positively impact the properties that paid these fees.
- C. The estimated total cost of the Coleman Park project is \$1,692,300.00. The City's funding sources will include unexpended Parks Development Impact Fees of \$292,300.00 collected as of June 30, 2023 and \$600,000.00 in grant funds. The remaining \$800,000.00 of project funding is yet to be determined.
- D. The unexpended fees were deposited in the Parks Development Impact Fees Fund, which is the appropriate fund to finance this park improvement. All future fees will also be deposited into this fund. The approximate date by which the above Development Impact Fee funds will be deposited into the appropriate account or fund for expenditure is 2024.

Section 6. The City Council finds that the Highway 41/Main Development Impact Fee Fund currently contains \$45,242.10 in unexpended Development Impact Fees collected more than five years ago. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:

- A. Additional funds are needed to design and replace the existing intersection at Highway 41/Main Street.
- B. There exists a reasonable relationship between the unexpended funds described above and the purpose for which they were generated because the intersection improvement will positively impact the properties that paid these fees.
- C. The estimated total cost of the Highway 41/Main Street Intersection Project as of the FY 2023-24 budget is \$7,316,000.00. The City's funding sources will include unexpended Highway 41/Main Development Impact Fees of \$228,049.52 collected as of June 30, 2023, \$597,950.00 in unexpended Street Maintenance Development Impact Fees, \$600,000.00 in Measure E District Transaction Tax, and \$5,890,000.00 in grant funding.
- D. The unexpended fees were deposited in the Highway 41/Main Development Impact Fees Fund, which is the appropriate fund to finance this intersection improvement. All future fees will also be deposited into this fund. The approximate date by which the above Development Impact Fee funds will be deposited into the appropriate account or fund for expenditure is 2024.

Section 7. The City Council finds that the Traffic Development Impact Fee Fund currently contains \$49,972.98 in unexpended Development Impact Fees collected more than five years ago. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:

- A. Additional funds are needed to design and implement traffic improvements to mitigate impacts of new development.
- B. There exists a reasonable relationship between the unexpended funds described above and the purpose for which they were generated because the improvements will mitigate

impacts of development of the properties that paid these fees.

- C. The estimated total cost of traffic improvements will be updated in the forthcoming capital needs assessment. The City's funding sources will include unexpended Development Impact Fees of \$49,972.98, future fees, and other available capital funding sources.
- D. The unexpended fees were deposited in the Traffic Development Impact Fees Fund, which is the appropriate fund to finance these traffic improvements. All future fees will also be deposited into this fund. The approximate date by which the above Development Impact Fee funds will be deposited into the appropriate account or fund for expenditure is 2025.

Section 8. The City Council finds that the Storm Drain Development Impact Fee Fund currently contains \$4,208.00 in unexpended Development Impact Fees collected more than five years ago. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:

- A. Additional funds are needed to design and improve the City's storm drain facilities to accommodate new development.
- B. There exists a reasonable relationship between the unexpended funds described above and the purpose for which they were generated because the storm drain improvements will mitigate impacts of development from the properties that paid these fees.
- C. The estimated total cost of storm drain improvements will be updated in the forthcoming capital needs assessment. The City's funding sources will include unexpended Development Impact Fees of \$4,208.00, future fees, and other available capital funding sources.
- D. The unexpended fees were deposited in the Storm Drain Development Impact Fees Fund, which is the appropriate fund to finance these storm drain improvements. All future fees will also be deposited into this fund. The approximate date by which the above Development Impact Fee funds will be deposited into the appropriate account or fund for expenditure is 2025.

Section 9. The City Council finds that the Calvary Baptist Drain Development Impact Fee Fund currently contains \$314.36 in unexpended Development Impact Fees collected more than five years ago. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:

- A. Additional funds are needed to design and improve the storm drain adjacent to Calvary Baptist.
- B. There exists a reasonable relationship between the unexpended funds described above and the purpose for which they were generated because the improvements to the storm drain will help mitigate the impact from development of the properties that paid these fees.
- C. The estimated total cost of this storm drain improvement will be updated in the forthcoming capital needs assessment. The City's funding sources will include unexpended Development Impact Fees of \$314.36, future fees, and other available capital funding sources.

- D. The unexpended fees were deposited in the Calvary Baptist Storm Drain Development Impact Fees Fund, which is the appropriate fund to finance this storm drain improvement. The approximate date by which the above Development Impact Fee funds will be deposited into the appropriate account or fund for expenditure is 2025.

Section 10. The City Council finds that the Sewer Master Plan Development Impact Fee Fund currently contains \$146,072.58 in unexpended Development Impact Fees collected more than five years ago. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:

- A. Additional funds are needed to update the City's Sewer Master Plan.
- B. There exists a reasonable relationship between the unexpended funds described above and the purpose for which they were generated because the Sewer Master Plan will positively impact the properties that paid these fees.
- C. The estimated total cost of Sewer Master Plan will be updated in the forthcoming update to the One Water Plan and any required follow up. The City's funding sources will include unexpended Development Impact Fees of \$146,072.58, future fees, and contributions from the Sewer Operating Fund.
- D. The unexpended fees were deposited in the Sewer Master Plan Development Impact Fees Fund, which is the appropriate fund to finance the Sewer Master Plan development. All future fees will also be deposited into this fund. The approximate date by which the above Development Impact Fee funds will be deposited into the appropriate account or fund for expenditure is 2025.

Section 11. The City Council finds that the Flood Hazard Development Impact Fee Fund currently contains \$2,391.00 in unexpended Development Impact Fees collected more than five years ago. This is a correction to last year's report which was found to have a calculation error resulting in this report stating this fund contained \$17,385.99 in unexpended Development Impact Fees collected more than five years ago. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:

- A. Additional funds are needed to improve flood hazard areas in the city.
- B. There exists a reasonable relationship between the unexpended funds described above and the purpose for which they were generated because the improvements to the flood hazard areas will help mitigate impacts from development of the properties that paid these fees.
- C. The estimated total cost of improvements to the flood areas will be updated in the forthcoming capital needs assessment. The City's funding sources will include unexpended Development Impact Fees of \$2,391.00, future fees, and other available capital funding sources.
- D. The unexpended fees were deposited in the Flood Hazard Development Impact Fees Fund, which is the appropriate fund to finance the improvements. All future fees will also be deposited into this fund. The approximate date by which the above Development Impact Fee funds will be deposited into the appropriate account or fund for expenditure is 2025.

Section 12. In accordance with Government Code Section 66006(b), the City Council has reviewed and accepted the annual disclosure information made available to the public regarding City mitigation fees which was presented to the City Council and also placed on file with the City Clerk.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting held on this 12th day of December 2023 by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:
- RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

CITY OF MORRO BAY
ANNUAL STATUS REPORT ON RECEIPT AND USE OF DEVELOPMENT IMPACT FEES
JUNE 30, 2023

Government Impact Fees

Government Impact Fees are collected to ensure that new development pays the cost of infrastructure expansion required to meet the needs of that new development, effectively transferring the cost burden of growth from the existing rate and taxpayers.

The collected fees are held in fund 900, Government Impact Fees Accumulation Fund. They can be used for capital projects for new facilities, vehicles, and rehabilitation and/or renovation of existing facilities, so long as the rehabilitation or renovation is needed to serve the new development that has paid the fee.

Fund 900	
Beginning Fund Cash Balance FY 2022-23 (07/01/2022)	1,667,502

	Bal	Fees	Fees	Remaining
	7/1/2022	Collected	Used	Balance
Administration Fees	\$ 649,030	\$ 29,172	\$ -	\$ 678,201
Police Fees	\$ 47,778	\$ 8,832	\$ -	\$ 56,610
Fire Fees	\$ 82,164	\$ 10,399	\$ -	\$ 92,563
Street Fees	\$ 598,840	\$ 57,123	\$ -	\$ 655,962
Storm Drain Fees	\$ (0)	\$ -	\$ -	\$ (0)
Parks Fees	\$ 289,691	\$ 27,595	\$ (30,000)	\$ 287,286
	<u>\$ 1,667,502</u>	<u>\$ 133,121</u>	<u>\$ (30,000)</u>	<u>\$ 1,770,623</u>

Uses of Funds	
Shasta St. Pocket Park (Bocce Ball) - Transferred to CIP Fund	\$ 30,000
Total Use of Funds	\$ 30,000

Total Ending Balance FY 2022-23 (06/30/2023)	\$ 1,770,623
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Potential future projects are provided below. These are potential projects and may or may not be approved in the City's current budget. Any expenditure from these funds would require advance Council authorization and approval.

Government Impact Fees Potential Future Projects

Potential Future Projects	Total Funds Available	
Administration Fees		
City Administration Facility renovation		TBD
Veteran's Hall Building Improvements	\$	450,000
Total Potential Admin Projects	\$	450,000 \$ 678,201
Police Fees		
Police Annex Parking Lot Project	\$	47,000
Total Potential Police Projects	\$	47,000 \$ 56,610
Fire Fees		
Bonita Fire Station Remodel Design	\$	80,000
Total Potential Fire Projects	\$	80,000 \$ 92,563
Street Fees		
Local Road Safety Plan Implementation and Safety Improvement	\$	997,000
SR1/SR41/Main Street Intersection Improvements	\$	7,316,000
Total Potential Street Projects	\$	8,313,000 \$ 655,962
Storm Drain Fees		
Storm and Flooding Damages-Pavement Repairs	\$	400,000
Storm and Flooding Damages-Facilities and Equipment	\$	800,000
Total Potential Storm Drain Projects	\$	1,200,000 \$ (0)
Parks Fees		
Coleman Park Project	\$	1,692,300
Monte Young Restroom ADA Renovation	\$	150,000
Total Potential Parks Projects	\$	1,842,300 \$ 287,286
Total Potential Future Projects	\$	11,932,300 \$ 1,770,623

Affordable Housing In-Lieu Fees

Affordable Housing In-Lieu Fees are collected from residential development projects when the construction of affordable housing units is impractical. The required in-lieu fee is to be paid to the City prior to the issuance of a building permit (where square footage is added) or a final tract map. The Affordable Housing In-Lieu Fee is \$0.35 per square foot. The collected fees are held in the 941 fund and used solely for the affordable housing program activities, such as the Housing Element development and implementation, or transfer to another public agency for providing affordable housing in the City.

Beginning Fund Cash Balance FY 2022-23 (07/01/2022)				\$ 143,718
Sources of Funds				
	Bal 7/1/2022	Fees Collected	Fees Used	Remaining Balance
	\$ 143,718	\$ 12,417	\$ -	\$ 156,135
Uses of Funds				
No Funds Used in FY 2022-23				\$ -
Total Use of Funds				\$ -
Total Ending Balance FY 2022-23 (06/30/2023)				\$ 156,135
Potential Future Projects				
Local Housing Agency				\$ 55,000
Total Potential Projects				\$ 55,000

Sewer Impact Fees

Pursuant to Government Code, revenues derived from the City's impact fees can only be used for the purpose for which the charges are collected. Wastewater impact fees recover costs for buying in to existing facilities and assets. As such, this share of each fee represents a reimbursement to the City's existing customer base for previously funded facilities and may potentially be used for any purpose. However, the City's practice is conservative and uses these fees to exclusively fund capital improvements. The collected fees are held in the 922 fund and are used solely for wastewater capital improvements.

Beginning Fund Cash Balance FY 2022-23 (07/01/2022)				\$0.00
Sources of Funds				
	Bal 7/1/2022	Fees Collected	Fees Used	Remaining Balance
	\$ -	\$ 63,559	\$ (63,559)	\$ -
Uses of Funds				
Interfund Transfer to WRF Capital Project				\$ 63,559
Total Use of Funds				\$ 63,559
Total Ending Balance FY 2022-23 (06/30/2023)				\$0.00
Potential Future Projects				
Beachcomber Drive Sewer Main Replacement & Improvements				\$ 3,350,000
Total Potential Projects				\$ 3,350,000

Water Impact Fees

Pursuant to Government Code, revenues derived from the City’s impact fees can only be used for the purpose for which the charges are collected. Water impact fees are designed to recover the cost of existing water system facilities and assets as well as the cost of system upgrades and expansion needed to serve the City. The collected fees are held in the 921 fund and are restricted to be used solely for water system facilities, assets and system upgrades and expansion.

Beginning Fund Cash Balance FY 2022-23 (07/01/2022)					\$0.00
Sources of Funds					
	Bal		Fees	Fees	Remaining
	7/1/2022		Collected	Used	Balance
	\$ -	\$ 63,512	\$ (63,512)	\$ -	
Uses of Funds					
Interfund Transfer to WRF Capital Project				\$ 63,512	
Total Use of Funds				\$ 63,512	
Total Ending Balance FY 2022-23 (06/30/2023)					\$0.00
Potential Future Projects					
Brackish Water Reverse Osmosis Building Improvements				\$ 400,000	
Morro Basin Wellfield Rehabilitation				\$ 375,000	
Total Potential Projects				\$ 775,000	

Trust & Agency Fund Impact Fee Revenues

The city has historically used the Trust & Agency fund (fund 515) to hold funds with restricted purposes. Three impact fees remain in the Trust & Agency fund: traffic impact, sewer master plan impact, and flood hazard plan impact. In addition, previous years balances exist for the Highway 41/Main Impact, Storm Drain Impact and Calvary Baptist Drain Impact. These funds are restricted to use of related projects and improvements.

Beginning Fund Cash Balance FY 2022-23 (07/01/2022)					440,744
Sources of Funds					
	Bal		Fees	Fees	Remaining
	7/1/2022		Collected	Used	Balance
Highway41/Main (2600)	\$ 228,050	\$ -	\$ -	\$ -	\$ 228,050
Traffic Impact/All Surces (2607)	\$ 49,973	\$ -	\$ -	\$ -	\$ 49,973
Storm Drain (2613)	\$ 12,987	\$ 1,387	\$ -	\$ -	\$ 14,374
Calvary Baptist Drain Impact (2616)	\$ 314	\$ -	\$ -	\$ -	\$ 314
Sewer Master Plan (2622)	\$ 146,073	\$ -	\$ -	\$ -	\$ 146,073
Flood Hazard Plan (2740)	\$ 3,348	\$ -	\$ -	\$ -	\$ 3,348
Subtotal General Fund	\$ 440,744	\$ 1,387	\$ -	\$ -	\$ 442,131

Potential future projects using impact fee balances in the Trust and Agency Fund (515) are provided below. These are potential projects and may or may not be approved in the City's current budget. Any expenditures from these funds would require advance Council authorization and approval.

Potential Future Projects	Funds Available	
Highway41/Main Impact Fee		\$ 228,050
State Rt (SR) 1/SR 41 Interchange Improvement	\$ 7,316,000	
Potential Future Projects	\$ 7,316,000	\$ 228,050
Traffic Impact/All Sources		\$ 49,973
State Rt (SR) 1/SR 41 Interchange Improvement	\$ 7,316,000	
Potential Future Projects	\$ 7,316,000	\$ 49,973
Storm Drain Impact		\$ 14,374
Storm and Flooding Damages-Pavement Repairs	\$ 400,000	
Potential Future Projects	\$ 400,000	\$ 14,374
Calvary Baptist Drain Impact		\$ 314
Local Road Safety Plan Plan Impementation and Safety Improvements	\$ 997,000	
Potential Future Projects	\$ 997,000	\$ 314
Sewer Master Plan Impact		
One Water Plan Update	\$ 190,000	\$ 146,073
Potential Future Projects	\$ 190,000	\$ 146,073
Flood Hazard Plan Impact		\$ 3,348
Storm and Flooding Damages-Facilities and Equipment	\$ 800,000	
Potential Future Projects	\$ 800,000	\$ 3,348
Total Potential Future Projects & Available Funds	\$ 9,703,000	\$ 442,131

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conduct the same operations but at a potentially larger scale and with greater efficiency. The goals of this effort are to maximize customer service (both internal and external), increase the efficiency delivery of City services, identify workspace requirements for current and future City staff (including the potential to repurpose underutilized City facilities), and ensure the security and safety of the staff and public it serves.

An RFP was issued for the FCNA in June of 2023. A staff panel reviewed a total of three responsive and responsible proposals, and after conducting interviews, a consultant was selected in August. The initial cost of the FCNA received from the selected consultant was much higher than what the City had budgeted for the project. Through extensive negotiation and scope modifications, City staff recommends that the Council direct staff to enter into an agreement with BVTA based upon the attached cost and scope proposal in order to most efficiently use the \$200,000 budgeted for the project. The scope and fee are outlined in the agreement which can be found in Attachment 1 and 2.

The FCNA is projected to begin in January of 2024 for a duration of 6 months. The draft schedule is included in Attachment 3. The priority is to get some of the facilities assessed prior to budget development so that critical needs for facilities can be requested during the FY 24/25 budget cycle. The final presentation of the FCNA report and recommendations would be in June/July of 2024.

CONCLUSION

Staff recommends the City Council approve and authorize the City Manager to execute a contract in the amount of \$198,408.82 with Bureau Veritas Technical Assessments, LLC (BVTA), for performing a Facilities Condition and Needs Assessment (FCNA) for select facilities covered by the general fund for maintenance.

ATTACHMENTS

1. Agreement with BVTA
2. Exhibits for Agreement with BVTA (Scope of Services and Fee)
3. Draft FCNA Schedule

**AGREEMENT FOR SERVICES
BETWEEN CITY OF MORRO BAY AND
BUREAU VERITAS TECHNICAL ASSESSMETNS LLC**

THIS AGREEMENT FOR SERVICES (“**Agreement**”) is made and entered into this 1st day of December, 2023 by and between City OF MORRO BAY, a California municipal corporation (“**City**”) and BUREAU OF VERITAS TECHNICAL ASSESSMENTS LLC, a Maryland Limited Liability Company (“**Consultant**”). City and Consultant may be referred to individually as “**Party**” or collectively as “**Parties.**” In consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit A and incorporated herein by this reference, which may be referred to herein as the “**services**” or “**work**” hereunder. As a material inducement to City entering into this Agreement, Consultant represents and warrants: a) all services set forth in the Scope of Services will be performed in a competent and satisfactory manner; b) all materials used for services will be both of good quality as well as fit for the purpose intended; and, c) Consultant shall follow the highest professional standards and practices in performing the services required hereunder.

1.2 Consultant’s Proposal. The Scope of Services shall include the scope of services or work included in Consultant’s proposal or bid, which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal or bid, and this Agreement, the terms of this Agreement shall govern. No other terms and conditions from Consultant’s proposal or bid, other than description of scope of services or work, shall apply to this Agreement, unless specifically agreed to by City in writing.

1.3 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of City and any federal, State or local governmental agency having jurisdiction in effect at the time services are rendered. City, and its officers, employees and agents, shall not be liable at law or in equity for failure of Consultant to comply with this Section.

1.4 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Additional Services and Compensation. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes to the work by altering, adding to

or deducting from said work. No such extra work may be undertaken unless a written order, consistent with both Section 9.4 as well as Morro Bay Municipal Code (“**MBMC**”) section 3.08.060 (and as amended), is first given by City to Consultant, incorporating therein any adjustment in the Contract Sum for the actual costs of the extra work and/or the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other consultants.

1.6 Familiarity with Work. By executing this Agreement, Consultant represents and warrants Consultant: a) has thoroughly investigated and considered services to be performed, b) has carefully considered how services should be performed, and c) fully understands the facilities, difficulties and restrictions attending performance of services under this Agreement.

1.7 Software and Computer Services. If the Scope of Services includes the provision and/or installation of any software, computer system, or other computer technology, Consultant represents and warrants that it is familiar with and/or has inspected City’s current infrastructure, equipment, computer system and software and that the software, computer system, or other computer technology provided and/or installed by Consultant under this Agreement is compatible, and shall be fully functional, with such infrastructure, equipment, computer system and software of City. Consultant acknowledges that City is relying on this representation by Consultant as a material consideration in entering into this Agreement.

1.8 Prevailing Wages. If services include any “public work” or “maintenance work,” as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of Regulations, Title 8, section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit B and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of Exhibit B shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Sum. Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as **Exhibit C** and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed one hundred ninety-eight thousand, four hundred eight and 82/100 Dollars (\$198,408.82) (“**Contract Sum**”), unless additional compensation is approved pursuant to Section 1.5. Compensation may include reimbursement, for actual and necessary expenditures, if both specified in the Schedule of Compensation, as well as approved by City in advance. The Contract Sum shall include the attendance of Consultant at all

project meetings reasonably deemed necessary by City. Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

2.2 Invoices. Unless some other method of payment is specified in Exhibit C, Schedule of Compensation, in any month in which Consultant wishes to receive payment, no later than the first business day of such month, Consultant shall submit to City, in a form approved by City's Finance Director, an invoice for services rendered prior to the date of the invoice. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of this Agreement. Except as provided in Sections 7.3, 7.4 and 7.5, City shall pay Consultant for all expenses stated thereon which are approved by City pursuant to this Agreement generally within thirty (30) days, and City will use its best efforts to make payment no later than forty-five (45) days, from the submission of an invoice in an approved form. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law. Each invoice is to include (unless otherwise specified by City): 1) line items for all personnel describing the work performed, the number of hours worked, and the hourly rate; 2) line items for all materials and equipment properly charged to the Services; 3) line items for all other approved reimbursable expenses claimed, with supporting documentation; and 4) line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services, which shall be no later than December 1, 2024

3.3 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as **Exhibit D** and incorporated herein by this reference.

3.4 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Consultant shall within ten (10) days of the commencement of such delay notify City in writing of the causes of the delay. City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City

such delay is justified. City's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of this Agreement pursuant to this Section.

ARTICLE 4. COORDINATION OF WORK

4.1 Representative of Consultant. The representative of Consultant is Erik Piller, Senior Vice President, (800) 733-0660 x7292704, erik.piller@bureauveritas.com, who is authorized to act on Consultant's behalf with respect to the work or services specified herein and to make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the representative was a substantial inducement for City to enter into this Agreement. Therefore, the representative shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the representative may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City.

4.2 Contract Officer for City. The Contract Officer for City is Eric Riddiough, City Engineer, (805) 772-6569, eriddiough@morrobayca.gov (or such person as may be designated by the City Manager). The Contract Officer shall be the primary person on behalf of City responsible for the administration of the Agreement. It shall be Consultant's responsibility to assure that the Contract Officer is kept informed of both the progress of the performance of the services as well as any decisions which must be made by City.

4.3 Approvals from City. City approvals or actions, pursuant to the authority of this Agreement, are to be made (unless otherwise specified) either by the City Manager or by their delegate as provided for in writing.

4.4 Independent Contractor. Neither City, nor any of its officers, employees or agents, shall have any control over the manner or means by which Consultant, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Consultant represents and warrants that the personnel used to provide services to City pursuant to this Agreement shall at all times be under Consultant's exclusive control and direction. No City employee benefits shall be available to Consultant, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Consultant or any officer, employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction,

or the California Public Employees' Retirement System, to be classified as other than an independent contractor for City, then Consultant shall indemnify, defend, and hold harmless City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to City as a consequence of, or in any way attributable to, the assertion that Consultant, or any officer, employee, agent, or subcontractor Consultant used to provide services under this Agreement, is/are employees of City.

4.5 Subcontracting or Assignment. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Therefore, without express written approval of City, Consultant shall not contract with any other entity to perform in whole or in part services required hereunder without express written approval of City, and neither this Agreement nor any interest herein may be transferred or assigned. No approved transfer shall release Consultant, or any surety or insured of Consultant, of any liability hereunder without express written consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. Prior to commencement of any services under this Agreement, and without limiting Consultant's indemnification obligation to City, Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, for the duration of the Agreement, primary policies of insurance of the type and amounts below, issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by City, which shall cover all elected and appointed officers, employees and agents of City. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

(a) Commercial General Liability Insurance. A policy of commercial general liability insurance, with coverage at least as broad as Insurance Services Office ("ISO") form CG 00 01, written on a per occurrence basis for bodily injury, personal injury and property damage. Defense costs must be paid in addition to limits. Coverage for an additional insured shall not be limited to its vicarious liability. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) **Automobile Liability.** A policy of comprehensive automobile liability insurance, at least as broad as ISO form CA 00 01, written on a per occurrence basis covering bodily injury and property damage in an amount not less than \$1,000,000 combined single limit for each accident. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) **Professional Liability.** Professional liability insurance appropriate to Consultant's profession. This coverage may be written on a "claims made" basis and must include coverage for contractual liability. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of City submit written evidence of this continuous coverage. Limits shall be no less than \$1,000,000 per claim and no less than \$1,000,000 general aggregate.

(e) **Cyber Liability.** Cyber liability insurance appropriate to Consultant's profession and the services hereunder, written on a per occurrence basis, with limits not less than \$1,000,000 per occurrence/loss, and \$2,000,000 in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant pursuant to this Agreement and shall include, but not be limited to, claims involving: infringement of intellectual property; copyright; trademark; invasion of privacy violations; data breach; electronic information theft, loss, damage, destruction, alteration or misuse; release of private information; extortion; and, network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses, with limits sufficient to respond to these obligations.

(f) **Excess Liability Insurance.** Excess liability insurance may be used to satisfy the obligations herein. If excess liability insurance is used then the policy shall meet all the requirements herein and be at least as broad as the primary coverages set forth herein. Such policy shall: 1) include a drop down feature requiring the policy to respond if primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason; 2) be payable on behalf of wording as opposed to reimbursement; 3) have concurrency of effective dates with primary policies; 4) "follow form" to the underlying primary policies; and, 5) provide insureds, under primary policies required herein, shall be insureds under the excess liability policy.

(g) **Subcontractors.** In the event Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, Consultant shall either: 1) include each subcontractor as insureds under its policies of insurance required herein; or, 2) Consultant shall furnish to City all documentation, required in Article 5 for Consultant, for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

5.2 **General Insurance Requirements.**

(a) **Proof of Insurance, Enforcement and Notice.** No work or services under this Agreement shall commence until both Consultant has provided City with insurance

certificates, endorsement forms and appropriate insurance binders evidencing the above insurance coverages, as well as said documentation is approved by City. City reserves the right to inspect complete, certified copies of, and endorsements to, all required insurance policies, at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City. In the event any insurance policy required under this Agreement is cancelled or amended (and the insurance policy is not replaced pursuant to subsection (b) below), or does not comply with Article 5, then: 1) City has the right but not the duty to obtain insurance required herein and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments; or, 2) City, notwithstanding any other provisions of this Agreement, may immediately terminate this Agreement. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required insurance policies.

(b) Cancellation/Amendment. All of herein required policies of insurance shall provide the insurance may not be amended or cancelled by insurer or any Party hereto without providing thirty (30) calendar days prior written notice (with exception of ten (10) calendar days prior written notice for nonpayment) to City. In the event any of said policies of insurance are amended or cancelled, Consultant shall, five (5) business days prior to the cancellation date, submit new evidence of insurance in conformance with this Agreement to City.

(c) Additional Insureds. The commercial general liability policy provided for in Section 5.1(a) and the automobile liability policy provided for in Section 5.1(c) both shall name City and its elected and appointed officers, employees and agents ("**City Parties**") as additional insureds and such coverage shall contain no special limitations on the scope of protection afforded to City and City Parties. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and policies of insurance shall not contain any cross-liability exclusions.

(d) Primary, Subrogation, Contribution and Coverage. All of the above policies of insurance shall be primary insurance. The insurers for above policies, Consultant and any subcontractors are all deemed hereof to waive all rights of subrogation and contribution they may have against City or City Parties, and their respective insurers, and all insurance policies required herein shall be endorsed to waive such rights. Any insurance maintained by City or City Parties will apply in excess of, and not contribute with, Consultant's insurance. If Consultant maintains broader coverage and/or higher limits than the minimum amounts provided herein, City requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City and City Parties. None of the coverages required herein will be in compliance with this Agreement if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing. Requirements of specific coverage features or limits contained herein are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any Party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(e) **Limitations, Self- Insured Retention and Deductibles.** Consultant agrees that requirements of Article 5 shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant’s activities or the activities of any person or persons for which Consultant is otherwise responsible nor shall it limit Consultant’s indemnification liabilities as provided in Section 5.3. All insurance policies must specify that where the primary insured does not satisfy any self-insured retention, any additional insured may satisfy the self-insured retention. Any deductibles or self-insured retentions must be declared to and approved by City. At City’s option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City and City Parties, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, attorney’s fees, defense expenses and claims.

