

# City of Morro Bay

## City Council Agenda

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### *Mission Statement*

*The City of Morro Bay is dedicated to the preservation and enhancement of the quality of life. The City shall be committed to this purpose and will provide a level of municipal service and safety consistent with and responsive to the needs of the public.*

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**REGULAR MEETING – DECEMBER 8, 2008  
VETERANS MEMORIAL HALL - 6:00 P.M.  
209 SURF ST., MORRO BAY, CA**

ESTABLISH QUORUM AND CALL TO ORDER  
MOMENT OF SILENCE  
PLEDGE OF ALLEGIANCE  
MAYOR AND COUNCILMEMBERS ANNOUNCEMENTS & PRESENTATIONS  
CLOSED SESSION REPORT

PUBLIC COMMENT PERIOD - Members of the audience wishing to address the Council on City business matters (other than Public Hearing items under Section B) may do so at this time.

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

- When recognized by the Mayor, please come forward to the podium and state your name and address for the record. Comments are to be limited to three minutes.
- All remarks shall 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.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (805) 772-6205. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

A. CONSENT CALENDAR

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 AUTHORIZATION TO EXECUTE NEW LEASE AGREEMENT FOR LEASE SITE 67/67W LOCATED AT 575 EMBARCADERO - VIOLE FAMILY LLC; (HARBOR)

**RECOMMENDATION: Adopt Resolution 80-08 authorizing the Mayor to execute a new lease agreement for Lease Site 67/67W.**

A-2 AUTHORIZATION TO EXECUTE NEW LEASE AGREEMENT FOR LEASE SITE 68/68W LOCATED AT 591 EMBARCADERO – HELD FAMILY TRUST; (HARBOR)

**RECOMMENDATION: Adopt Resolution 81-08 authorizing the Mayor to execute a new leave agreement for Lease Site 68/68W.**

A-3 AUTHORIZATION TO FILL RECREATION & PARKS DEPARTMENT MAINTENANCE II POSITION; (RECREATION & PARKS)

**RECOMMENDATION: Authorize staff to fill the Recreation & Parks Department Maintenance II vacancy.**

A-4 AUTHORIZATION TO FILL RECREATION AND PARKS DEPARTMENT MAINTENANCE SUPERINTENDENT POSITION; (RECREATION & PARKS)

**RECOMMENDATION: Authorize staff to fill the Recreation & Parks Department Maintenance Superintendent vacancy.**

A-5 APPROVAL OF LETTER TO SAN LUIS OBISPO COUNCIL OF GOVERNMENTS SUPPORTING CITY REQUEST TO AMEND RURAL TRANSIT FUND GRANT PROJECT FROM CAPITAL TO OPERATING ASSISTANCE FOR MORRO BAY DIAL-A-RIDE; (PUBLIC SERVICES)

**RECOMMENDATION: Approve letter of support and direct Mayor to deliver the letter to the members of the SLOCOG Board at their December 17, 2008 meeting.**

A-6 CONTINUATION OF EMERGENCY PER PUBLIC CONTRACT CODE SECTION 22050 FOR THE INSTALLATION OF ENERGY RECOVERY EQUIPMENT; (PUBLIC SERVICES)

**RECOMMENDATION: Determine the necessity to continue the emergency per Public Contract Code 22050 for the installation of desalination plant energy recovery equipment.**

A-7 PROCLAMATION DECLARING FRIDAY, DECEMBER 26, 2008 AS A CITY HOLIDAY; (ADMINISTRATION)

**RECOMMENDATION: Adopt Proclamation.**

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 CITY OF MORRO BAY WATER MANAGEMENT PLAN STATUS REPORT 2008; (PUBLIC SERVICES)

**RECOMMENDATION: Review and adopt Water Management Plan Status Report.**

C. UNFINISHED BUSINESS

C-1 BUDGET AMENDMENT TO APPROPRIATE HARBOR FUNDS FOR COMPLETION OF HARBOR DEPARTMENT MODULAR OFFICE PROJECT; (HARBOR)

**RECOMMENDATION: Authorize budget amendment to FY08-09 budget to transfer \$235,000 from the Harbor Accumulation Fund to Harbor Capital Improvement Fund and authorize staff to release bids for a replacement modular office and demolition/site work to complete this project in this fiscal year.**

C-2 STATUS OF URGENCY INTERIM ORDINANCE PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES; (CITY ATTORNEY)

**RECOMMENDATION: City Council ban medical marijuana dispensaries until such time as the tension between State and Federal law is resolved.**

D. NEW BUSINESS

D-1 APPOINTMENT OF VICE-MAYOR TO SERVE A ONE-YEAR TERM; (ADMINISTRATION)

**RECOMMENDATION: Appoint a Vice-Mayor to serve a one-year term effective January 2009.**

D-2 APPROVAL OF THE CITY COUNCIL ANNUAL MEETING SCHEDULE - 2009; (ADMINISTRATION)

**RECOMMENDATION:** City Council adopt the proposed meeting schedule for calendar year 2009.

D-3 APPOINTMENT OF REPRESENTATIVES ON DISCRETIONARY BOARDS; (ADMINISTRATION)

**RECOMMENDATION:** Discuss and appoint or re-appoint representatives to serve on the various boards and committees.

D-4 SET DATE FOR INTERVIEWS OF COMMISSIONER/ADVISORY BOARD VACANCIES AND DISCUSSION REGARDING FREQUENCY OF MEETINGS, NUMBER OF MEMBERS AND POTENTIAL NEW REPRESENTATION CATEGORIES; (ADMINISTRATION)

**RECOMMENDATION:** Advise staff on advertising efforts to fill vacancies on City's Boards, Commissions, and Committees as well as schedule a date and time to interview applicants. Staff further recommends City Council discuss frequency of meetings, cancellation policy on meetings, number of Board and Commission members and representation categories; refer these items to the Boards and Commissions for their input and then return to the City Council with those recommendations.

E. ADJOURNMENT

**THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6200 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 AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.**

**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 THAT REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.**



AGENDA NO:	<u>A-1</u>
MEETING DATE:	<u>12/8/08</u>

# Staff Report

**TO:** Honorable Mayor and Council

**DATE:** 12/01/08

**FROM:** Harbor Director

**SUBJECT:** Authorization to Execute New Lease Agreement for Lease Site 67/67W, Located at 575 Embarcadero – Violé Family LLC

**RECOMMENDATION:**

Staff recommends that the City Council adopt Resolution No. 80-08 authorizing the Mayor to execute a new lease agreement for Lease Site 67/67W, located at 575 Embarcadero, with the Violé Family LLC.

**FISCAL IMPACT:**

Current annual minimum rent from this site is approximately \$20,000 with no percentage of gross sales rent generated. Under the new lease the minimum annual rent will be adjusted downward to \$12,000 until the end of the required re-construction period July 1, 2011. For the first 2 ½ years of the new lease Harbor fund rental revenues will be reduced by \$8,000 annually. Upon completion of the redevelopment project (no later than July 1, 2011) the site will begin to generate total rent (percentage of gross sales and minimum rent) estimated to be a minimum of \$30,000 annually (net annual increase to the Harbor Fund rental revenues of at least \$10,000 annually) and the transient units to be constructed on the site will pay TOT to the General Fund.

**SUMMARY:**

The recommended new lease agreement will require private investment of approximately \$1.3 million (\$2.6 million for both Lease Sites 67/67W and Lease Sites 68/68W) on City Tidelands property located at 575 Embarcadero to demolish 50-year-old buildings and construct a retail and motel facility with public access improvements and a new floating dock.

**BACKGROUND:**

The current improvements on this Lease Site were constructed sometime in the 1950s as a vacation home. Sometime around 1960, the street side portion was converted to a retail gallery, and the bay side portion has continued to be used as a vacation home by the Violé Family throughout. In 1983 the City executed a 20 year lease with Armand Violé (since deceased) and Ynez Violé O'Neil for the site. In 2001 Staff recommended to the City Council that this site and the adjacent site 68/68W be put out to public bid together for a joint redevelopment proposal. The Tenants on the two sites corresponded with the City asking for an extension of their existing leases to allow them to process a joint development plan without a public bid process.

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

On April 22, 2002 the City approved and executed an amendment to the two leases at Lease Site 67/67W and 68/68W, extending the term of the existing leases until December 31, 2008 so that the Tenants could process plans for a joint redevelopment of the sites. On August 27, 2007 the City Council approved in concept CUP #UPO-140 to demolish the existing buildings on Lease Sites 67/67W and 68/68W and replace them with 1,197 square feet of retail, a six room hotel and a 70' floating dock. Staff has negotiated two separate leases for the sites with the two Tenants.

