City of Morro Bay
City Council Agenda

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.

REGULAR MEETING
TUESDAY, JANUARY 26, 2016
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
CLOSED SESSION REPORT
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS –

PUBLIC PRESENTATIONS – None

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.

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.

A. CONSENT AGENDA

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

A-1 APPROVAL OF MINUTES FOR THE SPECIAL CITY COUNCIL MEETING HELD ON JANUARY 12, 2016; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE SPECIAL CLOSED SESSION CITY COUNCIL MEETING HELD ON JANUARY 13, 2016; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 TRANSIENT OCCUPANCY TAX AUDIT RECOMMENDATIONS FOR 2012 - 2014; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Authorize staff to audit vacation rentals only for Transient Occupancy Tax (TOT) for the upcoming audit period 2012-2014.

A-4 AUTHORIZATION FOR ATTENDANCE AT THE C-MANC ANNUAL WASHINGTON, D.C., "WASHINGTON WEEK" MEETINGS; (HARBOR)

RECOMMENDATION: Approve as submitted.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 DISCUSSION OF THE MAJOR MAINTENANCE & REPAIR PLAN (MMRP) FOR THE EXISTING WASTEWATER TREATMENT PLANT FOR THE NEXT FIVE-YEAR PERIOD; (PUBLIC WORKS)

RECOMMENDATION: Phase out the MMRP for the existing WWTP in FY 16/17 and fund any necessary repairs through the operations and maintenance budget.

C-2 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 600 ADDING CHAPTER 8.17 TO THE MORRO BAY MUNICIPAL CODE REGULATING THE USE OF EXPANDED POLYSTYRENE PRODUCTS WITHIN THE CITY; (PUBLIC WORKS)

RECOMMENDATION: Review Ordinance No. 600, accept public comment, and make a motion for introduction and first reading of Ordinance No. 600, by number and title only, adding Chapter 8.17 to the Morro Bay Municipal code regulating the use of expanded polystyrene products within the city.

C-3 CONSIDERATION OF FUTURE DIRECTION OF LEASE SITE 87-88/87W-88W, LOCATED AT 833 EMBARCADERO, OWNED BY B&L FLASH, INC. (VIOLET LEAGE AND BARRY LAMBERT); (HARBOR)

RECOMMENDATION: Withdraw the February 18, 2014, Consent of Landowner for the project proposed by B&L Flash due to lack of progress and direct staff to release a Request for Proposals for the site.

C-4 REVIEW OF USE OPTIONS AND POSSIBLE REDEVELOPMENT OPPORTUNITIES FOR THE 781 MARKET AVENUE (DISTASIO'S) PROPERTY, ADJACENT MARKET AVENUE AND EMBARCADERO PARKING LOTS, AND MARKET AVENUE RIGHT-OF-WAY; (COMMUNITY DEVELOPMENT/PUBLIC WORKS)

RECOMMENDATION: Discuss and provide direction to staff.

C-5 REVIEW OF 2007 PARKING MANAGEMENT PLAN AND IMPLEMENTATION OPTIONS; (COMMUNITY DEVELOPMENT/PUBLIC WORKS)

RECOMMENDATION: Discuss and provide direction to staff.

C-6 INTRODUCTION AND FIRST READING OF ORDINANCE NO. 598 AMENDING SECTION 3.08.070 OF THE MORRO MUNICIPAL CODE RELATING TO BIDDING; (CITY ATTORNEY)

RECOMMENDATION: Introduce Ordinance 598 and waive further reading, amending Section 3.08.070 of the Morro Bay Municipal Code relating to Bidding.

C-7 ADOPTION OF ORDINANCE NO. 599 AMENDING TITLE 9, CHAPTER 9.06 OF THE MORRO BAY MUNICIPAL CODE, PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, TO FURTHER PROHIBIT MARIJUANA CULTIVATION CITYWIDE AND PROVIDE OTHER MISCELLANEOUS EDITS; (CITY ATTORNEY)

RECOMMENDATION: Adopt Ordinance No. 599 amending Title 9, Chapter 9.06 of the Morro Bay Municipal Code, prohibiting the establishment of medical marijuana dispensaries, to further prohibit marijuana cultivation citywide and provide other miscellaneous edits, and waive further reading.

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, February 9, 2016 at 6:00 pm** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

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 772-6205 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 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: A-1

MEETING DATE: January 26, 2016

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – JANUARY 12, 2016
MORRO BAY VETERAN'S HALL
209 SURF STREET – 4:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Councilmember
	Matt Makowetski	Councilmember
	Noah Smukler	Councilmember
ABSENT:	John Headding	Councilmember
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Sam Taylor	Deputy City Manager
	Susan Slayton	Administrative Services Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Manager
	Eric Endersby	Harbor Director
	Amy Christey	Police Chief

ESTABLISH QUORUM AND CALL TO ORDER
Mayor Irons established a quorum of the City Council, with Councilmembers Johnson, Makowetski and Smukler present, and called the meeting to order at 4:05pm.

SPECIAL MEETING AGENDA ITEM:

I. STUDY SESSION TO DISCUSS FY 16/17 PROGRAM OBJECTIVES ASSOCIATED WITH THE ADOPTED CITY GOALS
HTTPS://YOUTU.BE/3NDEA91TEWU?T=34S

City Manager Buckingham opened his presentation with a brief overview of the discussion and approval process for FY 16/17 Program Objectives.

PUBLIC COMMENT RE: ITEMS ON THE AGENDA
https://youtu.be/3nDEa91tEwU?t=9m42s\

The public comment period for Item I was opened.

Ric Deschler, Morro Bay, was hopeful the goals presented will address and find a solution to deal with solid waste, perhaps considering a regional plant with Los Osos.

KC Caldwell, Morro Bay, shared her areas of interest which fall under Goal 8 - Quality of Life: 1) address the aging tree population by reestablishing the tree committee and reviewing the tree

ordinance; 2) expand the public viewshed corridor, 3) underground transmission lines, and 4) develop a public art policy.

Robert Davis, on behalf of the Morro Bay Citizens Bike Committee, presented a list of needs for the next few years: 1) Class 1 bike path from near Lemos to Cloisters; 2) safety improvements at San Jacinto / Main to help Del Mar students cross safely; 3) Bike Friendly Community signage; 4) bike route signage on southbound Highway 1 near Yerba Buena; 5) secure bike parking at public buildings, commuter destinations, and business clusters to encourage commuting; and 6) traffic calming on San Jacinto.

Marlys McPherson, Morro Bay, would like the commitment to funding street repairs be a priority, including redirecting general fund monies, if necessary.

Walter Heath, Morro Bay, presented a list compiled by Citizens Beautification and Heritage Committee, including: permanent lighting in the downtown corridor street trees; approved design and locations for ten interpretative panels for the hidden history project--requesting $10K in funding which is a 50% match; a signage program that includes wayfinding and street signs as well as design elements for commercial signage; and a "no smoking in public places campaign" to address cigarette butt pollution and enforcement of the existing ordinance.

Rigmore, Morro Bay, stated her support for underground utilities and providing designated smoking areas at public buildings.

Joan Solu, Morro Bay, suggested the public comment period follow staff presentations to allow the public to ask questions based on both the staff report and presentation. She also requested the expected cost be published once goals and objectives are established.

Lynda Merrill, Morro Bay, shared her top concern is fiscal solvency and how the City will continue to pay its employees' salaries and retirement. In order to protect wildlife, she asked the Council to ban fireworks and eliminate hunting in the bay. She supported an Otter Appreciation Day, discouraged large hotels, suggested the City review and minimize signage and banners, and not to pursue Community Choice Aggregation at this time.

Glenn Silloway, Morro Bay resident and member of the Citizens Beautification and Heritage Committee, suggested the City consider the following objectives: include public benches and donated memorial benches in the Facilities Maintenance Program and Parks Master Plan; include public restroom and shower signage in the Facilities Maintenance Program and Parks Master Plan; convert the front lawn at the Veteran's Hall to a garden place of honor and reflection; install a public view deck at the end of Surf Street; research the Caltrans approval process for a gateway mural at the Highway 1/41 overpass/underpass; replace the service organization sign located across from Lemos and the Welcome to Morro Bay sign to include plaques of service organizations and landscaping; review the Adopt-a-Park program and adopt best practices for participation; and establish a process for naming and renaming parks.

Dana McClish, Morro Bay resident, member of the Harbor Advisory Board and Chair of Marine Facilities Ad-hoc Committee, shared the Harbor Advisory Board's list of top goals: 1) boatyard

haul out, 2) eelgrass review, 3) dredging the harbor entrance, channels and continued pursuit of State Park Marina dredging, 4) establishment of a marine research facility, 5) support for LEAP and other economic development efforts, 6) an Ad-hoc committee to conduct research and fact-finding on the marine sanctuary issue, 7) continued support for off-boat fish sales to the public, 8) develop a Harbor cost allocation budget, 9) assist in fact finding and decision making regarding Measure D.

The public comment period was closed.

Mr. Buckingham continued the staff presentation by reviewing each goal and the draft list of objectives under each goal, turning it over to Council for questions and comments between Goals. https://youtu.be/3nDEa91tEwU?t=38m59s

Goal #1 – Develop New WRF

Responding to public comment, Councilmember Smukler noted the analysis of on-site composting and other options will be presented for Council consideration. He also requested other water reclamation options be included as an objective to take advantage of opportunities as they come forward. He and Councilmember Johnson suggested staff add improving influent quality as an objective. There was Council consensus to include the Morro Basin Management Plan, including assessment of potential funding opportunities, under Goal 9.

Goal #2 - Improve Streets

Councilmember Johnson confirmed the discussion of street funding initiatives will come to Council in March 2015. The 2-year pavement management plan will be added as a FY 16/17 objective and presented to PWAB and Council.

Councilmember Smukler requested the specific projects recommended by the Bike Committee and Citizens Beautification Committee be included, along with detail on which items are achievable.

Goal #3 – Review and Update Significant City Land Use Plans

Mayor Irons wanted to ensure an increase in the GP/LCP work scope doesn't delay the completion of the project beyond the stated time frame.

As suggested by the Harbor Advisory Board, the marine facility master plan will be added to the list of potential objectives for 2016/17.

Goal #4 – Maintain Core Public Safety Services

The Council is pleased to see CERT training continue and suggests using all available methods to educate the public.

Goal #5 – Ensure Fiscal Sustainability

Mayor Irons and Councilmember Johnson suggested a discussion on RV camping areas may naturally evolve out of the General Plan update and should be removed from the list.

Staff confirmed several budget policies were addressed last year, so the goal this year is to review older resolutions along with current policies and merge them into one document. Staff will also investigate online budget transparency tools.

Goal #6 – Support Economic Development

The Council suggested a public workshop to educate businesses on the opportunity of creating a BID and allow interest to evolve from within the industry and not be driven by the City.

Councilmember Johnson suggested Business Community Partnerships and Business Support Services might be further refined and possibly combined. She was also pleased to see further discussion on a Commercial Real Estate Inventory, which Mayor Irons recommended include the allowable uses for each property.

Councilmember Makowetski confirmed an Economic Development Code Scrub would go along with the GP/LCP update, as well as through the Economic Development Strategic Plan review and adoption. In response to questions about the Maritime Museum, Mr. Buckingham noted that in the near-term they will move boats and install a temporary building; while the long-term project includes a permanent facility and must be synchronized with nearby property uses.

ADJOURNMENT
The meeting adjourned at 5:55 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES – MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
JANUARY 13, 2016
CITY HALL CONFERENCE ROOM – 6:15 P.M.