5.3 **Indemnification.**

(a) **General Obligations.** Consultant agrees, to the full extent permitted by law, to indemnify, defend and hold harmless City and its elected and appointed officers, employees and agents (each an “**Indemnitee**” and collectively, “**Indemnitees**”) against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein “**Claims or Liabilities**”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable (each an “**Indemnitor**” and collectively, “**Indemnitors**”), or arising from Indemnitors’ reckless or willful misconduct, or arising from Indemnitors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith: 1) Consultant will defend any action or actions filed or threatened in connection with any such Claims or Liabilities, or at option of Indemnitee(s) will reimburse and pay for all costs and expenses, including legal costs and attorneys’ fees, incurred by Indemnitee(s) in connection therewith; and, 2) Consultant will promptly pay any judgment rendered against Indemnitee(s) for any such Claims or Liabilities, and will save and hold Indemnitee(s) harmless therefrom.

(b) **Further Provisions.** The indemnity obligation herein shall be binding on successors, assigns and heirs of Consultant and shall survive termination of this Agreement. Consultant shall incorporate similar indemnity agreements as provided herein with its subcontractors, and if Consultant fails to do so Consultant shall be fully responsible to indemnify City hereunder therefor. Failure of City and/or City Parties (collectively “City” for solely this Section 5.3(b)) to monitor compliance with any of the indemnification provisions herein shall not be a waiver hereof. The indemnification provisions herein do not apply to claims or liabilities occurring as a result of City’s sole negligence or willful misconduct, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City’s negligence, except that design professionals’ indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnification provided herein includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the

performance of professional services hereunder. Payment of invoices by City is not a condition precedent to enforcement of the indemnity obligation herein. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence or willful misconduct of City, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating City as solely negligent or responsible for willful misconduct. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

(c) **Professional Liability.** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless Indemnitees against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all Claims and Liabilities, consistent with all obligations provided for in this Section 5.3, to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services under this Agreement.

ARTICLE 6. RECORDS, REPORTS AND RELEASE OF INFORMATION

6.1 Records. Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder ("**books and records**") as shall be necessary to perform the services required by this Agreement and enable City to evaluate the performance of such services. Any and all such books and records shall be maintained in accordance with generally accepted accounting principles, shall be complete and detailed, and shall be readily accessible. City shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts. Such books and records shall be maintained for a period of three (3) years following completion of the services hereunder. City shall have access to such books and records in the event any audit is required. Consultant shall fully cooperate with City in providing access to any and all Consultant records and documents if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials ("**documents and materials**") prepared by Consultant, its officers, employees, agents and subcontractors in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of City and/or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership, use, reuse, or assignment of the documents and materials hereunder. Consultant may retain copies of such documents and materials for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents and materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, with respect to any Consultant documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for City.

6.3 Confidentiality and Release of Information. All information gained or work product produced by Consultant in its performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from City. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from City or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant immediately gives City notice of such court order or subpoena. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct. As concerning, regarding or related to, in any way, this Agreement and the work performed thereunder: a) Consultant shall immediately notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party; b) City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding; and, c) Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant, however, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California, or any other appropriate court in such county, and Consultant agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.

7.2 Suspension, or Termination, Prior to Expiration of Term. This Section shall govern any termination of this Agreement except as specifically provided in Section 7.4 for termination for cause. City reserves the right to terminate or suspend this Agreement, or any portion hereof, at any time, for any reason, with or without cause, upon ten (10) days’ notice to Consultant, except that where termination or suspension is due to the fault of Consultant, the period of notice may be such shorter time as determined by City. Upon receipt of any notice of termination or suspension, Consultant shall immediately cease all services hereunder, unless the notice provides otherwise, or except such as specifically approved by City. Upon submittal of an invoice consistent with Section 2.2, Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination or suspension and for any services authorized by City thereafter in accordance with the Schedule of Compensation, or such as may be approved

by City, except as provided in Section 7.5. In event of termination, or suspension, without cause pursuant to this Section, there is no need to provide opportunity to cure pursuant to Section 7.3.

7.3 Default of Consultant and Opportunity to Cure. In the event that Consultant is in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively ten (10) days, but may be extended, or reduced, if circumstances warrant, as determined by City. During the period of time that Consultant is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices, without liability for interest. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default by conclusion of noticed timeframe, City may immediately both terminate this Agreement with notice to Consultant as well as pursue the remedy in Section 7.4, without prejudice to any other remedy to which City may be entitled at law, in equity or under this Agreement. Any failure on the part of City to give notice of Consultant's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.

7.4 Termination for Default of Consultant. If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.3, take over the work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of set-off or partial payment of the amounts owed City therefor.

7.5 Retention of Funds. Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.6 Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver

of any other default concerning the same or any other provision of this Agreement. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement of this Agreement imposes no additional obligations on City nor does it waive any rights hereunder. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

7.7 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.8 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.

7.9 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, consultants' fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. INDIVIDUAL LIABILITY, CONFLICTS AND NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of City. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict of interest exists upon sending Consultant written notice describing the conflict. No officer or employee of City shall have any financial interest, direct or indirect, in this

Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects their financial interest or the financial interest of any corporation, partnership or association in which they are, directly or indirectly, interested, in violation of any State statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices. Any notice or other communication either Party desires or is required to give to the other Party or any other person in regards to this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, in the case of City addressed to City Clerk at City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442, and in the case of Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

9.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment. This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties as to the Agreement. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all prior and contemporaneous negotiations, arrangements, agreements and understandings, if any, between the Parties, concerning this Agreement, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Consultant and (consistent with, as amended, Chapter 3.08 of the MBMC) by City.

9.5 Severability. Should a portion of this Agreement be declared invalid or unenforceable by a judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 No Undue Influence. Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to remedies in Section 7.4 and any and all remedies at law or equity.

9.7 Corporate Authority. The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF MORRO BAY, a California municipal corporation

Yvonne Kimball
City Manager

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Chris F. Neumeyer, City Attorney

CONSULTANT:

Bureau Veritas Technical Assessments LLC, a Maryland Limited Liability Company

By: _____
Erik Pillar
Senior Vice President

By: _____
Matthew Munter, PE
Executive Vice President, Principal
6021 University Boulevard, Suite 200
Ellicott City, MD 21043

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY

EXHIBIT A
SCOPE OF SERVICES

- I. Consultant will perform services described in Consultant's Proposal attached hereto.**
- II. All work product is subject to review and acceptance by City, and must be revised by Consultant without additional charge to City until found satisfactory and accepted by City.**



December 7, 2023

Via Email: eriddiough@morrobayca.gov

Mr. Eric Riddiough
City Engineer
City of Morro Bay
595 Harbor Street
Morro Bay, California 93442

RE: City of Morro Bay; Morro Bay, California
Proposal No: 163998.23P

Dear Mr. Riddiough:

We are pleased to provide City of Morro Bay (hereinafter referred to as “Client”) with the following proposal. If accepted, Bureau Veritas Technical Assessments LLC (hereinafter referred to as “BVTA”) will perform the services listed below (collectively, the “Services”) meeting the specifications hereafter described.

Property(ies)

City of Morro Bay
Morro Bay, California

Proposed Service(s) & Fee(s)

Service(s)	Lump Fee(s)
Facility Condition Assessment	\$ 114,644.01
ADA Title II Survey (6 Sites)	\$ 8,764.81
Feasibility Study by Gensler (Phase 1: \$47,000; Phase 2: \$28,000)	\$ 75,000.00

All fees referred to in this document are expressed in US Dollars. Pricing is not inclusive of taxes. If applicable, taxes shall be included at the time of invoicing, payable by the client and remitted by BVTA to the taxing municipality. The proposed fees are limited to the specific Services described in this Proposal, performed according to the requirements of the corresponding ASTM standard practices, or Client-specified Protocols.

Deliverable(s)

The quoted price includes the delivery of:

# of	Report Type	Method of Delivery
6 - 49	Draft	Email Full Report (PDF)
6 - 49	Final	Email Full Report (PDF)

Unless otherwise specified, BVTA will submit all reports in Final format. Timing for completion of any requested post-delivery modifications to the report will be determined at the time of the request.

If different deliverables are required, please indicate the quantity, type and method of delivery on the Project Authorization page of this proposal.

Timing

BVTA’s FCA report(s) will be delivered within 90-120 full business/working days after receipt and approval of the signed proposal document.

After engagement, a call will be placed to the designated onsite Point of Contact (POC) provided by the Client in order to schedule the site visit(s), where applicable. The Client acknowledges that the Point of Contact provided shall be deemed an agent of the Client for the purposes of providing access and conveying information pertaining to the Site.

Projects Placed on Hold or Canceled

Should the Client place the awarded project on hold or cancel the engagement after contract execution, the Client agrees to pay project-specific costs incurred by BVTA, such as administrative processing, regulatory database searches and non-recoverable travel fees, as well as a percentage of the project fee, depending upon the time the project is placed on hold or cancelled. Please note that BVTA invoices canceled jobs at the time of cancellation. Jobs on hold will be automatically invoiced 30 days from the date of the hold request. Requests to cancel or place projects on or off hold must be received by BVTA in writing (email acceptable) from the Client. Invoices billed as a result of projects being placed on hold or canceled are fully collectible.

Payment Details

BVTA will submit a monthly consolidated invoice inclusive of all services performed to date. The per site fee will be established per the schedule of values provided at the program kick-off and invoiced at the billing milestones stated below. Invoices will be payable within 30 days of receipt:

Billing Milestone	Percentage Invoiced
Completion of onsite assessments	45% of per site fee
Delivery of Draft Reports	45% of per site fee
Delivery of Final* Reports	10% of per site fee

*If comments on the Draft reports are not received within 60 calendar days, BVTA will invoice for Final Reports.

Upon receipt of each monthly invoice, the amount due per billing milestone is fully collectible. Please forward payments to: Accounting Department, Bureau Veritas Technical Assessments LLC, PO Box 74007289, Chicago, IL 60674-7289 or contact your BVTA administrator to pay via credit card or to receive wiring instructions. BVTA recommends payment by credit card for amounts less than \$1000. **Please ensure that Proposal #163998.23P or invoice number is clearly identified on all payments and correspondence for proper credit.**

Documents to be Furnished by Client

In order to facilitate a cursory review of pre-existing documents for each Project, BVTA asks to be furnished with electronic or printed copies of available site information. Such documents may include:

FCA Services:

- Inspection Reports (sewer, boiler, chiller, etc)
- Prior Engineering Reports (CNA, PNA, PCA, etc.)
- Prior Master Plans / Facility Master Plans
- Capital Expenditure Schedules (prior or planned)
- Rehabilitation budget & scope (draft or final)
- Accessibility Transition Plans/Self Evaluations
- Building Systems Maintenance Records
- Owner Elected Repair list (if available)
- Original Building Plans (can be viewed on-site)
- Fire Protection/Life Safety Plans
- Site Plan/Floor Plans

Note: Documents to be reviewed should be provided to BVTA within five (5) business days and not less than one (1) day prior to the onsite. In the event that documents can only be made available at the Site, BVTA will perform a cursory review during the site visit as time permits. If documents are received after the site visit date, or if the volume of documentation is determined by BVTA to be excessive, then the Project may be subject to additional review fees at the rate of \$215.00 per hour. Any additional review fees will be mutually agreed upon by BVTA and the Client at the time of review request and will be authorized using a Change Order.

Terms & Conditions

BVTA will perform its Services subject to the attached "Terms & Conditions", which are incorporated by reference and made a part of this Proposal. Please indicate your acceptance of this Proposal by signing the attached "Project Authorization" page where indicated and return it to BVTA.

Please feel free to contact me at (800) 733-0660 x.7292704 or Erik.Piller@bureauveritas.com should you have any questions. BVTA welcomes the opportunity to be of service.

Sincerely,

Bureau Veritas Technical Assessments LLC



Erik S. Piller
Senior Vice President

Attachments:

- Site List w/ Breakdown
- Description of Services
- Terms & Conditions
- Project Authorization

Site List and Breakdown

#	Facility Name	SF	Address	FCA Cost / Bldg	ADA Cost / Site	SPACE NEEDS
1	Lila Keiser Park	864	1 Park Street	\$ 4,138.77		
2	Lila Keiser Park	1,152	1 Park Street	-		
3	Community Center	19,674	1001 Kennedy Way	\$ 4,138.77	\$ 2,504.23	X
4	Lift Station 2 - Front Street (RR Only)	280	1196 Front Street	\$ 4,138.77		
5	Rock View Plaza	2,574	801 Embarcadero	\$ 3,311.02		
6	Anchor Memorial Park	1,740	801 Embarcadero	\$ 3,311.02		
7	Mariner Memorial Park	2,070	501 Embarcadero	\$ 3,311.02		
8	Corporate Yard	1,500	170 Atascadero Road	\$ 5,794.28		X
9	Corporate Yard	288	170 Atascadero Road			
10	Corporate Yard	6,300	170 Atascadero Road			
11	Corporate Yard	4,716	170 Atascadero Road			
12	Corporate Yard	2,550	170 Atascadero Road			
13	Corporate Yard	750	170 Atascadero Road			
14	VEH. EQUIP. STORAGE	3,143	170 Atascadero Road			
15	Veterans Memorial Building	5,478	209 Surf Street	\$ 4,138.77	\$ 1,252.12	
16	Teen Center	2,238	231 Atascadero Road	\$ 4,966.53		
17	Teen Center	16,200	231 Atascadero Road	-		
18	City Hall Annex (Group w/ City Hall)	987	535 Harbor Street	\$ 413.88	\$ 1,252.12	X
19	City Hall	3,564	595 Harbor Street	\$ 4,138.77	\$ 1,252.12	X
20	Library	6,579	625 Harbor Street	\$ 3,311.02		
21	LIBRARY BUILDING	6,579	625 Harbor Street			
22	Modular Building	2,200	695 Harbor Street	\$ 4,138.77		
23	Embarcadero Storage - Apartment	1,344	714 Embarcadero	\$ 3,311.02		
24	PARKING LOT	1,000	714 Embarcadero			
25	Embarcadero Storage - Apartment	450	714B Embarcadero			
26	Fire Station 53	14,174	715 Harbor Street	\$ 4,138.77		
27	Parking Lot Commercial Building	12,728	781 Market Street	\$ 3,311.02		
28	Centennial Park Restroom Building	800	789 Embarcadero	\$ 2,483.26		
29	Centennial Stairway	1,350	806 Embarcadero	\$ 2,483.26		
30	Police Station	4,929	850 Morro Bay Boulevard	\$ 3,311.02	\$ 1,252.12	X
31	Morro Bay Blvd. Pressure (PD Annex)	50	851 Morro Bay Boulevard	-	-	
32	Police Storage Buildings	840	875 Morro Bay Boulevard	\$ 3,311.02		
33	Police Storage Buildings	600	875 Morro Bay Boulevard	\$ -		
34	Administrative Office	5,000	955 Shasta Avenue	\$ 3,311.02	\$ 1,252.12	X
35	Bocce Ball Courts	-	955 Shasta Avenue	-		
36	Anchor Street Stairway	224	Anchor Street End	\$ 2,483.26		
37	Morro Rock Restroom Building	728	Coleman Drive at Morro Rock	\$ 3,311.02		
38	Cloisters Park	384	Coral Avenue	\$ 3,311.02		
39	Cloisters Park	150	Coral Avenue	-		
40	Coleman Park		Coleman Drive	\$ 3,311.02		

41	North Point Stairway	1,085	End of Toro Lane	\$ 2,483.26		
42	Morro Bay City Park Restroom Bldg	330	Harbor Street / Morro Bay Blvd	\$ 3,311.02		
43	Del Mar Park	226	Ironwood Avenue	\$ 3,311.02		
44	Del Mar Park	256	Ironwood Avenue	-		
45	Monte Young Park Restroom Building	140	Monte Young Park	\$ 3,311.02		
46	Black Mountain Repeater Building	140	Morro Bay State Park	\$ 2,483.26		
47	Tidelands Park and Parking Areas	1,300	South End of Embarcadero	\$ 4,966.53		
48	Franklin Riley Park		442 Morro Avenue	\$ 3,311.02		
49	Bayshore Bluffs Park	1,344	178 Bayshore Drive	\$ 4,138.77		
		140,998		\$ 114,644.01	\$ 8,764.81	\$ 75,000.00

TOTAL	\$	198,408.82
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Description of Services

We have split the scope and fee into the following sections:

- Facility Condition Assessment w/ ADA
- Feasibility Study of Limited Facilities (Gensler)

PROJECT UNDERSTANDING

BVTA understands that the Facility Condition Assessment (FCA) and Needs Assessment project with the City of Morro Bay (the “City”) will:

- Include a comprehensive assessment of all sites, buildings, building systems, and infrastructure.
- Follow ASTM E2018-15 Standard Guide for Property Condition Assessments, as applicable.
- Determine the present condition and estimated life expectancy of various building systems and components.
- Identify and document present condition of all physical assets including grounds, facilities, and infrastructure.
- Recommend corrections for all deficiencies and provide cost estimates for corrections.
- Prioritize and categorize deficient conditions, associated corrective actions, and information concerning building systems and deficiency categories.
- Establish anticipated renewal and replacement costs for the various systems and components.
- Result in strategic plan for capital repairs, lifecycle component replacement, and building modernization.
- Calculate the Current Replacement Value (CRV) and Facility Condition Index (FCI) for each facility.
- Collect Equipment Inventory data for Client properties.
- Include a comprehensive ADA Title II / CASp survey of the facilities and sites. (6 Reports)
- **Gensler:** Provide a feasibility analysis evaluating designated City-owned buildings to fit current and future City needs.
- **Gensler:** Provide recommendations for improving facilities with the goal of establishing a facility condition baseline for goal setting and progress tracking.

FACILITY CONDITION ASSESSMENT AND ADA SURVEY

DATA GATHERING AND INTERVIEW

Our project plan details distinct phases of the project. During each phase, we will require coordination and support from the City’s facility management.

Data Gathering Phase – BVTA will need the support of staff who can provide us access to drawings and records. The following is a typical list of exhibits requested.

- Inspection reports (sewer, boiler, chiller, etc)
- Building systems Maintenance Records
- Maintenance policy documentation
- Owner elected repair list (if available)
- Original building plans (can be viewed on-site)
- Capital expenditure schedules (prior or planned)
- Fire protection / life safety plans
- Rehabilitation budget and scope (draft or final)
- Certificates of occupancy / facility license
- Prior assessments

- Site plan / floor plans
- Accessibility transition plans / studies
- CMMS / IWMS data set

In addition to the drawings and records, we will supply a pre-survey questionnaire for each facility or site. Our expectation is that someone with knowledge of maintenance and operations of the facility will complete this survey and be prepared to discuss it with us while on-site.

Site Phase – BVTAWill need support in the form of escorts while in the facilities to help us access mechanical areas, to discuss with us any known issues in the facility, and to answer other technical questions.

Report Review Stage – BVTAWill provide a complete deliverable for each building.

CLIENT COORDINATION

Project Director – BVTAWill become familiar with the City’s existing Project Directory - property list and contact directory for each location. We will contact or interview the facilities contacts as part of our process to determine current use requirements and priority of properties based on agency goals.

Facility Access – Working with the City, we will develop procedures to gain Facility Access. Our visits will be coordinated and pre-approved by the City prior to the visit. We will work with the City to establish a protocol that will ensure that our activities will have minimal disruption to the operation of each facility and will maintain a safe work environment.

TEAM COMPOSITION

The project will be managed by a Program Manager who will be your single point of contact. Reporting to the Program Manager will be several Project Managers who are architectural and engineering subject matter experts (SME) in the evaluation of building systems and generating the reports. We evaluate the building portfolio to determine which team members will be assigned to particular sites. Larger or more complex sites will have both an architect and an engineering SME. Smaller or simpler buildings will have a single SME field assessor that understands all building systems.

TECHNICAL APPROACH FOR FACILITY ASSESSMENTS

Prior to assessments beginning, BVTAWill conduct a Kick-Off Meeting to review requirements and to consolidate exhibits such as drawings and prior completed reports.

During the term of the project, BVTAWill conduct regular Progress Meetings to maintain open communication with the entire project team and the City. BVTAWill lead with an agenda that includes a focus on work plan, schedule, and project needs. This will permit the opportunity to proactively address challenges encountered, so that course adjustments may be made. Each meeting will conclude with task assignments, schedules, and goals to be met. BVTAWill provide

the City with a written status report that tracks and monitors the progress of the assessments against the schedule submitted.

BVTA has allocated time for regular teleconference meetings and the following meetings: Kick-Off Meeting (teleconference) 5 City Meetings, and a Final Findings Presentation meeting. Any additional in-person meetings will be on a time and expense basis.

PILOT PROGRAM

To begin the work BV proposes a Pilot Program where we will perform an assessment of a single building and prepare a written Draft Report for review. A meeting will be held with Client staff to review the draft report before assessing the remaining buildings. The assessment team will visit the building to evaluate the general condition of the buildings and site improvements, review available construction documents in order to become familiar with, and be able to comment on the in-place construction systems, life safety, mechanical, electrical and plumbing systems, and the general built environment.

FIELD ASSESSMENTS

The Assessment Team will conduct a walk-through survey of the facility and site to observe systems and components, identify physical deficiencies, and formulate recommendations to remedy the physical deficiencies.

As a part of the walk-through survey, the Team will survey 100% of each facility. BVTA will survey the exterior and grounds, including the building exterior, roofs, sidewalk/pavement, and recreational/other areas as applicable. They will interview the building maintenance staff about the property's historical repairs and replacements and their costs, level of preventive maintenance exercised, pending repairs and improvements, and frequency of repairs and replacements. The Assessment Team will develop opinions based on their site assessment, interviews with the City's building maintenance staff, and interviews with relevant maintenance contractors, municipal authorities, and experience gained on similar properties previously evaluated.

The Team may also question others who are knowledgeable of the property's physical condition and operation or knowledgeable of similar systems to gain comparative information to use in evaluation of the subject property.

The Assessment Team will review documents and information provided by the City's maintenance staff that could aid the knowledge of the property's physical improvements, extent and type of use, and/or assist in identifying material discrepancies between reported information and observed conditions.

The facility condition assessment will include the City-identified assets and will focus on the following facility and site systems and components:

Site + Infrastructure

- Topography: Observe general topography and note any unusual or problematic features or conditions observed or reported.
- Paving, Curbing, and Parking: Identify material types of paving and curbing systems at the property.
- Flatwork: Identify material flatwork at the property (sidewalks, plazas, patios, etc.).
- Landscaping and Appurtenances: Identify material landscaping features, material types of landscaping (fences, retaining walls), and site appurtenances (irrigation systems, fountains, lighting, signage, ponds).
- Utilities: Identify type of material utilities provided to the property (water, electricity, natural gas); and assess condition, physical deficiencies, life cycle repair, and replacement issues.
- Parks and Recreational Amenities
- Identify any material on-site recreational facilities such as athletic fields, swimming pools, spas, tennis or basketball courts, jogging or bicycle paths, etc.
- Observe the general conditions and note any reported physical deficiencies or any unusual items or conditions observed or reported.
- The inventory will be arranged by asset type. In a parks and recreation system there will be multiple amenities within each park.

EV Charging Stations

- With information provided by the client document the payment software providing access to the charging station, if any.
- Identify the power source for the EV charging station and if possible, determine if the power used is billed to a client electrical meter.
- Determine the age of the equipment and review for deterioration from weather and use. Identify the remaining useful life of the charging station equipment and the cost to replace the equipment.
- Review the signage, paving and surface materials around the charging stations for deterioration.

Structural + Seismic + Building Envelope

- Identify material elements of the structural frame and exterior walls, including the foundation system, floor framing system, roof framing system, facade or curtain-wall system, glazing system, exterior sealant, doors, commercial overhead doors, sliders, windows, and stairways, etc.
- Observe general conditions and note any physical deficiencies identified or unusual items or conditions observed. Observations may be subject to grade, and rooftop vantage points.
- Visually inspect observable areas for cracking and moisture infiltration as well as areas of apparent foundation settlement and displacement.
- Perform a visual Seismic Assessment to determine Seismic Performance parameters and utilize a standardized seismic checklist
- In the event more information or exploratory testing is required, in order to provide remedial measures, the report may include recommendation for additional investigative testing (Tier 1 or Tier 2).

Wall Evaluation

- Photograph elevations and details both from internal and external vantage points, as well as from adjacent structures where possible.
- Observe representative operable and fixed panels on all facades, operating a representative sample of units to assess hardware and visually inspect exterior conditions and condition of waterproofing seals.
- Assess curtain wall condition to determine water infiltration, damage, caulk degradation, metal panel degradation, stone degradation and anchoring, and other related curtain wall issues.

Curtain Wall

- Review curtain wall condition and a sampling of fixed panels on facades to assess hardware and visually review exterior conditions and the condition of waterproofing seals, where accessible without the use of lifts, ladders, scaffolding, suspension devices, or the like; may include observations from internal and external vantage points, as well as adjacent structures. Observations are limited to grade and may include accessible balconies or rooftop vantage points.
- Review provided drawings and records of repair, replacement, and maintenance of framing and glazing.

Roofing (Non-Invasive Visual)

- Identify material roof systems (roof type, reported age, slope, drainage) and any unusual roofing conditions or rooftop equipment.
- Observe general conditions of the roof system (membranes, attachment methods, flashings, counter flashings, pitch pans, gravel stops, parapets, miscellaneous appurtenances, insulation).
- Observe for evidence of material repairs, significant ponding, or evidence of material roof leaks. Note if a roof warranty is in effect. Note any physical deficiencies identified or unusual items observed or reported.
- Identify material rooftop equipment or accessories (antennas, lightning protection, HVAC equipment, solar equipment). Include any material problems reported.
- BVT understands that the City will provide OSHA compliant ladders, lifts and/or scaffolding (depending on roof type) so that the Project Manager may safely access roof areas. If requested, BVT can provide a quote for lift and/or ladder access as needed. Observations will be limited to readily accessible areas.

Plumbing

- Identify material plumbing systems at the property including domestic water supply, sanitary sewer, or any special or unusual plumbing systems (such as water features, fuel systems, gas systems, etc.).
- Identify type and condition of restroom fixtures, drinking fountains and/or other plumbing equipment.
- Observe general conditions and note any physical deficiencies identified or unusual items or conditions observed. Include any reported material system inadequacies.

Heating

- Identify material heat generating systems at the property.
- Observe general conditions, identify reported age of the equipment, note past material component replacements/upgrades, note apparent level of maintenance, and identify if a maintenance contract is in place. If heating equipment is not operational at the time of the walk-through survey, provide an opinion of the condition to the extent reasonably possible.
- Identify and observe any special or unusual heating systems or equipment present (fireplaces, solar heat, etc.) and note any reported material problems or inadequacies.

Air-Conditioning + Ventilation

- Identify the material air-conditioning and ventilation systems at the property. Include material equipment such as cooling towers, chillers (type of refrigerant used), package units, split systems, air handlers, thermal storage equipment, etc.
- Identify material distribution systems (supply and return, make-up air, exhaust) at the property.
- Observe general conditions, identify equipment reported age, note past material component upgrades/replacements and apparent level of maintenance, and identify if a maintenance contract is in place (contractor name). If AC and ventilation systems are not operational at the time of the walk-through survey, provide an opinion of the condition to the extent reasonably possible.
- Observe general conditions and note any physical deficiencies identified or unusual items or conditions

observed. Additionally, include any material reported system inadequacies or operating deficiencies.