**DISCUSSION:**

The Harbor Department Lease Management Policy process for an existing Tenant to renegotiate the lease agreement in mid-Embarcadero zoning are for the Tenant to obtain concept level approval of a conditional use permit for improvements to be constructed on the lease site. Staff is then authorized to enter into negotiations for a proposed new long term lease based on the amount of private investment proposed, the size of the lease site, and the public benefit of the proposed development. The Violé Family LLC has obtained Concept Plan and Coastal Commission approval of CUP #UPO-140 and the proposed lease requires construction of the improvements outlined in CUP #UPO-140 no later than July 1, 2011. Following are some of the main terms of the agreement.

**SITE:** Lease site 67/67W approximately 4400 square feet of land area and 1,840 square feet of water area.

**TERM:** Almost 40 years, commencing January 1, 2009 and terminating on June 30, 2048. Current cost estimate for construction is \$1.3 million for Lease Site 67/67W only; or \$2.6 million for both Lease Site 67/67W and Lease Site 68/68W.

In the mid-Embarcadero zoning area, lease terms are negotiated based on Tenant's investment in City property, size of leased area, and the public benefits of the project. Below are recent long term leases approved by the City for comparison purposes. Please note that cost estimates include design, development, permitting, and building/site improvements only. Interior design/sub-Tenant improvements, fixtures, furniture and equipment are not considered in calculations for determining proposed term of a lease, since those items remain the property of Tenant upon lease termination.

**Estero Landing, Inc. 501 Embarcadero - Approved June 2008**

40 year lease currently under construction, 1900 square feet of retail space and a 6 room hotel at an estimated construction cost of \$2.5 million. Lease Sites 53/56-53W/56W are 5,300 square feet of land area and 5,300 square feet of water area.

**Anderson Inn Properties 899 Embarcadero - Approved February 2006**

Amended this year to make it a 50 year lease with a Tenant investment of \$3.7 million on Lease Sites 91/92-91W/92W with approximately 7,000 square feet of land area and 2,800 square feet of water area.

**Rose's Landing 725 Embarcadero - Approved February 2002**

Amended in 2003 to make it a 43 year lease based on Tenant investment in excess of \$1.5 million on Lease Sites 82/85-82W/85W with approximately 10,700 square feet of land area and 4,500 square feet of water area.

**RENT:** \$12,000 annually on commencement, CPI adjustment annually on July 1, minimum rent adjusted to \$20,000 annually on July 1, 2011. Adjustment of the minimum annual rent based on re-appraisal on July 1, 2016 and every 5 years thereafter. Percentage of gross sales rent of 5% of all gross sales (slip income, TOT unit income and retail sales) effective immediately.

**IMPROVEMENTS TO BE CONSTRUCTED ON THE SITES:** Refer to Section 13 of the lease. Tenant must obtain building permit by July 1, 2010 and complete construction by July 1, 2011. Improvements to be constructed include new public restroom to be available to the public during business hours at Tenant's cost and lateral access walkway/deck on the bay front.

**MAINTENANCE UTILITIES AND INSURANCE:** City standards improvements and utility installed and maintained at Tenant's cost.

**SECTION 13.03 Joint development of Lease Sites 67/67W and 68/68W:** In the event that Tenant fails to complete redevelopment of improvements on the premises per the schedule outlined in conformance with the lease, whether the adjacent Lease Site improvements are completed in conformance with their lease agreement or not, City may terminate the lease. In such case City may enter into negotiations with the adjacent Lease Site Tenant to assume the lease or otherwise complete construction as required under the lease at the sole option of City.

**RESOLUTION NO. 80-08**

**AUTHORIZATION TO EXECUTE NEW LEASE AGREEMENT FOR  
LEASE SITE 67/67W, LOCATED AT 575 EMBARCADERO – VIOLÉ FAMILY LLC**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA**

**WHEREAS**, the City of Morro Bay is the lessor of certain property on the Morro Bay waterfront described as Lease Site 67/67W, located at 575 Embarcadero; and,

**WHEREAS**, the Violé Family has been Tenants on this Lease Site since the 1960s; and,

**WHEREAS**, the buildings on the Lease Site are substandard and are in need of replacement; and

**WHEREAS**, the Violé Family LLC is working in tandem with the Held Family Trust, lessees of the adjacent Lease Site 68/68W to redevelop the sites and to provide public access improvements in conjunction with the redevelopment plans that include retail and motel uses; and

**WHEREAS**, the Violé Family LLC, desires to terminate the existing lease and enter into a new almost 40-year lease agreement effective January 1, 2009 to provide for redevelopment of Lease Site 67/67W under CUP #UPO-140.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, that a new lease agreement for Lease Site 67/67W, located at 575 Embarcadero, with the Violé Family LLC, is hereby approved and that the Mayor is hereby authorized to execute the lease document.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8<sup>th</sup> day of December 2008 on the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Janice Peters, Mayor

ATTEST:

\_\_\_\_\_  
Bridgett Bauer, City Clerk



AGENDA NO:	<u>A-2</u>
MEETING DATE:	<u>12/8/08</u>

# Staff Report

**TO:** Honorable Mayor and Council

**DATE:** 12/01/08

**FROM:** Harbor Director

**SUBJECT:** Authorization to Execute New Lease Agreement for Lease Site 68/68W, Located at 591 Embarcadero – Held Family Trust

**RECOMMENDATION:**

Staff recommends that the City Council adopt Resolution No. 81-08 authorizing the Mayor to execute a new lease agreement for Lease Site 68/68W, located at 591 Embarcadero, with the Held Family Trust, dba 591 Embarcadero LLC.

**FISCAL IMPACT:**

Current annual minimum rent from this site is approximately \$20,000 with no percentage of gross sales rent generated. Under the new lease the minimum annual rent will be adjusted downward to \$12,000 until the end of the required re-construction period July 1, 2011. For the first 2 ½ years of the new lease Harbor fund rental revenues will be reduced by \$8,000 annually. Upon completion of the redevelopment project (no later than July 1, 2011) the site will begin to generate total rent (percentage of gross sales and minimum rent) estimated to be a minimum of \$30,000 annually (net annual increase to the Harbor Fund rental revenues of at least \$10,000 annually) and the transient units to be constructed on the site will pay TOT to the General Fund.

**SUMMARY:**

The recommended new lease agreement will require private investment of approximately \$1.3 million (\$2.6 million for both Lease Sites 67/67W and Lease Sites 68/68W) on City Tidelands property located at 591 Embarcadero to demolish 50-year-old buildings and construct a retail and motel facility with public access improvements and a new floating dock.

**BACKGROUND:**

The current improvements on this Lease Site were constructed sometime in the 1950s as a vacation home. The street side portion was converted to a retail gallery, and the bay side portion has continued to be used as a vacation rental unit. In 1983 the City executed a 20 year lease with Deanna Davis for the Site and in 1995 that lease was assigned to the Held Family. In 2001 Staff recommended to the City Council that this site and the adjacent site 67/67W be put out to public bid together for a joint redevelopment proposal. The Tenants on the two sites corresponded with the City asking for an extension of their existing leases to allow them to process a joint development plan without a public bid process.

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

On April 22, 2002 the City approved and executed an amendment to the two leases at Lease Site 67/67W and 68/68W, extending the term of the existing leases until December 31, 2008 so that the Tenants could process plans for a joint redevelopment of the sites. On August 27, 2007 the City Council approved in concept CUP #UPO-140 to demolish the existing buildings on Lease Sites 67/67W and 68/68W and replace them with 1,197 square feet of retail, a six room hotel and a 70' floating dock. Staff has negotiated two separate leases for the sites with the two Tenants.

**DISCUSSION:**

The Harbor Department Lease Management Policy process for an existing Tenant to renegotiate the lease agreement in mid-Embarcadero zoning are for the Tenant to obtain concept level approval of a conditional use permit for improvements to be constructed on the lease site. Staff is then authorized to enter into negotiations for a proposed new long term lease based on the amount of private investment proposed, the size of the lease site, and the public benefit of the proposed development. The Held Family has obtained Concept Plan and Coastal Commission approval of CUP #UPO-140 and the proposed lease requires construction of the improvements outlined in CUP #UPO-140 no later than July 1, 2011. Following are some of the main terms of the agreement.

**SITE:** Lease site 68/68W approximately 4300 square feet of land area and 1,760 square feet of water area.

**TERM:** Almost 40 years, commencing January 1, 2009 and terminating on June 30, 2048. Current cost estimate for construction is \$1.3 million for Lease Site 67/67W only, or \$2.6 million for both Lease Site 67/67W and Lease Site 68/68W.