AGENDA NO: A-2

MEETING DATE: January 26, 2016

PRESENT:	Jamie Irons	Mayor
	John Headding	Councilmember
	Christine Johnson	Councilmember
	Matt Makowetski	Councilmember
	Noah Smukler	Councilmember
STAFF PRESENT:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Colin Tanner	Chief Labor Negotiator
	Susan Slayton	Administrative Services Director

ESTABLISH QUORUM AND CALL TO ORDER – A quorum was established and the meeting was called to order at 3:04 p.m.

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

CLOSED SESSION PUBLIC COMMENTS - Mayor Irons opened the meeting for public comments for items only on the agenda; seeing none, the public comment period was closed.

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

CS-1 <u>CONFERENCE WITH LABOR NEGOTIATORS</u>
City Designated Representative: Colin Tanner, Chief Labor Negotiator
Employee Organizations: Morro Bay Firefighters' Association; Morro Bay Police Officers' Association; Service Employee's International Union, SEIU Local 620; Management Employees; and, Confidential Employees

RECONVENE TO OPEN SESSION - The City Council reconvened to Open Session.

ADJOURNMENT
The meeting adjourned at 7:43 p.m.

Recorded by:

Dana Swanson
City Clerk

AGENDA NO: A-3

MEETING DATE: January 26, 2016

Staff Report

TO: **Honorable Mayor and City Council** **DATE:** **January 19, 2016**

FROM: **Susan Slayton, Administrative Services Director**

SUBJECT: **Transient Occupancy Tax Audit Recommendation for 2012 - 2014**

RECOMMENDATION

Staff recommends the City Council approve auditing the vacation rentals only for Transient Occupancy Tax (TOT) for the upcoming audit period 2012 - 2014.

SUMMARY

In past years, TOT audits have been performed for 2001-2003, 2004-2008, and 2009-2011. The results of those audits indicate the hotels/motels/inns/bed & breakfast establishments plus the Morro Dunes RV Park and Campground are complying with the City's TOT Ordinance, with small variances. Staff found the vacation rentals, under property management, are also compliant, but the privately owned and operated, short-term vacation rentals are not always in compliance, and usually need assistance with record-keeping. With this in mind, staff is recommending restricting the 2012-2014 TOT to short-term vacation rentals.

BACKGROUND

On June 22, 2009, the City Council directed staff to begin a three-year TOT audit cycle, starting with the 2009/10 fiscal year, and continue auditing every three years thereafter. Since then, staff has conducted two audit cycles, the first containing the calendar years 2005 – 2008, and the second auditing 2009 – 2011. The next cycle would be 2012 – 2014.

With the first two audit cycles, staff found the hotels/motels/inns/bed & breakfast establishments to be mostly in compliance. After working with the various TOT collectors, the amount recovered in 2005-2008 did not offset the cost of the audit (assessments recovered $32,137; cost for the audit $60,000, 53%). With the 2009-2011 audit, again after working with TOT collectors, the recovery did not cover the cost of the audit (recovery $9,552, cost $35,835, 27%).

DISCUSSION

The 2009-2011 audit demonstrated good compliance with the City's TOT Ordinance. However, staff is concerned with the escalating number of vacation rentals that did not exist with those two audits, and is therefore recommending the 2012 – 2014 TOT audit focus solely on vacation rentals.

Prepared By: ____SS____ Dept Review:_____

City Manager Review: ___DWB_____

City Attorney Review: _____

AGENDA NO: A-4

MEETING DATE: January 26, 2016

Staff Report

TO: **Honorable Mayor and City Council** **DATE: January 15, 2016**

FROM: **Eric Endersby, Harbor Director**

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

RECOMMENDATION

Staff recommends the City Council approve authorization for a three-person delegation (the Mayor, City Manager and Harbor Director) to attend the California Marine Affairs and Navigation Conference (C-MANC) "Washington Week" meetings in Washington, D.C. This year's meetings are scheduled for March 14 - 17, 2016.

ALTERNATIVE

Do not approve authorization for the "Washington Week" C-MANC delegation and direct staff accordingly.

FISCAL IMPACT

The total cost for airfare, hotel, and monetary contribution to the Golden State Reception for the "Washington Week" meetings is estimated to be $11,216.68 including approximately $1,025 in staff time in preparatory meeting attendance, grant preparation, and travel/meeting logistics. Staff expenses will be assumed by the Harbor Fund. The City has applied for a grant of $10,200 from the Central Coast Joint Cable Fisheries Liaison Committee which, if granted, will be used for reimbursement of actual travel, attendance and associated costs of attendance. The City has been successful in obtaining the Cable Committee Grant for the last several years, and is hopeful that this year will be no different. If we are not successful in obtaining the grant, however, we would need to come back to Council for a budget adjustment as those funds are not currently budgeted.

BACKGROUND

C-MANC annually hosts "Washington Week" meetings, where representatives of California Ports and Harbors have the opportunity to remind Congress of the importance of dredging projects, commercial fishing and other coastal-related legislation in California and nation-wide. The City of

Prepared By: __EE____ **Dept Review:_EE____**

City Manager Review: __DWB_____

City Attorney Review: _____

Morro Bay is a long-standing member of C-MANC, and for the past 20+ years, has sent representatives to the "Washington Week" meetings. Historically, Morro Bay's delegation has consisted of the Mayor and Harbor Director, with the exception of 2012, where the City Manager went instead of the Mayor. This year like last, we are proposing a three-person delegation including the City Manager in order to take advantage of his contacts, relationships and expertise in D.C. from his previous 27 year U.S. Army career.

DISCUSSION

The opportunity for face-to-face meetings with our representatives to stress the critical need to fund navigational and entrance dredging is a high priority, and the annual "Washington Week" proceedings are the City's most effective way to have Morro Bay's voice heard.

Additional meetings will be scheduled, including office visits to Federal agencies such as OMB, EPA, U.S. Fish and Wildlife, Army Corps of Engineers, U.S. Coast Guard, NOAA and other congressional offices, regarding the proposed FY17 budget appropriations and other matters important to Morro Bay. Also at this annual event, C-MANC members host the Golden State Reception, attended by over 200 elected and appointed Washington officials, for a "meet and greet" gathering, where agencies can meet with representatives and staffers of various levels to discuss their issues and concerns in a less formal setting.

For the current Federal fiscal year, FY16, C-MANC and the City recommended funding sufficient for Morro Bay's harbor entrance dredging needs. Due in large part to our D.C. efforts, the dredge ship YAQUINA is adequately funded to dredge the harbor entrance this spring, and additional funding for the amendment of the environmental document necessary for the whole-channel dredging of the harbor we are advocating for FY17 was secured and the amendment completed.

CONCLUSION

It is important for the California C-MANC delegation to maintain its many relationships in Washington, in addition to bringing a unified voice to D.C. of the importance of all of California's ports and harbors to the national economy and security. With our last whole-channel dredging project now at the six year mark, it is becoming crucial that we get in the Corps' work plan and funded to dredge our entire navigational channel within the next year or two, especially given what we've seen so far with this year's El Nino, and are recommending that Morro Bay be funded to the $7.5M level in FY17 for that to be accomplished.

Staff is recommending approval of City Council authorization to send a three person delegation to C-MANC's "Washington Week" proceedings this coming March. Staff has applied for cable grant funding to cover the trip's costs, and is supplying "in-kind" City staff time as its share; therefore, no direct fiscal impacts are anticipated, provided the grant is approved.

AGENDA NO: C-1

MEETING DATE: January 26, 2015

Staff Report

TO: **Honorable Mayor and City Council** **DATE: January 13, 2016**

FROM: **Rob Livick, PE/PLS - Public Works Director/City Engineer**

SUBJECT: **Discussion of the Major Maintenance & Repair Plan (MMRP) for the Existing Wastewater Treatment Plant for the Next Five-year Period**

RECOMMENDATION

Following discussion and consideration of this item, City staff recommends that the MMRP be phased out in FY 16/17 and that any remaining necessary repairs to the plant be funded through the operations and maintenance (O&M) aspects of the Wastewater Treatment Plant (WWTP) budget.

ALTERNATIVE

1) Direct staff to return with a list of MMRP projects to be funded for the next five-year period.

FISCAL IMPACT

There is no fiscal impact at this time. The fiscal impact of phasing out the MMRP and funding necessary repairs should result in savings that the City and District will need to develop and construct new Water Reclamation Facility (WRF)s.

BACKGROUND

This staff report is intended to a status report on the MMRP and the MMRP funding needs over the next five-year period. There is also a brief update on current fiscal year's MMRP projects at the end of this staff report.

At the February 14, 2013, JPA meeting the Council and District Board approved the development of an MMRP to assist the City and District in projecting the budgeting of expenditures required to keep the current plant operating efficiently, safely, reliably and in compliance with regulatory requirements during the time period required to develop and construct a new WRF.

Per Council direction, staff has prepared time sensitive and prioritized MMRP budgets for approval by the Council and District Board. In addition, the Council and District Board have received regular updates on the progress and costs associated with the MMRP.

Development of a MMRP has successfully assisted the City and District in projecting the budgeting

Prepared By: __BK_____ **Dept Review: ____RL____**

City Manager Review: _____

City Attorney Review: _____

of expenditures required to keep the current plant operational and in compliance with regulatory requirements until a new WRF can be constructed and in operation. The City's current schedule for design, permitting and construction of a new WRF is to have the facility constructed and operational by 2021. This program will continue to ensure prudent spending on this facility and still maintain the high quality effluent that is discharged to the Estero Bay.

It is important to note the difference between the MMRP projects and normal O&M activities. The MMRP is a program designed to address projects that are above and beyond normal operations and maintenance, may encompass entire treatment processes and/or structures, and may require reconstruction of infrastructure. An example is the cleaning and coating of digesters #1 and #2. These projects involved cleaning the digesters, coating the interiors, and extensive rehabilitation of valving and piping. Those projects should provide reliable operation of the solids treatment process for the next five-year period.

O&M activities have been projects that include the repair and replacement of specific equipment that has reached the end of its useful life, inspections, tank cleaning, and projects or maintenance that occur on a regular basis. The City and District have always employed a strategy of proactive maintenance. Examples of this are the rebuilding of the biofilter recirculation pumps on a five-year cycle or the purchase of new aeration blowers every ten years. Both the approved MMRP and O&M budgets are included in the annual budget preparations and reviewed by City and District staff prior to consideration and approval by the Council and District.

DISCUSSION

MMRP Budget

The City and District have funded approximately $1.2M in MMRP related projects over the past three fiscal years (FY13/14, 14/15, and 15/16). Attached to this report is a table that provides the MMRP budget and actual expenditures for each of those fiscal years. Expenditures for MMRP projects to date have totaled $1.226 million. The difference between fiscal year MMRP project budgets and expenditures is related to projects carrying over multiple fiscal years and budget being carried over fiscal year to fiscal year, as well as project budgets being reduced (chlorine contact improvement project) and projects being completed for less than estimated costs, in which case the difference stays in the sewer reserve fund. For example, the MMRP budget for FY13/14 contained $500k for the purchase and installation of influent screens; the screening project was not completed until FY14/15, and the budget from FY13/14 was carried over to FY14/15 to cover project expenses.

MMRP Projects Completed

Over the past three years, the MMRP budget has resulted in the successful completion of numerous major improvement projects at the plant. The biggest project has been the installation of the influent screens at the headworks that should provide longevity to the entire treatment process by increasing the efficiency of the downstream processes. This project provided protection for both downstream processes as well as the enhanced safety for the operators. Other major projects were the cleaning and coating of digesters #1 and #2. These projects should ensure that the solids stabilization treatment process will continue to work efficiently for the stated five year goal. Other major projects successfully completed include repairs to the chlorine contact tank and primary clarifiers. All of these projects should provide adequate useful life to these treatment processes to allow for reliable operation over the next five-year period.