- Identify and observe any special or unusual air-conditioning and ventilation systems or equipment (cold storage systems, special computer cooling equipment, etc.) and note any material reported problems or system inadequacies.

Electrical

- Identify the electrical service provided and distribution system at the property.
- Include material switchgear disconnects, circuit breakers, transformers, meters, emergency generators, general lighting systems, and other such equipment or systems.
- Observe general electrical items (distribution panels, type of wiring, energy management systems, emergency power, lightning protection).
- Observe general conditions and note any physical deficiencies identified or unusual items or conditions observed. Also, note the presence of any special or unusual electrical equipment, systems, or devices at the property, and include reported material problems or system inadequacies.

Life Safety + Fire Protection

- Identify material life safety/ fire protection systems at the property, including sprinklers and stand pipes (wet or dry), fire hydrants, fire alarm systems, water storage, smoke detectors, fire extinguishers, emergency lighting, stairwell pressurization, smoke evacuation, etc.
- Observe general conditions and note any material physical deficiencies identified or unusual items or conditions observed or reported including any reported system inadequacies.

Elevators + Vertical Transportation

- Identify vertical transportation systems at the property. Include the equipment manufacturer, equipment type, location, number, capacity, etc.
- Observe elevator cabs, finishes, call and communication equipment, etc.
- Identify the company that provides elevator/ escalator maintenance at the property. Observe general conditions and note any physical deficiencies identified or unusual items or conditions observed or reported including any reported material system inadequacies.
- Out of Scope Issues: Performing any calculations, examination of operating system components such as cables, controller, motors, etc.; entering elevator/escalator pits or shafts.

Interior Elements

- Identify offices, special use areas, and building standard finishes, including flooring, ceilings, walls, etc. Furnishings and fixed components will be reviewed and included in the cost estimate tables for replacements. BVTA will identify material building amenities or special features.
- Observe general conditions and note any physical deficiencies identified or unusual items or conditions observed or reported.

Food Service Spaces and Equipment

- Assess all food service equipment and spaces (kitchen, cafeteria, dining, serving areas). Food service equipment (fixed equipment) will be evaluated for adherence to life/ safety code and ventilation requirements as well for condition and capital replacement.

Special Systems and Equipment

- Include all special systems and equipment, such as Emergency Medical Systems (EMC), chillers, radio towers, equipment lifts, chair lifts, chemical storage or treatment areas, storage tanks, dumbwaiters, vaults, public

address systems, and telephone systems.

Limited Accessibility Compliance

- Provide a general statement of the subject building's likely compliance to the Americans with Disabilities Act to help identify whether Client may be exposed to issues and whether there is the need for further review.
- We have included a full scope to do a complete comprehensive ADA Title II/CASp study and a separate cost for this option. (see scope at end)

Energy Conservation Analysis

- Consider energy conservation savings when making repair or replace recommendations and include these projects in the project prioritization.
- Able to provide an Energy Audit (ASHRAE Level I, II, or III) or Benchmarking (EnergyStar) services as an additional service.

RANKING AND CLASSIFICATIONS

Based upon our observations, research and judgment, along with consulting commonly accepted empirical Expected Useful Life (EUL) tables; BVT will render our opinion as to when a system or component will most probably necessitate replacement.

Accurate historical replacement records provided by the facility manager are typically the best source for this data. Exposure to the weather elements, initial system quality and installation, extent of use, the quality and amount of preventive maintenance exercised are all factors that impact the effective age of a system or component. As a result, a system or component may have an effective age that is greater or less than its actual age. The Remaining Useful Life (RUL) of a component or system equals the EUL less its effective age.

CONDITION RANKING OF BUILDING SYSTEMS / EQUIPMENT

BVT can rate the condition of each facility with the below rating system, or another City-specified scale:

- | | |
|---|--|
| 5 | Excellent – No visible defects, new or near new condition, may still be under warranty if applicable |
| 4 | Good – Good condition, but no longer new, may be slightly defective or deteriorated, but is overall functional |
| 3 | Adequate – Moderately deteriorated or defective, but has not exceeded useful life |
| 2 | Marginal – Defective or deteriorated in need of replacement; exceeded useful life |
| 1 | Poor – Critically damaged or in need of immediate repair; well past useful life |

BVT can also include alternative categories to rank and weight priorities as required by the City, such as functional deficiencies, aesthetics, time-based urgencies, and other mission critical factors.

PRIORITY CLASSES

The analysis will include all cost observations be ranked by Priority Classes. The following five classes are typical but can be altered to meet your specifications and needs.

1. Currently Critical (Immediate): Requiring immediate action including a cited safety hazard and areas of accelerated deterioration, returning a building component to normal operation.

2. Potentially Critical (Years 1-2): Requiring action in the next year including components experiencing intermittent operations, potential life safety issues, and rapid deterioration, returning a building component to normal operation.
3. Necessary—Not Yet Critical (Years 3-5): Requiring appropriate attention to preclude predictable deterioration, potential downtime, additional damage, and higher costs to remediation if deferred further.
4. Recommended (Years 6-10; Years 15-20) Representing a sensible improvement to the existing conditions (not required for the most basic function of the facility; however, will improve overall usability and/or reduce long-term maintenance costs.
5. Does Not Meet Current Code (“Grandfathered”): No Action required at this time but should substantial work be undertaken correction would be required.

DEFICIENCY CATEGORIES (UNIFORMAT)

The deficiencies observed will be classified into categories such as those below using the Uniformat System (Level 4):

- A10 Foundations
- A20 Basement Construction
- B10 Superstructure
- B20 Exterior Enclosure
- B30 Roofing
- C10 Interior Construction
- C20 Stair
- C30 Interior Finishes
- D10 Conveying
- D20 Plumbing
- D30 HVAC
- D40 Fire Protection
- D50 Electrical
- E10 Equipment
- E20 Furnishings
- F10 Special Construction
- F20 Selective Building Demolition

COST ESTIMATING

BVTA’s cost estimating database is comprised of RS Means data and further customized with proprietary cost tables developed by BVTA, based on historical and localized actual costs. BVTA maintains and updates our Uniformat-based cost estimating system with information received from the field. Through construction monitoring work, we have current cost data from hundreds of in-progress construction and rehabilitation projects. This data allows us to calculate costs based on local conditions to maintain a cost database that is typically more current than RS Means’ models.

Each report will include a Capital Needs Analysis including an estimated cost for each system or component repair or replacement anticipated during the evaluation term. The report will provide options for repair of the deficiency, and the capital needs analysis will be presented as an Excel-

based cost table that includes a summary of the description of each component, the age and estimated remaining useful life, the anticipated year of repair or replacement, quantity, unit cost and total cost for the repair of each line item.

A consolidated Capital Needs Analysis will be presented that includes all anticipated capital needs for all buildings. The cost estimate for capital deficiencies will be based on the estimate for maintenance and repair, but may at the City's option, also include project management, construction, and design fees derived using actual costs from previous projects. After determining these costs, we will confirm these costs with the City Staff.

EQUIPMENT AND ASSET INVENTORY

During the assessment, each field team will be responsible for collection and storing all of the inventory and condition assessment data in an electronic format that is readily transferable to a standardized CMMS system.

Bureau Veritas will collect information on the major pieces of facility equipment. Specifically, the data collection will focus on the following components:

HVAC (level of detail for which Preventive Maintenance would be performed)

- Heating System
 - Identify boilers, furnaces, unit heaters and major labeled equipment.
- Ventilation System
 - Identify the major labeled equipment; exhaust hoods, fans.
- Air Conditioning System
 - Identify the material air-conditioning components, including cooling towers, compressors, chillers, package units, roof top units, split systems and major labeled equipment. Excluded are window units, terminal units, VAVboxes, thermostatic controls.

Electrical

- Major panels only-for identification to track maintenance.
- Transformers
- Switchgear

Equipment

- Building Automation System

Plumbing

- Pumps external to HVAC systems
- Domestic Hot Water heaters over 80 gallons
- Other major labeled equipment.

Commercial Kitchen- major equipment (above approximately \$2000 value)

- Walk-in freezer and refrigerator equipment
- Ovens, stoves, broilers, grills
- Reach-in refrigerators and freezers

- Dishwashers
- Fryers

Vertical Transportation (if applicable)

Life Safety/Security

- High Level (system level) only-for identification to track maintenance
 - Alarm Panels
 - Emergency generators
 - Exhaust hood fire suppression

Where appropriate, the following data will be collected for each component:

- Location data by floor and room
- Model
- Serial Number
- Manufacturer
- Manufactured Date

REPORT DELIVERABLES

BVTA will provide an in-depth report including a description of each of the building components and systems as described in the approach sections above. Each report is organized by building system and include digital photos of major systems and components and of all deficiencies identified. Reports will include current and anticipated repairs and deficiencies, recommended repair and component life-cycle replacements, and applicable options for repair or maintenance of building components.

The Capital Needs analysis will include a cost database sorted by building system and ranked by priority for repair. The format of the database will allow for reporting by building, system, or priority for repair, and a year-by-year analysis of capital needs.

Facility Condition Index

A Facility Condition Index (FCI) will be calculated for each building. This index will be a function of required repairs compared to building replacement costs. The FCI will be generated from the data collection/capital planning database and will be updated as components age or are replaced.

Capital Plan

Reports will reflect a 5, 10, or 20-year capital plan based on BVTA's 20-year building system evaluation. The analysis will include a cost table sorted by building and system and ranked by priority for repair. Tables will allow for the customization of reporting and a year-by-year capital needs analysis.

The report will include:

- An Executive Summary with graphic presentation of results to provide a quick, user-friendly summary of the property's observed condition and estimated costs assigned by category. Estimated costs shall be cross-

referenced to report sections and elaboration of cost issues will be presented.

- Components observed that are exhibiting deferred maintenance issues and estimates for immediate and capital repair costs based on observed conditions, available maintenance history and industry-standard useful life estimates. If applicable, this analysis will include the review of any available documents pertaining to capital improvements completed within the last five-year periods, or currently under contract. BVT shall also inquire about available maintenance records and procedures and interview current available on-site maintenance staff.
- Recommended schedule for replacement or repairs (schedule of priorities).
- Digital photographs for the buildings including photos of deficiencies.
- General description of the property and improvements and comment generally on observed conditions.
- Critical repairs and life safety issues separately from repairs anticipated over the term of the analysis.
- FCI number for the building.

BVTA will submit PDF draft reports electronically and once approved and finalized, a program summary report to include a roll-up of all prioritized capital needs across all facilities. All electronic copies of the report will include all text, deficiency tables, digital photos, and supporting documentation and report appendices.

Deficiency Categories / Plan Types

Each deficiency identified in the Assessment shall be classified in the following manner (or other Client defined categories):

- Category 1 - Scheduled Maintenance: Maintenance that is planned and performed on a routine basis to maintain and preserve the condition.
- Category 2 - Deferred Maintenance: Maintenance that was not performed when it was scheduled or is past its useful life resulting in immediate repair or replacement.
- Category 3 - Capital Renewal: Planned replacement of building systems that have reached the end of their useful life.
- Category 4 - Energy and Sustainability: When the repair or replacement of equipment or systems are recommended to improve energy and sustainability performance.
- Category 5 - Security: When a system requires replacement due to a security risk or requirement.

Program-wide Report

In addition to each building report, BV will develop a Program-wide Report that includes a ranked system-wide Capital Plan for all facilities with programmatic conclusions and recommendations. The Program Report includes a brief narrative description of each facility/building component and system, and discusses the current, anticipated repairs, deficiencies, and of all buildings assessed. The Program Report analyses will include tables sorted by building system and ranked by priority for repair. The format of the tables will allow for the several perspectives of reporting by FCI, building, system, or priority for repair, and a year-by-year analysis of capital needs.

ADA PROJECT APPROACH (6 REPORTS)

An assessor will visit the property to observe the exterior areas, interior common areas, and employee only areas to assess the existing property improvements' compliance with the Americans with Disabilities Act and its implementing regulations for Title II entities (28 C.F.R Part 35), the 2010 ADA Standards for Accessible Design, and applicable state and local accessibility

codes. BV will then produce a report which identifies the facility's compliance with accessibility requirements and identifies specific barriers, with resolutions for barrier removal, and corresponding preliminary order of magnitude cost estimates.

The assessor will conduct a review of the facility's exterior areas, interior common areas, and employee only areas to observe and identify representative barriers to accessibility and formulate recommendations to remedy the physical barriers. When applicable, as part of the review the assessor will meet with a property representative with specific knowledge of the facility to gain an understanding of overall features, public use patterns, and relevant historical data. All landlord controlled features of the property which will be subject to observation, will include, but not be limited to, parking lots, sidewalks, ramps, curb ramps, stairs, and restrooms. All exterior elements and elements within the interior areas, which are subject to accessibility regulation, will be observed.

The ADA encompasses employee only areas in addition to public spaces. Under Title I of the ADA, employee work areas, as well as employee only corridors, restrooms, break rooms, and kitchens/kitchenettes are covered under the ADA.

Observation Process

The assessor will first review documents and information provided by the municipal representative that could supplement the consultant's knowledge of the subject property's physical improvements, extent and type of use, and/or assist in identifying barriers to accessibility.

During the site walk through, the assessor will follow a Survey Form that meets or exceeds the current ASTM format. The assessor will utilize a digital level, measuring tape, door pressure gauge, and GPS-enabled digital camera. The field observer will identify and prioritize any existing improvements not in accordance with the applicable ADA requirements in the order of preference, as set out by BV or per the preferences of Client, as indicated. Typical priorities are as follows:

- Physical access to the property
- Access to areas of public accommodation
- Removal of remaining barriers

The assessor will assess exterior common areas and interior areas to identify existing conditions that are not in accordance with the applicable accessibility codes, including the elements specified below (if applicable, where landlord is responsible for observed elements):

- Van and car accessible parking
- Passenger loading zones
- Accessible routes
- Curb ramps
- Ramps
- Protruding objects
- Building unit entrance exteriors
- Building entrance and exits to common areas
- Interior accessible routes

- Exterior and interior stairs which are part of the means of egress
- Elevators and platform lifts (wheelchair lifts)
- Entrances and exits to common areas
- Handrails and grab bars
- Space allowance and reach ranges
- Restrooms
- Kitchenettes
- Break rooms
- Alarms (visual and audible) and warnings
- Signage
- Public telephones
- Switches and outlets

Accessibility Survey Content

BV will deliver an electronic (PDF) report. The report will utilize survey content which has been entered into an AssetCalc database, including the following information:

- Summary of Findings for all primary regulated elements observed, such as parking, accessible routes, entrances, elevators, and corridors
- Individually recorded barriers
- Applicable ADA regulatory guideline references for each barrier
- Recommendations for viable corrective measures necessary to comply with applicable regulations
- Preliminary order of magnitude cost estimates for each observed barrier

ADA Survey Limitations

BV's order of magnitude cost estimates for each individual barrier removal are limited planning level cost estimates based on industry standards, and should not be construed as construction estimates. Costs will be estimated using R.S. Means, Marshall & Swift, or similar industry cost indices, and BV's experience with past costs for similar properties, without the benefit of site-specific engineering/design or contractor estimates. An additional estimating effort will be required to define the actual cost of corrective actions to eliminate accessibility barriers. Planning level estimates are not based on, and will not include, detailed specifications or architectural/engineering drawings. If requested, BV can provide a proposal for subsequent Transition Planning and Construction Project Management services.

SOFTWARE DELIVERABLE AssetCALC

BVTA will utilize AssetCALC as its platform for all data collected on this project. AssetCALC is a cloud platform developed, licensed, maintained, and supported solely by BVTA for our clients. The use of this software is at your option and there are no licensing fees for this software for two (2) years.

All BVTA assessors have been trained to utilize our tablet-based data collection tool (ACgo) to collect data consistently across the campus portfolios. The data collection tool can be used with and without WiFi connection and can be preloaded with existing asset data and location information for field verification and input.

AssetCALCã is a web-based SQL database platform that enables our program managers and end-users to:

- query, edit, and analyze their facility condition data
- plan immediate and short-term repairs
- budget capital expenditures throughout the lifecycle of a building or an entire portfolio

BVTA will utilize our software to output reports, tables, and dataset for use in individual site reports. The system unites BVTA's experienced field data collection methods with advanced planning and reporting tools, construction cost libraries, location mapping (GIS) features, digital photo management, and document storage.

Data Development

- AssetCALCã includes a configurable facility hierarchy and asset data architecture—this will include all of your assets grouped based on site location, asset group, and function.
- Data and reports can be exported to an Excel, XML, or an ODBC database format.

Features Include:

- Facility Condition Assessment access:
- Component/system descriptions
- Locations
- Conditions and EUL/RUL
- Repair and replace recommendations
- Digital photos
- Search and Sorting Functionality
- Prioritization of maintenance projects
- UniFormat II Cost Database
- Project Budgets and Capital Plans
- Unlimited concurrent user licensing
- Secure IT platform and back-ups
- Client is the owner of data collected and residing in the database
- Online User Training and Documentation

Reporting

AssetCALCã includes more than a dozen standard options for data summaries and reports:

- Facility Condition Index (FCI) Reports
- Rank and Prioritize Capital Improvement Projects
- Deferred Maintenance Backlog
- Facility Queries (by building, priority, system, or dollar deficiency amount)
- Capital Budget Planning
- Year-by-Year Capital Needs Analysis
- 5, 10, or 20-Year Replacement Reserve Reports
- Custom 3rd party form automation available

Screen Shots

Additional screen shots of the AssetCALCã Database and a live demo are available upon request.

CMMS Ready Data - Integration

BV will be delivering to Client a live asset management plan that can be maintained and kept up-to-date by staff. BV will provide training to staff on maintaining the on-going monitoring program to track facilities, work performed, re-prioritization of maintenance projects, and how to update this information in the database. The data from the FCA can be exported to Excel or ODBC

FEASIBILITY ANALYSIS – PERFORMED BY GENSLER

PHASE 1: PROJECT STARTUP / KICKOFF

Upon Client's authorization to proceed, key representatives of Client, Gensler, and appropriate consultants will meet to kick off the Project. The purpose of the meeting is to establish the parties' mutual understanding of the Project objectives, schedule, budget, and delivery process. The agenda may include the following:

- Introduction of key team members, including each party's primary contact and the person authorized to make decisions;
- Discussion of Project performance targets;
- Discussion of Schedule milestones, including process and durations for Client's review and approval;
- Discussion of programming information to be provided by Client and Client's process for providing such information;
- Discussion of communication protocols;
- Identification of key personnel and protocols for invoicing and payment;

During each phase of the project, Gensler will attend weekly virtual project meetings with Client to review Project design status as specified with respect to each phase. Gensler will not be providing meeting minutes, scheduling or other project management responsibilities.

Client-Provided Programming Information.

Client will provide and Gensler will review programming information (together with the Project description in this Agreement, the "Program"), which will include the following parameters:

- Existing personnel counts and functional department allocations if available;
- Existing space requirements for personnel, functional departments, and equipment;
- Adjacency requirements;
- Technology requirements;
- Infrastructure requirements, including after-hours use, HVAC, and special security;
- Other applicable guidelines, policies, and procedures that may affect Project design.

Phase 1 Analysis

The analysis will take into account the potential growth of staff and analyze the operations of these facilities over the next 20-30 years to understand the space required to conduct the same operations but at a potentially larger scale and with greater efficiency. Gensler will engage in a

thorough assessment of the current city staff and public usage patterns. Gensler may consider projected long-range changes in demographics and the way public services are or may be provided based on anecdotal experience.

Deliverables for this phase include:

Gensler will prepare and conduct a digital Survey for end user input. Gensler will conduct up to 10 stakeholder or user interviews at ½ hour each. Gensler will synthesize the data from surveys and end user interviews into a written narrative as an executive summary. The scope/results may include all or some of the following items; current and future space programming, current and future head count, useability requirements, preferred or least preferred adjacencies and suggested best practices.

PHASE 2: ANALYSIS

Gensler will evaluate the existing structures to see if there is a possibility to optimize the existing spaces or expand/add space to the structure. Evaluate the possibility of shared uses (mixed use) within city buildings and identification of the pros/cons of such operation and provide recommendations for possible combined uses of city facilities. Assess whether each building is serving its intended role, and if they are over or underutilized in their current capacity. This includes the future needs/roles. Assess the ability of each building to serve current needs, including the ability to accommodate the number of employees, and determine if the building is meeting the overall needs of the city now and in the future. This includes parking capacity.

Deliverables for this phase include:

Over a course of 2 days, Gensler will visit all sites to observe each location to validate against current plans, and review the use, role and functionality of the existing spaces/buildings. Through notations on drawings, mark-ups or bubble diagrams Gensler will evaluate the existing conditions of the space and buildings. Gensler will prepare a utilization of the building using a matrix of above intended use, as intended, or below intended use. Using the data from Phase 2, the Phase 1 documentation and the building condition reports by Bureau Vertis, Gensler will evaluate each building through an Excel file matrix or bubble diagram the opportunities or constraints to expand, add space, combine spaces or look at shared uses for current and future projected needs. A final written narrative and associated diagrams will be provided to the Client for review and comment.

Data Collection.

Client understands and agrees that Gensler may gather statistical data, analytics, trends and other aggregated or otherwise de-identified data derived from Gensler's services to Client, including, but not limited to, data related to WPI ("Aggregate Data"), and that Aggregate Data will be stored and processed by Gensler for general research purposes. Aggregate Data, as well as any resulting research, know-how, processes, algorithms or other methodology related to the Aggregate Data, shall remain Gensler's property and will be considered Confidential Information under the Standard Terms and Conditions attached to this Agreement.

Optional/ Additional Services.

Gensler will provide services beyond the Basic Services described above if requested by Client and confirmed in writing by Gensler. Additional Services include, but are not limited to:

- Services required due to accelerated deadlines, delays, untimely Client information, approvals, or instructions, out-of-sequence phasing, Project pauses or remobilization, or other schedule changes due to reasons beyond Gensler's reasonable control;
- Services required due to changes in: (i) the Program; (ii) previously provided Client information, approvals, or instructions; or (iii) federal, state, or local laws, or regulations (or their interpretation by the authority having jurisdiction);
- Value engineering services required due to: (i) absence of Project Budget at the commencement of Services; (ii) Project Budget changes after the Programming phase; (or (iv) inaccurate cost estimates;
- Services required due to performance failures by Client's consultants/contractors; and
- Services pertaining to areas beyond Client's properties listed above beyond the Basic Services
- Providing a space use analysis: evaluate all listed buildings for staff, equipment, storage and functional needs which includes an evaluation of the physical location of City-owned buildings with regard to their current and potential best city use and recommend options for relocation or rehabilitation if it is in the best interest of the City to fit current and future city needs.
- Providing a narrative and graphical description of alternative layouts of City facilities, including any potential shift to City services or possible combination of facilities. The recommendations should include a cost benefit analysis taking into account land value, building operations and maintenance, deferred maintenance costs, and recommended construction costs. Evaluate if there is a cost benefit of combining or co-locating facilities or staff while continuing to meet the goals for customer service.
- Test Fitting or blocking/planning or other design services beyond general adjacency bubble diagrams.

Terms & Conditions

The Client shall be liable to Bureau Veritas Technical Assessments LLC for all costs and expenses of collection, including reasonable attorney and paralegal fees, and court costs. Time is of the essence with respect to this provision. Bureau Veritas Technical Assessments LLC's non-exercise of any rights or remedies, whether specified herein or as otherwise provided by law, shall not be deemed a waiver of any rights or remedies, nor preclude Bureau Veritas Technical Assessments LLC from the future exercise of such rights or remedies. If a third party is accepting a Proposal as agent for the Client, such third party represents and warrants to Bureau Veritas Technical Assessments LLC that it is duly authorized to bind the Client to the terms of the Proposal and guarantees payment for services.

Project Authorization

To contract with BVTA for this project, please review and edit the information below, sign, and return the entire agreement to BVTA

Client Contact & Report Addressee:

Mr. Eric Riddiough
 City of Morro Bay
 595 Harbor Street
 Morro Bay, California 93442

Phone: 805-772-6569

Email: eriddiough@morrobayca.gov

Report & Invoice Recipient:

Mr. Eric Riddiough
 City of Morro Bay
 595 Harbor Street
 Morro Bay, California 93442

Project Information:

Property Name: City of Morro Bay
City/County: Morro Bay, San Luis Obispo

Address:
State/Zip: California

Building Information:

Type of Project: Government - Essential Facilities

Buildings: 6 - 49

Square Feet: 140,998

Year Built:

Stories:

Acres:

Built in Phases:

Units:

% Occupied:

Yr(s)/Phases:

FCA Report Delivery Date: 90-120 business days from receipt of signed "Project Authorization" to proceed, site contact and mobilization fee, if required.

Service(s)	Lump Sum Fee(s)
Facility Condition Assessment	\$ 114,644.01
ADA Title II Survey	\$ 8,764.81
Feasibility Study by Gensler (Phase 1: \$47,000; Phase 2: \$28,000)	\$ 75,000.00

# of Reports	Report Type	Delivery Method
6 - 49	Draft	Email Full Report (PDF)
6 - 49	Final	Email Full Report (PDF)

Electronic Report Deliverables: BVTA's standard electronic delivery is through automated email links to our reports. If you prefer an alternate delivery method, please select one of our options listed below:

Dropbox

Posted to BVTA Website

Posted to Your Website

Site Point of Contact: (the POC shall be deemed an agent of the client for providing access and conveying site data)

POC:	POC Phone:
POC E-mail:	POC Cell:

I have read and verified the accuracy of the information set forth above, and in Proposal No. 163998.23P, including the legal name of the Client. I hereby certify that I am an employee authorized to sign this contract on behalf of the Client, and by my signature below I hereby accept the Proposal, as addressed to my company, including the attached Terms and Conditions, and authorize BVTA to proceed with the Services as described. Should any project information change, I understand that additional fees may accrue, and the due date may be extended.