In the mid-Embarcadero zoning area, lease terms are negotiated based on Tenant's investment in City property, size of leased area, and the public benefits of the project. Below are recent long term leases approved by the City for comparison purposes. Please note that cost estimates include design, development, permitting, and building/site improvements only. Interior design/sub-Tenant improvements, fixtures, furniture and equipment are not considered in calculations for determining proposed term of a lease, since those items remain the property of Tenant upon lease termination.

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40 year lease currently under construction, 1900 square feet of retail space and a 6 room hotel at an estimated construction cost of \$2.5 million. Lease Sites 53/56-53W/56W are 5,300 square feet of land area and 5,300 square feet of water area.

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**RENT:** \$12,000 annually on commencement, CPI adjustment annually on July 1, minimum rent adjusted to \$20,000 annually on July 1, 2011. Adjustment of the minimum annual rent based on re-appraisal on July 1, 2016 and every 5 years thereafter. Percentage of gross sales rent of 5% of all gross sales (slip income, TOT unit income and retail sales) effective immediately.

**IMPROVEMENTS TO BE CONSTRUCTED ON THE SITES:** Refer to Section 13 of the lease. Tenant must obtain building permit by July 1, 2010 and complete construction by July 1, 2011. Improvements to be constructed include new public restroom to be available to the public during business hours at Tenant's cost and lateral access walkway/deck on the bay front.

**MAINTENANCE UTILITIES AND INSURANCE:** City standards improvements and utility installed and maintained at Tenant's cost.

**SECTION 13.03 Joint development of Lease Sites 67/67W and 68/68W:** In the event that Tenant fails to complete redevelopment of improvements on the premises per the schedule outlined in conformance with the lease, whether the adjacent Lease Site improvements are completed in conformance with their lease agreement or not, City may terminate the lease. In such case City may enter into negotiations with the adjacent Lease Site Tenant to assume the lease or otherwise complete construction as required under the lease at the sole option of City.

**RESOLUTION NO. 81-08**

**AUTHORIZATION TO EXECUTE NEW LEASE AGREEMENT FOR  
LEASE SITE 68/68W, LOCATED AT 591 EMBARCADERO –  
591 EMBARCADERO LLC**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA**

**WHEREAS**, the City of Morro Bay is the lessor of certain property on the Morro Bay waterfront described as Lease Site 68/68W, located at 591 Embarcadero; and,

**WHEREAS**, the Held Family has been Tenants on this Lease Site since 1995; and,

**WHEREAS**, the buildings on the Lease Site are substandard and are in need of replacement; and

**WHEREAS**, the Held Family Trust is working in tandem with the Violé Family LLC, lessees of the adjacent Lease Site 67/67W to redevelop the sites and to provide public access improvements in conjunction with the redevelopment plans that include retail and motel uses; and

**WHEREAS**, the current lease is with the Held Family Trust and said Trust has formed a new limited liability corporation called 591 Embarcadero LLC to hold the new lease agreement for Lease Site 68/68W.

**WHEREAS**, the Held Family Trust, doing business as 591 Embarcadero LLC, desires to terminate the existing lease and enter into a new almost 40-year lease agreement effective January 1, 2009 to provide for redevelopment of Lease Site 68/68W under CUP #UPO-140.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, that a new lease agreement for Lease Site 68/68W, located at 591 Embarcadero, with 591 Embarcadero LLC, is hereby approved and that the Mayor is hereby authorized to execute the lease document.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8<sup>th</sup> day of December 2008 on the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Janice Peters, Mayor

ATTEST:

\_\_\_\_\_  
Bridgett Bauer, City Clerk



AGENDA NO:

MEETING DATE:

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** December 8, 2008

**FROM:** Joe Woods, Recreation and Parks Director

**SUBJECT:** Authorization to Fill Recreation and Parks Department  
Maintenance II Position

**RECOMMENDATION:**

It is recommended that the City Council authorize staff to fill the Recreation and Parks Department Maintenance II vacancy.

**FISCAL IMPACT:**

This is a General Fund position. The continued funding of this position will allow the Recreation and Parks Department to maintain the current level of service to the Morro Bay community as well as City Departments. There will be no additional financial impact on the General Fund resulting from this action.

**BACKGROUND:**

The City Council instituted a hiring freeze, when the Fiscal Year 2004 / 2005 budget was adopted. This policy requires City Council approval for the filling of any new or vacant position while the freeze is in effect. Tom Robbins, our current Maintenance Worker II within the Recreation and Parks Maintenance Division, has decided to retire after 30 plus years of service, and staff is requesting authorization to fill this vacancy. Duties assigned to his position include, but are not limited to the following:

- Performs general cleaning and skilled maintenance duties within City facilities.
- Operates building, mechanical, and electrical systems at assigned buildings.
- Performs maintenance and repair on custodial and office equipment.
- Performs set ups for public meetings and outside rental usage.

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

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

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

City Attorney Review: \_\_\_\_\_



AGENDA NO:

MEETING DATE:

## Staff Report

**TO: Honorable Mayor and City Council      DATE: December 8, 2008**  
**FROM: Joe Woods, Recreation and Parks Director**  
**SUBJECT: Authorization to Fill Recreation and Parks Department Maintenance Superintendent Position**

### **RECOMMENDATION:**

It is recommended that the City Council authorize staff to fill the Recreation and Parks Department Maintenance Superintendent vacancy.

### **FISCAL IMPACT:**

This is a General Fund position. The continued funding of this position will allow the Recreation and Parks Department to maintain the current level of service to the Morro Bay community as well as City Departments. There will be no additional financial impact on the General Fund resulting from this action

### **BACKGROUND:**

The City Council instituted a hiring freeze, when the Fiscal Year 2004 / 2005 budget was adopted. This policy requires City Council approval for the filling of any new or vacant position while the freeze is in effect.

### **DISCUSSION:**

This position is a combination of the Facilities Superintendent and Parks Superintendent job descriptions which was authorized by the City Council in August 2008. The combination began the effort to consolidate the maintenance divisions in the City. Lou Zatt, the current Maintenance Superintendent, has decided to retire after 27 plus years of service, and staff is requesting authorization to fill this vacancy. Duties assigned to his position include, but are not limited to the following:

- Develops and schedules maintenance and custodial standards and techniques for all public facilities and parks.
- Manages costs within allocated resources to maintain facilities, parkland, equipment, and inventories.
- Inspects and directs repairs on buildings, play structures, and equipment.
- Aids in coordination of planning and managing installations, additions, moves and changes to City owned facilities and parkland.

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

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

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

City Attorney Review: \_\_\_\_\_



AGENDA NO: A-5

MEETING DATE: December 8, 2008

## Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** December 2, 2008  
**FROM:** Janeen Burlingame, Management Analyst

**SUBJECT:** Approval of Letter to San Luis Obispo Council of Governments Supporting City Request to Amend Rural Transit Fund Grant Project from Capital to Operating Assistance for Morro Bay Dial-A-Ride

**RECOMMENDATION:**

Staff recommends the City Council approve the letter of support in Attachment 1 and direct the Mayor to deliver the letter to the members of the San Luis Obispo Council of Governments (SLOCOG) Board at their December 17, 2008 meeting.

**FISCAL IMPACT:**

If the SLOCOG Board approves the City's request, the City will receive \$60,720 from the Rural Transit Fund to use for operating assistance for Morro Bay Dial-A-Ride (MBDAR) and no changes to service levels or fare structure would be considered for the remainder of this fiscal year.

If the request is not approved and the SLOCOG Board approves the reduction in this fiscal year's Transportation Development Act (TDA) revenue allocation, staff will bring an item to the Council in January to consider service cuts and fare increases that would need to take effect in February 2009 to combat the more than \$37,000 loss of Local Transportation Funds (LTF) with which to operate MBDAR for the remainder of fiscal year 2008/2009.

**SUMMARY:**

Staff received an e-mail from SLOCOG giving the City an "early look" at some funding changes that will come to the SLOCOG Board at their December meeting. One very important funding change pertains to TDA funds the City receives and uses to operate MBDAR. County sales tax receipts are down somewhere between 5 and 10% and SLOCOG staff is recommending their Board reduce the FY 2008/2009 TDA disbursements to the region by 10%. The LTF portion of the TDA is based on sales tax revenue generated. The 10% reduction would equate to a loss of \$37,329 to MBDAR for the remainder of this fiscal year.

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

**DISCUSSION:**

Given the City's own financial situation, the likely unavailability of general funds to offset the TDA loss and the pressing amount of time between when staff received the communication and when the agenda packets for the SLOCOG Board's advisory boards that would meet on December 3 to make recommendations to the SLOCOG Board, the Public Services Director sent SLOCOG a request to modify the project description of a previously approved FY 2008/2009 Rural Transit Fund grant from the purchase of a vehicle to operating assistance.