As noted above, the majority of the MMRP projects identified and completed over the past three years should position the plant to operate in a safe, reliable, and efficient manner for the next five years. Equally important, is recognizing completion of the budgeted MMRP projects over the last three fiscal years does not mean the existing plant is back to a like new status. The plant is thirty plus years old and will continue to need proactive O&M to continue operating in an efficient and reliable manner for the five-year period identified

Future MMRP Strategy

City, District, and MKN staff continually review the MMRP projects accomplished to date and assess the plant's condition and structural and equipment requirements to identify future potential maintenance projects to provide an estimate of spending for the MMRP for the next five years. Based on this review, City and District staff recommend the MMRP be phased out in the next fiscal year and that any future projects identified be funded through the O&M budget. This recommendation is based on the successful completion of MMRP projects to date, condition assessments of the plant, and the current schedule for completion of new WRF(s). As noted, the O&M budget will be brought to the Council and District Board during budget deliberations for discussion and approval. This will ensure the recommended O&M funding needs are brought forward each year. Should the five-year schedule be delayed for whatever reason, City and District staff would reconsider any recommendations for O&M or MMRP projects during the annual budget approval process.

The discussion of the MMRP with the goal of minimizing capital outlay at the current WWTP while balancing plant reliability and performance is important because the plant is subject to minimum mandatory penalties if they fail to meet NPDES permit requirements. It is also extremely important because the City and District strive to operate the plant to its maximum efficiency and performance levels to ensure water quality and public health and safety. The primary method of achieving these goals is to ensure the operational capability of the plant. For this reason, it is important to maintain the existing proactive O&M program while balancing the schedule with the development of the new WRF(s).

It is important to remember that during the original upgrade project at the existing location the City and District opted to follow a strategy to proactively defer maintenance to equipment and structures for the various treatment processes at the plant. They did this because the upgrade project at the existing location called for the project to be completed in a seven-year time schedule and the City and District did not want to invest significant capital into structures and equipment that would not be utilized once the upgrade was complete. The denial of the Coastal Permit in January 2011 for that project warranted capital investment in the MMRP to maintain plant efficiency and performance while a new WRF project(s) is developed and constructed. The City and District currently find themselves in a similar situation with the goals for development and completion of new WRFs in the next five-year period.

O&M Budget

For the past three fiscal years (including FY15/16), the O&M budget for the plant averaged $304K, with a range of $288K To $335K. The five-year average O&M budget is $259.9K, with a range of $176K to $335K. The five-year period has a higher range, representing the last three years of

increased O&M project funding. These figures represent the majority of the O&M costs and were funded in the 5504 (machinery and equipment supplies) and 6601 (Outside equipment repair and maintenance) line items in the WWTP budget. Not all O&M is funded from these two projects but they cover the majority of the O&M budget.

Based on the average O&M budget and the ranges cited for the past three fiscal years, staff estimates the range for the O&M budget of $200K to $300K for each of the next five fiscal years. Based on the estimated ranges, the total O&M budget for the next five-year period would range from $1M to $1.5M. As stated earlier, the O&M budget will be presented in detail to the City and District for review and approval during the annual budget preparation process.

For comparative purposes, the O&M budget for FY15/16 contains funding of $335K for various repair and maintenance projects in line items 5504 and 6601. As noted earlier, these funds represent the majority of the O&M budget for routine activities as well as the following special projects: purchase of a new aeration air blower ($25K), flow meter upgrades ($30K), purchase of chemical dosing pumps ($10K), purchase of two digester gas recirculation blowers ($10K), and Motor Control Center and alarm upgrades ($90k),repairs and maintenance of the cathodic protection system ($25K), purchase of an oxidation reduction probe ($10K), and electrical repairs or improvements recommended in the Black & Veatch Electrical Assessment ($50K).

O&M Strategy for Next Five Years

City and District staff will continue to develop and implement a proactive O&M program over the next five years with the goal of balancing for O&M at the existing plant and maximizing capital for the new WRF. The O&M program will address both routine maintenance as well as potential situations that may arise from an emergency basis. The O&M program review will include the following issues:

Lack of Redundancy: It is important to note the lack of redundancy at both the secondary clarifier and chlorine contact tank. Most processes and equipment at the plant have redundancy in place, an example is the two primary clarifiers, one can be taken off line while work is performed and the plant can continue to function utilizing the other clarifier. Any major issues with the secondary clarifier or chlorine contact tank could result in short term effluent violations as there is no backup to support these tanks and their functions. Staff has developed a methodology to drain and work on these tanks in the short term (a matter of hours) but long term issues could be problematic.

Digester #3: At this point in time, City and District staff are recommending the cleaning of digester #3 be delayed a year or two. At this time, they are also recommending the digester not be reconditioned due to the potential for a large funding requirement for potential repairs to the floating dome. The cleaning process would be funded through the O&M component of the WWTP budget, and be brought to the Council and District for approval during the budget approval process.

Clarifier Drive Units: Drive units on the primary and secondary clarifiers are over ten years old and have exceeded their useful life. Staff will continue to consult with the manufacturer to ensure any maintenance procedures are implemented.

Outfall: The outfall will need to have an inspection of the entire outfall from land to the diffuser

structure; this was last performed in 2011. It is a difficult and expensive process; the last inspection cost approximately $100K. An annual inspection is conducted as a requirement of the NPDES permit, but it generally focuses on the diffuser end of the outfall, and the buoys marking the location of the outfall and the ground tackle for the buoys. As it appears that both the City and District will require future use of the outfall for some purpose, it is imperative the outfall be inspected and maintained on a regular basis. City and District staff agree the Facility Master Planning Process should be completed prior to the next internal inspection of the outfall.

CONCLUSION

Following discussion and consideration of this item, City staff recommends that the MMRP be phased out in FY 16/17 and that any remaining necessary repairs to the plant be funded through the regular O&M aspects of the WWTP budget. This recommendation is based on the successful completion of MMRP projects to date, condition assessments of the plant, and the current schedule for completion of a new WRF.

STATUS REPORT ON THE FY15/16 MMRP PROJECTS

The following discussion provides an update of the FY 15/16 MMRP projects that are currently on-going or have been recently completed.

Digester #1 Repair
This project has been successfully completed and no further update is required.

Metering Vault Removal and Blending Valve Replacement Project
The City Council and Sanitary District Board awarded the contract to the lowest responsible bidder, Pacific Coast Excavation, Inc. of Santa Maria, in the amount of $90,238.00 at their respective regularly meetings of October 13 and 15. Staff expect to issue a Notice to Proceed in late March, with construction expected to take 14 to 21 calendar days. Pacific Coast Excavations was on-site to perform exploratory potholing on December 8 to verify site conditions.

Rehabilitation of the Secondary Clarifier #2
Staff is in the process of developing a work plan for the needed repairs. Plant staff drained, cleaned, and inspected the secondary clarifier on October 14. Overall, the tank looked to be in satisfactory condition, with areas of corrosion observed at the air water interface on the equipment located within the tank. MKN staff was on-site and provided a memo on their observations and recommendations. This will assist staff with prioritizing the work plan for correcting any problem areas. Plant staff has also begun the repair process for the catwalk. These repairs include chipping away corroded areas and repairing and coating these areas to prevent or minimize corrosion. Ultimately, this project could include repairs to the catwalk, repairs to the metal framework on the flights and skimmer cage assembly, repair and replacement of piping and valving, and other associated work. Staff will rely on their recent experience performing similar repairs on the primary clarifiers to refine the work schedule and process. It should be noted, draining the secondary clarifier required numerous operational changes to ensure adequate time to drain, inspect, and perform any critical repairs while ensuring the plant stayed in compliance with the requirements of the NPDES permit.

Chlorine Contact Basin Improvements
The repairs to the chlorine contact basin were completed on Wednesday, April 15. A detailed description of the work was included in the May 12, 2015 MMRP Update. To date, staff has not received any feedback from the RWQCB staff concerning the violation of the total chlorine residual limit. Staff completed additional work within the chlorine contact in October and November to deal with a noted issue concerning the increased accumulation of solids on the floor of the two contact chambers.

Purchase and Installation of New Distributor Arms and Biofilter Improvement Project
Staff will continue to work with City Public Works Engineering staff and MKN for the purchase and installation of new distributor arms on biofilter #2 and replacement of the main bearing on the turntable. These units are a critical component of the secondary treatment system.

Flood Control Measures at the Biofilters and Interstage Pumping Station
The City and District have executed a contract with CML Construction, in the amount of $39,329.43 for the construction of masonry block walls around the periphery of the two biofilters to prevent inundation during a flooding event. Plant staff have continued to implement cost effective flood control measures at the interstage pump station and other various locations throughout the plant. Staff will continue to work with City Public Works Engineering staff and staff at MKN on any remaining cost effective flood control measures in accordance with the requirements of the existing and anticipated NPDES permits.

Adopted MMRP Projects by Fiscal Year	Adopted Budget	Actual Cost	Project Status
FY13/14			
Influent Screening Project	500,000	0	Carried Over to FY14/15
Clean, Coat, and Repair Digester #2	250,000	253,312	Completed July 2014
Chlorine Contact Tank Improvements	200,000	0	Carried Over to FY 14/15
Interstage Pump and Valve Project	50,000	46,759	Completed April 2014
Reconditioning of the Chlorine Building	40,000	28,459	Completed June 2014
Total for FY 13/14	1,040,000	328,530	
FY 14/15			
Influent Screening Project Carryover from FY13/14	550,000	502,106	Completed October 2014
Clean, Coat, and Repair Digester #1	331,000	301,946	Completed July 2015
Primary Clarifier Rehabilitation	50,000	35,551	Completed June 2015
Biofilter Arms and Biofilter Improvements	215,000	0	Carried Over to FY 15/16
Chlorine Contact Tank Improvements – scope reduced from FY13/14	75,000	57,144	Completed April 2015
Total for FY14/15	1,221,000	896,747	
FY 15/16			
Clean, Coat, and Repair Digester #1 Carryover	50,000	0	
Metering Vault and Valve Replacement	125,000	0	Planning Process
Secondary Clarifier Rehabilitation	75,000	0	Planning process
Biofilter Arms and Biofilter Improvements Carryover	215,000	0	Planning process
Total for FY 15/16	465,000	0	
Total MMRP Project Expenses		1,225,277	

AGENDA NO: C-2

MEETING DATE: January 26, 2016

Staff Report

TO: **Honorable Mayor and City Council** **DATE: January 21, 2016**

FROM: **Janeen Burlingame - Management Analyst**

SUBJECT: **Introduction and First Reading of Ordinance No. 600 Adding Chapter 8.17 to the Morro Bay Municipal Code Regulating the Use of Expanded Polystyrene Products within the City**

STAFF RECOMMENDATION

Staff recommends the City Council review Ordinance No. 600, accept public comment, and make a motion for the introduction and first reading of Ordinance No. 600, by number and title only, adding Chapter 8.17 to the Morro Bay Municipal Code relating to regulating the use of expanded polystyrene products within the City.

PUBLIC WORKS ADVISORY BOARD (PWAB) RECOMMENDATION

The PWAB recommends the City Council adopt Ordinance No. 600, by number and title only, adding Chapter 8.17 to the Morro Bay Municipal Code relating to regulating the use of expanded polystyrene products within the City with a change to the effective date as follows:

"SECTION 4. This Ordinance shall take effect thirty days after its adoption, but not become operative until May 1, 2016."

FISCAL IMPACT

Other than staff time for public outreach and the subsequent deferral of work on other Public Works activities, there would be no fiscal impact to the General Fund should the ordinance be adopted.

BACKGROUND

At the September 8, 2015, City Council meeting, the Council discussed an informational memo prepared by the City Attorney regarding a possible ban on the use of certain expanded polystyrene (EPS) products. The Council approved a motion to support pursuing adoption of an ordinance banning the use of EPS food containers and the retail sale of EPS products, such as foam coolers and packing "peanuts," within Morro Bay, including reaching out to affected businesses. Staff was directed to return with a draft ordinance for consideration.