Authorized Signature **(Printed Name)** **Phone #**

Company Name **Title** **Date**

EXHIBIT B
SPECIAL REQUIREMENTS
(Superseding Agreement Boilerplate)

NOT APPLICABLE

EXHIBIT C

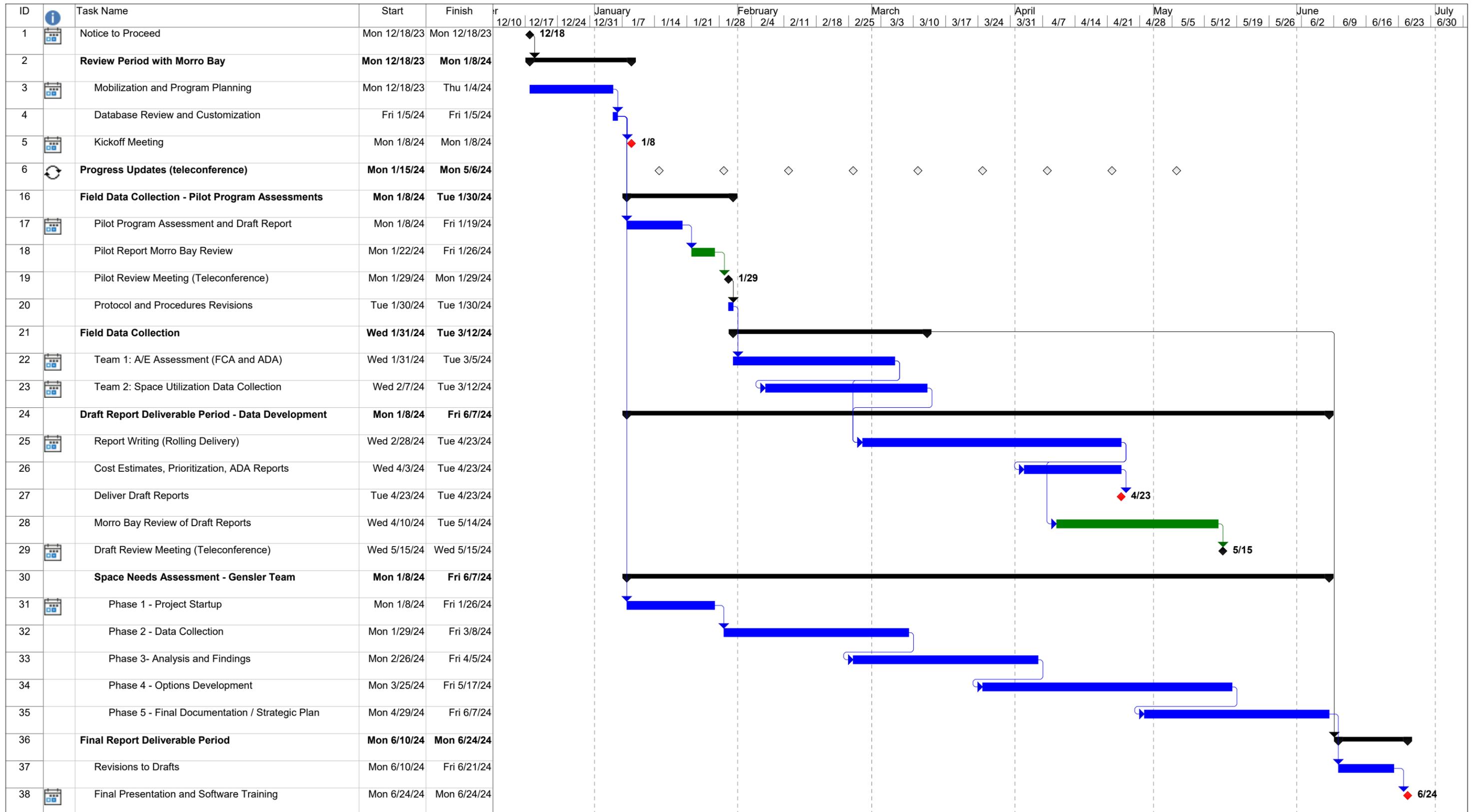
SCHEDULE OF COMPENSATION

- I. Consultant will be compensated for Services provided under this Agreement in accordance with description in Consultant's Proposal attached hereto.**
- II. City will compensate Consultant for the Services performed upon submission of a valid invoice, as described in Section 2.2.**
- III. The total compensation for the Services shall not exceed the Contract Sum, as provided in Section 2.1 of this Agreement.**

EXHIBIT D

SCHEDULE OF PERFORMANCE

- I. Consultant shall perform all services and deliver all work products timely in accordance with the schedule described in Consultant's Proposal attached hereto. All work is to be performed within 6 months from the date of this agreement with no invoice to be issued after December 31, 2024.**



Project: Proposed FCA and Needs Ass Date: Mon 11/27/23	Task		Project Summary		Inactive Summary		Manual Summary		External Milestone	
	Split		External Tasks		Manual Task		Start-only		Progress	
	Milestone		External Milestone		Duration-only		Finish-only		Deadline	
	Summary		Inactive Milestone		Manual Summary Rollup		External Tasks			



AGENDA NO: A-10

MEETING DATE: December 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: November 28, 2023

FROM: Yvonne Kimball, City Manager

SUBJECT: Authorization for Attendance at the C-MANC Annual Washington, D.C., “Washington Week” Meetings

RECOMMENDATION

Staff recommends the City Council authorize a three-person delegation consisting of the Mayor, Harbor Director, and City Manager to attend the California Marine Affairs and Navigation Conference (C-MANC) 2024 “Washington Week” meetings in Washington, D.C. slated for February 12 – 16, 2024, and to represent the City’s interests in the nation’s capital.

ALTERNATIVES

Do not approve authorization for the “Washington Week” C-MANC delegation.

FISCAL IMPACT

The total hard costs for airfare, hotel, and monetary contribution to the Golden State Reception for the “Washington Week” meetings are estimated at \$8,000 - \$10,000 for three persons, not including approximately \$2,000 in staff time in preparatory meeting attendance, grant preparation, and travel/meeting logistics. The Harbor Department has been approved for a grant of \$8,000 from the Central Coast Joint Cable Fisheries Liaison Committee for this trip. Expenses above \$8,000 will be assumed by the Harbor Fund.

BACKGROUND/DISCUSSION

C-MANC annually hosts Washington Week meetings, where representatives of California Ports and Harbors have the opportunity to remind Congress and various other agencies of the importance of dredging projects, commercial fishing, ocean and coastal management and other coastal-related issues in California. The City of Morro Bay is a long-standing member of C-MANC, and for over 25 years has sent representatives to the “Washington Week” meetings.

From an Army Corps of Engineers (Corps) priority standpoint, Morro Bay is considered a small or “subsistence” harbor. Because of our relative isolation, however, “harbor of safe refuge” status, United States Coast Guard presence and periodically dangerous harbor entrance, Morro Bay’s rank in priority for funding is elevated above a “subsistence” harbor, and we have been successful in having our dredging needs met.

The City could not afford to dredge our harbor without the Corps, as annually the Corps spends \$2.5-\$3 Million to dredge our entrance. The City and Harbor Department were successful in obtaining \$14.5 Million to dredge the entire Harbor channel past the boat ramp during the 2023 trip to Washington D.C.

Prepared By: TS

Dept Review: _____

City Manager Review: YK

City Attorney Review: _____

That dredge will take place in 2025. Continued dredging of ours and others' Federally authorized harbor entrance and channels remains a top priority of C-MANC, and our work with the Corps and our Washington D.C. visits remain a vital component to secure the necessary funding that will ensure our harbor remains not only safe for passage, but fully navigable from a commerce and operational standpoint.

In addition to the dredging funding, advocacy for our commercial fishing industry and its many facets remain a very high priority during Washington Week, and in recent years visits with the Bureau of Ocean Energy Management (BOEM) regarding the recent leases for offshore wind energy power generation projects on the Central Coast. In previous years, the City team also met with our Senators, Congressmembers, U.S. Environmental Protection Agency (EPA), Department of Housing and Urban Development, Department of Transportation and other agencies to discuss important issues at Morro Bay.

CONCLUSION

It is critically important for the California C-MANC delegation to maintain its many relationships in Washington and a seat at the D.C. table, in addition to bringing a unified voice to D.C. of the importance of all of California's ports and harbors, large and small, to the national economy and security.

Staff is therefore recommending approval of City Council authorization to send a delegation of three-persons to C-MANC's "Washington Week" proceedings.

ATTACHMENT

None

AGENDA NO: A-11

MEETING DATE: December 12, 2023

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
RECOGNIZING THE 10 YEARS OF COMMUNITY SERVICE BY
MORRO BAY IN BLOOM VOLUNTEERS**

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

WHEREAS, Morro Bay in Bloom is a volunteer organization dedicated to creating and maintaining welcoming public spaces in Morro Bay; and

WHEREAS, Morro Bay in Bloom's two hour social gardening sessions have transformed weedy and vacant spaces into lovely gathering places for residents and guests; and

WHEREAS, Morro Bay in Bloom volunteers have donated at least 4,200 hours each year for the past ten years, saving taxpayers \$200,000 annually; and

WHEREAS, Morro Bay in Bloom volunteers contribute significantly to the upkeep, beautification and care of the Morro Bay Boulevard Roundabout, Centennial Parkway, Coleman Beach Park, Mariner Park, Beach and Front Street waterfront areas including the Nick Howell Memorial, 695 Harbor Street, thirty-four juvenile street trees, the rose garden adjacent to City Park, nineteen downtown planter boxes, and numerous other projects; and

WHEREAS, Morro Bay in Bloom participates in America in Bloom's program of installing and maintaining tidy landscaped areas, attractive floral displays, robust urban tree canopies, maintaining litter-free areas, celebrating our city's heritage, supporting environmental initiatives, and contributing to our city's vitality through creative placemaking; and

WHEREAS, Morro Bay in Bloom volunteers celebrated the City of Morro Bay's achievement of American in Bloom's "Best Overall City" award in its population category in 2015, 2016 and 2017, becoming a member of America in Bloom's "Circle of Champions"; and

WHEREAS, Morro Bay in Bloom volunteers conducted their first social gardening session October 25, 2013, at the Morro Bay Library.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Morro Bay does hereby recognize Morro Bay in Bloom volunteers and celebrates ten years of service to the Morro Bay community.

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 December 2023.

CARLA WIXOM, Mayor
City of Morro Bay, California

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November 5, 2023. The City received two applications for this funding cycle (see below for more details).

Total Morro Bay funding is anticipated to be approximately \$51,228 for the 2024 program year with an estimated total allocation countywide of \$1,693,770. Final funding amounts are subject to change and will be released by the Department of Housing and Urban Development (HUD) in early 2024.

BACKGROUND

The CDBG program is a flexible funding source providing communities with resources to address a wide range of unique community development needs. (Online Link #2 below). The program works to ensure decent, affordable housing, to provide services for members of our community and to create jobs through expansion and retention of businesses. CDBG funds are available for community development activities, which meet at least one of the three national objectives:

1. A benefit to low- and moderate-income persons;
2. Aid in the prevention or elimination of blight;
3. Address urgent needs that pose a serious and immediate threat to the health or welfare of the community.

In order for a program to qualify under the low- and moderate-income objective, at least 51% of the persons benefiting from the project or program must earn no more than 80% of the area median. Additionally, at least 70% of the CDBG funds must be spent toward that objective.

The following criteria should also be used to guide selection of CDBG programs:

1. The proposal is consistent with the national objectives and eligibility criteria of the HUD CDBG program;
2. The proposal is consistent with the Urban County Consolidated Plan;
3. The proposal is consistent with the General Plan and other City codes/ordinances;
4. The proposal will achieve multiple community development objectives;
5. The proposal can be implemented in a timely manner, without significant environmental, policy, procedural, legal, or fiscal obstacles to overcome; and
6. The project is not financially feasible without CDBG funding.

DISCUSSION

The two applications received by the City for the 2024 funding cycle are included by category in the below table along with a description of the application request and staff recommendation.

<i>Federal Funding Category / Applications Received</i>	<i>Amount Requested</i>	<i>Amount Recommended (includes both current and rollover amount)</i>
<i>Public Services – Limited to 15% of 2024 Allocation (or a maximum of \$7,684)</i>		
<i>1. <u>Project Name:</u> Rapid Rehousing and Homeless Prevention Program</i> <i>Applicant:</i> 5 Cities Homeless Coalition (5CHC) <i>Project Description:</i> 5CHC proposes continued and expanded comprehensive homeless services of their Rapid-Rehousing Program, which includes connecting families	\$3,500 CDBG funding request to Morro Bay <i>(Total request is \$92,333 combined to all jurisdictions) countywide)</i>	<i>\$3,500</i>

and individuals with time-limited financial assistance and targeted supportive services, and housing stabilization services.		
Public Facilities		
<p>2. <u>Project Name:</u> ADA Accessibility Upgrade at Quintana and Main Streets.</p> <p><u>Applicant:</u> Public Works Department, City of Morro Bay.</p> <p><u>Project Description:</u> Installation of an audible signal crossing and ADA compliant pedestrian push button at the intersection of Main & Quintana Streets, the primary traffic signal in the city, and the installation of ADA curb ramps with detectable surfaces. Goal of program is to increase safety and facilitate improved accessibility for senior residents and persons with disabilities. This funding requested is to augment the previous awarded 2023 CDBG funding.</p>	\$40,000	\$37,482
Administration – Limited to 20% of 2024 Allocation: \$10,246 (per County agreement: City=35% / County =65%)		
City Program Administration Costs: (Required County Administration Costs):	\$3,586 (\$6,660)	\$3,586 (\$6,660)
Total Funds Requested	\$53,746	
Total Funds Recommended		\$51,228
Estimated Total 2023 Funding Available		\$51,228

Federal Regulations and Funding Criteria:

Federal HUD regulations apply limits to each category of funding, as described below. As part of the CDBG process, Council must adopt a draft recommendation for the 2024 grant year that meets the funding criteria while adhering to the category limits. Upon approval, the draft funding recommendations will be forwarded to the County for publishing, along with recommendations from all jurisdictions. The public notice starts a 30-day review and comment period during which a second public workshop will be held to allow questions from applicants after which the draft allocations, plus any workshop comments, will be forwarded to City Council for final recommendations at a duly noticed public hearing anticipated to be approximately March 2024. Final funding recommendations would then be forwarded to the County Board of Supervisors in order to adopt the 2024 Action Plan consistent with the 2020-2024 Consolidated Plan which is the five-year strategic planning document that establishes funding goals for HUD funding.

The following is a brief explanation of the funding categories and applications received within each:

Public Services – Public services activity applications are defined as those activities that include,

but not limited to, employment services, crime prevention, childcare, health services, substance abuse services, fair housing counseling and recreational services. Federal regulations limits no more than 15% of an allocation to be awarded to Public Services activities which for Morro Bay would be \$7,684.

Only one application was received under this category which was from the 5 Cities Homeless Coalition (5CHC) (Online link 1). The Rapid Re-housing and Homeless Prevention Program helps clients secure and maintain stable housing, provides case management, and seeks to resolve barriers to obtaining and maintaining housing for residents of SLO County. The goal of the program is to assist participants to secure long-term stable housing that they can afford to retain, to be in a better position to address other challenges such as employment or substance abuse. In addition, assistance is provided to those of imminent threat of homelessness also.

The City's Cooperation Agreement with the County requires any funding of public services activities be a minimum amount of \$8,000 or more based on HUD direction not to award CDBG funds that cost more to administer than the award itself. Cities can recommend awards of less than \$8,000 if the applicant has applied to multiple jurisdictions and the cumulative toward of their CDBG award is a minimum of \$8,000. 5CHC has applied to all jurisdictions in the county for this funding year for a cumulative total of \$92,333 and based on the high priority ranking for homeless prevention in the County Action Plan it is anticipated the minimum 15% funding Countywide would be met and therefore would allow the City to recommend funding. The City could also choose to award more than the \$3,500 requested and based on the anticipated allocation is eligible to award up to \$7,684 based on County and federal guidelines. Staff is recommending this project for funding because homeless prevention and services to address homelessness are part of the City's adopted Goals and are a high priority item under the County's Consolidated Plan.

Public Facilities – Public Facilities are defined as activities relating to real property, including the acquisition, construction, rehabilitation or installation of public improvements. These activities can be carried out by a grantee, sub-recipient, or other nonprofit.

The City's Public Works Department submitted a public facilities application (Online link 2) in the amount of \$40,000 that would provide additional funding in addition to the 2023 CDBG grant funding award of approximately \$75,884. The funding request is for the installation of an audible signal crossing and ADA compliant pedestrian push button at the intersection of Main and Quintana Streets. This project would enable ADA accessibility for seniors and persons with disabilities. In addition, the project would include installation of ADA curb ramps with detectable surfaces. The proposed project is consistent with the City's Bicycle and Pedestrian Master Plan of 2012 which identifies as a priority the improvement of safety and infrastructure at this intersection. Public Works' budget for this project also includes funds from SLOCOG Betterments Grant and local funds from Measure Q and E.

Administration –The 20% cap on percentage of award from this category is estimated at \$10,246 with \$3,586 available to Morro Bay this cycle (and with 65% of administration (\$6,660) reserved for County grant administration which includes compliance with Federal regulations).

- *City of Morro Bay – CDBG Program Administration*
Funds Requested: \$3,586 for City administration
Pursuant to the City's 2024-2026 Cooperation Agreement with the County, the twenty-percent cap on administration allowed under HUD regulation is split between City and County staff administration. Of the 20 percent, the City is eligible to apply for 35 percent of that (or \$3,586). with the balance to be forwarded to the County (\$6,660). This funding request is for costs associated with the administration of the Program, including staff time required for grant

administration and coordination with County Planning staff. If administration costs exceed the funding allocation, then remaining costs of administering the program would need to be paid from the General Fund.

CONCLUSION

The total estimated 2024 allocation for Morro Bay, as released by the County, is \$51,228. The 5CHC's application applied for \$3,500 which is less than the required minimum of \$8,000 but can be recommended based on an anticipated cumulative award by other jurisdictions in the Urban County Consortium. The Public Works Department application is recommended to provide additional 2024 funding in the amount of \$37,482 for the requested ADA upgrades at the signalized intersection of Quintana and Main Street.

Staff is recommending that Council approve the 2024 Draft Funding Recommendations for the two applications received (Online links 1 and 2), and the City application of \$3,586 for program administration.

ATTACHMENTS

1. Resolution No. 77-23

ONLINE LINKS:

1. [Application from 5 Cities Homeless Coalition – Subsistence Payments, Homeless Assistance, & Security Deposits](#)
2. [Application from City of Morro Bay Public Works Department ADA Accessibility Upgrades Main & Quintana](#)
3. County of San Luis Obispo CDBG Notice of Funding Availability for 2024
https://www.slocounty.ca.gov/Departments/Social-Services/Homeless-Services-Division/Community-Development/Forms-Documents/2024-Action-Plan-NOFA_Final.pdf
4. Community Development Block Grant (CDBG) Fact Sheet
<https://files.hudexchange.info/resources/documents/About-the-CDBG-Program.pdf>

RESOLUTION NO. 77-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING COMMUNITY DEVELOPMENT BLOCK GRANT
PROJECTS FOR YEAR 2023**

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

WHEREAS, via a Cooperation Agreement with County of San Luis Obispo (hereafter referred to as “County”), a political subdivision of the State of California, executed by the City of Morro Bay (hereafter referred to as “City”) a municipal corporation, on July 7, 2020, the City agreed to become a participant for a period of three years with the County and other cities therein as an “Urban County” under the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, under the Cooperation Agreement, the City retains the authority to determine which projects are to be funded with its allotment of Community Development Block Grant (CDBG) Program funds; and

WHEREAS, the CDBG Program promotes the public health, safety and welfare by providing grant funds to be used by the City and County to improve housing opportunities for low- and moderate- income households, to encourage economic reinvestment, to improve community facilities and public services, and to provide other housing-related facilities, or services; and

WHEREAS, the City expects to receive \$51,228 in CDBG funds in 2024; and

WHEREAS, in 2023, the County published a “Notice of Funding Availability” on October 6, 2023 for projects to be funded under the 2024 CDBG Programs, with County needs assessment workshops held in October 2023; and

WHEREAS, at a duly noticed public hearing on December 12, 2023, the City Council gave approval for draft funding recommendations to be forwarded to the County Board of Supervisors for 2024 CDBG projects.

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

1. City will timely submit final funding recommendations for the current CDBG funding cycle to the Board of Supervisors for the County of San Luis Obispo consistent with the programs and allocations listed in Exhibit “A,” attached hereto and incorporated herein by this reference, to be funded with the City’s allocation of CDBG Program funds.
2. City Manager is authorized for the current CDBG funding cycle 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 San Luis Obispo County

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of December 2023 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

RESOLUTION NO. 77-23
EXHIBIT "A"
DRAFT FUNDING RECOMMENDATIONS
TO FORWARD TO THE
COUNTY BOARD OF SUPERVISORS

Public Services – Limited to 15% of 2024 Allocation (or a maximum of \$7,684)	Amount Requested	Amount Recommended
1. <u>Project Name:</u> <i>Rapid Re-Housing and Homeless Prevention Program</i> Applicant: 5 Cities Homeless Coalition (5CHC)	\$3,500	\$3,500
Public Facilities		
2. <u>Project Name:</u> <i>ADA Accessibility Upgrade at Quintana and Main Streets</i> Applicant: <i>Public Works Department, City of Morro Bay</i>	\$40,000	\$37,482
Administration – Limited to 20% of 2024 Allocation, \$10,246 (per County agreement City=35% / County =65%)		
City Program Administration Costs (Required County Administration Costs)	\$3,586 (\$6,660)	\$3586 (\$6,660)
Total Funds Requested	\$53,746	
Total Funds Recommended		\$51,228
Estimated Total 2024 Funding Available		\$51,228

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AGENDA NO: C-1

MEETING DATE: December 12, 2023

Staff Report

TO: Honorable Mayor and City Council
FROM: Amy Watkins, Police Chief
SUBJECT: Ironman 70.3 Morro Bay After Action Report

DATE: November 30, 2023

RECOMMENDATION

Receive and file.

FISCAL IMPACT

Fiscal impact to the city consisting of staff time, maintenance and improvements to city roads and parking lots, and fees waived for permit fees were tallied and reviewed. First year costs consisted of city staff time, parking lot and roadway maintenance, and permit fees. The following expenditures were identified:

- City staff costs - \$49,135
- Public Works maintenance costs - \$11,500
- City permit fees waived per contract - \$13,698

Per the contract, the city was allowed to recoup costs up to \$25,000. Estimated expenditures to the city totaled \$74,333. The city can recoup \$25,000 from Ironman WTC, leaving \$49,333 in city costs to host the event.

SUMMARY

On Saturday, May 20, 2023, the City hosted the 2023 Ironman 70.3 Morro Bay for its inaugural event. The city welcomed 2,000 athletes and another 6,500 spectators. City staff began planning for the event in December of 2022. The event began at 6:00 am with the first swimmers in the harbor and concluded with the final runner finishing on the Embarcadero at 3:30 pm. The event required road closures to allow athletes to participate in the event and for athlete and spectator safety. Road closures took place along the Embarcadero, Front St., Beach St., Main St., Atascadero Rd., and along Highway 1 at San Jacinto and Yerba Buena. The event footprint required closures of three parking lots along the Embarcadero and increased visitors to the city for several days leading up to the event. The event was successful with no reported incidents related to athlete or spectator safety.

The City will host an additional two Ironman 70.3 triathlons on Sunday, May 19, 2024, and Sunday, May 18, 2025, under the current contract.

Prepared By: <u> AW </u>	Dept Review: <u> </u>
City Manager Review: <u> YK </u>	City Attorney Review: <u> </u>

BACKGROUND/DISCUSSION

In preparation for the event, Police Department staff met weekly with department directors, Ironman race director and staff, county and regional public safety departments, Chamber of Commerce, Visit Morro Bay, local businesses, and numerous community members and stakeholders. City staff worked diligently to cover all bases for the event focusing on safety while limiting road closures and access restrictions to the public.

Public Works staff made several road and parking lot improvements as required by Ironman to ensure a safe racecourse for the athletes. Public Works leveled several areas of the Rock parking lot, laid surface seal along Atascadero Rd., and swept the streets along Embarcadero, Coleman Dr., and Atascadero Rd.

City Engineers and the Recreation Department worked with Ironman to apply and file for permits required for roadway and lot closures throughout the event.

Police, Fire and Harbor Departments worked closely with Ironman, Federal, State, and County Public Safety departments to recruit and assign staff, create Incident Command Structures (ICS) and Operational Plans to ensure a safe event for athletes, spectators, and the community.

Leading up to the event, City staff conducted two public information meetings at the Morro Bay Community Center to provide the public with anticipated parking lot and road closure information and hear questions or concerns about those closures and any other overall concerns from the community. Staff walked the businesses along the Embarcadero to discuss parking and other restricted access during the event and how it would impact traffic flow for visitors and employees. Staff also walked along Main St. residential neighborhoods to advise of road closures and address resident concerns. Leading up to the event, staff issued informational press releases regarding the event and potential impacts on traffic and road closures. Several interviews were conducted with TV news and print media leading up to and during the event. City staff also used social media to keep the community and visitors informed.

Impacts to the community related to the event were minimal leading up to the event. The triangle parking lot near the Maritime Museum was closed on the Monday leading up to the event as the shipping and receiving lot for Ironman. The Pacific Street parking lot on Embarcadero was closed on the Tuesday prior to the event as the Ironman Village. The Rock parking lot was closed Friday evening before the Saturday event and used for the transition area for athletes during the event.

Embarcadero Road was closed from Pacific St. to the Rock parking lot beginning at 4:00 am on Saturday and reopened to the public at 3:30 pm that same day. Road closures within the city consisted of Morro Ave from Pacific St. to Olive Ave, Main St. from Olive Ave to Piney Way. Highway 1 was restricted to one lane from Atascadero Rd. to San Simeon. Access to Highway 1 at San Jacinto and Yerba Buena was restricted and detoured to Main St. on ramps to provide the highest level of safety for athletes and drivers along Highway 1. Those closures began at 7:00 am and concluded at 1:30 pm. This created traffic diversion but ultimately limited traffic delays within the city.

Impacts to businesses related to the event were reported as the Saturday event blocked vehicle traffic and therefore limited visitor access unrelated to the Ironman event from entering the Embarcadero area.

The shortened run course as a result of State Parks not allowing access to State Park Road for the event created a run course with three and a half loops for the runners. This allowed spectators to support the athletes approximately every 30 minutes, keeping the athlete supporters and spectators seeking quick food options instead of sit-down dining so they could cheer on their athletes each time they ran by. This was an unanticipated factor that impacted some businesses. Several businesses reported record setting days for business and visitors while others reported slowest days of the year on Saturday with increased business leading up to and after the event.

City staff along with Visit Morro Bay Executive Director, Michael Wambolt, presented City Council with a staff report recommending future Ironman events be moved to Sunday rather than the Saturday to provide businesses a better opportunity to capitalize on the increased visitors to the city on Saturday. Business owners expressed that a road closure on Sunday along Embarcadero would be less impactful to those businesses who rely on strong Saturday visitors. Sundays are normally slower days for shoppers along Embarcadero. City Council approved the date change June of this year.

City and Ironman staff understood and discussed throughout the planning for the inaugural event that staff was going to learn many things during the event. City and Ironman staff were and continue to be committed to improving the event each year for the community and participants. As anticipated, many improvements were identified and discussed during the event debrief held by staff on June 7, 2023. Several technical and race improvement items were discussed. City staff provided items to improve upon for 2024 and 2025. Some of those items are:

- City police work closer with traffic safety companies during traffic safety plan (TSP) formulation.
- More efficient clearing of roadways after each race section.
- Work to increase volunteers for the event, with better organization of the volunteers on race day.
- Improve on equipment pick up after race day.
- Work to ensure information mailers arrive to residents weeks before the event. Increase notification and mailers to residents as early as March 2024.
- Improve oversight of pedestrian bridge, consider law enforcement presence.
- Improve locations and communication for volunteer and athlete parking.
- Traffic impact on run course, specifically Marina and Morro.
- Evaluate and improve early morning athlete drop off and communication with athletes about drop off locations.

ATTACHMENT

1. Visit Morro Bay Report



During the June 2023 Morro Bay City Council meeting, Visit Morro Bay was asked to help provide an economic impact study for Morro Bay Ironman 70.3 in May 2023. This was asked of Visit Morro Bay due to the potential negative economic impact of the restaurant and retail sectors of Morro Bay.

Visit Morro Bay's board of directors approved funds of up to \$30,000 to enlist a third party to produce an economic impact study. The approval of funds was discussed during two Visit Morro Bay board meetings, the first in June 2023 and the second July 2023.

In early August 2023 Visit Morro Bay received two RFPs for an economic impact study from Oxford Economics and Destination Analysis, both are leaders in these type of destination studies. Both studies require a post event survey exit survey of attendees of the event, this survey is sent via email. Visit Morro Bay sent the request to the Ironman Group to facilitate the exit survey. Due to the delayed timing of this ask the Ironman Group stated they would not be able to send the survey to participants. These updates were shared with Interim City Manager Greg Carpenter and Assistant City Manager Sarah Johnson-Rios.

Visit Morro Bay's board of directors has approved the \$30,000 in funds for an economic survey be held for the 2024 Morro Bay Ironman 70.3.

To gain economic insights of the Morro Bay Ironman 70.3, Visit Morro Bay has utilized the economic impact calculator provided by Visit SLO CAL via Destinations International. This is a robust calculator utilized by destinations around the world to provide pre and post economic data. This report shows a potential local tax revenue of \$130,042.

The lodging segment during this year's race did show an overall positive impact as it brought compression which supported rate growth and overall revenue. Race week (May 14- May 20) was the third highest RevPAR when compared to the same weeks going back to 2018. However, some properties were left with rooms to sell on Saturday due to some athletes departing Morro Bay after the race concluded. As a result of this, the travel window was inverted: Friday was the busiest day and Saturday was a little soft.