The Regional Transit Authority recently made the same type of request from SLOCOG with the Board approving the modified Rural Transit Fund project description from a capital project to operating assistance so staff is fairly confident the City's request would be approved too as the basis for both requests was the same - to be able to continue providing existing service levels.

SLOCOG staff is recommending to its Board for its December 17 meeting approval of the requested FY 2008/2009 Rural Transit Fund project description modification to allow the City to use the \$60,720 for transit operations.

If the request is approved by the SLOCOG Board, existing MBDAR service levels and fare structure would be preserved for the remainder of this fiscal year and staff would begin looking at what changes may need to be made for next fiscal year based on the estimated TDA 2009/2010 allocation amounts received in March/April 2009. If the request is not approved, staff will bring an item to the Council in January to consider service cuts and fare increases that would need to take effect in February 2009.

**CONCLUSION:**

Staff recommends the City Council approve the attached letter of support and direct the Mayor to deliver the letter to the members of the San Luis Obispo Council of Governments (SLOCOG) Board at their December 17, 2008 meeting.

December 8, 2008

San Luis Obispo Council of Governments  
Attn: San Luis Obispo Council of Governments Board Members  
1150 Osos Street, Suite 202  
San Luis Obispo, CA 93401

RE: City Request to Modify FY 2008/09 Rural Transit Fund Project Description

Dear San Luis Obispo Council of Governments Board Members:

The City Council for the City of Morro Bay is writing this letter in support of a request from the City's Public Services Director. On November 18, a request was made to have a previously awarded Rural Transit Fund grant project modified from purchasing a replacement Dial-A-Ride vehicle to providing operating assistance to support the City's public transit system. This will allow the City to continue providing existing service levels and fare structure to the riding public for the remainder of the 2008/09 fiscal year.

Additionally, the Morro Bay City Council urges the Board to approve your staff's recommendation in agenda item B-3 at your December 17 meeting, which authorizes a FY 2008/09 Rural Transit Fund project description modification that allows the City to use \$60,720 for transit operations.

The City of Morro Bay uses 100% of the Transportation Development Act (TDA) funds it receives to provide general public demand response service. Due to increased fuel prices, contractor costs and previous decreases in TDA revenue allocated to Morro Bay, the City's fiscal year 2008/09 budget, adopted in May 2008, included \$40,000 of General Fund support for the demand response service. This support was required even after cutting full driver lunch coverage in order to continue providing the core service hours to the public. The City Council chose to use general funds rather than cut vital service to its citizens, even though the City is experiencing its own critical financial difficulties.

The City received an e-mail from the SLOCOG staff, regarding the anticipated reduction in TDA disbursements to the San Luis Obispo region due to decreases in county sales tax receipts. In that e-mail, the SLOCOG staff included a recommendation to the Board to reduce jurisdiction's FY 2008/09 claim amounts by 10%. This reduction would result in a more than \$37,000 loss of Local Transportation Funds to Morro Bay, funds that are necessary to operate Morro Bay's Dial-A-Ride service for the remainder of the fiscal year. The revenue decrease means the City will immediately have to consider and enact fare increases and major service cuts to the demand response transit system, as there are no additional General Fund monies available to further support the transit system.

For fiscal year 2008/09, the decrease in LTF would translate to a 28% service reduction for demand response service for the remainder of the fiscal year. This means effectively eliminating Saturday service and reducing weekday service by approximately 22% of the hours currently provided each weekday.

Public transportation is a lifeline to medical care, food and services for seniors, disabled and low-income residents. Unfortunately, with the reduction in the amount of LTF funds to be allocated to the City for the remainder of this fiscal year, there will be no choice but to consider and enact major service cuts and fare increases on those users of the service who can least afford it and who, often times, have no other means of transportation available to them.

On April 2, 2008, the Board awarded a Rural Transit Fund grant during the FY 2008/09 cycle to the City for the purchase of a replacement Dial-A-Ride vehicle in the amount of \$60,720. That project has not yet commenced, and City staff submitted a request to SLOCOG that the project description be modified from purchasing a replacement vehicle to providing operating assistance so the City can continue providing the existing service levels and fare structure to the riding public for the remainder of this fiscal year. The \$60,720 would offset the reduction to LTF allocated to the City, as well as, offset part of the General Fund support allocated for this fiscal year.

The vehicle to be replaced was purchased in 2005 and has approximately 87,000 miles on it. Although all three demand response vehicles rotate "in service" time, the vehicle is primarily used in a back up capacity. As there have been no major mechanical issues with the vehicle, the City would defer its replacement for another year. It is understood that the City would have to go through the application and approval process again to obtain another Rural Transit Fund grant in a future grant cycle to replace the vehicle.

The Morro Bay City Council is supportive of the City's Public Services Director's request to modify the Rural Transit Fund project description to allow for the funds to be used for transit operations and urges the Board approve your December 17 agenda item B-3 staff recommendation.

Thank you for your consideration in this matter.

Sincerely,

Mayor Janice Peters  
Councilmember Carla Borchard  
Councilmember Rick Grantham  
Councilmember Noah Smukler  
Councilmember Betty Winholtz

cc: Andrea Lueker, City Manager  
Bruce Ambo, Public Services Director  
Susan Slayton, Administrative Services Officer  
Janeen Burlingame, Management Analyst



AGENDA NO: A-6

MEETING DATE: 12/8/08

## Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** December 3, 2008

**FROM:** Dylan Wade, Utilities/Capital Projects Manager

**SUBJECT:** Continuation of Emergency per Public Contract Code Section 22050 for the Installation of Desalination Plant Energy Recovery Equipment

### **RECOMMENDATION:**

Staff recommends the City Council determine the necessity to continue the emergency per Public contract Code Section 22050 for the installation of desalination plant energy recovery equipment.

### **BACKGROUND:**

At your October 13, 2008 Council meeting, the City Council adopted Resolution 64-08 declaring that an emergency condition exists regarding immediate improvements to its Desal plant.

With the equipment design of the brackish membrane trains now complete, and a shipping date set in early December, it would take a minimum of several months to get the bid specifications completed, advertise, accept bids and bring a contract award to the Council. The delivery projections for State Water during the next calendar year are currently at 15%. There is insufficient time to go through the normal bidding procedures and complete the upgrade in between the end of this year's State Water shutdown and the beginning of next year's reduced State Water deliveries. Given the reduction in State Water deliveries and the increasing nitrate pollution we are experiencing in both the Morro and Chorro groundwater basins it is critical that we get the brackish water system operational as quickly as possible, and as such we need to continue the emergency per Public Contract Code (PC) Section 22050 for the installation of energy recovery equipment.

Pursuant to PC 22050(c)(1) the City Council must review that action and reaffirm by 4/5<sup>th</sup> vote at every regularly scheduled meeting until that action is terminated. Accordingly staff will Place this item on each subsequent agenda until the project is complete.

### **CONCLUSION:**

Staff recommends the City Council determine the necessity to continue the emergency per Public Contract Code Section 22050 for the installation of desalination plant energy recovery equipment.

**Prepared By:** \_\_\_\_\_

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

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

**City Attorney Review:** \_\_\_\_\_

**A PROCLAMATION OF THE CITY OF MORRO BAY  
DECLARING FRIDAY, DECEMBER 26, 2008  
AS  
A CITY HOLIDAY**

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

**WHEREAS**, December 25, 2008, Christmas Day, falls on a Thursday and it is anticipated that there will be minimal public use of city services on Friday, December 26, 2008; and

**WHEREAS**, according to the Personnel Rules and Regulations of the City of Morro Bay, Section 13, paragraph 13, the Mayor may proclaim any day as a "City Holiday; and

**WHEREAS**, the Friday closure has been requested by employees of the City of Morro Bay as it will increase staff morale by allowing for additional family bonding time during the Holidays.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Morro Bay does hereby proclaim Friday, December 26, 2008 as a City Holiday.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 8<sup>th</sup> day of December, 2008.

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**Janice Peters, Mayor  
City of Morro Bay, California**





AGENDA NO:

MEETING DATE:

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** November 21, 2008  
**FROM:** Dylan Wade Utilities/ Capital Projects Manager  
**SUBJECT:** The City of Morro Bay Water Management Plan Status Report 2008

**RECOMMENDATION:**

Review the Water Management Plan and adopt the attached status report.

**FISCAL IMPACT:**

No projected impact.