The PWAB discussed this item and reviewed the proposed ordinance at its November 18, 2015, and January 20, 2016, meetings. Discussion mostly centered on the hardship exemption and effective date.

DISCUSSION

Over 80 cities and counties in California have enacted regulations focused on restricting the use of food and drink containers made from EPS (commonly referred to as Styrofoam™) and some of those

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Prepared By: __JB_____ **Dept Review: ____RL____**

City Manager Review: _____

City Attorney Review: ___JWP_____

agencies have also prohibited the retail sale of most EPS products within their respective jurisdictions. The main reasons cited by for banning EPS: environmental impacts, potential health effects and potential for recycling opportunities to divert trash from the landfill.

EPS contains the toxic substances Styrene and Benzene, which are suspected carcinogens and neurotoxins that are hazardous to humans. EPS food containers leach the toxin Styrene when coming in contact with warm food or drink, alcohol, oils and acidic foods causing human contamination and posing a health risk to people.

EPS is harmful to the environment because it is a durable material that is not biodegradable, taking several decades to hundreds of years to deteriorate in the environment or landfill. Its foam structure allows it to break down easily into smaller pieces, making it more difficult and expensive to remove from the environment. Due to the lightweight nature, floatability and prevalence of the material to be blown around even when properly disposed of, it travels easily through gutters and storm drains, eventually reaching the ocean. The material absorbs pollutants like sponges, picking up and concentrating contaminants in the environment. As EPS litter moves through the environment, fish and wildlife mistake it as food and ingest the plastic. Several studies approximate plastic products, including polystyrene, make up 80-90% of floating marine debris. During the beach cleanup at Morro Rock in 2014, 94 pounds of trash were collected with the most prevalent material collected being plastics and cigarette butts. Much of the plastic collected was polystyrene that is not recyclable.

What Other Cities Have Done

In July 2015, SLO City adopted an ordinance that included the following provisions:

- Prohibits use of EPS for prepared food; requires food providers to use biodegradable, compostable, or recyclable food containers
- Prohibits vendors and event promoters from selling or otherwise providing EPS, which is not wholly encased within a more durable material
- One-time one year exemption for "undue hardship" (more than 15% increase in product cost) and a process for the City Manager to determine whether to grant such exemption - only 1 business applied for the hardship by the deadline
- For the first violation by any food provider violating the code that would result in administrative fines, the violator is allowed to pay for equivalent amounts of allowable alternatives in lieu of paying the fine
- For any event promoter violating the code that would result in a fine, varying rates are imposed depending on the size of the event
- Effective date 6 months after final ordinance adoption

The City of Pismo Beach adopted an ordinance in mid-November 2015 (final adoption in mid-December 2015) that is virtually identical to the SLO City ordinance with two notable differences:

- Effective date 30 days after final ordinance adoption
- Hardship exemption included but for a one-time 6-month exemption and no criteria set for defining undue hardship

Staff from Pismo Beach noted, as most of the affected businesses were no longer using EPS for prepared food containers, their Council did not feel the need to have a longer period of time between final adoption and the effective date. Additionally, they would be sending out notices to affected businesses before the effective date. Regarding the issue of using up existing stock, they indicated the business could apply for the hardship that would be specific to the time frame needed by the individual business and also have the option to purchase alternative products "in lieu" of a fine to address any issues of not being done using their stock of existing EPS products.

Outreach
Staff prepared an informational handout regarding Council's direction to pursue an ordinance prohibiting the use and sale of EPS food containers and products in the City for mailing to affected businesses. In addition, a survey was created to get input from affected businesses on the draft ordinance, including feedback on what an acceptable percentage of total cost increase would be used to qualify for an "undue hardship" exception. Both the informational handout and survey were mailed out in early November to affected businesses and an online survey was also created to make it easier for businesses to provide feedback to staff.

Additionally, between November and January, PWAB Member Stewart Skiff visited businesses to talk about the proposed ordinance and identify if they currently use EPS containers that would be affected by the ordinance or other alternative products.

At the writing of this report, staff received 30 survey responses (5 paper and 25 online). Of those responding to the question of what food containers the business currently use, 52% responded other alternatives were used and 48% responded using EPS products.

However, when Boardmember Skiff conducted his visits to the businesses, he identified 85% as already using alternative products for food and 66% for beverages with 15% using EPS products for food and 34% for beverages. When asked whether the business knew about the proposed ban on EPS products, only 6% stated they were unaware.

Boardmember Skiff also visited the grocery stores and mini-marts, noting many of the store managers wanted to keep EPS products and indicated they would stop selling items considered in the proposed ordinance when their competitor did.

Draft Ordinance
Staff feels using SLO City's ordinance as a template for a Morro Bay ordinance achieves what the City Council desired given the parameters indicated for inclusion in the development of an ordinance for Morro Bay.

Hardship Exemption
Council indicated inclusion of an exemption whereby a business could apply for a one-time exemption delaying the implementation of the ordinance requirement prohibiting the use of EPS food containers due to a financial hardship.

The SLO City ordinance included an affordability exclusion, using 15% as the threshold. It was unclear how that number was selected and SLO City staff noted several of the other cities and counties it researched used 15%. In the survey sent to affected Morro Bay businesses, staff asked what would be an acceptable percentage increase of operating costs to qualify for the exemption. Of those responding to the paper or online survey, 38% responded 10% or less, 23% responded 11-15%, 15% responded 16-20%, 8% responded 21-25%, 8% responded 26-30%, and 8% responded 41-50%.

The City of Pismo Beach, included the ability to apply for a hardship exemption, but did not tie it to affordability, and it would only be for a one-time 6-month exemption. There is no specific criteria set and staff from Pismo Beach indicated the business would have to make its case for hardship as there are different business types and one percentage may not be a hardship for one, but could be for another. Pismo Beach staff also noted most of its businesses already use alternative food container products and those still using EPS should have no more than 1- or 2-months' supply to work through.

Options for hardship exemption:

1. SLO City Approach - include hardship exemption of a one-time 1-year exemption; 15% percentage increase in **product** cost to qualify for exemption
2. Pismo Beach Approach – include hardship exemption of a one-time 6-month exemption; no affordability criteria to qualify for exemption
3. Include hardship exemption of a one-time 1-year exemption; 10% percentage increase in **total operating (not product)** cost to qualify for exemption (percentage coming from City survey responses)
4. Include hardship exemption of a one-time 6-month exemption; 10% percentage increase in **total operating (not product)** cost to qualify for exemption (percentage coming from City survey responses)

- Staff and PWAB recommendation: After reviewing information from SLO City, the City of Pismo Beach and the City's survey and business visits, staff and the PWAB recommend the Pismo Beach approach (that language is included in the proposed ordinance in Attachment 1). As a vast majority of the affected businesses already use alternative products, that approach would still provide an opportunity for the few remaining businesses that still use EPS products to obtain relief for a limited period of time.

Effective Date

Generally, ordinances go into effect 30 days after final passage, but the Council can specify a longer period of time. The cities of SLO and Pismo Beach differed on when each cities' ordinance would take effect. SLO City's ordinance went into effect 6 months after final adoption (January 1, 2016) and Pismo Beach's went into effect 30 days after final adoption (January 15, 2016).

Given Council's desire to make sure affected businesses would be aware of any ban on EPS products and wanting to work with businesses on obtaining compliance by its effective date, 30 days after final adoption for the effective date is not recommended.

During the PWAB's discussion of this item in November 2015, the Board thought having the effective date not occur during the summer, when affected businesses are experiencing their busiest times, and also to giving enough time to work through existing stocks of product before transitioning to alternative products was the best approach. Given the timeframe when Council is expected to hear this item at its January 26, 2016, meeting and its potential final adoption in February 2016, a 6-month effective date would be in the middle of August. As such, a third option would be to extend the effective date a few more weeks to get past the summer season by making the effective date October 1, 2016.

- Staff recommendation: Make the effective date be October 1, 2016. That would allow time for notification to the affected businesses and provide enough time to work through existing EPS stock and make the transition to alternative products.
- PWAB recommendation: Make the effective date be May 1, 2016. At their November meeting, the Board noted they did not want the effective date to be during summer, but after reviewing the information from the surveys and Boardmember Stewart's visits to businesses at their January 20 meeting, the Board indicated since most of the businesses already use alternative products and only a small percentage were not aware of the potential regulations prohibiting EPS food containers, a shorter effective date would be appropriate and would still miss the summer season.

Non-City Sponsored Special Events

Council did not indicate at its September 8 meeting to include those events in the proposed ordinance; however, given the previous adoption of Resolution No. 10-08 not to use city funds by any department or agency of the City to purchase Styrofoam™ products and discourage the use of

Styrofoam™ by private parties who use City facilities, and the Council's recent direction to pursue an ordinance prohibiting the use of EPS food containers and the retail sale of EPS products, inclusion of non-City sponsored special events prohibiting the use of EPS food containers seemed logical to include.

- Staff and PWAB recommendation: Include non-City sponsored special events in the ordinance (that language is included in the proposed ordinance in Attachment 1).

CONCLUSION

Staff recommends the City Council review Ordinance No. 600, accept public comment, and make a motion for the introduction and first reading of Ordinance No. 600, by number and title only, adding Chapter 8.17 to the Morro Bay Municipal Code relating to the regulation of the use of EPS products within the City.

The PWAB recommends the City Council adopt Ordinance No. 600, by number and title only, adding Chapter 8.17 to the Morro Bay Municipal Code relating to regulating the use of expanded polystyrene products within the City with a change to the effective date as follows:

"SECTION 4. This Ordinance shall take effect thirty days after its adoption, but not become operative until May 1, 2016."

ORDINANCE NO. 600

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRY BAY, CALIFORNIA AMENDING THE MORRO BAY MUNICIPAL CODE BY ADDING CHAPTER 8.17 TO REGULATE THE USE OF EXPANDED POLYTYRENE PRODUCTS WITHIN THE CITY

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, the City of Morro Bay (the "City") has the police power to protect the health, safety and welfare of the community, including the ability to protect and enhance the natural environment; and

WHEREAS, according to the California Department of Transportation, expanded polystyrene comprises approximately 15% of storm drain litter and is the second most common form of beach debris in California, and plastic products, including expanded polystyrene, make up 80 -90% of floating marine debris; and

WHEREAS, the City is situated adjacent to the Pacific Ocean and during regular beach clean-ups, expanded polystyrene products are found and discarded; and

WHEREAS, items made from expanded polystyrene are not biodegradable, compostable, or recyclable locally and expanded polystyrene as litter is high durable; and

WHEREAS, expanded polystyrene breaks into small, lightweight pieces that may be picked up by the wind even when it has been disposed of property, and flow or be flown into creeks and the Pacific Ocean, contributing to water quality and habitat protection concerns; and

WHEREAS, marine animals and birds often confuse expanded polystyrene with pieces of food, and when ingested, it can impact their digestive tracts, often leading to death; and

WHEREAS, expanded polystyrene is manufactured from petroleum, a non – renewable resource; and

WHEREAS, expanded polystyrene is not recycled at the Cold Canyon Landfill and there are no current plans to recycle it, and regulating the use of expanded polystyrene products will, therefore, maximize the operating life of the landfills; and

WHEREAS, take-out food packaging that is biodegradable, compostable, and recyclable is the most responsible and sustainable choice for the City's tourist economy, its citizenry and its environment and when those products are recycled, natural resources are spared and less energy is used for the production of new products; and

WHEREAS, regulating the use of expanded polystyrene products within the City will help protect the City's natural environment from contamination and degradation; and

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

SECTION 1: The Morro Bay Municipal Code is hereby amended by adding, a new Chapter 8.17 to read, in its entirety, as follows:

Chapter 8.17
EXPANDED POLYSTYRENE

8.17.010 Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. "ASTM standard" means meeting the standards of the American Society for Testing and Materials (ASTM) international standard D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.