Visit Morro Bay is always looking for ways to maximize and improve upon events like the Ironman 70.3. We believe that events like these can build demand and raise awareness of Morro Bay as a destination. The most important change was to move the race from Saturday to Sunday. The Morro Bay City Council approved this move.

Morro Bay is one of the top cross-visited destinations within SLO CAL, thus moving the race to Sunday should help support non-lodging businesses on the peak weekend day of Saturday. There would not be road closures until the evening of Saturday and early Sunday morning which would provide for an open travel path for cross visitation and day travelers to Morro Bay on Saturday and therefore help support retail and restaurants during what should be their busiest day of the week.

Steps to Improve Future Ironman 70.3

- Moving race from Saturday to Sunday – Done
- Adding IronKids event to Saturday – Done
- Added marketing funds for spectators - Done
- Racecourse Design – Ironman is working on this.
 - Adding State Park to course
- More robust restaurant and retail guide – In works

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AGENDA NO: C-2

MEETING DATE: December 12, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: December 6, 2023

**FROM: Amy Watkins, Police Chief
Dan McCrain, Fire Chief
Chris F. Neumeyer, City Attorney**

SUBJECT: For Mitigation of Harms to Public Health, Safety and Welfare: Adoption of Urgency Ordinance No. 664, and Introduction of Regular Ordinance No. 665, to add Chapter 8.26 to the Morro Bay Municipal Code (MBMC) for Regulation of Camping and Storage of Personal Property on Public Property; and, Introduction of Regular Ordinance No. 666 to add Chapter 8.27 to the MBMC for Regulation of Overnight Human Habitation of Vehicles on Private Property Used for Business or Nonprofit Organization Operations

RECOMMENDATION

1. Adoption, by title only and with further reading waived, of Urgency Ordinance No. 664, entitled "An Urgency Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.26 to Title 8 of the Morro Bay Municipal Code Regulating Camping and Storage of Personal Property on Public Property to Mitigate Harm to Public Health, Safety and Welfare"; and
2. Introduction, by title only and with further reading waived, of regular Ordinance No. 665, entitled "An Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.26 to Title 8 of the Morro Bay Municipal Code Regulating Camping and Storage of Personal Property on Public Property to Mitigate Harm to Public Health, Safety and Welfare"; and
3. Introduction, by title only and with further reading waived, of regular Ordinance No. 666, entitled "An Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.27 to Title 8 of the Morro Bay Municipal Code Regulating Overnight Human Habitation of Vehicles on Private Property Used for Business or Nonprofit Organization Operations to Mitigate Harm to Public Health, Safety and Welfare."
4. Direct staff to subsequently return with budget adjustments required to support the implementation of these ordinances. Eligible funding sources would include General Fund or Measure Q&E funds. Expected initial budget allocation of no less than \$50,000 to begin the cleanup and securing storage containers for the retention of personal property collected during cleanups.

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Prepared By: AW/CFN

Dept Review:

City Manager Review: YK

City Attorney Review: CFN

FISCAL IMPACT

Failure to adopt the ordinances will predictably see a steady increase in an ongoing and continuing drain on City resources, time and money. This is from ever increasing City staff responses (including from Police Department, Fire Department, Code Enforcement Division and Public Works Department) to the growing public health, safety and welfare harms generated by lack of regulations like those in the proposed ordinances. The findings in the ordinances document these conditions.

Adoption of the ordinances will result in upfront additional City enforcement costs, including the costs of retaining personal property held under the ordinance and cleanup of encampments, which may involve the collection and disposal of trash and potential hazardous material response. The Police Department and Code Enforcement Division will be primarily responsible for enforcement and handling of personal property, while the Public Works Department will provide support for coordinating the pickup and disposal of trash and hazmat response through its contractors.

An initial budget of approximately \$50,000 is expected to begin the cleanup and securing storage containers for the retention of personal property during cleanups. This budget allocation is not included in the FY 2023-24 Adopted Budget. If Council adopts the ordinances, Council should also direct staff to return later in time with budget allocations required to support the implementation of these ordinances. Eligible funding sources would include General Fund or Measure Q&E funds.

Future costs are unknown and are dependent on changes in the resident homeless population and the amount of enforcement associated with the proposed ordinance.

BACKGROUND

I. Introduction

In November of 2022, the City Manager created a City Homeless Working Group dedicated to discussing issues related to the unhoused or those experiencing homelessness. The working group was comprised of City department directors, staff, and homeless outreach service groups and began to focus on addressing the underlying issues and seeking solutions.

Addressing the unhoused continues to be a challenge locally, regionally, and statewide. In Morro Bay, concerns are often raised at public meetings, through calls for service to Police and Code Enforcement, to City administrators, to Council Members, and in public forums such as Facebook or NextDoor. During the pandemic, encampments expanded while more residents used the trails, pathways, and public infrastructure where persons experiencing homelessness often reside. Pandemic-related impacts, historically low vacancy rates, rising rents, and conversion of rental housing into ownership housing have all contributed to increasing homelessness. Staff estimates there are approximately 100 people experiencing homelessness in Morro Bay at any given time.

A primary public health and safety concern is camping on public property, especially (but not limited to) when an encampment site develops and spreads out over large areas, generates considerable garbage or waste, or when unlawful camping, coupled with other illegal activity, impacts a sensitive land use such as schools, degrades and destroys environmental areas, and creates dangerous water shed into waterways and the ocean. Camping on public property creates public health and safety hazards for City residents and for people living in encampment sites, including impacts related to the disposal of hazardous materials and unsanitary conditions that can lead to an infestation of vermin and the spread of communicable diseases. Camping on public property has also been a problem for

Public Works staff. Access to public facilities has been impeded by individuals camping, and trash and debris have accumulated in creeks and other storm drain facilities, in some cases reducing flood control capacity and/or threatening the environment, affecting the City's ability to comply with state permitting requirements.

II. City Efforts to Address Homelessness

For many years the City has invested significant funds, resources and time to assist persons experiencing homelessness. These efforts include assistance seeking temporary and permanent shelter, as well as assistance finding necessary public health services to address the causes of their homelessness. The City has sought to address the underlying issues contributing to homelessness and has striven to be a part of the solution. These City of Morro Bay actions and efforts have included:

1. City staff and City Manager participation on committee and sub-committees with service groups, county non-profits, and County Public Health Services to address causes of homelessness and work towards solutions.
2. Assignments of officers to the police department as a homeless liaison to address needs of the unhoused within the City limits.
3. Provision of connections to County Public Health Nurse and Doctors.
4. Facilitating connections to local and regional outreach services to assist with mental health needs, drug and alcohol counselors, probation and parole services, connections to permanent housing (THEMA, CAPSLO, 805 Street Outreach, Esteros Bay Alliance for Care, Salvation Army, SLO Food Bank, County Public Health and Behavioral Health services).
5. Monthly meetings with Estero Bay Alliance for Care (EBAC), a local, ad-hoc volunteer organization started in 2011 by Morro Bay Council Members to include different agencies and community organizations with the intent to study and address social issues in the Estero Bay area. EBAC membership includes a current Morro Bay City Council member, representatives from the Police Department, Social Services, local churches, health care organizations, the Food Group, various other active organizations, such as the Community Resource Connections office, and legal services organizations.
6. The City of Morro Bay supports a one-of-a kind weekly community dinner - where all are welcome - with financial and staffing resources in an effort to support our community needs.
7. In 2022, the Morro Bay City Manager created a City homeless working group comprised of City department heads, staff and homeless outreach service groups to address homelessness in Morro Bay. One of the first items the team addressed was the need for continued outreach and case management. The City conducted a recruitment for Homeless Outreach Case Manager. The Homeless Outreach Case Manager is one step in the city's efforts to meet the San Luis Obispo Countywide plan to address homelessness adopted by the County Homeless Services Oversight Council in 2022.
8. The Homeless Outreach Case Manager assists those experiencing homelessness to navigate services and to connect to resources that they need to secure housing, as well as shelter and transitional housing resources when available (e.g., ID Cards, financial benefits, transportation to service meetings and appointments). Duties include to make contact with unhoused or people struggling with housing in the field, build rapport and provide opportunities for assistance to those seeking help. The case manager schedules and provides

transportation to appointments for drug and alcohol services, county probation, state parole, behavioral health, CAPSLO, ECHO, and THMA.

9. City of Morro Bay provides annual funding to San Luis Obispo County Department of Social Services and Public Health.
10. Regular meetings with homeless outreach groups such as CAPSLO, THMA, County Public Health, Salvation Army, Veteran Services, 805 Street Outreach, and EBAC.
11. The City committed \$25,000 in housing impact in lieu fees to the HASLO Atascadero Rd Housing Project.
12. The City has transferred the City's portion of the National Opioid Settlement back to San Luis Obispo County to manage a regional effort to combat opioid related issues that directly impact our unhoused population.

III. Public Health and Safety Issues Presented by Camping on Public Property

Despite these efforts, and efforts from other agencies, the City of Morro Bay continues to experience significant and continuing threats to public health and safety resulting from persons experiencing homelessness sleeping and camping in unauthorized locations in the City, including the following:

1. Homeless encampments raise a number of public health concerns related to waste, sanitation and disease transmission. Homeless people, like all other people, generate solid waste during their daily activities of food preparation and consumption, shelter building and maintenance and storing their possessions. Though without any place or method of proper storage or disposal, the resulting piles of trash become food sources for rodents, breeding grounds for pathogens, fuel for fires, and unattractive nuisances to the public.
2. The opportunity for the spread of communicable diseases is increased in homeless encampments lacking basic sanitation services and waste collection, with some diseases such as hepatitis A and typhus more likely to occur in homeless populations.
3. Health and safety issues are presented by the violation of fire, building, electrical and other codes and standards for the public health and safety, including the unauthorized and unpermitted use of electrical and utility connections, due to the potential and reality of unsafe and unhealthy conditions in encampments, posing life, safety, fire and health threats to both the occupants of the encampments, the general public and emergency responders.
4. Health and safety issues are exacerbated and compounded by larger encampments as there is an exponential increase in these health and safety issues the larger the encampment, including but not limited to both accumulation of trash and debris as well as the greater likelihood of the spread of disease.
5. The City regularly receives a large volume of emails, phone calls and in-person complaints regarding the encampments in the City, and the frequency and number of these complaints has been increasing greatly recently and in the last year.
6. The homelessness problem in Morro Bay impacts crime rates. Homelessness related crime rates are significant both in terms of crimes against the homeless and also crimes committed by the homeless. The Morro Bay Police Department estimates a call volume of 60% of total calls for service are related to our unhoused population.
7. Business owners and residents near encampments are confronted by trash, used needles, and human waste, and increased instances of open drug use, property damage, theft, and break-ins. They have seen their property values decline, their small businesses fail, and their public spaces become uninhabitable.

8. Businesses and residences near encampments experience physical impediments to access to public and private property which both impedes emergency responses, evacuation of occupants during an emergency, and general public access, as well as exacerbates the likelihood of conflict, intimidations and threats to the public safety for both the unhoused as well as all members of the public, and furthermore the collection of biohazard materials, human waste, trash and rubbish near businesses and residential areas contributes to a general decline in public health, safety and welfare.
9. Encampments near emergency shelters established for emergency evacuations during events such as winter rain storms can cause barriers to access for evacuees.
10. Encampments near active construction sites, areas with heavy vehicle use, and similar areas pose unique threats to both the unhoused as well as the operators of construction equipment and vehicles through unintentional yet predictable collisions and threats to health and safety.
11. Encampments on or near public utilities and critical infrastructure, such as stormwater, water and sewer infrastructure, fire stations, electrical wires and natural gas pipelines, pose unique safety, environmental and security issues and are generally closed to the public or have limited public access for safety, environmental and security reasons.
12. Unauthorized connections or taps to public utilities, as well as violation of fire, building, electrical and other codes and standards, create unsafe conditions and a potential life safety hazard for the occupant, the general public and emergency responders.
13. Encampments pose immense public health concerns as the rates of overdoses from drugs like fentanyl and heroin have increased substantially among the unhoused and encampments can provide an environment conducive to illegal drug consumption.
14. Abandoned encampment cleanups are performed by police officers with police equipment and City staff in an attempt to maintain and or control the spread of large encampments and this taxes public resources while unnecessarily exposing first responders and City staff to unhealthy and unsafe situations.
15. Fires in unsafe locations for cooking and warming occur at encampments increasing the risk of fires posing a threat to safety and health.
16. Accumulation of biohazard and medical waste occurs in and around encampments and these items end up in our creeks, storm drains, waterways, and beaches posing a direct threat to health and safety.
17. Severe blockage of storm drains due to excessive encampment debris leads to increased roadway and stream flooding and drain blockages during storms causing threats to health and safety.
18. During times of severe storms, unhoused camps are located in and evacuated from low lying, unsafe areas, and storm drains due to increased risk of flooding, rapid water movement, and blockage of storm drains, posing safety threats to the residents of the encampments.

IV. Federal Court Decisions

Under applicable State and federal law, the City has limitations on the scope of its enforcement efforts regarding camping on public property.

A federal Ninth Circuit Court of Appeals decision, *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) (“Martin”), prohibits criminal prosecution for sleeping outside on public property when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness, based upon

an interpretation of the Cruel and Unusual Punishments Clause of the U.S. Constitution's Eight Amendment. The federal Ninth Circuit court suggested in its decision in *Martin* that the prohibition on criminal prosecution would not apply to individuals who have reasonable access to adequate temporary shelter.

The court also suggested that even when adequate shelter is unavailable, an ordinance establishing reasonable time, place and manner regulations on sitting, lying or sleeping may be allowed under the U.S. Constitution when the regulations are to address legitimate public health and safety concerns. The federal Ninth Circuit court in the case of *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) expanded upon its decision in *Martin* to prohibit civil enforcement for sleeping outside when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness if civil enforcement can lead to criminal enforcement.

These federal Ninth Circuit court decisions are at present on appeal to the U.S. Supreme Court.

V. Vehicle Camping on Private Property

In addition to the health and safety problems generated by unregulated camping on public property, the use of vehicles for human habitation overnight on private property used for business or nonprofit organization operations also impacts public health and safety, including for the following reasons:

1. Damage to private property, theft, the accumulation of trash, food waste, human waste and contaminated medical waste and the unauthorized discharge of Greywater and Hazardous Water. The accumulation of trash, food waste and human waste has the potential to spread disease and result in infestations by vermin and insects.
2. The accumulation of discarded contaminated medical waste, including used hypodermic needles, has the potential to harm patrons of the businesses or non-profits located where the overnight human habitation of vehicles is occurring who are exposed to this waste, and is an attractive nuisance for children.
3. The collection of contaminated medical waste, human waste and trash and the discharge of Greywater and Hazardous Water has the potential to contaminate the City's waterways and beaches due to the proximity to storm drains.
4. Overnight human habitation in vehicles on private property used by business or nonprofit establishments has resulted in a significant number of police calls for service related to vandalism, property damage and criminal activity, including narcotics usage, noise violations, excessive debris around the vehicles, prowling, parking violations, private property trespassing, and loitering.
5. Unregulated overnight human habitation in vehicles on private property used by business or nonprofit establishments creates increased public health and safety risks such as those from overdoses, fire hazards, and death.

DISCUSSION

With all of these considerations in mind, and in consultation with the City homeless working group, staff has prepared the proposed ordinances for the City Council's consideration. Draft ordinances were reviewed by the City's homeless working group and then finalized by City staff. They add Chapter 8.26 and Chapter 8.27 to the MBMC concerning, respectively, public property camping regulations, as well as overnight camping in vehicles parked on private property with businesses or nonprofits.

I. Ordinance for Public Property Camping Regulations

A. Urgency Adoption

Government Code section 36937(b) provides that an “ordinance takes effect immediately, if it is an ordinance ... [f]or the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is **passed by a four-fifths vote of the city council.**” (Emphasis added.)

The basis for an urgency adoption of this ordinance are articulated in the findings for the urgency ordinance. These include immediate threats from unregulated camping on public property, which continue to grow, to public health and safety from improper waste disposal and sanitation, disease transmission, fire risks, criminal activity (such as property damage, theft and break-ins), and impediment of emergency responses. The proposed regulations are intended to address these immediate threats so as to preserve public health and safety.

There is also the matter, as articulated more fully in the urgency ordinance findings, of the pending threats to public peace, health and safety posed by multiple encampments in the City when anticipated heavy winter storms arrive in the near future. The City needs adequate time to clean up these encampments before the winter storm season commences. Last year during heavy rainfall in the winter season, debris from encampments obstructed storm drains downstream and exacerbated roadway flooding, and a repeat of these events is imminent. Areas of multiple campsites of persons experiencing homelessness in the City are also in waterways intended for stormwater runoff or in low lying areas, and there is immediate concern for the safety of the occupants. The anticipated increased rain also has the very real potential of carrying the ongoing human waste, medical waste, accumulated trash and items containing and emitting dangerous chemicals, from the campsites if they are not removed, to the City’s residential areas, business areas, community areas, the beaches and to the ocean, potentially causing contamination and injury.

The same amendment to the local code is also proposed for introduction by first reading as a regular ordinance. Notwithstanding the articulated findings and reasons for the passage of this code amendment on an urgency basis, simultaneous introduction of the same ordinance (and then a subsequent second reading for adoption) provides for the further codification of the MBMC amendment on a non-urgency basis, thereby providing the fullest basis under state law for the codification of this ordinance.

B. Summary of Ordinance

The proposed ordinance mitigates harms to public health, safety and welfare through time, place and manner regulation of camping on public property. Below is a summary.

1. **Regulations.** Provides persons who do not have a permanent residence or domicile and/or are involuntarily experiencing homelessness the ability to camp on public property or rights-of-way, provided the camping is occurring in compliance with time, place, and manner regulations and consistent with any administrative rules and policies. Provides for authority for City to adopt administrative rules or policies governing or guiding enforcement of the chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances.

- a. **Time Regulations.** Camping on public property, where allowed, may only occur for 24 hours at a time in any one location.
 - b. **Place Regulations.** Camping on public property is not allowed in certain places in the City, including:
 - i. in or within 200 feet of residential areas, schools, playgrounds, visitor serving commercial areas, critical infrastructure, or high/very high fire zones.
 - ii. where creates physical impediments preventing emergency or non-emergency access to public or private property
 - iii. vehicle and bicycle lanes within public rights-of-way
 - iv. certain public property such as City Hall, Community Center and Veterans Hall
 - c. **Manner Regulations.** Camping, when and where allowed, is subject to regulations, including:
 - i. cannot impede sidewalk accessibility or use of public rights-of-way
 - ii. camping limited to space of not more than 12x12 feet (144 square feet)
 - iii. a camp may not be located within a 150 foot radius from another camp
 - iv. requires areas to be kept clean and free of garbage, debris, and waste
 - v. open flames, recreational fires, and the like are prohibited (some flameless warming and cooking devices permitted)
 - vi. dumping of greywater or hazardous water prohibited
 - vii. no unauthorized connections or taps to public utilities
 - viii. building structures out of plywood, pallets, etc. not allowed (portable tents used for shelter not included in this prohibition)
 - ix. limited storage of personal property related to what is necessary for camping, sleeping, or keeping warm and dry
 - x. camps limited to no more than two persons, two animals and one portable tent used for shelter
2. **Enforcement.** The ordinance provides for gradual and humane enforcement seeking to respect the dignity of all involved. The intent is to always resolve violations at the lowest possible level, and to engage to seek compliance and solve problems while maintaining the dignity of all involved.
- a. **Voluntary Compliance.** The first step is seeking voluntary compliance. Good faith efforts will be made to determine whether the person subject to enforcement has been referred to service providers and/or local non-profit assistance organizations and make a referral if it appears none has been made.
 - b. **72 Hour Notice.** After that if the violation persists, a 72 hour notice will be provided (with limited exceptions including for emergencies) in advance of any action to remove an established campsite or camp facilities in violation of the regulations. That notice (among other requirements) will provide information about any available housing, shelter or homeless services available, the phone number and address to contact in order to obtain such housing, shelter or homeless services, if available, and information about obtaining free transportation, if available, to such housing, shelter or homeless services.

- c. **Removal of Established Campsites.** Finally, if both of these steps occur and violations continue, City officials are authorized to remove established campsites or camp facilities not in compliance with the time, place and manner regulations. When removing camp facilities, or individuals, camp materials, or personal property from an established campsite, enforcement personnel will make reasonable efforts to remove individuals without the use of force or citation. Personal property removed, of reasonable value or utility and that is not hazardous, will be held by the City, at the City's expense, for no less than 90 days (or as required by applicable law), for retrieval. Property not retrieved within the applicable time frame is subject to disposition or destruction by the City.

C. Mapping Restricted Places and Review of Buffer Zones

The proposed ordinance provides for a 200 foot buffer from certain places such as residential zones, visitor serving commercial, critical infrastructure, etc. These are in Section 8.26.030(B)(1,7,8,9,11 and 12).

Three maps are provided (attached) which summarize the place restrictions in the new ordinance with the proposed 200 foot buffer, and then alternative buffers of 150 feet and 100 feet.

Council may direct staff to amend the ordinance on the floor to change the buffer distance. Or, the ordinance as presented may be adopted with the proposed 200 foot buffer used for many of the place restrictions.

II. Ordinance Regulating Overnight Vehicle Camping on Private Property With Business and Nonprofit Operations

The proposed ordinance provides for regulation of overnight human habitation of vehicles on private property used for business or nonprofit organization operations. Such activity would be prohibited without the consent of the property owner or the lessee. However, such camping is allowed if done with the permission of the property owner or the lessee. If permission is received, then such overnight vehicle camping is allowed subject to following certain regulations, which include:

1. Access to sanitary facilities at all times.
2. No payment of any fee, rent or other monetary charge.
3. Restricted to no more than 3 overnight stays, within a ten day period, per vehicle.
4. No dumping of wastewater, greywater, hazardous water, or trash on the property unless sufficient City approved receptacles or hook-ups are available.
5. Reasonable personal property restrictions.

This ordinance also provides for authority for City to adopt administrative rules or policies governing or guiding enforcement of the chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances.

CONCLUSION

Staff recommends City Council, to mitigate harms to public health, safety and welfare, adopt the urgency ordinance to regulate camping on public property, and introduce for first reading both a regular ordinance regulating camping on public property as well as a regular ordinance to regulate

use of vehicles for human habitation on private property with businesses or nonprofits.

ATTACHMENTS

1. Ordinance 664, An Urgency Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.26 to Title 8 of the Morro Bay Municipal Code Regulating Camping and Storage of Personal Property on Public Property to Mitigate Harm to Public Health, Safety and Welfare.
2. Ordinance 665, An Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.26 to Title 8 of the Morro Bay Municipal Code Regulating Camping and Storage of Personal Property on Public Property to Mitigate Harm to Public Health, Safety and Welfare.
3. Ordinance 666, An Ordinance of the City Council of the City of Morro Bay, California Adding Chapter 8.27 to Title 8 of the Morro Bay Municipal Code Regulating Overnight Human Habitation of Vehicles on Private Property Used for Business or Nonprofit Organization Operations to Mitigate Harm to Public Health, Safety and Welfare.
4. Maps, "City of Morro Bay Prohibited Camping Boundary," with 200, 150 and 100 foot buffers

ORDINANCE NO. 664

**AN URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ADDING CHAPTER 8.26 TO TITLE 8 OF THE MORRO BAY
MUNICIPAL CODE REGULATING CAMPING AND STORAGE OF
PERSONAL PROPERTY ON PUBLIC PROPERTY TO MITIGATE HARM
TO PUBLIC HEALTH, SAFETY AND WELFARE**

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

WHEREAS, the City of Morro Bay (“City”) encourages the use of open spaces and facilities within the City by all members of the community; and

WHEREAS, camping in undesignated campsites within the City limits creates unsanitary, unhealthy, disorderly, and dangerous conditions that may affect both the campers and the general public; and

WHEREAS, camping in undesignated campsites within the City limits tends to degrade and even destroy the property upon which the camping is occurring, particularly in situations where an encampment is large and ongoing; and

WHEREAS, camping in undesignated campsites within the City limits detracts from the use of the property for its intended purposes; and

WHEREAS, the City has the authority to adopt regulations to ensure the public’s health, safety, and general welfare, and desires to regulate camping within the City; and

WHEREAS, a federal Ninth Circuit Court of Appeals decision, *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) (“Martin”), prohibits criminal prosecution for sleeping outside on public property when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness, based upon an interpretation of the Cruel and Unusual Punishments Clause of the U.S. Constitution’s Eight Amendment; and

WHEREAS, the federal Ninth Circuit court suggested in its decision in *Martin* that the prohibition on criminal prosecution would not apply to individuals who have reasonable access to adequate temporary shelter; and

WHEREAS, the Ninth Circuit court in *Martin* suggested that even when adequate shelter is unavailable, an ordinance establishing reasonable time, place and manner regulations on sitting, lying or sleeping may be allowed under the U.S. Constitution when the regulations are to address legitimate public health and safety concerns; and

WHEREAS, the federal Ninth Circuit court in the case of *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) (“Grants Pass”) expanded upon its decision in *Martin* to prohibit civil enforcement for sleeping outside when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness if civil enforcement can lead to criminal enforcement; and

WHEREAS, for many years the City has invested significant funds, resources and time to assist persons experiencing homelessness to find temporary and permanent shelter and necessary public health services to address the causes of their homelessness, has sought to address the underlying issues contributing to homelessness and has striven to be a part of the solution. These City of Morro Bay actions and efforts have included:

1. City staff and City Manager participation on committees and sub-committees with service groups, County non-profits, and County Public Health Services to address causes of homelessness and work towards solutions.
2. Assignments of officers to the police department as a homeless liaison to address needs of the unhoused within the City limits.
3. Provision of connections to County Public Health Nurse and Doctors.
4. Facilitating connections to local and regional outreach services to assist with mental health needs, drug and alcohol counselors, probation and parole services, connections to permanent housing (THEMA, CAPSLO, 805 Street Outreach, Esteros Bay Alliance for Care, Salvation Army, SLO Food Bank, County Public Health and Behavioral Health services).
5. Monthly meetings with Estero Bay Alliance for Care (EBAC), a local, ad-hoc volunteer organization started in 2011 by Morro Bay Council Members to include different agencies and community organizations with the intent to study and address social issues in the Estero Bay area. EBAC membership includes a current Morro Bay City Council member, representatives from the Police Department, Social Services, local churches, health care organizations, the Food Group, various other active organizations, such as the Community Resource Connections office, and legal services organizations.
6. The City of Morro Bay supports with financial and staffing resources a one-of-a kind weekly community dinner - where all are welcome - in an effort to support our community needs.
7. In 2022, the Morro Bay City Manager created a City homeless working group comprised of City department heads, staff and homeless outreach service groups to address homelessness in Morro Bay. One of the first items the team addressed was the need for continued outreach and case management. The City conducted a recruitment for Homeless Outreach Case Manager. The Homeless Outreach Case Manager is one step in the City’s efforts to meet the San Luis Obispo Countywide plan to address homelessness adopted by the County Homeless Services Oversight Council in 2022.
8. The Homeless Outreach Case Manager assists those experiencing homelessness to navigate services and to connect to resources that they need to secure housing, as well as

shelter and transitional housing resources when available (e.g., ID Cards, financial benefits, transportation to service meetings and appointments). Duties include to make contact with unhoused or people struggling with housing in the field, build rapport and provide opportunities for assistance to those seeking help. The case manager schedules and provides transportation to appointments for drug and alcohol services, county probation, state parole, behavioral health, CAPSLO, ECHO, and THMA.

9. City of Morro Bay provides annual funding to San Luis Obispo County Department of Social Services and Public Health.
10. Regular meetings with homeless outreach groups such as CAPSLO, THMA, County Public Health, Salvation Army, Veteran Services, 805 Street Outreach, and EBAC.
11. The City committed \$25,000 in housing impact in lieu fees to the HASLO Atascadero Rd Housing Project.
12. The City has transferred the City's portion of the National Opioid Settlement back to San Luis Obispo County to manage a regional effort to combat opioid related issues that directly impact our unhoused population.