**BACKGROUND:**

The Water Management Plan in the simplest terms is the policy document that guides the “when, where, why, and how” the City of Morro Bay’s water resources be allocated. The Water Management Plan was originally adopted by the City Council on February 28, 1994 through the approval of Resolution No. 07-94. The document was adopted and certified as an amendment to the City’s Local Coastal Plan by the California Coastal Commission. Periodic review of this portion of our Local Coastal Plan is required. Adoption of the attached report satisfies this requirement.

**CONCLUSION:**

Review the Water Management Plan and adopt the attached status report.

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

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

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

City Attorney Review: \_\_\_\_\_

City of Morro Bay  
Water Management Plan Status Report  
December 2008

The City Council of Morro Bay has reviewed the adequacy of the community's water resources and reflected upon changes in climatic, hydrological, technological, or political conditions that have affected the City's long-term water supply since the adoption and certification of the Water Management Plan in 1995 and make the following comments:

The Water Management Plan, certified by the California Coastal Commission, identified resources and established priorities for the long-term water supply in Morro Bay. The Plan also delineated 13 specific programs and tasks to be implemented that, if successfully pursued, would provide adequate, sustainable water supplies for the community at General Plan build-out. The resources were prioritized as follows:

- Conservation
- Reclamation
- Groundwater
- State Water
- Desalination (routine replacement and seasonal peaking)
- Lake Nacimiento

The City is committed to providing safe affordable and sustainable water to Morro Bay residents and the Water Management Plan outlines steps to be taken to assure the acquisition of these resources. Of the 13 measures required by the Plan, six represented specific projects to be completed (such as permit acquisition) and seven are ongoing tasks (such as implementation of conservation programs). All 13 measures relate to the six priority policies listed above and are summarized in more detail on the attached Appendix "A".

Since the adoption of the Plan, the six projects have been completed and the seven programs successfully implemented to fulfill the Plan's goals. These projects and programs are summarized as follows:

1. Conservation: In conformance to the Water Management Plan, the community continues to conserve water substantially below the average annual personal water use threshold level of 130 gallons per day. These voluntary actions combined with conservation incentive programs established by the City Council that have been codified in the Morro Bay Municipal Code call for an escalating series of mandatory conservation measures that can be implemented depending upon the severity of the water supply emergency. Furthermore, the City has established a conservation based rate structure leading to the conclusion that Morro Bay's citizens are both cognizant of, and committed to, the need to sustain its precious water supply.

2. Reclamation: Pursuant to the Water Management Plan, two wastewater reclamation analyses were performed in 1997 and 1999, both concluding that without full grant permitting, design and construction funding and operational financial contributions by reclaimed water users, wastewater reclamation is not yet a financially viable water resource for the community. In 2007 the City of Morro Bay and the Cayucos Sanitary District acting under the Joint Powers Agreement adopted a facilities master plan and elected to pursue a tertiary upgrade to the existing wastewater treatment plant with an eye toward reclamation. Once the proposed wastewater treatment plant tertiary upgrade is complete, it is anticipated that this high quality effluent will provide increased opportunity for wastewater reuse.

3. Groundwater: Pursuant to the Water Management Plan, appropriate rights permits for the City's Morro and Chorro groundwater resources were acquired in 1995. The permits have not yet met all of the necessary conditions for licensing. The conditions of approval for the Chorro resource, however, have placed constraints that reduce availability and reliability of these supplies. In 2007 the City completed an analysis to determine the source of nitrate contamination in the Morro Valley. Based on the findings in the report the agricultural operations are the source of pollution in the watershed, and it may be years before the unlimited use of the groundwater resources are restored. Reliability issues and water quality contamination result in the determination that groundwater should appropriately be placed in a lower priority position.

4. State Water: Pursuant to the Water Management Plan, the City participated in the construction of facilities for the delivery of water from the State Water Project and deliveries from that resource commenced in 1997. Measures have been taken to provide increased reliability of the community's full contracted amount for the future through the purchase of drought buffers. Recent judicial decisions regarding endangered fish species, and concerns about the future of the State Water delivery system with regards to the stability of Delta levies, coupled with concerns about the impacts of global warming, have reduced the overall reliability of the State Water system. The risk of decreased reliability has been partially offset by the purchase additional drought buffer allocations. The State Water system has become and will continue to be the community's baseline potable water resource, reducing dependence upon local groundwater resources.

Concurrently, commencement of State Water deliveries to other parties located within the Chorro Valley, in the total contracted amount of 1,025 acre feet per year with 100% drought buffer, has brought new supplemental water into the watershed. This importation serves as an environmental enhancement on a watershed-wide basis by increasing the amount of water available for Chorro Creek as well as further reducing their dependence upon groundwater resources.

This imported surface water is of superior quality to the local groundwater, providing enhanced treated discharged water quality.

5. Desalination: In accord with the Water Management Plan, permits were acquired to provide for non-emergency operation of the Desalination Facility. The

Facility has been operated intermittently since the summer of 1995 to mitigate elevated groundwater nitrate concentrations. Currently the Desalination Facility is undergoing a series of major renovation to restore the ability to both reduce groundwater nitrate levels while restoring the facilities seawater conversion capabilities. This will enable the Desalination Facility to continue serve as a back up and peaking plant for deliveries from the State Water system.

6. Lake Nacimiento: In accordance with the Water Management Plan, acquisition of operational permits for the Desalination Facility and financial considerations led to the determination to not participate in the Lake Nacimiento Water Supply Project. At this point in time, the window of opportunity to consider acquisition of water from the Lake Nacimiento Water Supply Project is nearly closed.

Based upon the above, the Morro Bay City Council determines that the City of Morro Bay has substantially completed the tasks necessary to secure water resources adequate to meet the demands of the community in accord with the build-out projections of the General Plan. This has been accomplished through the acquisition of resources and completion of tasks and actions delineated in the 1995 Water Management Plan, to wit:

- Stridently continued levels of water conservation by the community;
- Commencement of potable water deliveries from the State Water Project with successful completion of measures to maximize reliability of those deliveries;
- Acquisition of appropriate groundwater rights permits;
- Acquisition of non-emergency operation permitting for the Desalination Facility, simultaneously providing seasonal peaking and routine replacement supply and allowing cessation of participation in the Lake Nacimiento Water Supply Project;
- Completion of two additional reclaimed water feasibility analyses;
- Completion of a system to uniformly blend water supplies within the City; and
- Other voluntary conservation programs underway.

The Morro Bay City Council, in recognition of the above facts, clarifies the priorities for long-term water policy:

- Conservation;
- Reclamation;
- State Water;
- Groundwater; and
- Desalination (routine replacement and seasonal peaking).

The City Council further confirms that completion of the Water Management Plan assures adequate, affordable and sustainable water supplies.

THIS WATER MANAGEMENT PLAN WAS REVIEWED AND THIS REPORT APPROVED by the City Council of the City of Morro Bay at a regular meeting held on the 8th day of December, 2008 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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Janice Peters, Mayor

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BRIDGETT BAUER, City Clerk

**APPENDIX “A”**  
to the  
2008 Water Management Plan Status Report

The 13 programs of the Morro Bay Water Management Plan (quoted and italicized) and summary of actions:

Measure 1: *“The City will develop appropriate levels of water conservation needed based on water availability and quality.”*

Action Summary: The City has implemented a five-tiered mandatory water conservation ordinance. The levels of conservation are: normal, moderately restricted, severely restricted, critical and emergency. The least restrictive level contains 5 mandatory conservation features. The City will continue to monitor the ordinance and modify as deemed appropriate by the City Council.

Measure 2: *“The City should continue with voluntary water conservation unless average annual personal water use exceeds 130 gpcd, at which time an extensive consumer education program shall be implemented and if unsuccessful, more stringent measures shall be adopted.”*

Action Summary: Since the adoption of the Water Management Plan, the citizens of Morro Bay have redoubled their commitment to water conservation. Total per capita water consumption has averaged 108 gallons per day with annual use varying slightly. Residential per capita water consumption was 72 gallons per day with a slight annual variation as well.

Water consumption will continue to be monitored per the Water Management Plan.

Measure 3: *“The City shall continue the use of groundwater within the limits of the City’s water rights and promote the continued conservation of all water use through existing programs and promote additional methods of conservation to the benefit of the consumers.”*

Action Summary: The City is using groundwater in conformance to the appropriate right permits. In addition to the existing conservation programs, the City implemented a customer rebate program for installation of low-flow toilets and faucets. The toilet program was intended to reach both those that chose not to participate in the current retrofit program and those that had previously retrofitted from 7 gallon toilet to 3.5 and now wished to have 1.6 gallon units. The public has responded well to both programs.

Existing programs shall continue and new programs shall be developed and implemented pursuant to the Water Management Plan.