B. "Biodegradable" means compostable (separately defined) or the ability of organic matter to break down from a complex to a more simple form through the action of bacteria or to undergo this process.

C. "City facility" means any building, structure or vehicle owned and operated by the city of Morro Bay, its agents, agencies, and departments.

D. "City contractor" means any person or entity that enters into an agreement with the city to furnish products or services to or for the city.

E. "Compostable" means all the materials in the product or package will break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch). Compostable disposable food containers must meet ASTM standards for compostable materials.

F. "Disposable food container" is interchangeable with "to go" packaging and "food packaging material" and means all containers that are used to hold prepared food or drinks. Disposable food containers include clamshells, bowls, plates, trays, cartons, boxes, and cups that are intended for single use, including, without limitation, food containers for takeout foods and leftovers from partially consumed meals prepared by food providers; provided, that single-use disposable items such as straws, cup lids, or utensils and single-use disposable packaging for unprepared foods are not intended to be part of this definition.

G. "Events promoter" means each person who applies for any event permit issued by the city or any city employee(s) responsible for any city-organized event.

H. "Expanded polystyrene" or EPS means blown expanded and extruded polystyrene or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic).

I. "Expanded polystyrene products" means any item such as coolers, ice chests, cups, bowls, plates, trays, clamshell containers, meat trays, shipping boxes, packing peanuts or any other

merchandise made from expanded polystyrene that is not wholly encapsulated or encased by a more durable material.

J. “Food provider” means any person or establishment located within the city that is a retailer of prepared food or beverages for public consumption including, but not limited to, any store, supermarket, delicatessen, restaurant, shop, caterer or mobile food vendor.

K. “Person” means an individual, business, event promoter, trust, firm, joint stock company, corporation, nonprofit, including a government corporation, partnership, or association.

L. “Prepared food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the city. Prepared food does not include raw, butchered meats, fish or poultry sold from a butcher case or similar food establishment.

M. “Recyclable” means any material that is specified in the franchise agreement with the city’s solid waste removal provider including, but not limited to, aluminum, tin and bi-metal cans, clear and colored glass containers, high density polyethylene (HDPE), polyethylene terephthalate (PET), clear or rigid polystyrene, corrugated cardboard and mixed paper.

N. “Vendor” means any person, retail store or business who sells or offers goods or merchandise, located or operating within the city, including those referenced in the definition of “food provider.”

8.17.020 Expanded polystyrene disposable food containers prohibited.

A. No food provider operating within the city may provide prepared food in or provide separately any disposable food container made from expanded polystyrene, except as exempted in Section 8.17.050.

B. No person shall use a disposable food container made from expanded polystyrene in any city facility.

C. City contractors in the performance of city contracts and events promoters may not provide prepared food in disposable food containers made from expanded polystyrene.

8.17.030 Required biodegradable, compostable, or recyclable disposable food containers.

A. Every person who is a food provider within the city who utilizes disposable food containers shall use biodegradable, compostable or recyclable products.

B. Any person who is a food provider within any city facility and utilizes disposable food containers shall use only biodegradable, compostable or recyclable products.

C. Every city contractor and event promoter who utilize disposable food containers shall only use biodegradable, compostable, or recyclable products while performing under a city contract or permit.

8.17.040 Prohibited sales.

No vendor or events promoter in the city may sell or otherwise provide any expanded polystyrene product which is not wholly encapsulated or encased within a more durable material, except as exempted in Section 8.17.050. This specifically includes, but is not limited to, cups, plates, bowls, trays, clamshells and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, packing peanuts, or other packaging materials.

8.17.050 Exemptions.

A. The city manager or designee, in his/her sole discretion, may exempt a food provider from the requirements set forth in Section 8.17.020(A) for one single, six-month period upon written application by the vendor or food provider showing this chapter would create an undue hardship or practical difficulty. The city manager or designee's decision shall be in writing, and the decision shall be final and not subject to appeal. The city manager or designee may approve the exemption application in whole or in part, with or without conditions.

B. In addition, exemptions to allow for the sale or provision of expanded polystyrene products may be granted by the city manager or designee, in his/her sole discretion, if the vendor can demonstrate, in writing, a public health and safety requirement or medical necessity to use the products. The city manager or designee shall put the decision to grant or deny the exemption in writing and the decision shall be final and not subject to appeal.

C. Each exemption application shall include all information necessary for the city manager or designee to make a decision, including, but not limited to, documentation showing factual support for the claimed exemption. The city manager or designee may require the applicant to provide additional information.

D. Foods prepared or packaged outside the city and sold inside the city are exempt from the provisions of this chapter.

E. Raw meat, fish and other raw food trays are exempt from the provisions of this chapter.

F. Products made from expanded polystyrene, which are wholly encapsulated or encased by a more durable material, are exempt from the provisions of this chapter. Examples include surfboards, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and coolers encased in hard plastic.

G. Construction products made from expanded polystyrene are exempted from this chapter if the products are used in compliance with Title 14, Buildings and Construction, and used in a manner preventing the expanded polystyrene from being released into the environment.

H. In a situation deemed by the city manager to be an emergency for the immediate preservation of the public peace, health or safety, city facilities, food providers, city contractors and vendors doing business with the city shall be exempt from the provisions of this chapter.

I. Expanded polystyrene packaging products, which have been received from sources outside the city, may be reused to be kept out of the waste stream.

8.17.060 Violations.

A. Any violation of the provisions of this chapter by any person is subject to administrative fines as provided in Chapter 1.03, which may be appealed pursuant to the procedures in that chapter.

B. For the first violation, the city manager or designee may allow the violating food provider, in lieu of payment of the administrative fine, to submit receipts demonstrating the purchase after the citation date of biodegradable, compostable, or recyclable products in an amount equal to the amount of the citation.

C. Each food provider and vendor who violates this chapter in connection with city permitted special events shall be assessed fines as follows:

1. A fine not to exceed two hundred dollars for an event of one to two hundred persons.

2. A fine not to exceed four hundred dollars for an event of two hundred one to four hundred persons.

3. A fine not to exceed six hundred dollars for an event of four hundred one to six hundred persons.

4. A fine not to exceed one thousand dollars for an event of more than six hundred persons.

D. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

SECTION 2. This Ordinance is exempt from review under the California Environmental Quality Act (CEQA) (California Public Resources Code Section 2100 et seq.). Pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty there is no possibility the activity in question may have a significant effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground it is an action of a regulatory agency (the City) for the protection of the environment because, among other things, it will regulate the use and sale of expanded polystyrene products and reduce the amount of expanded polystyrene products that enter local landfill and waterways. Thus, this Ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

SECTION 3. 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, then such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Morro Bay hereby declares 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. This Ordinance shall take effect thirty days after its adoption, but not become operative until October 1, 2016.

SECTION 5: The City Clerk or her duly appointed deputy shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

INTRODUCED at a regular meeting of the City Council of Morro Bay, held on the 26th day of January, 2016, by motion of Councilmember_____, seconded by Councilmember_____.

PASSED AND ADOPTED on the _____day of February, 2016.

_____
JAMIE L. IRONS, Mayor

Attest:

_____
DANA SWANSON, City Clerk

APPROVED AS TO FORM:

_____
JOSEPH W. PANNONE, City Attorney

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council of the 26th day of January, 2016, and hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the _____ day of _____, 2016, by the following vote, to wit:

AYES:
NOES:
ABATAIN:
ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this _____ day of _____, 2016.

_____
City Clerk of the City of Morro Bay

AGENDA NO: C-3

MEETING DATE: January 26, 2016

Staff Report

TO: **Honorable Mayor and City Council** **DATE: January 20, 2016**

FROM: **Eric Endersby, Harbor Director**

SUBJECT: **Consideration of Future Direction of Lease Site 87-88/87W-88W, Located at 833 Embarcadero, Owned by B&L Flash, Inc. (Violet Leage and Barry Lambert)**

RECOMMENDATION

Staff recommends the City Council withdraw its February 18, 2014, Consent of Landowner (COL) for the project proposed by B&L Flash due to lack of progress and direct staff to release a Request for Proposals (RFP) for the site.

ALTERNATIVES

1. Withdraw the current COL and direct staff to prepare another COL to allow the new leaseholder team, including lease site subtenant Cherise Hansson (Under the Sea Gallery), to pursue their proposal, as outlined in their proposal included as Attachment 1 and discussed in the body of this report.
2. Withdraw the existing COL and direct staff to work directly with Cherise Hansson to bring a new COL to Council as soon as possible.

FISCAL IMPACT

There is no fiscal impact at this time.

BACKGROUND

The current lease for Lease Site 87-88/87W-88W, owned by B&L Flash and where Off the Hook Restaurant and Under the Sea Gallery are located, expires in September 2018. With the lease approaching the five year window of expiration, Harbor Department staff engaged the leaseholder in the fall of 2012 to determine their intentions for the future of the site.

In June 2013, the City Council considered, and rejected, a joint redevelopment proposal from this leaseholder and the leaseholder next door to the south, Burt Caldwell and the Libertine Pub. At that time, the Council asked both leaseholders to develop separate proposals.

In February 2014, the City Council considered a second proposal from B&L Flash and granted COL

01181.0001/282708.1
Prepared By: ____EE_____ **Dept Review: __EE_____**

City Manager Review: __DWB_____

City Attorney Review: ___JWP_____

approval for it. That proposal consists of a complete tear-down and redevelopment of the lease site, featuring a single-story building with mixed retail and restaurant use, and continued side-tie dock use. In September 2014, the leaseholder submitted an initial Concept Plan for this site to the (now) Community Development Department to begin the process to obtain Concept Plan approval from the Planning Commission and City Council.

Regarding lease renewal, the City's Harbor Department Lease Management Policy stipulates:

> "In this area [Beach St. to Tidelands Park] tenants are encouraged to propose redevelopments of lease sites to improve public benefits on these sites, enhance the Embarcadero business environment, and renegotiate leases to modern terms. To help accomplish this, and to provide tenants motivation not to let long-term leases run to the very end of their terms with degraded building/improvements, and under market lease terms, the City will generally not renew leases with existing tenants in this area if they allow their leases to run to a term of less than five years remaining."

DISCUSSION

Staff is concerned with three elements of the current leaseholder's management of this lease site and redevelopment proposal, which call to question the ability of this leaseholder to bring the redevelopment project to a successful and timely conclusion. Those elements are:

1. The leaseholder has a demonstrated history of financial difficulties with regard to lease payments, and thus, will likely be financially challenged to undertake the proposed redevelopment project.
2. Staff is in receipt of communication from the leaseholder's bank that demonstrates the bank has similar issues and concerns with the leaseholder's financial capacity to secure financing for a major new project.
3. The leaseholder's redevelopment Concept Plan will not garner staff and Planning Commission permit approvals as currently configured.

This leaseholder has a ten-year+ history of late and missed payments for the subject site. Last September, the leaseholder agreed to a payment plan whereby all past due rents, and monthly accruing rents, would be completely paid off and current by March 1, 2016. The leaseholder also fell behind on that special payment plan. On January 5, 2016, associates of the leaseholder made payments on the leaseholder's behalf to bring the account current. Even with that payment, staff remains concerned the existing leaseholder does not appear, in and of themselves, able to maintain a clean payment record. (That being said, staff is also in receipt of information that indicates a sub-lease holder (Off the Hook) is not making lease payments to the master lease holder, thus causing the master lease holder measurable financial challenges. As noted, however, there is a 10+ year history of late / missed payments with this master lease holder that are not related to the sub-lessee's current apparent non-payments.