WHEREAS, despite the City's efforts the Police and Fire Departments have found that a significant number of the City's homeless population routinely decline the City's offers of help for various reasons including many people experiencing homelessness refuse to accept services and refuse to move from encampments. Some of the homeless actually have access to temporary shelter but choose not to use it, and, therefore, of the City's estimated population of persons experiencing homelessness, the Police and Fire Departments estimates less than ten percent of the City's homeless population would be categorized as involuntarily homeless; and

WHEREAS, the City has experienced significant and continuing threats to public health and safety resulting from persons experiencing homelessness sleeping and camping in unauthorized locations in the City, including the following:

1. Homeless encampments raise a number of public health concerns related to waste, sanitation and disease transmission. Homeless people, like all other people, generate solid waste during their daily activities of food preparation and consumption, shelter building and maintenance and storing their possessions. Though without any place or method of proper storage or disposal, the resulting piles of trash become food sources for rodents, breeding grounds for pathogens, fuel for fires, and unattractive nuisances to the public.
2. The opportunity for the spread of communicable diseases is increased in homeless encampments lacking basic sanitation services and waste collection, with some diseases such as hepatitis A and typhus more likely to occur in homeless populations.
3. Health and safety issues are presented by the violation of fire, building, electrical and other codes and standards for the public health and safety, including the unauthorized and unpermitted use of electrical and utility connections, due to the potential and reality of unsafe and unhealthy conditions in encampments, posing life, safety, fire and health threats to both the occupants of the encampments, the general public and emergency responders.

4. Health and safety issues are exacerbated and compounded by larger encampments as there is an exponential increase in these health and safety issues the larger the encampment, including but not limited to both accumulation of trash and debris as well as the greater likelihood of the spread of disease.
5. The City regularly receives a large volume of emails, phone calls and in-person complaints regarding the encampments in the City, and the frequency and number of these complaints has been increasing greatly recently and in the last year.
6. The homelessness problem in Morro Bay impacts crime rates. Homelessness related crime rates are significant both in terms of crimes against the homeless and also crimes committed by the homeless. The Morro Bay Police Department estimates a call volume of 60% of total calls for service are related to our unhoused population.
7. Business owners and residents near encampments are confronted by trash, used needles, and human waste, and increased instances of open drug use, property damage, theft, and break-ins. They have seen their property values decline, their small businesses fail, and their public spaces become uninhabitable.
8. Businesses and residences near encampments experience physical impediments to access to public and private property which both impedes emergency responses, evacuation of occupants during an emergency, and general public access, as well as exacerbates the likelihood of conflict, intimidations and threats to the public safety for both the unhoused as well as all members of the public, and furthermore the collection of biohazard materials, human waste, trash and rubbish near businesses and residential areas contributes to a general decline in public health, safety and welfare.
9. Encampments near emergency shelters established for emergency evacuations during events such as winter rain storms can cause barriers to access for evacuees.
10. Encampments near active construction sites, areas with heavy vehicle use, and similar areas pose unique threats to both the unhoused as well as the operators of construction equipment and vehicles through unintentional yet predictable collisions and threats to health and safety.
11. Encampments on or near public utilities and critical infrastructure, such as stormwater, water and sewer infrastructure, fire stations, electrical wires and natural gas pipelines, pose unique safety, environmental and security issues and are generally closed to the public or have limited public access for safety, environmental and security reasons.
12. Unauthorized connections or taps to public utilities, as well as violation of fire, building, electrical and other codes and standards, create unsafe conditions and a potential life safety hazard for the occupant, the general public and emergency responders.
13. Encampments pose immense public health concerns as the rates of overdoses from drugs like fentanyl and heroin have increased substantially among the unhoused and encampments can provide an environment conducive to illegal drug consumption.
14. Abandoned encampment cleanups are performed by police officers with police equipment and City staff in an attempt to maintain and or control the spread of large

encampments and this taxes public resources while unnecessarily exposing first responders and City staff to unhealthy and unsafe situations.

15. Fires in unsafe locations for cooking and warming occur at encampments increasing the risk of fires posing a threat to safety and health.
16. Accumulation of biohazard and medical waste occurs in and around encampments and these items end up in our creeks, storm drains, waterways, and beaches posing a direct threat to health and safety.
17. Severe blockage of storm drains due to excessive encampment debris leads to increased roadway and stream flooding and drain blockages during storms causing threats to health and safety.
18. During times of severe storms, unhoused camps are located in and evacuated from low lying, unsafe areas, and storm drains due to increased risk of flooding, rapid water movement, and blockage of storm drains, posing safety threats to the residents of the encampments; and

WHEREAS, in light of these significant and continuing threats to public health and safety, the City seeks to adopt reasonable time, place and manner regulations in a manner consistent with the federal Ninth Circuit court's decisions in *Martin* and *Grants Pass*; and

WHEREAS, Government Code Section 36937 expressly authorizes the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety, if the ordinance is approved by four-fifths of the City Council; and

WHEREAS, the City Council deems it necessary to adopt an urgency ordinance pursuant to Government Code section 36937(b) to provide for immediate enforcement of the public property camping regulations provided for by this ordinance, finding the urgency, for the immediate preservation of the public peace, health and safety, is demonstrated by the following facts:

1. Many of the preceding recitals, including but not limited to concerns about the following, all demonstrate urgent and growing present threats to public health and safety that if allowed to continue without the immediate adoption of the proposed regulations will continue to pose growing threats to the public health and safety as each day goes by:
 - a. waste disposal and sanitation;
 - b. disease transmission;
 - c. fire risks;
 - d. criminal activity, such as property damage, theft and break-ins;
 - e. impediment of emergency responses; and
 - f. threats to public utilities and critical infrastructure;
2. The City must be prepared now for expected rainfall levels this winter similar to the levels experienced last winter which resulted in significant flooding and damage. El Nino conditions are currently in effect which, according to the National Weather Service, brings with it a 75 to 85 percent probability of rainfall that is significantly above the average

rainfall experienced in California, including “atmospheric river” events, as well as colder weather. The National Weather Service has also stated that in November the El Nino effect reached a high level and this is expected to continue during the winter months.

3. Areas of multiple campsites of persons experiencing homelessness in the City are in waterways intended for stormwater runoff. In these areas, there are encampments in close proximity to concrete stormwater channels damaged from last year's storms that are in danger of collapse. Heavy rainfall could lead to the collapse of these stormwater channels creating a life safety hazard for the occupants of these camps.
4. Where large encampments currently exist in the City, such as near the Morro Creek overpass at Main St., Quintana Creek, and Toro Creek Bridge at Highway 1, the City is aware of extreme soil erosion from large rainfall and storms earlier this year. With a new wet weather and storm season approaching, there are immediate safety concerns regarding further erosion in areas where these encampments exist.
5. Last year during heavy rainfall in the winter season, debris from encampments obstructed storm drains downstream and exacerbated roadway flooding, and a repeat of these events poses an immediate threat to the public peace, health and safety if the present encampments are not removed before the onset of the expected heavy rainfall this winter season.
6. After the January, 2023 storms when the City did the clean-up of encampment debris in the storm drain area on Quintana the contractors removed 4 "end dump" truckloads of trash. They stated each end dump is 53 yards, meaning over 200 yards of trash was removed during that clean-up.
7. Soil moisture levels are higher than previous years and reservoirs are already full leading to more potential for flooding events. Having encampments located in the storm drain system and low-lying areas presents an urgent need to remove these encampments before the arrival of anticipated winter storms and poses an immediate threat to the public peace, health and safety.
8. The anticipated increased rain has the very real potential of carrying the ongoing human waste, medical waste, such as used and contaminated hypodermic needles, accumulated trash and items containing and emitting dangerous chemicals, from the campsites to the City's residential areas, business areas, community areas, the beaches and to the ocean, potentially causing contamination and injury, posing an immediate threat to the public peace, health and safety as the storm season approaches if encampments are not removed.
9. With the change in weather conditions and decreasing temperatures, the likelihood of open flames being used for warming and cooking fires in areas with downed trees and damaged shrubbery caused by these campsites along with heavy vegetation resulting from the increased rainfall from last winter increases the potential for unintended ignition and spread of fires, posing an immediate threat to the public peace, health and safety.

WHEREAS, the City finds that reasonable camping regulations for public property will best serve the public’s health, safety, and general welfare; and

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

SECTION 1. RECITALS. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Ordinance as if fully set forth herein.

SECTIONS 2. NEW CHAPTER 8.26 ADDED TO CODE. Chapter 8.26 is added to Title 8 of the Morro Bay Municipal Code to read as follows:

“CHAPTER 8.26 – PUBLIC PROPERTY CAMPING REGULATIONS

8.26.010 FINDINGS AND PURPOSE

- A. As the City continues to offer assistance and services to persons experiencing homelessness, the City must appropriately consider various interests and formulate policy to best protect public health, safety, welfare, property, and the environment, with its limited resources.
- B. The City Council acknowledges that at the time of the adoption of this ordinance, there is a lack of nightly shelter beds and housing available regionally for persons experiencing homelessness and recognizes the systemic lack of state and federal investment in shelter and public health services for those experiencing homelessness.
- C. The City Council acknowledges that it is currently unavoidable that some persons will live or shelter for survival outdoors until they are able to access affordable or free shelter or housing. In Morro Bay, this has typically meant sheltering, sometimes for extended periods of time, on City rights-of-way and City property, and at times on other public agency property such as the California Department of Parks and Recreation property.
- D. Public rights-of-way and public property are generally intended for public use and travel. The City Council is the authority for rights-of-way within the City; as such, the City must consider the safety of motorists and pedestrians travelling on roadways and sidewalks, including to and from neighboring properties, businesses, and residences.
- E. The City owns limited property where camping can or should be allowed for reasons including but not limited to public health and safety concerns and issues created by the impact of camping on public property.
- F. The City has had increasing concerns regarding public health and safety due to camping on or in rights-of way and public property in or near streets, roads, sidewalks, schools, residences, businesses, critical infrastructure, public access points and similar locations. Public utility properties (e.g., stormwater, water, sewer) are environmentally and operationally sensitive and generally closed to the public or have limited access for safety, environmental and security reasons.

- G. Over the long term and working with other governmental agencies and non-profit organizations, the City's goal is that people should not have to live outside and there should be safer options because long-term camping for survival and sheltering outside is not a solution for people without homes.
- H. It is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City rights-of-way and public property, which are intended to be as compatible as possible with the needs of everyone in Morro Bay to be healthy, safe, and have access to public places.
- I. Smaller camp sites support both the health and safety of people who are camping for survival on public property as well as the health and safety of the public.
- J. It is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City rights-of-way and public property which will address issues such as fire risk, unsanitary conditions, health risks, public infrastructure security, public access impediments, trash, waste and public safety hazards to both people camping as well as neighboring businesses, residents and community members, as well as environmental degradation, which have occurred with longer-term camping in the City.
- K. It is the intent of the City to evaluate each removal of an Established Campsite with considerations of public health and safety, including for the people who are sheltering in the camps, potential user conflicts, and available resources. The City intends to use a team approach and coordinate with other governmental agencies and non-profit organizations as appropriate. When the City requires a person experiencing homelessness to remove an Established Campsite, through these regulations, it intends to provide the person adequate time to remove the Established Campsite before the City removes the Established Campsite, to secure any personal property with reasonable utility or reasonable value for the person to retrieve at a later date, and to clean the former Established Campsite to address threats to public health and safety.

8.26.020 DEFINITIONS

The following words and phrases, when used in this Chapter, shall have the meaning ascribed to them by this section unless it is apparent from the context that another meaning is intended.

- A. "Camp" or "Camping" means residing in or using any public property for one or more nights for living accommodation purposes, such as sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or using any tents, or storing personal belongings (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware, and similar material), or making any fire using Bunsen burners or other heating items, or regularly cooking meals. These activities constitute camping when it reasonably appears, in light of all the circumstances, that a person is using public property as a living accommodation for one or more nights, with the intent to camp.

- B. "Camp Facilities" include, but are not limited to, tents, huts, or similar temporary shelters consisting of any material with a top or roof or any other upper covering or that is otherwise enclosed by sides that is of sufficient size for a person to fit underneath or inside while sitting or lying down and includes the use of a tarp or other material tied or affixed to a structure or bush to create an enclosed area.
- C. "Camp Materials" includes but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, shopping carts, recyclable material and/or non-City designated cooking or heating facilities and similar equipment, or personal possessions that would facilitate one's use of a park, public property, or any portion of the public right-of-way as a temporary residence.
- D. "Critical Infrastructure" means real property or a facility, whether privately or publicly owned, that the City Manager designates as being so vital and integral to the operation or functioning of the City or in need of protection that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare. Critical infrastructure may include, but is not limited to, government buildings, such as fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage systems, or levees; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources.
- E. "Enforcement Personnel" means the employee(s) of the City, including but not limited to sworn police officers, authorized by the City to seek compliance with, and enforce, the regulations, requirements and rules of this Chapter.
- F. "Established Campsite" means a location or locations in the public right-of-way or on City property where a Camp, Camps, and/or Camp Materials have been set up for twenty-four (24) hours or more.
- G. "Fire Severity Zones" means mapped area as defined by the Office of State Fire Marshal that designates zones (based on factors such as fuel, slope, and fire weather) with varying degrees of fire hazard (i.e., moderate, high, and very high).
- H. "Greywater" means untreated wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines and the like. It does not include any toilet discharge, unhealthy bodily wastes, or manufacturing wastes.
- I. "Hazardous Water" means sewage, toilet discharge, unhealthy bodily wastes, manufacturing wastes and the like.

- J. "Landscaped Area" means any manicured or natural ground covered areas including but not limited to flower beds, bushes, brush areas, or shrubs.
- K. "Personal Property" means any tangible property and includes, but is not limited to, goods, materials, merchandise, tents, tarpaulins, bedding, blankets, sleeping bags, personal items such as household items, luggage, backpacks, clothing, food, documents, and medication.
- L. "Playground" means any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on City, county, or State park grounds.
- M. "Public Property" means any publicly owned property in the City, whether improved or unimproved, including, but not limited to, any of the following: public alleyways; public parking lots; public passageways; public streets; public rights-of-way; park Playgrounds; freeway on-ramps and off-ramps; publicly owned, maintained, or operated parks; publicly owned, maintained, or operated landscaped areas or greenbelts; publicly owned fences, trees, light poles, or equipment boxes; publicly owned, maintained, or operated open spaces including, but not limited to, public facilities or buildings of any kind; public sidewalks, curbs, and gutters; public educational institutions; or other government owned, maintained, or operated properties located within the City.
- N. "Public Utilities" means every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof, as defined by Public Utilities Code section 216, and as amended.
- O. "Rights-of-Way" means all City-owned or controlled rights-of-way, whether in fee title or as holder of a public easement for right-of-way or public access purposes. Public rights-of-way include but are not limited to any public road, street, sidewalk, or private street or other property that is subject to a public access easement dedicated or granted to the City for vehicular use, pedestrian use, utilities or other means, and any planter strip or landscaped area located adjacent to or contained within streets that is part of the public right-of-way.
- P. "School" means any institution, facility or organization, whether public or private, that offers instruction on those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education. School for

purposes of this section does not include a vocational or professional institutions of higher education, including a community or junior college, college, or university. The setback shall be calculated from the school property boundaries.

- Q. “Store” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.
- R. “Transportation Facility Loading Area” means that area within 200 feet of where trains, buses or any form of public transportation loads or unloads passengers.
- S. “Vehicle” means a “motor vehicle” as defined by California Vehicle Code, section 415 and includes a “recreational vehicle” as defined by California Health and Safety Code, section 18010(a).

8.26.030 TIME, PLACE AND MANNER REGULATIONS

Persons who do not have any other permanent residence or domicile and/or are involuntarily experiencing homelessness are permitted to camp on public property or rights of-way, provided the camping is occurring in compliance with the following time, place and manner regulations and consistent with any administrative rules and policies promulgated by the City Manager, or designee, adopted after the Effective Date of this Ordinance, in accordance with this Chapter.

A. Time. Unless otherwise specified, any Camping or Camp, where allowed, may only occur for 24-hours at a time in any one location. After 24 hours in one location, the Camp and all associated Camp Materials must be moved at least one street block or 600 feet, whichever is greater, to another allowed location.

B. Place. Camping is not allowed at any time in any of the following places:

1. Within 200 feet of a residentially zoned property boundary or within any area zoned Residential, as determined by the City of Morro Bay Zoning Map and the Morro Bay Municipal Code.
2. Within any Mixed Use Overlay Zone, as determined by the City of Morro Bay Zoning Map and the Morro Bay Municipal Code.
3. Any place where Camping, a Camp, or Camp Materials create a physical impediment preventing emergency or non-emergency ingress, egress or access to public or private property, including but not limited to, on public sidewalks or other public rights-of-way, driveways providing access to vehicles, and entrances or exits from buildings and/or other real property.
4. Any vehicle lane, bicycle lane, or roundabout within any public rights-of-way or Transportation Facility Loading Area.

5. Within 1000 feet from any shelter both established for emergency evacuations as well as approved under the Morro Bay Municipal Code and/or approved consistent with any applicable provision of State or federal law.
6. On any street or public rights-of-way, the City has closed to camping due to construction, heavy vehicle use, or other use of the roadway that is incompatible with camping in the rights-of-way. The City does not need to close a street to vehicle traffic, to close a street to camping under this section.
7. Within, or within 200 feet of, any School.
8. Within, or within 200 feet of, any Playground.
9. Within, or within 200 feet of, any area designated as Visitor Serving Commercial (VSC), as determined by the City of Morro Bay Zoning Map and the Morro Bay Municipal Code.
10. At the following public property: Morro Bay City Hall, Morro Bay Community Center, Morro Bay Veterans Hall, Morro Bay Public Library, Morro Bay Centennial Parkway and Stairway, and such further designations made in writing by the City Manager, or her or his designee, upon the written recommendation of the Morro Bay Police Chief and the Morro Bay Fire Chief.
11. Within, or within 200 feet of, Critical Infrastructure.
12. Within, or within 200 feet of, either a very high Fire Severity Zone or a high Fire Severity Zone.

C. Manner. Camping, when and where allowed, is subject to all of the following limitations and regulations:

1. Individuals, Camp Materials, Camps, or personal property may not obstruct, block, prevent access to, or impede: sidewalk accessibility or passage; clear vision of moving vehicles or bicycles; usage of fire hydrants; usage or function of Public Utilities, Critical Infrastructure, or other City infrastructure; or, otherwise obstruct, block, prevent access to, or impede the use of the Rights-of-Way for vehicular, pedestrian, bicycle, or other passage.
2. A Camp or Camping shall be limited to a spatial footprint of no greater than 12 feet by 12 feet, or 144 square feet, and shall have a smaller footprint if necessary to comply with the restrictions set forth in this Chapter. The intent of this section is to allow a person to sleep protected from the elements and maintain the essentials for living, while still allowing others to use public spaces as designed and intended.
3. To prevent larger Camping sites from forming and the impacts to public health and safety that can result, a Camp shall not be within a one hundred fifty (150) foot radius of any other Camp.

4. Individuals may not accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no reasonable utility or reasonable value, as determined by the City, in public rights-of-way, on City property, or on any adjacent public or private property.
5. Open flames, recreational fires, burning of garbage, bonfires, or other fires, flames, or heating deemed unsafe by the Morro Bay Fire Department, or the Morro Bay Police Department, are prohibited. Types of flameless cooking stoves and other flameless devices for keeping warm, as consistent with this subsection, are permitted.
6. Dumping of Greywater or Hazardous Water into any facilities or places not intended for Greywater or Hazardous Water disposal is prohibited. This includes but is not limited to City streets, public rights-of-way, public waterways and storm drains, which are not intended for disposal of Greywater or Hazardous Water.
7. Unauthorized connections or taps to Public Utilities, including but not limited to such connections or taps that cross over City property, roadways, rights-of-way, driveways, streets, sidewalks, and fences, are prohibited.
8. Violations of building codes, fire codes, and other relevant codes or standards for health and safety, are prohibited.
9. Obstruction of, or attachment of Camp Materials or personal property to, fire hydrants, utility poles, Public Utilities infrastructure, public infrastructure, fences, trees, vegetation, vehicles, or buildings is prohibited.
10. Individuals may not build or erect structures, whether by using plywood, wood materials, pallets, or other materials. Items such as tents, and similar items used for shelter that are readily portable, are not structures for purposes of this section.
11. Storage of personal property such as vehicle tires, bicycles, or associated components (except as needed for an individual's personal use), gasoline, generators, lumber, household furniture, propane tanks, combustible material or gases, or other items or materials, is prohibited, other than what is related to camping, sleeping, or keeping warm and dry.
12. Digging, excavation, terracing of soil, alteration of ground, water or infrastructure, or damage to vegetation or trees is prohibited.
13. All animals, in the custody, ownership or companionship of an individual, must be leashed or crated at all times.
14. Camps shall consist of no more than two persons, two animals (e.g., dogs) that are leashed or crated at all times, and one tent.

8.26.040 ENFORCEMENT

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A. Voluntary Compliance. Before enforcement actions are taken in respect to this Chapter (with the exception of enforcement of subsection (B)(3)), the enforcement personnel shall make a good faith effort to contact the person violating this Chapter and provide a reasonable opportunity to cure or remedy the alleged violation. Enforcement Personnel shall make a good faith effort to determine whether the person subject to enforcement has been referred to service providers and/or local non-profit assistance organizations and make a referral if it appears none has been made. The following shall be communicated to the person in a manner designed to help them understand the alleged violation:

1. A written or verbal description or identification of the activity constituting the alleged violation and identification of the recipient as being the person responsible for the violation;
2. A written or verbal statement that the enforcement personnel has determined the activity to be a violation;
3. A written or verbal statement of the action required to fix the violation and the time and/or date by which the violation must be fixed; and
4. A written or verbal statement advising that if the violation is not fixed within the time specified, enforcement actions may be imposed.

B. Notice of Violation

1. 72 Hour Notice. Prior to implementing any of the enforcement mechanisms provided for in this Chapter to remove an Established Campsite and/or Camp Facilities because of violations of this Chapter, the Enforcement Personnel shall provide occupants of an Established Campsite or Camp Facilities, at least 72 hours in advance of any action to remove the Established Campsite or Camp Facilities, notice both to remove the camp within 72 hours consistent with the requirements of this Chapter as well as of the intent by the City to remove the Established Campsite or Camp Facilities in no less than 72 hours (the “notice”). The notice shall be in writing and shall be posted on or near the Established Campsite or Camp Facilities, so as to reasonably communicate the notice to persons living at the Established Campsite or Camp Facilities but not present during the attempt to provide notice. In addition, the Enforcement Personnel shall make a good faith effort to personally provide the written notice to the occupant(s) of the Established Campsite or Camp Facilities present at the time the Enforcement Personnel posts the notice. Failure of the occupant(s) of the encampment to comply with the notice’s requirements to remove the camp within 72 hours consistent with the requirements of this Chapter shall constitute a violation of this Chapter. The notice shall contain the following information:

- a. The location of the Established Campsite or Camp Facilities;
- b. The date and time notice was posted;
- c. A statement that the Established Campsite or Camp Facilities violates this Chapter;
- d. An advisement that the City will remove the Established Campsite or Camp Facilities 72 hours after the date and time of the notice;

- e. Information about any housing, shelter or homeless services available for occupants of the Established Campsite or Camp Facilities, the phone number and address to contact in order to obtain such housing, shelter or homeless services, if available, and information about obtaining free transportation, if available, to such housing, shelter or homeless services;
- f. An advisement that any personal property remaining at the Established Campsite or Camp Facilities site when the Enforcement Personnel returns to remove the Camp Facilities will be impounded for no fewer than 90 days, or as provided for by applicable law, and will be discarded thereafter if not claimed; and
- g. The address, phone number, and operating hours of the location where the personal property will be stored and may be retrieved, being a storage facility and depending on the property potentially with the Morro Bay Police Department, and that the City will charge no fee for storage or retrieval.

2. Less Than 72 Hour Notice. The notice detailed above may establish a shorter time for the removal of the encampment if the Enforcement Personnel have determined the conditions at the Established Campsite or Camp Facilities requires removal of the Established Campsite or Camp Facilities in less than 72 hours to avoid a potential emergency, such as possible site contamination by hazardous materials or when there is reasonable potential danger to human life or safety. Failure of the occupant(s) of the encampment to comply with the notice's requirements to remove the camp consistent with the requirements of this Chapter shall constitute a violation of this Chapter.

3. Illegal Activity or Exceptional Emergency. Enforcement personnel may remove an Established Campsite or Camp Facilities without providing the notice described above in the following circumstances:

- a. When there is probable cause for law enforcement officials to believe that illegal activity, other than camping, is occurring at an Established Campsite or Camp Facilities, or in the immediate vicinity of an Established Campsite or Camp Facilities; or
- b. When there is probable cause for law enforcement officials to believe that the property that comprises an Established Campsite or Camp Facilities is being used or is intended to be used to commit or facilitate the commission of otherwise illegal activity; or
- c. In the event of an exceptional emergency, such as significant evidence of site contamination by hazardous materials or when there is immediate danger to human life or safety.

C. Removal of an Established Campsite or Camp Facilities. If the occupant(s) fail to comply with the request for voluntary compliance set forth in subsection A above, and after the enforcement personnel comply with the requirements set forth in subsection B above,

any Camp, Camp Materials, or personal property in violation of any of the standards in this Chapter may be removed or cleaned-up by the City or its designated contractors, and the enforcement personnel may take appropriate actions to remove an Established Campsite or Camp Facilities and enforce this Chapter, consistent with the following:

1. When removing Camp Facilities, or individuals, Camp Materials, or personal property from an Established Campsite, enforcement personnel will make reasonable efforts to remove individuals without the use of force or citation.
2. When removing personal property, the City shall make reasonable efforts to determine if the property belongs to an individual and has any reasonable utility or reasonable value. The City shall make reasonable efforts to identify which Established Campsite the property was removed from, to aid in connecting people with their property. Items that are perishable, that have no reasonable use or value, that are not identifiable as belonging to an individual, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and need not be stored.
3. Weapons, drug paraphernalia, or other contraband, and items that appear to be either stolen or evidence of a crime, shall be provided to law enforcement officials.
4. Following removal of personal property from City property or rights-of-way, the City shall post a notice at or as near as possible to the location the property was collected and on the City's website, stating where the personal property is being stored, and listing the phone number and hours a person claiming ownership can collect or make arrangements to collect their personal property.
5. After an Established Campsite or Camp Facilities has been removed, then at the recommendation of the Police Chief or Fire Chief on the basis of public health and safety, the City Manager may order that no camp be set up in that same location or a 100-foot radius for up to 30 days. The City shall post signs informing the public that camping is prohibited at the location for the specified period of time.

D. Removal and Storage of Personal Property or Camp Materials During Removal of an Established Campsite or Camp Facilities. Personal property or Camp Materials may be removed from City rights-of-way, City property, or a Camp, during removal of an Established Campsite or Camp Facilities pursuant to Section C above, if in violation of the provisions of this Chapter, as provided for herein.

1. Personal property removed from City rights-of-way or City property and unclaimed at the time of removal will be stored by the City for a minimum of ninety (90) days, or the duration (if shorter in time) allowed by applicable State or federal law, counting from the day of the removal as day one.
2. Items that are perishable, that have no reasonable use or value, that are not identifiable as belonging to an individual, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and will not be stored. Property discarded, dumped, or otherwise abandoned in the City rights-of-way or on public property may be immediately discarded.