Measure 4: *“The City shall take all the necessary steps to obtain the City’s rights to its groundwater within the Morro and Chorro Basins.”*

Action Summary: The State Water Resource Control Board (SWRCB) issued appropriate right permits for the Morro and Chorro groundwater wells after the adoption of the Water Management Plan. The permits, containing conditions of approval linking extractions to in-stream flow levels, were in the total requested annual amount of 1,723.5 acre feet per year. Full extractions of these rights have not been made due to the nitrate pollution encountered in both the Morro and Chorro groundwater basins. While the source of the nitrates has been determined in the Morro Basin, no long-term solution has as of yet

been developed. In the Chorro Basin the study to determine the source of the nitrate pollution is underway. As the results of these nitrate analysis are come forth the City will work with the other stakeholders in the basins to formulate a strategy for managing the pollution in the basins, while trying to protect and perfect our water rights.

Measure 5: *“Even with delivery of State Water, use of reclaimed water is the City’s second highest priority and remains a productive source of potential conservation for both large and small scale projects, respectively, and as a result, should be pursued when funded by a potential user, required as part of a wastewater plant upgrade or permit condition or when it is shown as cost effective for City use. Staff is further directed to pursue small-scale projects, as both internal and external funding sources are made available.”*

Action Summary: The City performed two separate wastewater reclamation analyses since the adoption of the Water Management Plan, one to provide tertiary level treatment for the entire Morro Bay – Cayucos Wastewater Treatment Plant (WWTP) and the other to construct a separate facility in the Chorro Creek watershed. Both analyses yielded the results that reclamation was not yet cost-effective for City use. The Morro Bay – Cayucos Wastewater Treatment Plant Master Plan identified a tertiary treatment upgrade as the selected alternative. The tertiary treatment upgrade will facilitate future reclamation projects.

Additional analyses, programs and projects will be performed pursuant to the Plan.

Measure 6: *“The City shall continue its participation in the State Water Project, in particular, the Coastal Branch Aqueduct and local facilities.”*

Action Summary: Facilities are constructed and deliveries from the State Water Project (SWP) commenced in September 1997. This water has significantly better water quality than the local groundwater and is preferred by the citizens.

Measure 7: *“The City shall apply for and obtain permits to allow operation of the existing desalination facilities as a source of routine replacement water. With the high energy consumption of desalination, it is expected that the facilities will be operated intermittently once State Water is available. The main purpose of the facilities will be to make up for shortfalls in State Water and/or groundwater during droughts and blending to meet the City Council’s established minimum water quality standards, so long as those standards are consistent with the State Department of Health Services potable drinking water standards. The permits should allow use of the facilities at the discretion of the City, so that the City can utilize all of its water supply options without declaring a water emergency.”*

Action Summary: Permits for non-emergency operation of the Desalination facility have been perfected so that the Desalination facility can be operated at the discretion of the City. Since the arrival of State Water, there have been only limited periods during the State Water shutdowns when the Desalination facility has operated to make up the shortfalls. During these periods the City relies on the output of the desal plant to produce a blended water that meets minimum drinking water standards.

The City Council has not adopted discrete local water quality standards and we continue to employ the standards promulgated by the State Department of Health Services. Established water quality standards will be monitored and, if deemed appropriate, the City Council will adopt consistent local standards.

Measure 8: *“Once permits are obtained, and before State Water is available, the City should begin operation of the desalination facilities, to verify its performance and to allow groundwater basins to achieve the minimum water quality standards established by the City Council, so long as those standards are consistent with the State Department of Health Services potable drinking water standards. Due to a settlement agreement between the City and the Cayucos Sanitary District, no discharge of brine water from the desalination facilities into the jointly owned outfall shall occur.”*

Action Summary: After issuance of permits for the Desalination Facility in early 1995 and prior to SWP deliveries in late 1997, the Desalination Facility was operated. With nitrate concentrations in the local groundwater above the maximum contaminant levels established by the EPA and State Department of Health Services, the City operated the Facility in the summer of 1995. Desalted water was blended with nitrate-contaminated groundwater making it possible to deliver potable water to the community.

Discharge of brine is via a permitted agreement with the Morro Bay Power Plant and a duly issued NPDES permit has been issued. This permit is up for and will be renewed in the 2009 calendar year.

Measure 9: *“The City shall monitor groundwater levels and quality. The desalination plant initially shall be operated as necessary to reduce groundwater pumping to ensure that groundwater quality meets or exceeds established minimum water quality standards for a continuous period of not less than four consecutive months. Thereafter, the desalination plant shall be used as needed to ensure the City’s minimum water quality standards are met as routine replacement and to offset drought conditions.*

Action Summary: The City continues to monitor groundwater levels and quality. All groundwater wells in both the Morro and Chorro groundwater basins with the exception of well 11A do not meet water quality standards for nitrate contamination. During periods when State Water is not available the desal plant has been used to treat and blend with well water to produce water that meets water quality standards. The Desalination Facility will continue to be available for use consistent with the Water Management Plan.

Measure 10: *“When State Water becomes available, the City shall conjunctively use State Water, groundwater, and routine replacement desalination water to meet its demands in an economical manner without causing adverse levels of seawater intrusion or exceeding minimum water quality criteria as defined by the State or a subsequent action by the City.”*

Action Summary: Since the arrival of State Water, the community has had the ability to conjunctively use these resources. The availability of State Water has been such that all demands have been met without needing to access groundwater or to operate the Desalination Facility except for programmed SWP maintenance interruptions and as a peaking resource. There has been no seawater intrusion found and water introduced to our system consistently meets adopted standards.

The City will continue to provide conjunctive use of its water resources pursuant to the Water Management Plan.

Measure 11: *“A replacement well or wells for Well No. 8 should be constructed, far enough from Chorro Creek that the pumped water will not be under the influence of surface water.”*

Action Summary: A suitable replacement well for No. 8 was not identified. With the determination by the SWRCB in late 1995 that Chorro groundwater is fully appropriated between May and December, additional groundwater well(s) subject to appropriative rights permitting are not likely to provide a viable long-term source of water.

Measure 12: *“The City shall consider construction of a blending system to uniformly blend its water supplies within the City. Blending will greatly improve water quality and will increase flexibility in which groundwater wells are pumped. Blending will also help the City meet stringent new water quality regulations currently being promulgated at the State and Federal levels.”*

Action Summary: This blending system was completed in the fall of 2001.

Measure 13: *“If a permit is not received for operation of the desalination facilities as a routine replacement water source, the City should consider whether to continue to participate in Nacimiento Water Supply Project, as that project moves into the Phase 4, preliminary design and environmental review.”*

Action Summary: With Desalination Facility permitting acquired, the City elected to not participate further in the Nacimiento Water Supply Project. At this juncture it is probably too late to subscribe to the Nacimiento Water Supply Project.



AGENDA NO:       C-1      

MEETING DATE:    12/08/08   

# Staff Report

**TO:** Honorable Mayor and Council

**DATE:** 12/01/08

**FROM:** Harbor Director

**SUBJECT:** Budget Amendment to Appropriate Harbor Funds for Completion of Harbor Department Modular Office Project

**RECOMMENDATION:**

- A. Authorize a budget amendment to the FY08-09 City of Morro Bay budget to transfer \$235,000 from Harbor Fund Accumulation to Harbor Capital Improvement Fund account #8452 – Harbor Temporary Office Project.
  
- B. Authorize Staff to release bids for a replacement modular office and demolition/site work to complete the project in this fiscal year.

**FISCAL IMPACT:**

The City has previously budgeted \$221,500 to this project and expended approximately \$30,000 for planning design/development and permitting to date. Current cost estimate for construction is \$394,000 plus \$30,000 for transition costs, new modular furnishing and project management. Harbor Cash Accumulation Fund balance at close of FY07-08 was approximately \$750,000. A transfer of \$235,000 from Accumulated Cash in the Harbor Fund to the Capital Project account will reduce Harbor Fund Accumulated Cash to approximately \$515,000.

**BACKGROUND:**

The Harbor Department operates out of a 960 square foot building that was constructed in the 1950s. In FY07-08 the City made an original appropriation of \$81,500 for planning and design of a modular office to replace the existing building under modern building, health and safety codes. In FY08-09 an additional \$140,000 was appropriated to this Capital Project account. Earlier this year the Planning Commission and City Council approved plans to construct a 1500 square foot modular on the site of the existing Harbor Office.

**Prepared By:** \_\_\_\_\_

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

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

**City Attorney Review:** \_\_\_\_\_

In September of 2008, the Coastal Commission issued a Coastal Permit Waiver on the project. RRM Design Group was engaged to complete design documents suitable for bidding and to provide a detailed cost estimate for construction. On November 24, 2008 we received a cost estimate for construction of the project of \$394,000.