With regard to the Concept Plan submitted for Planning Commission and Council approval, to date the leaseholder has been unwilling to revise them to meet existing City requirements. Staff has met

numerous times over several months with the leaseholder's representative, and have worked to make clear precisely how the Concept Plan submitted for approval fails to meet the Waterfront Master Plan and Local Coastal Plan. The leaseholder has chosen not to modify the Concept Plan to conform with what staff believes to be very clear direction from the Planning Commission. The leaseholder's representative then requested the non-conforming plan be presented to the Planning Commission for denial so it could then be appealed to the Council. Staff continues to work with the leaseholder and their representatives in hopes of bringing the Planning Commission a Concept Plan that reasonably conforms to existing land-use regulations. The proposed Concept Plan, as last evaluated by planning staff would receive a recommendation of denial as currently configured and staff is confident the Planning Commission would deny the project since the Planning Commission has provided very clear written guidance on the primary issue in the past 12 months.

The leaseholder has recently notified staff, as indicated in the proposal included with this staff report, they have a new lease management and redevelopment team in place that is ready and capable of making the necessary plan changes to meet City requirements. In addition, they have indicated they possess the financial and logistical capacity to successfully complete the redevelopment project, and are committed to doing so.

At the time of the existing COL issuance, that step was a new process for the City whereby the City grants a basic level of assurance to a leaseholder for their redevelopment proposal that it is acceptable, in very general concept terms, for submission to the Community Development Department for full permit processing and consideration of Concept-level approval. B&L Flash's COL, while containing no sunset or performance trigger dates, equally does not create any entitlement and the City retains the right to withdraw that consent

CONCLUSION

Based on the history of the management of this lease site under its current ownership, staff does not believe the leaseholder has the capacity to bring the previously approve project through the Planning Commission, City Council and Coastal Commission permitting process and into construction for a profitable long-term operation. Staff thus recommends the City Council withdraw the existing COL and direct staff to issue an RFP for redevelopment of the lease site.

Alternative 1. Staff does recognize, however, interested parties have made financial contributions, and encouraged other positive progress, as evidenced by the payment plan being retired early, a proposed change in the lease management and redevelopment project team and a commitment to revising the Concept Plan, as indicators of the leaseholder's intent to carry the redevelopment project and subsequent lease management through to successful conclusion. Staff, however, remains very concerned about the existing leaseholder's (B&L Flash) capacity, in and of themselves, to finance and manage a complete teardown and rebuild that will result in a profitable long-term project. Staff thus does not recommend Alternative 1. If this alternative be chosen, then staff recommends the original COL still be withdrawn, and a new COL drafted for future Council consideration to include definitive performance standards and deadline conditions.

Alternative 2. Council could withdraw the existing COL, and then direct staff to work exclusively

with Ms. Hansson, if she is interested, to bring a new proposal to Council for consideration. Ms. Hansson has been running a very successful sub-lease on the subject site for 16 years and has been instrumental helping with the existing leaseholder's financial challenges. The benefit of this alternative is Ms. Hansson could be the lead in a new master leaseholder team (as of 2018) that may have the capacity to complete this project and manage a profitable site. Staff is concerned, however, with setting some perceived precedent to transferring a COL from one entity to another, without a full RFP process. Since there is nothing that prevents Ms. Hansson from responding to a new RFP, and since that RFP would ensure a transparent process, staff is not inclined to recommend this alternative either. If Council directs this alternative, and Ms. Hansson chooses not to submit a proposal, staff will then release a broad RFP for redevelopment of the site.

If an RFP is released for the subject site, then the current leaseholder, in addition to subtenant Cherise Hansson, would be free to submit a proposal for consideration.

ATTACHMENT

1. Proposal received from Cherise Hansson.

Proposal for Consent of Landowner
B & L Flash- Violet Leage
833 Embarcadero Rd
Morro Bay

B & L Flash is moving forward with the 833 Embarcadero project. We would like to update the city of our progress towards the new lease proposal. The architect Chris Parker has resubmitted plans per city planning request. The current city lease is in good standing. The expected project cost/ funds are secured for completion. A new team of Violet Leage, Travis Leage and Cherise Hansson are working together to aid in all of the above requirements as well as continuing the project with no delays.

Firstly, the project is moving forward with completing requests made by the city planning department. The architectural corrections have or will be submitted by the week of January 18th, 2016. Violet Leage has assigned Travis Leage to help as a construction project liaison between planning department, architect, engineer and herself. Mr. Leage has built multiple projects in the city of Morro Bay as a qualified contractor. He has worked with architects, engineers, contractors and city officials to complete projects in an efficient and timely manner. His utmost concern is quickly responding to city recommendations for the building project and coming to an agreed final project. We understand the importance of completing project plans and moving to the next step of the lease phase. Travis Leage will continue with project building once lease commences and looks forward to the earliest possible construction start date.

Secondly, Violet Leage as master tenant is in good standing with her current lease obligations. In the summer months Leage's main subtenant Lexmar Corp, Maridee Bell failed to pay her monthly rent and annual percentage to city. Due to Lexmar defaulting on her signed contract between city and Violet Leage the lease went into default. All mail sent to lease address was not received by Violet Leage. Once Violet Leage was notified of the discrepancy she immediately set up an approved payment plan in September of 2015. The payment plan was to be fulfilled by March of 2016. Violet Leage was able to fulfill the payment plan early, by three months. Upon request receipts are available showing agreed payments on lease in a timely manner. All subtenant percentages have been paid in full and minimum monthly payments are up to date.

Thirdly, is that finances have been secured for project. We have the resources required to complete the project, and if necessary may be discussed at meeting.

At this time I would like to introduce myself, Cherise Hansson. I am the owner of Under the Sea Gallery. I have been a subtenant at 833 Embarcadero since 1999. My total contributions to the city of Morro Bay are over a quarter of a million dollars. I am one of the three oldest retail gift tenants on the Embarcadero with a city lease. Under the Sea Gallery has persevered through hard economic times and has become an iconic landmark of Morro Bay tourism. I have an immense amount of return customers, many of which make the journey for the sole purpose of visiting my shop. These patrons also bring with them the need for lodging, food and other retail needs. I am a hard-working sole-proprietor deeply rooted in the community of Morro Bay. Through the years I have helped mold many of my employees into strong business minded entrepreneurs. Four previous employees currently have successful retail shops of their own. Among them is a recent addition to the city lease program, Heather Koide, "Smoobage". I was instrumental in her decision to move onto the Embarcadero.

Travis Leage, my life partner, and I have built a positive relationship within the community. We have three young boys whom all attend Del Mar Elementary. I am an avid volunteer at the school as well as a contributing business owner to many community programs.

My involvement with the development of the lease site will be to act as a liaison between Violet Leage and the city of Morro Bay. Additionally I will be an investor of the project as well as a continued source of revenue for the lease site and the City of Morro Bay.

It is my utmost goal to see this project to fruition and in a timely manner. The ability to have a brand new building would greatly help build my business. Therefore I can continue to provide income for my family, and revenue for the city of Morro Bay. I will continue to provide jobs that teach skills which lead to future Morro Bay businesses. I will also keep the income and profits within our community of beautiful Morro Bay.

Thank you for your time,

Cherise Hansson 1/14/16

This proposal is approved by _____
Violet Leage of B & L Flash

AGENDA NO: C-4

MEETING DATE: January 26, 2016

Staff Report

TO: **Honorable Mayor and City Council** **DATE: January 19, 2016**

FROM: **Scot Graham, Community Development Manager**
Rob Livick, PE/PLS- Public Works Director/City Engineer

SUBJECT: **Review of Use Options and Possible Redevelopment Opportunities for the 781 Market Avenue (DiStasio's) property, adjacent Market Avenue and Embarcadero Parking Lots, and Market Avenue Right-of-Way**

RECOMMENDATION

Staff recommends the City Council provide direction to staff to investigate options for the highest and best future use of recently acquired properties on Market Avenue, and other adjacent City property, through a robust public outreach process. Specifically, staff is requesting the Council provide direction to include those properties in the ongoing and current discussions associated with the GP/LCP update, Downtown/Waterfront Strategic Plan, and Embarcadero sidewalk widening and Centennial Parkway redevelopment projects.

ALTERNATIVES

Alternative 1. Leave the properties as they are, continuing the restaurant and public parking lot uses on into the future.

Alternative 2. The City Council may direct staff to look at other options agreed upon by the majority of the Council.

FISCAL IMPACT

The City, through the 2015/2016 budget process, has allocated funding in the amount of $800,000 for the General Plan update, $60,000 for the Embarcadero widening and Centennial Stair project and $100,000 for the Downtown/Waterfront Strategic Plan. It is likely planning and public outreach efforts for redevelopment of the area in question could be combined with the aforementioned planning efforts with little to no additional cost.

BACKGROUND

In October 2015, the City Council authorized staff to pursue acquisition of the 14,500 square foot 781

01181.0001/282746.1
Prepared By: ___SG____ **Dept Review: ___SG____**

City Manager Review: __DWB_____

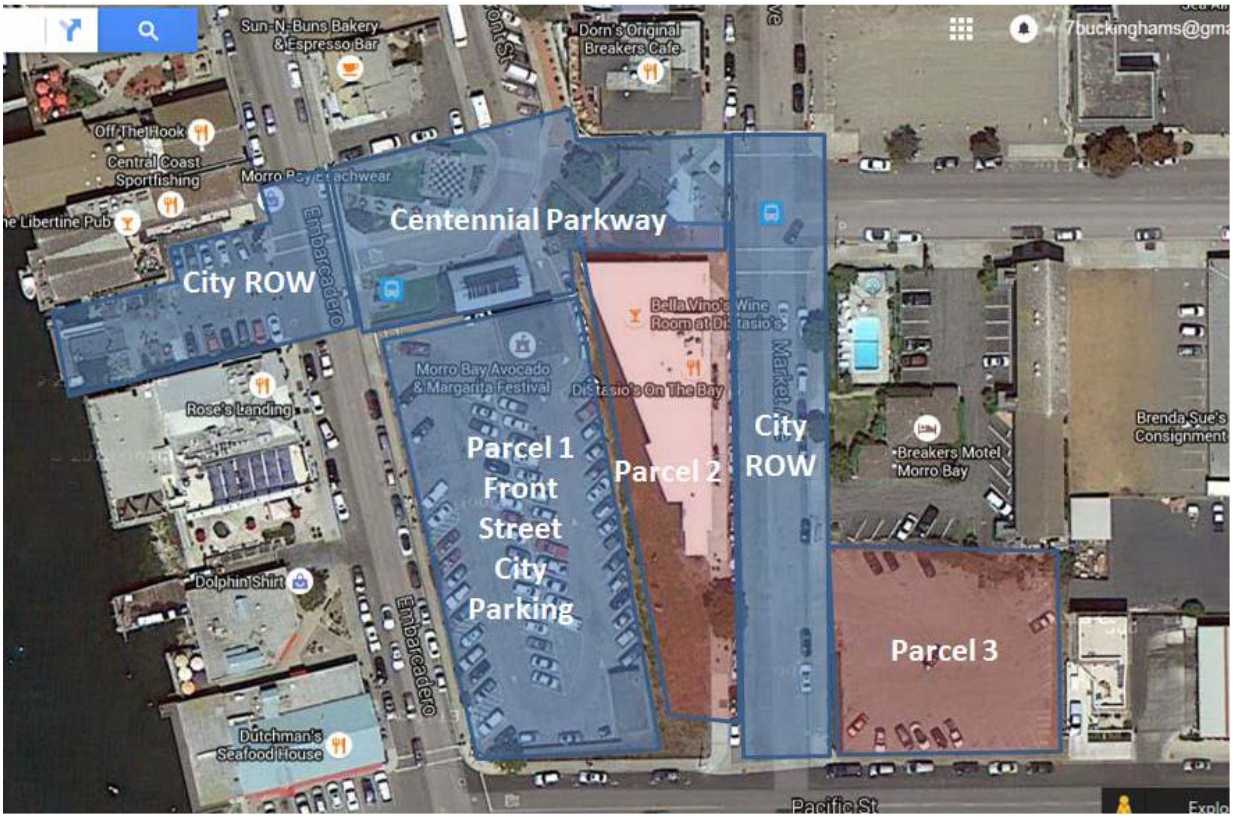
City Attorney Review: __JWP_____

Market Street property and adjacent 14,300 square foot 40-space parking lot, made available through the Salwasser Bankruptcy proceedings (Parcels 2 & 3 on the figure below). The City held a $1.2 Million note on the property and with the additional $150,000 paid for the purchase/reacquisition of the property now has an overall investment in Parcels 2 & 3 of $1.35 Million. The subject property recently appraised for $1.75 Million.