3. The City will store personal property at a storage facility at or near a designated City facility, where people can reasonably retrieve belongings. Notwithstanding any otherwise applicable City policy or procedure, all items collected and stored pursuant to this Chapter that reasonably appear to have a monetary value at the time of collection of less than one thousand dollars (\$1,000) shall be stored at a storage facility, and items that reasonably appear to have a monetary value at the time of collection of one thousand dollars (\$1000) or more shall be separately stored for safekeeping with the Morro Bay Police Department (“MBPD”).
4. The City will make reasonable efforts to provide a range of times the storage facility will be available for people to collect their personal property. The City may dispose of any personal property (whether stored at the storage facility or with the MBPD) that remains unclaimed after ninety (90) days, or the duration (if shorter in time) allowed by applicable State or federal law, counting from the day of the removal as day one.

8.26.050 VIOLATIONS

A citation for a violation of Chapter 8.26 shall be for an infraction. At the City's discretion, it may issue Administrative Citations under Chapter 1.03. Citations will be issued only when other means of achieving compliance have been unsuccessful or are not practicable for the particular situation.

8.26.060 SUSPENSION OF ENFORCEMENT

The City Manager, or designee, is specifically authorized to modify or suspend enforcement of any section or part of this Chapter in the event of a declared emergency, pursuant to administrative rules or policies, weather conditions (including but not limited to extreme heat or cold), or for any other reason within the City Manager's authority, regardless of whether an emergency has been declared. In addition, the City Manager may suspend the enforcement of regulations contained in this Chapter when the City Manager, or designee, has determined a person does not have access to shelter and is engaged in case management or behavioral health services, or when necessary or appropriate to respond to a person's disability, or as further set forth in City's administrative policies implementing this Chapter 8.26 adopted by the City Manager, or designee, pursuant to Section 8.26.090.

8.26.070 ADOPTION OF ADMINISTRATIVE RULES

The City Manager, or designee may adopt administrative rules or policies governing or guiding enforcement of this Chapter, consistent with the intent of this Chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances. These administrative rules or policies should ensure that enforcement is tailored to various circumstances, including but not limited to situations where a person has a disability under the Americans with Disabilities Act, where minor children are present or otherwise involved, where

a person has employment obligations that may relate to their ability to comply with this Chapter, or for other reasons that may support discretion in enforcement.

8.26.80 METHODS OF ENFORCEMENT NOT EXCLUSIVE

Methods of enforcement for violations of this Chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate. However, the intent of the City is to always resolve violations at the lowest possible level, and to engage to seek compliance and solve problems while maintaining the dignity of all involved.”

SECTION 3. URGENCY. Based on the foregoing recitals and all facts of record stated before the City Council, the City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b), and take effect immediately upon adoption.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 5. POTENTIAL CONFLICTS. All ordinances, parts of ordinances, City resolutions or policies, and the like, in conflict with those sections amended or added herein to the Morro Bay Municipal Code, are hereby expressly superseded by this ordinance, with the exception of Section 8.24.010(D) of the Morro Bay Municipal Code.

SECTION 6. EFFECTIVE DATE. This ordinance is hereby declared to be an urgency measure and shall become effective immediately upon adoption by at least a four-fifths (4/5) vote of the City Council pursuant to Government Code section 36937(b).

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SECTION 7. 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.

PASSED AND ADOPTED on the ____ day of _____, 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Urgency Ordinance No. 664 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____ 2023, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

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

DANA SWANSON, City Clerk

ORDINANCE NO. 665

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ADDING CHAPTER 8.26 TO TITLE 8 OF THE MORRO BAY
MUNICIPAL CODE REGULATING CAMPING AND STORAGE OF
PERSONAL PROPERTY ON PUBLIC PROPERTY TO MITIGATE HARM
TO PUBLIC HEALTH, SAFETY AND WELFARE**

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

WHEREAS, the City of Morro Bay (“City”) encourages the use of open spaces and facilities within the City by all members of the community; and

WHEREAS, camping in undesignated campsites within the City limits creates unsanitary, unhealthy, disorderly, and dangerous conditions that may affect both the campers and the general public; and

WHEREAS, camping in undesignated campsites within the City limits tends to degrade and even destroy the property upon which the camping is occurring, particularly in situations where an encampment is large and ongoing; and

WHEREAS, camping in undesignated campsites within the City limits detracts from the use of the property for its intended purposes; and

WHEREAS, the City has the authority to adopt regulations to ensure the public’s health, safety, and general welfare, and desires to regulate camping within the City; and

WHEREAS, a federal Ninth Circuit Court of Appeals decision, *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) (“Martin”), prohibits criminal prosecution for sleeping outside on public property when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness, based upon an interpretation of the Cruel and Unusual Punishments Clause of the U.S. Constitution’s Eight Amendment; and

WHEREAS, the federal Ninth Circuit court suggested in its decision in *Martin* that the prohibition on criminal prosecution would not apply to individuals who have reasonable access to adequate temporary shelter; and

WHEREAS, the Ninth Circuit court in *Martin* suggested that even when adequate shelter is unavailable, an ordinance establishing reasonable time, place and manner regulations on sitting, lying or sleeping may be allowed under the U.S. Constitution when the regulations are to address legitimate public health and safety concerns; and

WHEREAS, the federal Ninth Circuit court in the case of *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) (“Grants Pass”) expanded upon its decision in *Martin* to prohibit civil enforcement for sleeping outside when adequate shelter is not reasonably available for persons involuntarily experiencing homelessness if civil enforcement can lead to criminal enforcement; and

WHEREAS, for many years the City has invested significant funds, resources and time to assist persons experiencing homelessness to find temporary and permanent shelter and necessary public health services to address the causes of their homelessness, has sought to address the underlying issues contributing to homelessness and has striven to be a part of the solution. These City of Morro Bay actions and efforts have included:

1. City staff and City Manager participation on committees and sub-committees with service groups, County non-profits, and County Public Health Services to address causes of homelessness and work towards solutions.
2. Assignments of officers to the police department as a homeless liaison to address needs of the unhoused within the City limits.
3. Provision of connections to County Public Health Nurse and Doctors.
4. Facilitating connections to local and regional outreach services to assist with mental health needs, drug and alcohol counselors, probation and parole services, connections to permanent housing (THEMA, CAPSLO, 805 Street Outreach, Esteros Bay Alliance for Care, Salvation Army, SLO Food Bank, County Public Health and Behavioral Health services).
5. Monthly meetings with Estero Bay Alliance for Care (EBAC), a local, ad-hoc volunteer organization started in 2011 by Morro Bay Council Members to include different agencies and community organizations with the intent to study and address social issues in the Estero Bay area. EBAC membership includes a current Morro Bay City Council member, representatives from the Police Department, Social Services, local churches, health care organizations, the Food Group, various other active organizations, such as the Community Resource Connections office, and legal services organizations.
6. The City of Morro Bay supports with financial and staffing resources a one-of-a kind weekly community dinner - where all are welcome - in an effort to support our community needs.
7. In 2022, the Morro Bay City Manager created a City homeless working group comprised of City department heads, staff and homeless outreach service groups to address homelessness in Morro Bay. One of the first items the team addressed was the need for continued outreach and case management. The City conducted a recruitment for Homeless Outreach Case Manager. The Homeless Outreach Case Manager is one step in the City’s efforts to meet the San Luis Obispo Countywide plan to address homelessness adopted by the County Homeless Services Oversight Council in 2022.
8. The Homeless Outreach Case Manager assists those experiencing homelessness to navigate services and to connect to resources that they need to secure housing, as well as

shelter and transitional housing resources when available (e.g., ID Cards, financial benefits, transportation to service meetings and appointments). Duties include to make contact with unhoused or people struggling with housing in the field, build rapport and provide opportunities for assistance to those seeking help. The case manager schedules and provides transportation to appointments for drug and alcohol services, county probation, state parole, behavioral health, CAPSLO, ECHO, and THMA.

9. City of Morro Bay provides annual funding to San Luis Obispo County Department of Social Services and Public Health.
10. Regular meetings with homeless outreach groups such as CAPSLO, THMA, County Public Health, Salvation Army, Veteran Services, 805 Street Outreach, and EBAC.
11. The City committed \$25,000 in housing impact in lieu fees to the HASLO Atascadero Rd Housing Project.
12. The City has transferred the City's portion of the National Opioid Settlement back to San Luis Obispo County to manage a regional effort to combat opioid related issues that directly impact our unhoused population.

WHEREAS, despite the City's efforts the Police and Fire Departments have found that a significant number of the City's homeless population routinely decline the City's offers of help for various reasons including many people experiencing homelessness refuse to accept services and refuse to move from encampments. Some of the homeless actually have access to temporary shelter but choose not to use it, and, therefore, of the City's estimated population of persons experiencing homelessness, the Police and Fire Departments estimates less than ten percent of the City's homeless population would be categorized as involuntarily homeless; and

WHEREAS, the City has experienced significant and continuing threats to public health and safety resulting from persons experiencing homelessness sleeping and camping in unauthorized locations in the City, including the following:

1. Homeless encampments raise a number of public health concerns related to waste, sanitation and disease transmission. Homeless people, like all other people, generate solid waste during their daily activities of food preparation and consumption, shelter building and maintenance and storing their possessions. Though without any place or method of proper storage or disposal, the resulting piles of trash become food sources for rodents, breeding grounds for pathogens, fuel for fires, and unattractive nuisances to the public.
2. The opportunity for the spread of communicable diseases is increased in homeless encampments lacking basic sanitation services and waste collection, with some diseases such as hepatitis A and typhus more likely to occur in homeless populations.
3. Health and safety issues are presented by the violation of fire, building, electrical and other codes and standards for the public health and safety, including the unauthorized and unpermitted use of electrical and utility connections, due to the potential and reality of unsafe and unhealthy conditions in encampments, posing life, safety, fire and health threats to both the occupants of the encampments, the general public and emergency responders.

4. Health and safety issues are exacerbated and compounded by larger encampments as there is an exponential increase in these health and safety issues the larger the encampment, including but not limited to both accumulation of trash and debris as well as the greater likelihood of the spread of disease.
5. The City regularly receives a large volume of emails, phone calls and in-person complaints regarding the encampments in the City, and the frequency and number of these complaints has been increasing greatly recently and in the last year.
6. The homelessness problem in Morro Bay impacts crime rates. Homelessness related crime rates are significant both in terms of crimes against the homeless and also crimes committed by the homeless. The Morro Bay Police Department estimates a call volume of 60% of total calls for service are related to our unhoused population.
7. Business owners and residents near encampments are confronted by trash, used needles, and human waste, and increased instances of open drug use, property damage, theft, and break-ins. They have seen their property values decline, their small businesses fail, and their public spaces become uninhabitable.
8. Businesses and residences near encampments experience physical impediments to access to public and private property which both impedes emergency responses, evacuation of occupants during an emergency, and general public access, as well as exacerbates the likelihood of conflict, intimidations and threats to the public safety for both the unhoused as well as all members of the public, and furthermore the collection of biohazard materials, human waste, trash and rubbish near businesses and residential areas contributes to a general decline in public health, safety and welfare.
9. Encampments near emergency shelters established for emergency evacuations during events such as winter rain storms can cause barriers to access for evacuees.
10. Encampments near active construction sites, areas with heavy vehicle use, and similar areas pose unique threats to both the unhoused as well as the operators of construction equipment and vehicles through unintentional yet predictable collisions and threats to health and safety.
11. Encampments on or near public utilities and critical infrastructure, such as stormwater, water and sewer infrastructure, fire stations, electrical wires and natural gas pipelines, pose unique safety, environmental and security issues and are generally closed to the public or have limited public access for safety, environmental and security reasons.
12. Unauthorized connections or taps to public utilities, as well as violation of fire, building, electrical and other codes and standards, create unsafe conditions and a potential life safety hazard for the occupant, the general public and emergency responders.
13. Encampments pose immense public health concerns as the rates of overdoses from drugs like fentanyl and heroin have increased substantially among the unhoused and encampments can provide an environment conducive to illegal drug consumption.
14. Abandoned encampment cleanups are performed by police officers with police equipment and City staff in an attempt to maintain and or control the spread of large

encampments and this taxes public resources while unnecessarily exposing first responders and City staff to unhealthy and unsafe situations.

15. Fires in unsafe locations for cooking and warming occur at encampments increasing the risk of fires posing a threat to safety and health.
16. Accumulation of biohazard and medical waste occurs in and around encampments and these items end up in our creeks, storm drains, waterways, and beaches posing a direct threat to health and safety.
17. Severe blockage of storm drains due to excessive encampment debris leads to increased roadway and stream flooding and drain blockages during storms causing threats to health and safety.
18. During times of severe storms, unhoused camps are located in and evacuated from low lying, unsafe areas, and storm drains due to increased risk of flooding, rapid water movement, and blockage of storm drains, posing safety threats to the residents of the encampments; and

WHEREAS, in light of these significant and continuing threats to public health and safety, the City seeks to adopt reasonable time, place and manner regulations in a manner consistent with the federal Ninth Circuit court's decisions in *Martin* and *Grants Pass*; and

WHEREAS, the City finds that reasonable camping regulations for public property will best serve the public's health, safety, and general welfare.

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

SECTION 1. RECITALS. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Ordinance as if fully set forth herein.

SECTIONS 2. NEW CHAPTER 8.26 ADDED TO CODE. Chapter 8.26 is added to Title 8 of the Morro Bay Municipal Code to read as follows:

"CHAPTER 8.26 – PUBLIC PROPERTY CAMPING REGULATIONS

8.26.010 FINDINGS AND PURPOSE

- A. As the City continues to offer assistance and services to persons experiencing homelessness, the City must appropriately consider various interests and formulate policy to best protect public health, safety, welfare, property, and the environment, with its limited resources.
- B. The City Council acknowledges that at the time of the adoption of this ordinance, there is a lack of nightly shelter beds and housing available regionally for persons experiencing homelessness and recognizes the systemic lack of state and federal investment in shelter and public health services for those experiencing homelessness.

- C. The City Council acknowledges that it is currently unavoidable that some persons will live or shelter for survival outdoors until they are able to access affordable or free shelter or housing. In Morro Bay, this has typically meant sheltering, sometimes for extended periods of time, on City rights-of-way and City property, and at times on other public agency property such as the California Department of Parks and Recreation property.
- D. Public rights-of-way and public property are generally intended for public use and travel. The City Council is the authority for rights-of-way within the City; as such, the City must consider the safety of motorists and pedestrians travelling on roadways and sidewalks, including to and from neighboring properties, businesses, and residences.
- E. The City owns limited property where camping can or should be allowed for reasons including but not limited to public health and safety concerns and issues created by the impact of camping on public property.
- F. The City has had increasing concerns regarding public health and safety due to camping on or in rights-of way and public property in or near streets, roads, sidewalks, schools, residences, businesses, critical infrastructure, public access points and similar locations. Public utility properties (e.g., stormwater, water, sewer) are environmentally and operationally sensitive and generally closed to the public or have limited access for safety, environmental and security reasons.
- G. Over the long term and working with other governmental agencies and non-profit organizations, the City's goal is that people should not have to live outside and there should be safer options because long-term camping for survival and sheltering outside is not a solution for people without homes.
- H. It is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City rights-of-way and public property, which are intended to be as compatible as possible with the needs of everyone in Morro Bay to be healthy, safe, and have access to public places.
- I. Smaller camp sites support both the health and safety of people who are camping for survival on public property as well as the health and safety of the public.
- J. It is the purpose and intent of the City Council to provide standards for camping and survival sheltering on City rights-of-way and public property which will address issues such as fire risk, unsanitary conditions, health risks, public infrastructure security, public access impediments, trash, waste and public safety hazards to both people camping as well as neighboring businesses, residents and community members, as well as environmental degradation, which have occurred with longer-term camping in the City.
- K. It is the intent of the City to evaluate each removal of an Established Campsite with considerations of public health and safety, including for the people who are sheltering in the camps, potential user conflicts, and available resources. The City intends to use a team approach and coordinate with other governmental agencies and non-profit organizations as appropriate. When the City requires a person experiencing homelessness to remove an Established Campsite, through these regulations, it intends to provide the person

adequate time to remove the Established Campsite before the City removes the Established Campsite, to secure any personal property with reasonable utility or reasonable value for the person to retrieve at a later date, and to clean the former Established Campsite to address threats to public health and safety.

8.26.020 DEFINITIONS

The following words and phrases, when used in this Chapter, shall have the meaning ascribed to them by this section unless it is apparent from the context that another meaning is intended.

- A. "Camp" or "Camping" means residing in or using any public property for one or more nights for living accommodation purposes, such as sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or using any tents, or storing personal belongings (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware, and similar material), or making any fire using Bunsen burners or other heating items, or regularly cooking meals. These activities constitute camping when it reasonably appears, in light of all the circumstances, that a person is using public property as a living accommodation for one or more nights, with the intent to camp.
- B. "Camp Facilities" include, but are not limited to, tents, huts, or similar temporary shelters consisting of any material with a top or roof or any other upper covering or that is otherwise enclosed by sides that is of sufficient size for a person to fit underneath or inside while sitting or lying down and includes the use of a tarp or other material tied or affixed to a structure or bush to create an enclosed area.
- C. "Camp Materials" includes but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, shopping carts, recyclable material and/or non-City designated cooking or heating facilities and similar equipment, or personal possessions that would facilitate one's use of a park, public property, or any portion of the public right-of-way as a temporary residence.
- D. "Critical Infrastructure" means real property or a facility, whether privately or publicly owned, that the City Manager designates as being so vital and integral to the operation or functioning of the City or in need of protection that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare. Critical infrastructure may include, but is not limited to, government buildings, such as fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage systems, or levees; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources.

- E. "Enforcement Personnel" means the employee(s) of the City, including but not limited to sworn police officers, authorized by the City to seek compliance with, and enforce, the regulations, requirements and rules of this Chapter.
- F. "Established Campsite" means a location or locations in the public right-of-way or on City property where a Camp, Camps, and/or Camp Materials have been set up for twenty-four (24) hours or more.
- G. "Fire Severity Zones" means mapped area as defined by the Office of State Fire Marshal that designates zones (based on factors such as fuel, slope, and fire weather) with varying degrees of fire hazard (i.e., moderate, high, and very high).
- H. "Greywater" means untreated wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines and the like. It does not include any toilet discharge, unhealthy bodily wastes, or manufacturing wastes.
- I. "Hazardous Water" means sewage, toilet discharge, unhealthy bodily wastes, manufacturing wastes and the like.
- J. "Landscaped Area" means any manicured or natural ground covered areas including but not limited to flower beds, bushes, brush areas, or shrubs.
- K. "Personal Property" means any tangible property and includes, but is not limited to, goods, materials, merchandise, tents, tarpaulins, bedding, blankets, sleeping bags, personal items such as household items, luggage, backpacks, clothing, food, documents, and medication.
- L. "Playground" means any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on City, county, or State park grounds.
- M. "Public Property" means any publicly owned property in the City, whether improved or unimproved, including, but not limited to, any of the following: public alleyways; public parking lots; public passageways; public streets; public rights-of-way; park Playgrounds; freeway on-ramps and off-ramps; publicly owned, maintained, or operated parks; publicly owned, maintained, or operated landscaped areas or greenbelts; publicly owned fences, trees, light poles, or equipment boxes; publicly owned, maintained, or operated open spaces including, but not limited to, public facilities or buildings of any kind; public sidewalks, curbs, and gutters; public educational institutions; or other government owned, maintained, or operated properties located within the City.

- N. "Public Utilities" means every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof, as defined by Public Utilities Code section 216, and as amended.
- O. "Rights-of-Way" means all City-owned or controlled rights-of-way, whether in fee title or as holder of a public easement for right-of-way or public access purposes. Public rights-of-way include but are not limited to any public road, street, sidewalk, or private street or other property that is subject to a public access easement dedicated or granted to the City for vehicular use, pedestrian use, utilities or other means, and any planter strip or landscaped area located adjacent to or contained within streets that is part of the public right-of-way.
- P. "School" means any institution, facility or organization, whether public or private, that offers instruction on those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education. School for purposes of this section does not include a vocational or professional institutions of higher education, including a community or junior college, college, or university. The setback shall be calculated from the school property boundaries.
- Q. "Store" means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.
- R. "Transportation Facility Loading Area" means that area within 200 feet of where trains, buses or any form of public transportation loads or unloads passengers.
- S. "Vehicle" means a "motor vehicle" as defined by California Vehicle Code, section 415 and includes a "recreational vehicle" as defined by California Health and Safety Code, section 18010(a).

8.26.030 TIME, PLACE AND MANNER REGULATIONS

Persons who do not have any other permanent residence or domicile and/or are involuntarily experiencing homelessness are permitted to camp on public property or rights of-way, provided the camping is occurring in compliance with the following time, place and manner regulations and consistent with any administrative rules and policies promulgated by the City Manager, or designee, adopted after the Effective Date of this Ordinance, in accordance with this Chapter.

- A. Time.** Unless otherwise specified, any Camping or Camp, where allowed, may only occur for 24-hours at a time in any one location. After 24 hours in one location, the Camp and all

associated Camp Materials must be moved at least one street block or 600 feet, whichever is greater, to another allowed location.

B. Place. Camping is not allowed at any time in any of the following places:

1. Within 200 feet of a residentially zoned property boundary or within any area zoned Residential, as determined by the City of Morro Bay Zoning Map and the Morro Bay Municipal Code.
2. Within any Mixed Use Overlay Zone, as determined by the City of Morro Bay Zoning Map and the Morro Bay Municipal Code.
3. Any place where Camping, a Camp, or Camp Materials create a physical impediment preventing emergency or non-emergency ingress, egress or access to public or private property, including but not limited to, on public sidewalks or other public rights-of-way, driveways providing access to vehicles, and entrances or exits from buildings and/or other real property.
4. Any vehicle lane, bicycle lane, or roundabout within any public rights-of-way or Transportation Facility Loading Area.
5. Within 1000 feet from any shelter both established for emergency evacuations as well as approved under the Morro Bay Municipal Code and/or approved consistent with any applicable provision of State or federal law.
6. On any street or public rights-of-way, the City has closed to camping due to construction, heavy vehicle use, or other use of the roadway that is incompatible with camping in the rights-of-way. The City does not need to close a street to vehicle traffic, to close a street to camping under this section.
7. Within, or within 200 feet of, any School.
8. Within, or within 200 feet of, any Playground.
9. Within, or within 200 feet of, any area designated as Visitor Serving Commercial (VSC), as determined by the City of Morro Bay Zoning Map and the Morro Bay Municipal Code.
10. At the following public property: Morro Bay City Hall, Morro Bay Community Center, Morro Bay Veterans Hall, Morro Bay Public Library, Morro Bay Centennial Parkway and Stairway, and such further designations made in writing by the City Manager, or her or his designee, upon the written recommendation of the Morro Bay Police Chief and the Morro Bay Fire Chief.
11. Within, or within 200 feet of, Critical Infrastructure.
12. Within, or within 200 feet of, either a very high Fire Severity Zone or a high Fire Severity Zone.

C. Manner. Camping, when and where allowed, is subject to all of the following limitations and regulations:

1. Individuals, Camp Materials, Camps, or personal property may not obstruct, block, prevent access to, or impede: sidewalk accessibility or passage; clear vision of moving vehicles or bicycles; usage of fire hydrants; usage or function of Public Utilities, Critical Infrastructure, or other City infrastructure; or, otherwise obstruct, block, prevent access to, or impede the use of the Rights-of-Way for vehicular, pedestrian, bicycle, or other passage.
2. A Camp or Camping shall be limited to a spatial footprint of no greater than 12 feet by 12 feet, or 144 square feet, and shall have a smaller footprint if necessary to comply with the restrictions set forth in this Chapter. The intent of this section is to allow a person to sleep protected from the elements and maintain the essentials for living, while still allowing others to use public spaces as designed and intended.
3. To prevent larger Camping sites from forming and the impacts to public health and safety that can result, a Camp shall not be within a one hundred fifty (150) foot radius of any other Camp.
4. Individuals may not accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no reasonable utility or reasonable value, as determined by the City, in public rights-of-way, on City property, or on any adjacent public or private property.
5. Open flames, recreational fires, burning of garbage, bonfires, or other fires, flames, or heating deemed unsafe by the Morro Bay Fire Department, or the Morro Bay Police Department, are prohibited. Types of flameless cooking stoves and other flameless devices for keeping warm, as consistent with this subsection, are permitted.
6. Dumping of Greywater or Hazardous Water into any facilities or places not intended for Greywater or Hazardous Water disposal is prohibited. This includes but is not limited to City streets, public rights-of-way, public waterways and storm drains, which are not intended for disposal of Greywater or Hazardous Water.
7. Unauthorized connections or taps to Public Utilities, including but not limited to such connections or taps that cross over City property, roadways, rights-of-way, driveways, streets, sidewalks, and fences, are prohibited.
8. Violations of building codes, fire codes, and other relevant codes or standards for health and safety, are prohibited.
9. Obstruction of, or attachment of Camp Materials or personal property to, fire hydrants, utility poles, Public Utilities infrastructure, public infrastructure, fences, trees, vegetation, vehicles, or buildings is prohibited.

10. Individuals may not build or erect structures, whether by using plywood, wood materials, pallets, or other materials. Items such as tents, and similar items used for shelter that are readily portable, are not structures for purposes of this section.
11. Storage of personal property such as vehicle tires, bicycles, or associated components (except as needed for an individual's personal use), gasoline, generators, lumber, household furniture, propane tanks, combustible material or gases, or other items or materials, is prohibited, other than what is related to camping, sleeping, or keeping warm and dry.
12. Digging, excavation, terracing of soil, alteration of ground, water or infrastructure, or damage to vegetation or trees is prohibited.
13. All animals, in the custody, ownership or companionship of an individual, must be leashed or crated at all times.
14. Camps shall consist of no more than two persons, two animals (e.g., dogs) that are leashed or crated at all times, and one tent.

8.26.040 ENFORCEMENT

- A. Voluntary Compliance.** Before enforcement actions are taken in respect to this Chapter (with the exception of enforcement of subsection (B)(3)), the enforcement personnel shall make a good faith effort to contact the person violating this Chapter and provide a reasonable opportunity to cure or remedy the alleged violation. Enforcement Personnel shall make a good faith effort to determine whether the person subject to enforcement has been referred to service providers and/or local non-profit assistance organizations and make a referral if it appears none has been made. The following shall be communicated to the person in a manner designed to help them understand the alleged violation:
1. A written or verbal description or identification of the activity constituting the alleged violation and identification of the recipient as being the person responsible for the violation;
 2. A written or verbal statement that the enforcement personnel has determined the activity to be a violation;
 3. A written or verbal statement of the action required to fix the violation and the time and/or date by which the violation must be fixed; and
 4. A written or verbal statement advising that if the violation is not fixed within the time specified, enforcement actions may be imposed.

B. Notice of Violation

1. **72 Hour Notice.** Prior to implementing any of the enforcement mechanisms provided for in this Chapter to remove an Established Campsite and/or Camp Facilities because of violations of this Chapter, the Enforcement Personnel shall provide occupants of an Established Campsite or Camp Facilities, at least 72 hours in advance of any action to

remove the Established Campsite or Camp Facilities, notice both to remove the camp within 72 hours consistent with the requirements of this Chapter as well as of the intent by the City to remove the Established Campsite or Camp Facilities in no less than 72 hours (the “notice”). The notice shall be in writing and shall be posted on or near the Established Campsite or Camp Facilities, so as to reasonably communicate the notice to persons living at the Established Campsite or Camp Facilities but not present during the attempt to provide notice. In addition, the Enforcement Personnel shall make a good faith effort to personally provide the written notice to the occupant(s) of the Established Campsite or Camp Facilities present at the time the Enforcement Personnel posts the notice. Failure of the occupant(s) of the encampment to comply with the notice’s requirements to remove the camp within 72 hours consistent with the requirements of this Chapter shall constitute a violation of this Chapter. The notice shall contain the following information:

- a. The location of the Established Campsite or Camp Facilities;
- b. The date and time notice was posted;
- c. A statement that the Established Campsite or Camp Facilities violates this Chapter;
- d. An advisement that the City will remove the Established Campsite or Camp Facilities 72 hours after the date and time of the notice;
- e. Information about any housing, shelter or homeless services available for occupants of the Established Campsite or Camp Facilities, the phone number and address to contact in order to obtain such housing, shelter or homeless services, if available, and information about obtaining free transportation, if available, to such housing, shelter or homeless services;
- f. An advisement that any personal property remaining at the Established Campsite or Camp Facilities site when the Enforcement Personnel returns to remove the Camp Facilities will be impounded for no fewer than 90 days, or as provided for by applicable law, and will be discarded thereafter if not claimed; and
- g. The address, phone number, and operating hours of the location where the personal property will be stored and may be retrieved, being a storage facility and depending on the property potentially with the Morro Bay Police Department, and that the City will charge no fee for storage or retrieval.