**DISCUSSION:**

Final bid documents should be ready for release in late December of 2008. There will be a dual bid process, one for the modular unit purchase and installation, and one for demolition and site work. The Harbor Department will use Mar-Wal Construction for construction management, and estimates an additional \$30,000 in costs for construction management, office relocation costs and new modular furniture for the office. We have permission from the Morro Bay Power Plant (MBPP) to use the Visitor Center (Gatehouse) at the MBPP entrance for the duration of the project. The MBPP Visitor Center will become the Harbor Department Customer Service Center and Harbor Patrol duty desk. We will locate a storage unit in the area for Harbor Patrol boat equipment, and find alternate office space for other Harbor Department personnel during construction.



AGENDA NO:

MEETING DATE:

## Staff Report

**TO:** Honorable Mayor And City Council                      **DATE:** December 2, 2008  
**FROM:** Rob Schultz, City Attorney  
**SUBJECT:** Status of Urgency Interim Ordinance Prohibiting the Establishment of Medical Marijuana Dispensaries

### **RECOMMENDATION:**

It is the recommendation of the City Attorney's Office that the City Council ban medical marijuana dispensaries until such time as the tension between State and Federal law is resolved. An ordinance banning Medical Marijuana Dispensaries (MMD) would not preempt California law governing medical marijuana and would not impact qualified patients' and caregivers' rights to cultivate and possess medical marijuana for their own medical use, provided they maintain compliance with State law.

### **FISCAL IMPACT:**

None at this time.

### **SUMMARY:**

In 1996 California voters enacted Proposition 215, the Compassionate Use Act, which protects qualified patients and their primary caregivers from prosecution under California laws for possession or cultivation of marijuana to treat serious illness pursuant to a doctor's recommendation. Several years later, in 2003, the state legislature enacted implementing legislation to allow qualified patients and caregivers to obtain identification cards that insulate them from arrest for cultivation and/or use of marijuana for authorized medical purposes. Although not expressly authorized under these laws, some people used this legal backdrop to set up medical marijuana dispensaries where qualified patients and caregivers could purchase marijuana for medical use.

However, under federal law, marijuana has no currently accepted medical use and the cultivation, possession, or distribution of marijuana is prohibited. Congress has not changed this prohibition despite the passage of medical marijuana laws in a number of states. The ongoing conflict between

**Prepared By:** \_\_\_\_\_                      **Dept Review:** \_\_\_\_\_  
**City Manager Review:** \_\_\_\_\_  
**City Attorney Review:** \_\_\_\_\_

federal and state law on this subject has created a dilemma for local governments and their law enforcement agencies, particularly with regard to medical marijuana dispensaries.

The City's moratorium will expire January 1, 2009. Under state law, it may not be continued beyond that date. During previous discussions, the City Council has expressed interest in considering an ordinance that would establish provisions for locating and regulating medical marijuana dispensaries (MMDs) within the City of Morro Bay. In response, the City's Attorney's Office has been developing a possible approach to locating and regulating MMDs and has prepared a draft ordinance.

The purpose of this agenda item is to provide the City Council with an opportunity to review the current status of federal and state law and the associated risks and possible consequences of establishing an ordinance allowing medical marijuana dispensaries. The draft ordinance prepared by the City Attorney's office has not been reviewed by other Staff. Therefore, should the Council not accept the City Attorney's recommendation to ban MMDs and decide instead to develop regulations allowing MMDs, enough time should be allowed for further staff input.

### **BACKGROUND AND LEGAL ANALYSIS**

Under the Controlled Substances Act enacted by Congress in 1970, marijuana is classified as a Schedule I controlled substance. This classification is based on a determination that marijuana (1) has a high potential for abuse, (2) has no currently accepted use for medical treatment, and (3) is not accepted as safe, even when used under medical supervision. This federal law makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States. Use of marijuana is also prohibited under the "California Uniform Controlled Substances Act," passed in 1972.

On November 5, 1996, California voters passed Proposition 215, the "Compassionate Use Act of 1996," with the stated intent of ensuring that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician. This voter initiative exempts patients and their primary caregivers from prosecution under State laws that otherwise prohibit the cultivation or possession of marijuana. A "primary caregiver" is defined as "the individual, designated by a qualified patient or person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person...." (H&S Section 11362.7(d))

Shortly after Proposition 215 passed, medical marijuana dispensaries began appearing in Oakland, San Francisco and Santa Cruz. Although one of the Act's stated purposes is "To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana", to date this plan has not been forthcoming, although the Attorney General recently released guidelines which are discussed below. This vacuum and lack of direction from the Legislature left communities to guess at how the Act was intended to be implemented, particularly as it concerns the distribution of medical marijuana through dispensaries. In response, the federal Drug Enforcement Agency (DEA) took an aggressive role to close these businesses as being in violation of federal law. This enforcement activity resulted

in a number of significant court decisions. The first of these decisions was *United States v. Oakland Cannabis Buyers Cooperative, et al.* (2001) 532 U.S. 483. In that case, the United States Supreme Court held that there is no medical necessity exception to the prohibition against possession and use of marijuana under federal law, even when the patient is “seriously ill” and lacks alternate sources of relief. In *People v. Mower* (2002) 28Cal.4th 457, the California Supreme Court held that although Proposition 215 exempts qualified individuals from certain State marijuana laws, it does not grant an absolute immunity from arrest. Instead, it provides a limited immunity from prosecution and may provide a basis for a pretrial motion to set aside an indictment or a defense at trial.

In 2003, the State legislature passed Senate Bill 420, effective January 1, 2004, which established the Medical Marijuana Program. This legislation creates a voluntary system for qualified patients and their caregivers to obtain identification cards issued by counties that will insulate them from arrest for violations of State law relating to marijuana. It does not expressly authorize establishment of medical marijuana dispensaries. Nevertheless, after passage of SB 420, a number of people opened or attempted to open medical marijuana dispensaries in cities throughout the state.

In June 2005, the United States Supreme Court rendered an opinion in the case of *Gonzales v. Raich* (2005) 125 S.Ct. 2201. In the *Raich* case, federal agents seized and destroyed marijuana plants that were being grown for personal medical use. The plaintiffs sued to prohibit enforcement of the Controlled Substances Act to the extent that it interfered with their medical use of marijuana as permitted under California law. The Ninth Circuit Court of Appeals held that federal law enforcement authorities could not enforce the Controlled Substances Act against these individuals because it exceeded Congressional authority under the commerce clause of the United States Constitution. The Supreme Court reversed, holding that the commerce clause does allow Congress to prohibit cultivation or use of marijuana for medical purposes authorized by California law. Although the Supreme Court’s analysis focused narrowly on the scope of Congressional authority under the commerce clause, the practical effect of the *Raich* decision is that federal law enforcement officers may continue to enforce federal drug laws against Californians who cultivate or use medical marijuana. The Supreme Court in *Raich* did not go so far, however, as to invalidate California law permitting the medicinal use of marijuana. No appellate court has as yet invalidated the California law. What resulted was a substantial controversy over the validity of state law permitting medicinal use of marijuana when federal authorities may legally raid medical marijuana dispensaries, shut them down, and prosecute those persons dispensing or using marijuana inside them. The *Raich* decision cast a cloud of uncertainty over the Compassionate Use Act.

In August 2008, California Attorney General (AG) Jerry Brown for the first time issued guidelines for the operation of California’s medical marijuana laws (as he is required to do under those laws). The AG guidelines are attached hereto and are an important step towards fully clarifying the legal landscape and towards implementing medical marijuana law in California. They advise patients on how stay within the confines of state law. They advise law enforcement on how to approach encounters with medical marijuana patients. They advise patients, law enforcement, and local communities on what is allowed and what is not allowed with regards to medical marijuana under California law. Although the AG guidelines are recommendations and are not binding on any court,

they do provide powerful direction to state and local law enforcement, judges, and other public officials.

Perhaps most importantly, the AG guidelines provide recommendations for operating medical marijuana dispensaries in accordance with state law. Specifically, the Attorney General states:

“...a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines... are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful.”

The AG guidelines also contain a provision requiring medical marijuana dispensaries to operate on a not-for-profit basis.

On November 24, 2008, the California Supreme Court, in a unanimous decision, defined the term “primary caregiver” as used in the Compassionate Use Act (CUA) of 1996. In the case of *People v. Mentch*, S148204, the Court held that the CUA “provides partial immunity for the possession and cultivation of marijuana to two groups of people: qualified medical marijuana patients and their primary caregivers. We hold that a defendant whose care giving consisted principally of supplying marijuana and instructing on its use, and who otherwise only sporadically took some patients to medical appointments, cannot qualify as a primary caregiver under the Act...”