The property in question was originally purchased by the City in 2003. In 2010, the City sold Parcel 2 (APN 066-321-027) and Parcel 3 (APN 066-112-007) (collectively the "Property") to George and Charlotte Salwasser, including the parking lot and the building housing DiStasio's on the Bay restaurant. As part of the 2010 sale, the City required the Salwassers to build and maintain an elevator on the Property for public access from an adjacent parking area to the restaurant. Ultimately the elevator was never built.

The City, since reacquiring the property, has opened the 40-space parking lot to the public while negotiating a formal lease agreement with DiStasio's.

Location of Market Avenue Property (Parcel 2 and 3):



DISCUSSION

Given the current planning efforts that are underway in the immediate area surrounding the properties identified in the figure above, staff believes it is appropriate to discuss potential options for inclusion of the 781 Market Avenue property and adjacent parking lot in those planning efforts. The overall

planning area includes the 40-space parking lot (Parcel 3) at the corner of Pacific and Market, the Market Avenue right-of-way extending from Pacific to Morro Bay Blvd., Parcel 2, containing the restaurant, the Front Street/Embarcadero City parking lot (Parcel 1), the Centennial Parkway area, small section of the Embarcadero right-of-way and the lease site area between Rose's Landing and the Libertine. The land area associated with these properties totals approximately 2.3 acres.

Revitalization of that area could help provide the City with much needed economic investment in what is effectively the City's core commercial area, tying together both the Downtown and Waterfront. The question becomes, what could appropriate redevelopment opportunities look like in that area.

The Possibilities

Option 1. Keep everything as is. Restaurant property stays a restaurant and 40-space parking lot remains open to the public.

Option 2. Mixed-Use Development. A robust public process might consider some or all of the following on some or all of the City-owned property identified in the figure above.

- Construction of a parking garage, possibly on the existing Front Street/Embarcadero parking lot
- Construction of commercial retail along the Embarcadero frontage
- Hotel with 200 – 400 person conference facility
- Closure of the Market Avenue right-of-way between Pacific Street and Morro Bay Boulevard.
- Creation of significant public gathering space and focal point for the City (Centennial Parkway), perhaps encompassing the area at the top of Centennial Stairway and proceeding down the stairs, through the existing park area (chess boards / bathroom / Front Street dogleg), across the Embarcadero, and through the street-end parking area to the bay.

The next question is how do we achieve or move an effort like this forward. Adding these properties into the discussion that we are currently having with regard to the Embarcadero, Centennial Stair, and overall General Plan/LCP update efforts will be key in making sure we obtain appropriate and significant public input for anything we may want to do in this core City planning area.

Redevelopment efforts could take the form of the City sending out a Request for Proposal to help identify developers experienced in this type of redevelopment. The City could enter into a private / public partnership to implement projects, or the City could choose to sell certain property to qualified developers. There are numerous options that would allow for appropriate and responsible redevelopment of this important area.

CONCLUSION

The City has recently reacquired the 781 Market Avenue property, along with the adjacent 40-space parking lot. Given the timing of current and ongoing planning efforts in that core planning area, it seems appropriate to obtain some direction from Council related to inclusion of those properties in those

redevelopment efforts. To that end, staff is recommending the City Council direct staff to incorporate those properties into the current and ongoing public discussions associated with the GP/LCP Update and those conversations associated with the Embarcadero sidewalk widening, Centennial Stair redevelopment and the Downtown/Waterfront Strategic plan process.

AGENDA NO: C-5

MEETING DATE: January 26, 2016

Staff Report

TO: **Honorable Mayor and City Council** **DATE: January 19, 2016**

FROM: **Scot Graham, Community Development Manager**
Rob Livick, PE/PLS- Public Works Director/City Engineer

SUBJECT: **Review of 2007 Parking Management Plan and Implementation Options**

RECOMMENDATION

Staff recommends the City Council:

1. Direct staff to implement angled parking based on Parking Management Plan (PMP) for 4 areas/streets,
2. Direct staff to implement commercial loading zones for the Embarcadero, as identified in the PMP, and direct modification to MBMC 10.48.020,
3. Direct staff to research paid parking opportunities identified in the PMP and bring back options for discussion, and
4. Direct staff to research and return to Council with options for improving overall parking and business atmosphere in the Downtown and on the Embarcadero, *i.e.* a Parking Management Plan Update.

ALTERNATIVES

- Direct staff to work on any combination of the four items noted above
- Direct staff to address other parking issues, as deemed appropriate by a majority of the Council
- Direct staff to cease work on parking improvements.

FISCAL IMPACT

Staff time and cost of implementing the striping for the four streets/areas identified in the PMP is approximately $80,000 with the majority of the work contracted and subject to prevailing wage requirements.

BACKGROUND

On October 8, 2007, the City Council approved the Final PMP for the City, through adoption of Resolution No. 48-07 (Resolution provided in Attachment A). The PMP can be found on the City website in the Document Center, under Community Development-Planning Division-Other Plans and Studies-Parking Management Plan at the following link: http://www.morro-

01181.0001/282732.1
Prepared By: _SG & RL_____ **Dept Review: _____SG & RL___**

City Manager Review: __DWB_____

City Attorney Review: __JWP_____

bay.ca.us/DocumentCenterii.asp. The PMP has gone mostly untouched since adoption, with the exception of the directional signage program as illustrated in Appendix E of the PMP. Additionally the City made modifications to the summer trolley route, as recommended in the PMP.

Recent parking improvements in the City include the addition of approximately 200 parking spaces through acquisition of the dirt parking lot from Dynegy, typically referred to as the "Triangle Lot" and acquisition of the 40-space parking lot at the corner of Market Avenue and Pacific. Both parking lots have been signed and are open for public use.

The City has recently added "parking t's" to many of the curbside parallel parking spaces in the downtown to better delineate the extent of individual parking spaces. The City is also in the process of adding perpendicular parking on the west side of Market Avenue, between Beach and Surf Streets.

DISCUSSION

Staff has reviewed the PMP, and while the City has done little to implement that policy directive, since the 2007 adoption date, there are some items worth further discussion from an implementation standpoint. Because it has been a number of years since Council approved the PMP, staff determined to bring this overview to Council before implementing the approved PMP. Of particular interest are related policies concerning the following areas:

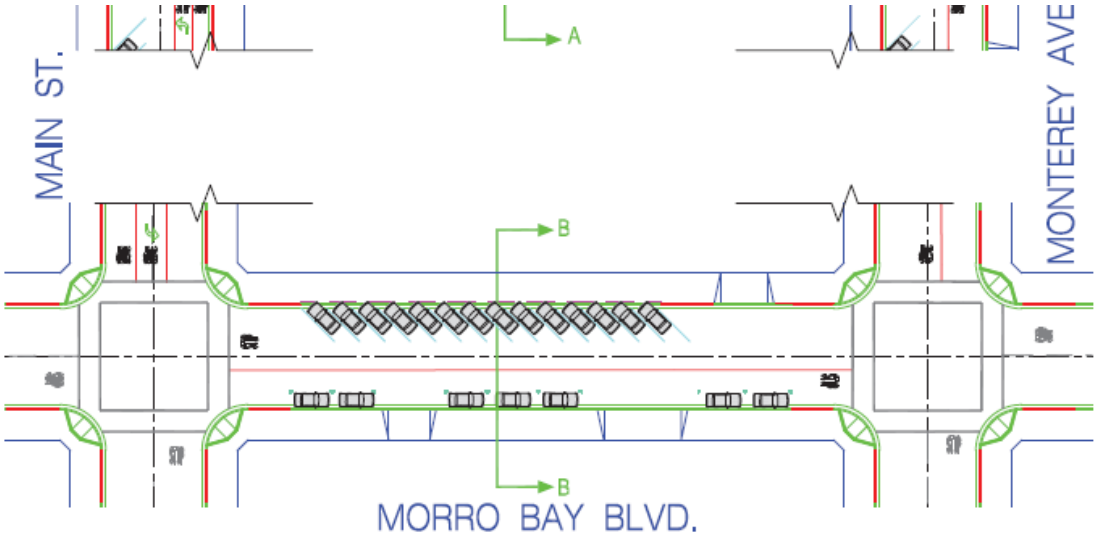
1. Restriping some of the parking areas in the downtown to achieve a greater yield,
2. Adding commercial loading zones in the Embarcadero area,
3. Researching paid parking opportunities in the downtown and on the Embarcadero and
4. Reviewing and possibly amending current parking policies (zoning) to help improve and encourage new and existing businesses to invest in the City.

Angled Parking

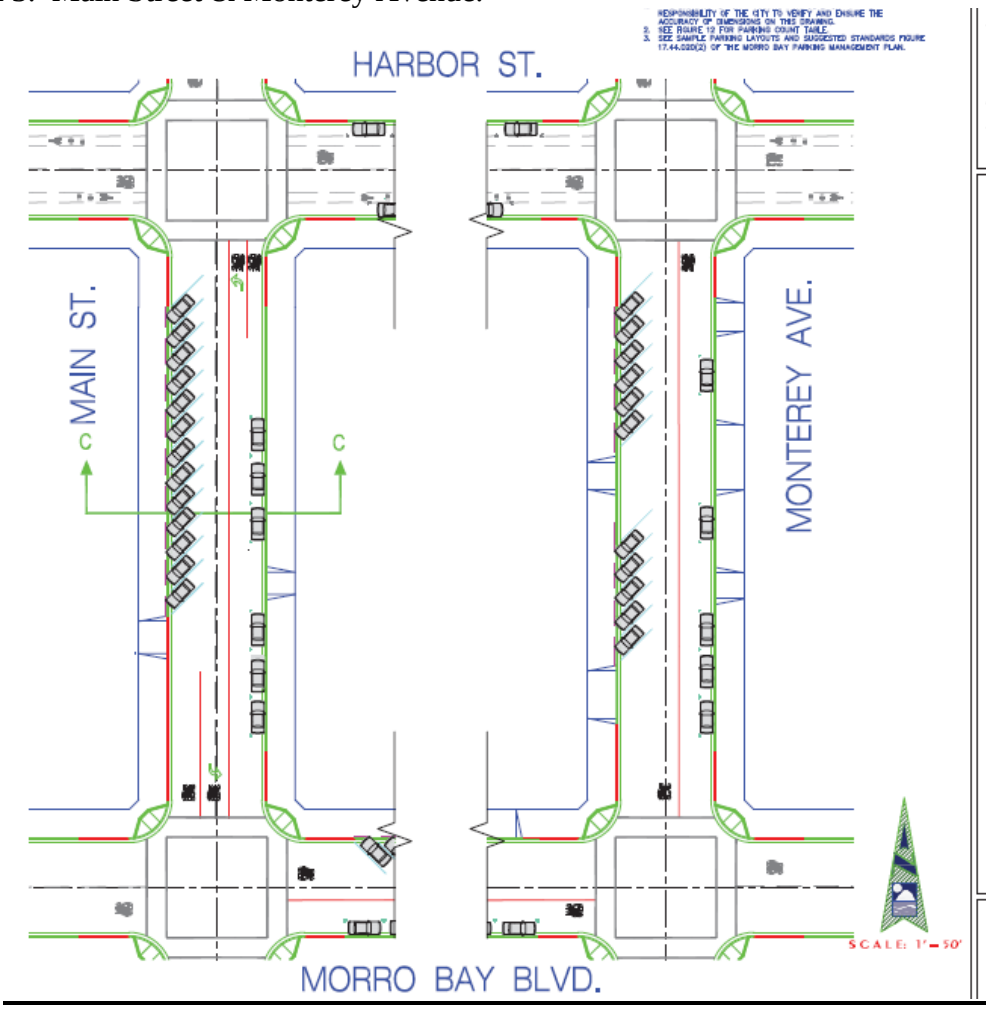
The angled parking discussion starts on page 52 of the PMP, and identifies it as a cost efficient way to achieve additional parking supply – making best use of land that is already under City control. While there are likely many streets in and around the Downtown where that type of solution could be implemented, the PMP identifies four example locations: 1) North side of Morro Bay Boulevard. between Monterey and Main, 2) west side of Main Street between Harbor Street and Morro Bay Boulevard., 3) west side of Monterey Avenue between Morro Bay Boulevard and Harbor Street, and 4) center lane of Market between Dunes Street and Harbor Street.