- 2. Less Than 72 Hour Notice.** The notice detailed above may establish a shorter time for the removal of the encampment if the Enforcement Personnel have determined the conditions at the Established Campsite or Camp Facilities requires removal of the Established Campsite or Camp Facilities in less than 72 hours to avoid a potential emergency, such as possible site contamination by hazardous materials or when there is reasonable potential danger to human life or safety. Failure of the occupant(s) of the encampment to comply with the notice’s requirements to remove the camp consistent with the requirements of this Chapter shall constitute a violation of this Chapter.

- 3. Illegal Activity or Exceptional Emergency.** Enforcement personnel may remove an Established Campsite or Camp Facilities without providing the notice described above in the following circumstances:
- a. When there is probable cause for law enforcement officials to believe that illegal activity, other than camping, is occurring at an Established Campsite or Camp Facilities, or in the immediate vicinity of an Established Campsite or Camp Facilities; or
 - b. When there is probable cause for law enforcement officials to believe that the property that comprises an Established Campsite or Camp Facilities is being used or is intended to be used to commit or facilitate the commission of otherwise illegal activity; or
 - c. In the event of an exceptional emergency, such as significant evidence of site contamination by hazardous materials or when there is immediate danger to human life or safety.

C. Removal of an Established Campsite or Camp Facilities. If the occupant(s) fail to comply with the request for voluntary compliance set forth in subsection A above, and after the enforcement personnel comply with the requirements set forth in subsection B above, any Camp, Camp Materials, or personal property in violation of any of the standards in this Chapter may be removed or cleaned-up by the City or its designated contractors, and the enforcement personnel may take appropriate actions to remove an Established Campsite or Camp Facilities and enforce this Chapter, consistent with the following:

1. When removing Camp Facilities, or individuals, Camp Materials, or personal property from an Established Campsite, enforcement personnel will make reasonable efforts to remove individuals without the use of force or citation.
2. When removing personal property, the City shall make reasonable efforts to determine if the property belongs to an individual and has any reasonable utility or reasonable value. The City shall make reasonable efforts to identify which Established Campsite the property was removed from, to aid in connecting people with their property. Items that are perishable, that have no reasonable use or value, that are not identifiable as belonging to an individual, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and need not be stored.
3. Weapons, drug paraphernalia, or other contraband, and items that appear to be either stolen or evidence of a crime, shall be provided to law enforcement officials.
4. Following removal of personal property from City property or rights-of-way, the City shall post a notice at or as near as possible to the location the property was collected and on the City's website, stating where the personal property is being stored, and listing the phone number and hours a person claiming ownership can collect or make arrangements to collect their personal property.
5. After an Established Campsite or Camp Facilities has been removed, then at the recommendation of the Police Chief or Fire Chief on the basis of public health and safety, the City Manager may order that no camp be set up in that same location or a

100-foot radius for up to 30 days. The City shall post signs informing the public that camping is prohibited at the location for the specified period of time.

D. Removal and Storage of Personal Property or Camp Materials During Removal of an Established Campsite or Camp Facilities. Personal property or Camp Materials may be removed from City rights-of-way, City property, or a Camp, during removal of an Established Campsite or Camp Facilities pursuant to Section C above, if in violation of the provisions of this Chapter, as provided for herein.

1. Personal property removed from City rights-of-way or City property and unclaimed at the time of removal will be stored by the City for a minimum of ninety (90) days, or the duration (if shorter in time) allowed by applicable State or federal law, counting from the day of the removal as day one.
2. Items that are perishable, that have no reasonable use or value, that are not identifiable as belonging to an individual, or that are in an unsanitary condition due to saturation or contamination from bodily fluids, whether human or animal, or other contamination, will be considered garbage, discarded, and will not be stored. Property discarded, dumped, or otherwise abandoned in the City rights-of-way or on public property may be immediately discarded.
3. The City will store personal property at a storage facility at or near a designated City facility, where people can reasonably retrieve belongings. Notwithstanding any otherwise applicable City policy or procedure, all items collected and stored pursuant to this Chapter that reasonably appear to have a monetary value at the time of collection of less than one thousand dollars (\$1,000) shall be stored at a storage facility, and items that reasonably appear to have a monetary value at the time of collection of one thousand dollars (\$1000) or more shall be separately stored for safekeeping with the Morro Bay Police Department (“MBPD”).
4. The City will make reasonable efforts to provide a range of times the storage facility will be available for people to collect their personal property. The City may dispose of any personal property (whether stored at the storage facility or with the MBPD) that remains unclaimed after ninety (90) days, or the duration (if shorter in time) allowed by applicable State or federal law, counting from the day of the removal as day one.

8.26.050 VIOLATIONS

A citation for a violation of Chapter 8.26 shall be for an infraction. At the City's discretion, it may issue Administrative Citations under Chapter 1.03. Citations will be issued only when other means of achieving compliance have been unsuccessful or are not practicable for the particular situation.

8.26.060 SUSPENSION OF ENFORCEMENT

The City Manager, or designee, is specifically authorized to modify or suspend enforcement of any section or part of this Chapter in the event of a declared emergency, pursuant to

administrative rules or policies, weather conditions (including but not limited to extreme heat or cold), or for any other reason within the City Manager's authority, regardless of whether an emergency has been declared. In addition, the City Manager may suspend the enforcement of regulations contained in this Chapter when the City Manager, or designee, has determined a person does not have access to shelter and is engaged in case management or behavioral health services, or when necessary or appropriate to respond to a person's disability, or as further set forth in City's administrative policies implementing this Chapter 8.26 adopted by the City Manager, or designee, pursuant to Section 8.26.090.

8.26.070 ADOPTION OF ADMINISTRATIVE RULES

The City Manager, or designee may adopt administrative rules or policies governing or guiding enforcement of this Chapter, consistent with the intent of this Chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances. These administrative rules or policies should ensure that enforcement is tailored to various circumstances, including but not limited to situations where a person has a disability under the Americans with Disabilities Act, where minor children are present or otherwise involved, where a person has employment obligations that may relate to their ability to comply with this Chapter, or for other reasons that may support discretion in enforcement.

8.26.80 METHODS OF ENFORCEMENT NOT EXCLUSIVE

Methods of enforcement for violations of this Chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate. However, the intent of the City is to always resolve violations at the lowest possible level, and to engage to seek compliance and solve problems while maintaining the dignity of all involved."

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

SECTION 4. POTENTIAL CONFLICTS. All ordinances, parts of ordinances, City resolutions or policies, and the like, in conflict with those sections amended or added herein to the Morro Bay Municipal Code, are hereby expressly superseded by this ordinance, with the exception of Section 8.24.010(D) of the Morro Bay Municipal Code.

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

SECTION 6. 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 held on the 12th day of December 2023, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the _____ day of _____, 2024, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:
- RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance No. 665 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____ 2024, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

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

DANA SWANSON, City Clerk

ORDINANCE NO. 666

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ADDING CHAPTER 8.27 TO TITLE 8 OF THE MORRO BAY
MUNICIPAL CODE REGULATING OVERNIGHT HUMAN
HABITATION OF VEHICLES ON PRIVATE PROPERTY USED FOR
BUSINESS OR NONPROFIT ORGANIZATION OPERATIONS TO
MITIGATE HARM TO PUBLIC HEALTH, SAFETY AND WELFARE**

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

WHEREAS, the City finds that the use of vehicles for human habitation overnight on private property used for business or nonprofit organization operations impacts public health and safety as this activity tends to result in damage to private property, theft, the accumulation of trash, food waste, human waste and contaminated medical waste and the unauthorized discharge of Greywater and Hazardous Water; and,

WHEREAS, the accumulation of trash, food waste and human waste has the potential to spread disease and result in infestations by vermin and insects; and,

WHEREAS, the accumulation of discarded contaminated medical waste, including used hypodermic needles, has the potential to harm patrons of the businesses or non-profits located where the overnight human habitation of vehicles is occurring who are exposed to this waste, and is an attractive nuisance for children; and,

WHEREAS, the collection of contaminated medical waste, human waste and trash and the discharge of Greywater and Hazardous Water has the potential to contaminate the City's waterways and beaches due to the proximity to storm drains; and,

WHEREAS, overnight human habitation in vehicles on private property used by business or nonprofit establishments has resulted in a significant number of police calls for service related to vandalism, property damage and criminal activity, including narcotics usage, noise violations, excessive debris around the vehicles, prowling, parking violations, private property trespassing, and loitering; and,

WHEREAS, unregulated overnight human habitation in vehicles on private property used by business or nonprofit establishments creates increased public health and safety risks such as those from overdoses, fire hazards, and death; and,

WHEREAS, the City finds that reasonable regulations for human habitation of vehicles overnight on private property used for businesses and nonprofit organizations are necessary to protect public health and safety.

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

SECTION 1. RECITALS. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Ordinance as if fully set forth herein.

SECTIONS 2. NEW CHAPTER 8.27 ADDED TO CODE. Chapter 8.27 is added to Title 8 of the Morro Bay Municipal Code to read as follows:

“CHAPTER 8.27 – REGULATION OF OVERNIGHT HUMAN HABITATION OF VEHICLES ON PRIVATE PROPERTY USED FOR BUSINESS OR NONPROFIT ORGANIZATION OPERATIONS

8.27.010 FINDINGS AND PURPOSE

- A. The use of various types of vehicles for human habitation overnight on private property used for businesses or non-profit organizations impacts public health and safety as this activity tends to result in damage to private property, theft, public safety risks, the accumulation of trash, food waste, human waste and contaminated medical waste and the unauthorized discharge of Greywater and Hazardous Water.
- B. It is the purpose and intent of the City Council to regulate and provide standards for the human habitation of vehicles overnight on private properties used for business and nonprofit operations so as to be as compatible as possible with the needs of everyone in Morro Bay to be healthy and safe.

8.27.020 DEFINITIONS

The following words and phrases, when used in this Chapter, shall have the meaning ascribed to them by this section unless it is apparent from the context that another meaning is intended.

- A. “Business” means any business that is required to obtain a current and valid business tax certificate under Chapter 5.04 of the Morro Bay Municipal Code.
- B. “Greywater” means untreated wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines and the like. It does not include any toilet discharge, unhealthy bodily wastes, or manufacturing wastes.
- C. “Hazardous Water” means sewage, toilet discharge, unhealthy bodily wastes, manufacturing wastes and the like.
- D. “Human Habitation” means, considering all the circumstances, that a person is using a vehicle for: sleeping; bathing; preparing or cooking meals; or, possessing or storing items that are not associated with ordinary vehicle use, such as a sleeping bag, bedroll, blanket, sheet, pillow, used bedding, kitchen utensils, cookware, cooking equipment, camping gear, food, water, personal grooming items, or containers of feces or urine. Evidence of

human habitation includes observations, considering all the circumstances, of any of the above, as well as that: a person has obscured some or all of the windows; there is litter, rubbish, or waste in or around the vehicle; there is furniture set up in or around the vehicle, such as chairs, tables, umbrellas, or portable cooking equipment; or, there is evidence of human urination or defecation around the vehicle.

- E. "Nonprofit Organization" means an organization that qualifies for tax-exempt status by the IRS because its mission and purpose are to further a social cause and provide a public benefit, regardless of whether or not the organization has secured such tax-exempt status.
- F. "Overnight" means at any time during the hours of 10:00 p.m. and 6:00 a.m. the following day.
- G. "Vehicle" means a "motor vehicle" as defined by California Vehicle Code, section 415 and includes a "recreational vehicle" as defined by California Health and Safety Code, section 18010(a).

8.27.030 PROHIBITION AND REGULATIONS

- A. Prohibition.** Notwithstanding any other provision of this Code, overnight human habitation is prohibited in vehicles parked on private property owned or leased by a business or a nonprofit organization.
- B. Exception.** A total of three vehicles per parcel, may be used by persons who lack access to permanent or safe shelter and who cannot obtain other housing, for overnight human habitation in a parking lot or paved or gravel surface of a parcel of any size owned or leased by a business or nonprofit organization, with the permission of the property owner or lessee, after the owner or lessee is issued a City permit by the Community Development Department, and the owner or lessee complies with the requirements of subsection C.
- C. Requirements.** A property owner or lessee who allows overnight human habitation in vehicles on private property pursuant to this section shall:
 - 1. Provide persons occupying such vehicles with access to sanitary facilities, including but not limited to toilet, hand washing and trash disposal facilities at all times people are authorized to be present overnight.
 - 2. Not require payment of any fee, rent or other monetary charge for the activity authorized by this Chapter.
 - 3. Restrict this use of owner's or lessee's property to one period consisting of no more than three (3) overnight stays, once every ten (10) days, per vehicle.
 - 4. Not allow the discharge or dumping of wastewater, Greywater, Hazardous Water, or trash on the property unless sufficient City approved receptacles or hook ups are available.

5. Not allow for the storage of personal property beyond six (6) feet immediately adjacent to the vehicle.
6. Not allow on-site storage of personal property when the personal property owner is no longer staying on the private property being used.

D. Revocation. A property owner or lessee who permits overnight human habitation in vehicles on private property pursuant to this Chapter may revoke that permission at any time and for any reason. Any person who has permission for human habitation in a vehicle on that property as provided in this Chapter shall leave the property with their vehicle and personal property immediately after permission has been revoked.

E. Existing Land Uses. The provisions of this Chapter are not intended to limit or otherwise change any land uses that may be permitted on real property under the Morro Bay Municipal Code.

8.27.040 VIOLATIONS AND ENFORCEMENT

- A. Violations of this chapter are deemed a public nuisance, and may be abated as such. Each day a violation continues is deemed a new violation.
- B. Violations of this chapter may be punishable as infractions or misdemeanors, pursuant to Chapter 1.16 of this Code.
- C. Violations of this chapter may be punishable thorough administrative fines, in accordance with Chapter 1.03 of this Code, as may be set by City Council resolution.
- D. Methods of enforcement for violations of this Chapter are not exclusive and may consist of multiple enforcement mechanisms where legally authorized and appropriate.

8.27.050 SUSPENSION OF ENFORCEMENT

The City Manager, or designee, is specifically authorized to modify or suspend enforcement of any section or part of this Chapter in the event of a declared emergency, pursuant to administrative rules or policies, weather conditions (including but not limited to extreme heat or cold), or for any other reason within the City Manager's authority, regardless of whether an emergency has been declared. In addition, the City Manager may suspend the enforcement of any of the regulations in this Chapter when the City Manager, or designee, has determined a person does not have access to shelter and is engaged in case management or behavioral health services, or when necessary or appropriate to respond to a person's disability, or as further set forth in City's administrative policies implementing this Chapter 8.27 adopted by the City Manager, or designee, pursuant to Section 8.27.060.

8.26.060 ADOPTION OF ADMINISTRATIVE RULES

The City Manager, or designee, may adopt administrative rules or policies governing or guiding enforcement of this Chapter, consistent with the intent of this Chapter, including but not limited to ensuring consistent and appropriate enforcement for various circumstances. These administrative rules or policies should ensure that enforcement is tailored to various circumstances, including but not limited to situations where a person has a disability under the Americans with Disabilities Act, where minor children are present or otherwise involved, where a person has employment obligations that may relate to their ability to comply with this Chapter, or for other reasons that may support discretion in enforcement. “

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

SECTION 4. POTENTIAL CONFLICTS. All ordinances, parts of ordinances, City resolutions or policies, and the like, in conflict with those sections amended or added herein to the Morro Bay Municipal Code, are hereby expressly superseded by this ordinance.

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

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SECTION 6. 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 held on the 12th day of December 2023, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the _____ day of _____, 2024, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:
- RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance No. 666 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____ 2024, and that it was so adopted by the following vote:

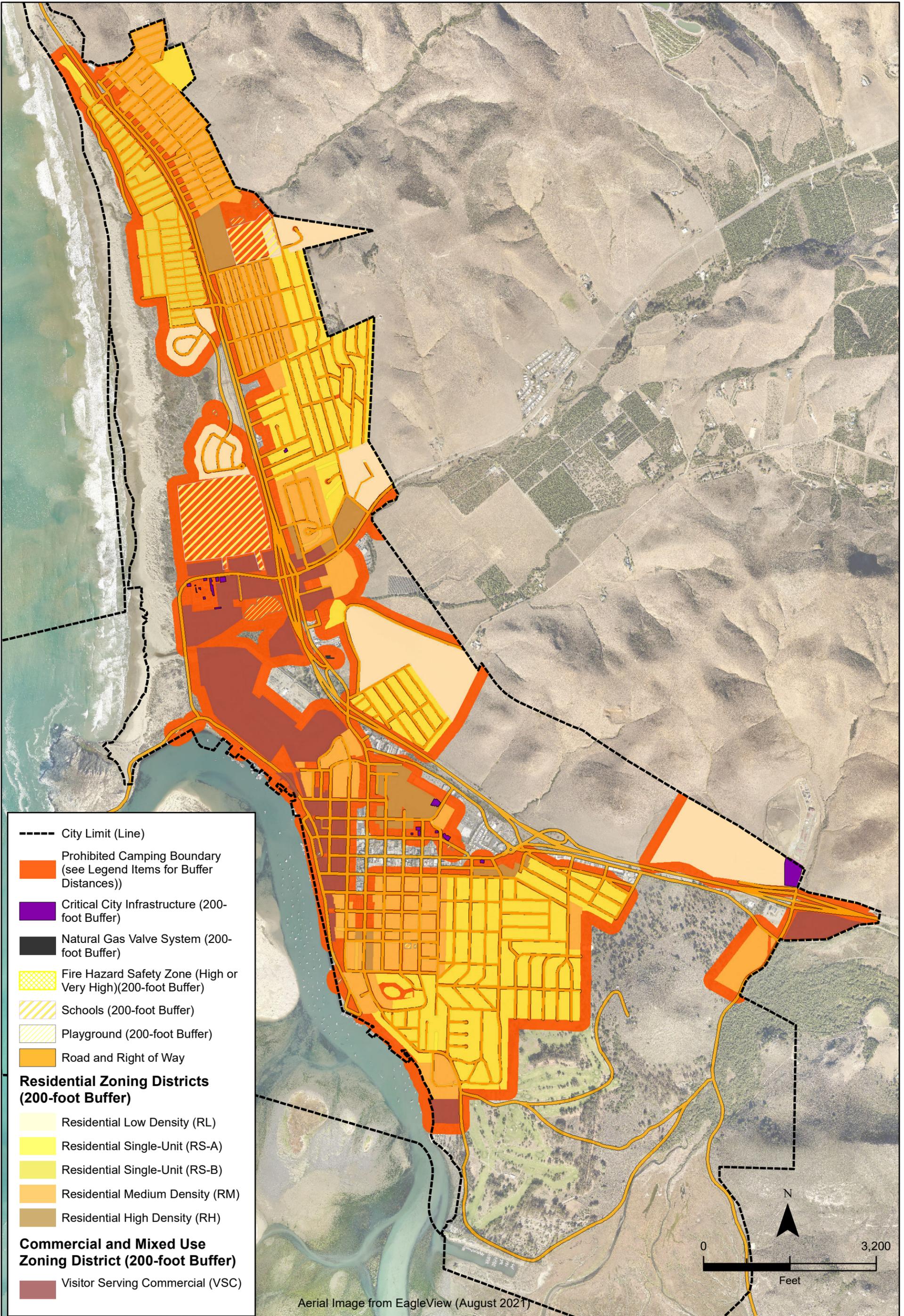
AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

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

DANA SWANSON, City Clerk



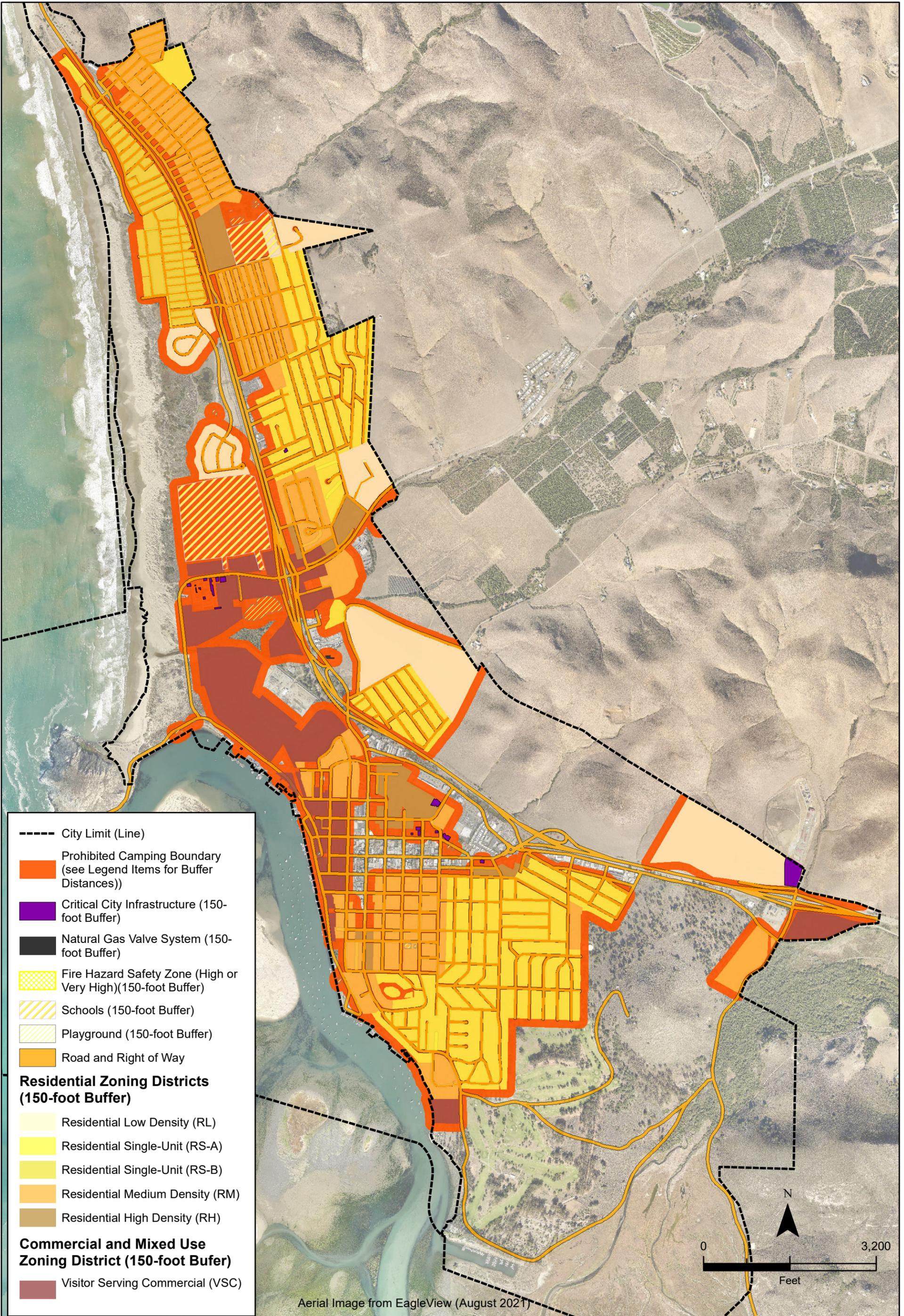
City of Morro Bay Prohibited Camping Boundary



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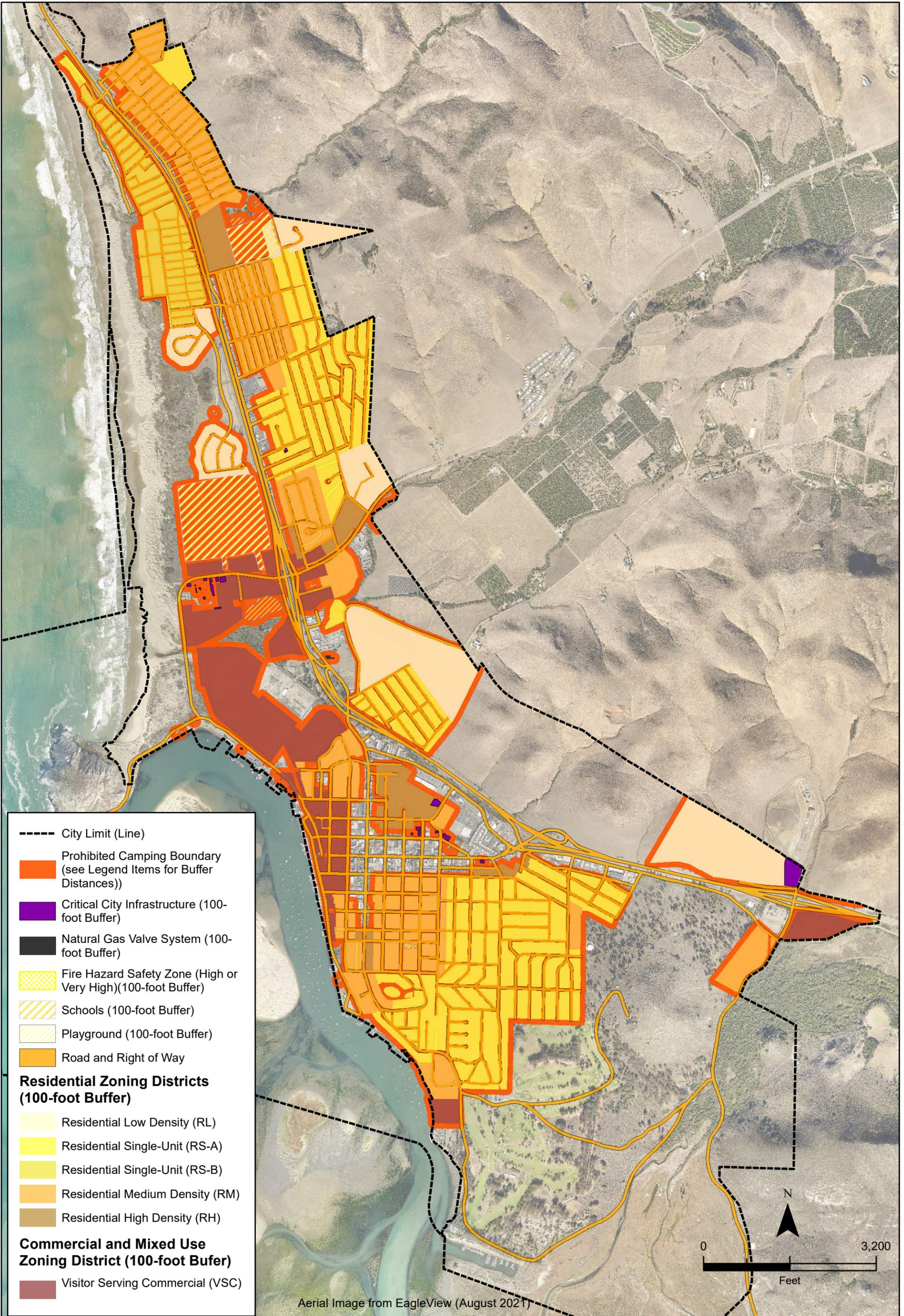
City of Morro Bay Prohibited Camping Boundary



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City of Morro Bay Prohibited Camping Boundary



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