According to the evidence presented by Mentch, he opened a care giving and consultancy business in March 2003 called the Hemporium, the purpose of which was to give people safe access to medical marijuana. He provided the drug to approximately five different people, each of whom possessed a valid recommendation for the use of marijuana. He did not profit from his sales of marijuana, he counseled his customers about the best strains of marijuana to use for their ailments, and he took “a couple of them” to medical appointments on a sporadic basis.

The Supreme Court in *Mentch* held that “the statutory definition has two parts: (1) a primary caregiver must have been designated as such by the medical marijuana patient; and (2) he or she must be a person ‘who has consistently assumed responsibility for the housing, health, or safety’ of the patient.” The Court concluded that “a defendant asserting primary caregiver status must prove at a minimum that he or she (1) consistently provided care giving, (2) independent of any assistance in taking medical marijuana, (3) at or before the time he or she assumed responsibility for assisting with medical marijuana.” The Court went on to note, “primary caregiver status requires an existing, established relationship. In some situations, the formation of a bona fide care giving relationship and the onset of assistance in taking medical marijuana may be contemporaneous, as with a cancer

patient entering chemotherapy....” However, the Court held, “what is not permitted is for an individual to establish an after-the-fact care giving relationship in an effort to thereby immunize from prosecution previous cultivation or possession for sale.” One who merely supplies a patient with marijuana has no defense under the CUA, said the Court, and one has to be a caregiver before he or she provides the marijuana.

The Supreme Court in *Mentch* discussed the purpose of the CUA as one to help those who were seriously ill and who could benefit from the use of marijuana for medical purposes. It pointed out that the CUA’s “focus is on the seriously and terminally ill, [and] logically the Act must offer some alternative for those unable to act in their own behalf; accordingly, the Act allows ‘primary caregivers’ the same authority to act on behalf of those too ill or bedridden to do so. To exercise that authority, however, one must be a ‘primary’ — principal, lead, central — ‘caregiver’ — one responsible for rendering assistance in the provision of daily life necessities — for a qualifying seriously or terminally ill patient.” In a footnote, the Court stated that “the Act is a narrow measure with narrow ends. As we acknowledged only months ago, ‘the proponents’ ballot arguments reveal a delicate tightrope walk designed to induce voter approval, which we would upset were we to stretch the proposition’s limited immunity to cover that which its language does not.”

### **CONCLUSION:**

The AG guidelines and the *Mentch* California Supreme Court decision seem to finally resolve a major dispute in regard to the state’s medical marijuana laws. It is now clear that to be classified as a “primary caregiver,” one must be able to prove that he or she provided for the qualified patient’s needs prior to providing medical marijuana. Furthermore, those needs are now clearly articulated and include the rendering of assistance in the provision of daily life necessities to a seriously ill person. That includes assisting such a person with his or her housing, health and/or safety needs and does not mean just providing medical marijuana.

Based upon the AG guidelines and the *Mentch* decision, it is the City Attorney Office’s recommendation that City Council should create an ordinance banning MMDs but not preempt California law governing medical marijuana and qualified patients’ and caregivers’ rights to cultivate and possess medical marijuana for their own medical use, provided they maintain compliance with State law.



AGENDA NO: D-1

MEETING DATE: 12/08/08

## Staff Report

**TO:** Honorable Mayor And City Council      **DATE:** December 2, 2008

**FROM:** City Clerk

**SUBJECT:** Appointment of Vice Mayor to Serve a One-Year Term

### RECOMMENDATION

Appoint a Council Member to serve a one-year term as Vice Mayor effective January 2009.

### DISCUSSION

Based on City Council Policies and Procedures, the appointment of the Vice Mayor shall be for a one-year term and shall be made at the first meeting in December. For appointment as Vice Mayor, a Council Member must be on the Council at least one year. Of those who have been on the Council for at least one year, the Council Member who has not yet held the position shall be appointed Vice Mayor. If there are two Council Members who have not yet held the position, the Council Member receiving the highest number of votes in the most recent election shall be appointed Vice Mayor. If all have held the position, the Council Member who has held it the least number of times shall be appointed Vice Mayor. If all Council Members have held it for the same number of years, the Council Member for whom it has been the longest period of time since holding the position shall be appointed Vice Mayor.

Prepared By: B. Bauer  
City Manager Review: \_\_\_\_\_  
City Attorney Review: \_\_\_\_\_



AGENDA NO: D-2

MEETING DATE: 12/08/08

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** December 2, 2008

**FROM:** Andrea K. Lueker, City Manager

**SUBJECT:** City Council Annual Regular Meeting Schedule - 2009

## **RECOMMENDATION:**

Staff recommends the City Council adopt the proposed meeting schedule for calendar year 2009:

1. The regular meeting dates are the second and fourth Monday of each month with the exception of July 27<sup>th</sup>, November 23<sup>rd</sup> and December 28<sup>th</sup>, which are traditionally cancelled.
2. In the event the 2<sup>nd</sup> or 4<sup>th</sup> Monday falls on a recognized City holiday (May 25<sup>th</sup>), the meeting be held on the following Tuesday,.
3. Approve March 30<sup>th</sup> and November 30<sup>th</sup> (fifth Mondays) as the dates for joint City Council – Planning Commission meetings. Due to the proximity of the November 30<sup>th</sup> date to Thanksgiving and the lack of other 5<sup>th</sup> Mondays, the Council may want to look at 3<sup>rd</sup> Mondays for this meeting.
4. Review potential dates for Joint Wastewater Treatment Plant meetings.

## **BACKGROUND:**

For the past five years, staff has proposed a schedule of meeting dates for the City Council for the new calendar year. The proposed schedule for the 2009 calendar year is very similar to the 2008 calendar with the exception of the Joint Wastewater Treatment Plant meeting dates to be determined.

A 2009 calendar is attached for your reference.

u.w.council.annual meeting schedule 09

**Prepared By:** \_\_\_\_\_

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

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

**City Attorney Review:** \_\_\_\_\_

AGENDA NO: D-3

MEETING DATE: 12/08/08



## Staff Report

**TO: Honorable Mayor And City Council      DATE: December 2, 2008**

**FROM: City Clerk**

**SUBJECT: Appointment of Representatives on Discretionary Boards**

### **RECOMMENDATION**

Discuss and appoint or re-appoint representatives to serve on the various boards and committees.

### **DISCUSSION**

Based on City Council Policies and Procedures, annually the Mayor shall make appointments to a variety of County and/or regional committees and boards. One Member of the Council shall serve as a voting representative and one Member shall serve as alternate. (See 6.6.2 for appointment procedures.) To the best of their ability, Voting Delegates shall reflect the majority view of the Council as a whole, rather than their own personal opinions.

Attached for your review is a list of the present City Council Discretionary Appointments.

Prepared By: B. Bauer  
City Manager Review: \_\_\_\_\_  
City Attorney Review: \_\_\_\_\_



AGENDA NO: D-4

MEETING DATE: 12/08/08

## Staff Report

**TO:** Honorable Mayor And City Council      **DATE:** December 2, 2008

**FROM:** City Manager, Andrea K. Lueker  
City Clerk, Bridgett Bauer

**SUBJECT:** Set Date For Interviews Of Commissioner/Advisory Board Vacancies And Discussion Regarding Frequency Of Meetings, Number Of Members And Potential New Representation Categories

### **RECOMMENDATION**

Advise staff on advertising efforts to fill vacancies on the City's Planning Commission, Recreation & Parks Commission, Harbor Advisory Board, Public Works Advisory Board and Community Promotions Committee; and, schedule a date and time to interview applicants.

Staff further recommends the City Council briefly discuss the frequency of meetings/cancellation policy on meetings, number of Board and Commission members and the make-up of the Boards and Commissions in terms of designated categories. After discussion, staff recommends the City Council refer these items to the Boards and Commissions for their input and then return to the City Council with those recommendations.

### **DISCUSSION**

Attached is a list of City Commissions and Advisory Boards reflecting upcoming term expirations providing the number of upcoming vacancies on each Board and Commission.

There has been discussion regarding Board and Commission size, frequency of meetings, meeting cancellation policy as well as designated categories that exist on some Boards and Commissions. The City Council may want to amend some/none or all of these, however, prior to making any changes, staff strongly suggests these topics be presented to each Board and Commission for a discussion and recommendation from that Board.

**Prepared By:** \_\_\_\_\_

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

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

**City Attorney Review:** \_\_\_\_\_