Layouts for the four example locations are provided below:

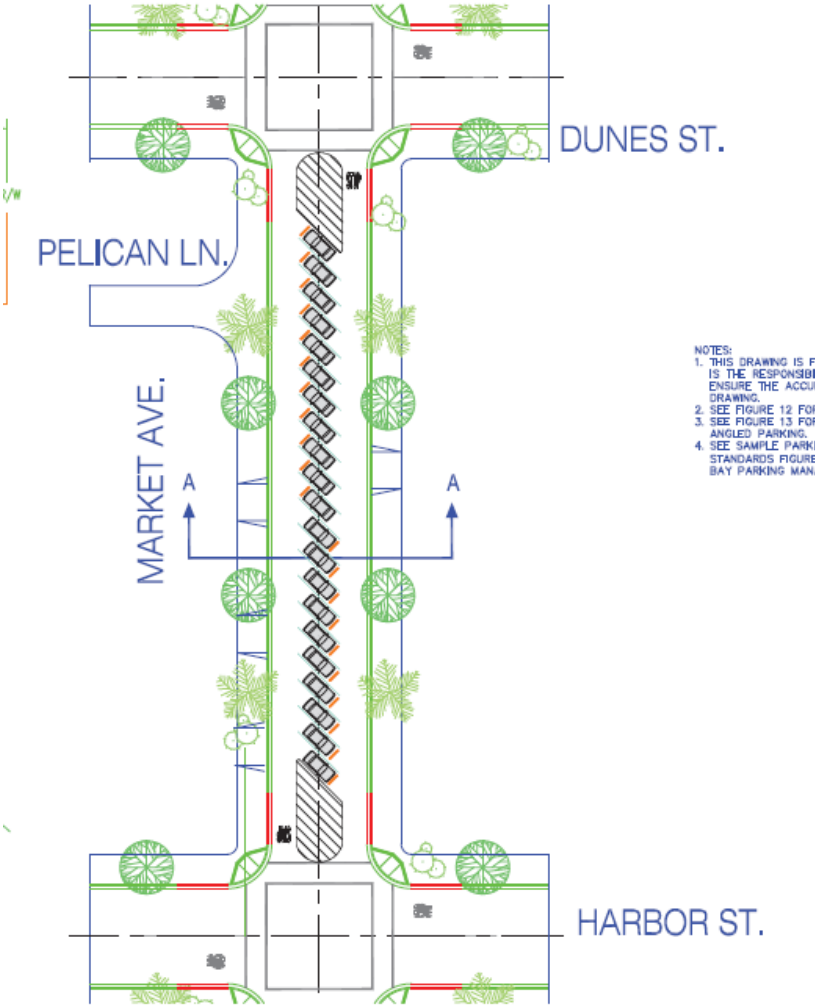
1. Morro Bay Boulevard



2 & 3. Main Street & Monterey Avenue.



4. Market Avenue.



Overall, the concept would be to implement angled parking in those four locations, along with the area on Market Avenue in front of the Elemental Herbs building, as a starting point. Addition of angled/perpendicular parking on other streets could be considered over time. With Council approval, staff intends to implement that aspect of the approved PMP in the coming months.

Commercial Loading Zones

Commercial loading zones or "Delivery Truck Parking" is discussed beginning on page 70 of the PMP and includes recommendations for the modification when, prior to 11:00am, deliveries may be made to the Embarcadero Businesses, along with the installation of several short term/time limited spaces. The PMP directed the installation of the loading zone spaces, in cooperation with local businesses, and suggested the following locations:

- East side of Embarcadero just south of Driftwood Street,
- West side of Embarcadero south of Morro Bay Boulevard, and

- East side of Front Street south of the northerly intersection with Embarcadero

In order to modify the time restriction of commercial delivery, Council would need to adopt a modification to Morro Bay Municipal Code section 10.48.020 allowing a time of day restriction.

Paid Parking

Paid parking is discussed on page 64 of the PMP and the conclusion is somewhat mixed. The PMP does note "charging for parking in selected locations is a technique used to discourage parking by certain users, such as employees." Other studies clearly indicate paid parking can improve business by increasing availability and turnover in certain select areas. The PMP indicated, however, since Morro Bay - at that time - did not have a high demand for parking, paid parking may not be needed. Staff, in reviewing the PMP and considering many of our businesses do believe we need to improve parking availability in high-business areas, recommends we should further research and consider paid parking. Staff concurs with the existing research indicating select use of paid parking, when taken in conjunction with timed parking areas, can be an effective way to increase turnover in high traffic areas. Conceptually, the idea is to look at parking holistically by identifying areas where increased parking space turnover is desired and by identifying areas where it is acceptable to park for longer periods of time. Having low cost or free parking lots or on-street parking around the perimeter of the Downtown and Embarcadero and higher cost parking areas in the immediate vicinity of the core commercial areas would push longer-term parking outside the core commercial areas where turnover is desired.

In any case, staff would like to research paid parking options for the Downtown and Embarcadero areas, while reaching out to the business community and return to Council for a more robust discussion on the topic.

Parking Policy Discussion

Staff would like to evaluate current parking policies related to parking in-lieu fees, grandfathering, and existing nonconforming buildings, with an eye toward making the City's parking requirements more supportive of businesses that wish to relocate or reinvest in Morro Bay.

Relaxation of the City's commercial building reuse policies, similar to what was done on North Main Street, would go a long way toward facilitating commercial building reuse in the city.

A hearty discussion on parking requirements for the lease sites along the west side of the Embarcadero is likely worth a serious look. The lease sites tend to be fairly small and the provision of onsite parking spaces may not be the highest and best use for the ground floor lease area.

CONCLUSION

Staff would like the Council to provide general concurrence related to moving forward with the parking restriping of Morro Bay Boulevard, Main Street, Monterey Avenue and Market Avenue.

Staff would also like the Council to provide direction to staff to research paid parking opportunities and to conduct a City policy review of parking requirements associated with commercial building use and

reuse, and to return with possible revisions that would improve the likelihood of commercial investment in the city.

ATTACHMENTS

1. City Council Resolution No. 48-07
2. Engineer's Opinion of Probable Cost for Striping Improvement

RESOLUTION NO. 48-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY ADOPTING THE FINAL PARKING MANAGEMENT PLAN FOR THE CITY OF MORRO BAY, CALIFORNIA

WHEREAS, the City Council decided that it was necessary and desirable to prepare a comprehensive Parking Management Plan for the downtown and Embarcadero areas; and

WHEREAS, the City contracted with TPG Consulting, Inc. for a comprehensive evaluation of the downtown and Embarcadero area parking needs, supply and demand assessment, and alternative management strategies for a more efficient and effective use of both public and private parking resources; and

WHEREAS, TPG prepared a report, entitled the *Final Parking Management Plan* for the City of Morro Bay, California, in October of 2007 (attached hereto as Exhibit A); and

WHEREAS, the *Parking Management Plan* for the City of Morro Bay, California, has been available for public review and comment; and

WHEREAS, following the issuance of the initial draft of the plan in April 2007 *Parking Management Plan* for the City of Morro Bay, California, the City held a numerous public hearings on the plan with the Harbor Commission, Public Works Advisory Board, Planning Commission and other civic groups and received additional information; and

WHEREAS, the *Final Parking Management Plan* establishes the policy framework for which to base subsequent decisions on Capital Improvement Projects that implement the recommendations of the plan; and

WHEREAS, the City Council desires to align all parking related polices in accordance with the recommendations and conclusions of the *Final Parking Management Plan*; and

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

SECTION 1. Consistency with General Plan.

The City Council finds that the parking conditions and management tools to effectively utilize parking resources in the downtown and Embarcadero areas are consistent with the City's General Plan and Local Coastal Plan.

SECTION 2. CEQA Finding.

The adoption of the *Final Parking Management Plan* is categorically exempt from environmental review pursuant to section 15061(b)(3) of the California Environmental Quality Act guidelines. The intent of the management plan is to manage parking resources and mitigate parking related impacts to the greatest practicable extent within the City's financial constraints.

SECTION 3. Adoption of Final Parking Management Plan Report.

The *Final Parking Management Plan* prepared by TPG Consulting, Inc. for the City of Morro Bay, California, is hereby adopted.

PASSED AND ADOPTED by the City Council of the City of Morro Bay this 8th day of October 2007 by the following vote:

AYES: DeMeritt, Grantham, Peirce, Winholtz, Peters
NOES: None
ABSENT: None
ABSTAIN: None

JANICE PETERS, Mayor

ATTEST:

BRIDGETT BAUER, City Clerk

APPROVED AS TO FORM:

ROBERT SCHULTZ, City Attorney

CITY OF MORRO BAY
DEPARTMENT OF PUBLIC WORKS
Opinion of Probable Cost

Project: Downtown Restriping per PMP
Prepared by: Rob Livick
Date: January 19, 2016

PRICE INDEX BASELINE, 2011 CALTRANS INDEX = 84
CURRENT PRICE INDEX = 125 Caltrans

-ENGINEER'S SEAL-

REGISTERED PROFESSIONAL ENGINEER
ROBERT A. LIVICK
C 61057
CIVIL
STATE OF CALIFORNIA

Digitally signed by Rob Livick
Date: 2016.01.19 12:26:04 -08'00'

Engineer's signature date

-RESULTS-

Subtotal	$34,695.75
Cost Index Factor	1.49
Adjusted Subtotal	***$51,630.58***
Inflation (10%)	$5,163.06
Administration (20%-40%)	$20,652.23
Adjusted Subtotal	***$77,445.87***
Contingency (3%)	$2,323.38
TOTAL COST OPINION: (rounded to the nearest $100)	**$79,800**

S:\City Council Staff Reports\Livick\2016\01262016\[Striping Cost Opinion.xlsx]Bond Estimate

TRAFFIC CONTROL: SEC. 9-1	TYPE	UNIT COST	UNIT	MINIMUM	QUANTITY	TOTAL
TRAFFIC STRIPING	THERMOPLASTIC	$1.75	LF		4839	8,468.25
REMOVE STRIPING		$3.00	LF		2900	8,700.00
REMOVE PAVEMENT MARKING		$4.50	SF		500	2,250.00
REMOVE SIGN		$75.00	EA		9	675.00
TRAFFIC MARKING		$1.25	SF		302	377.50
CURB PAINTING		$2.00	LF		550	1,100.00
INSTALL SIGNS		$400.00	EA		12	4,800.00
INSTALL CONCRETE PARKING STOPS		$55.00	EA		35	1,925.00
MISC MINOR CONCRETE WORK		$500.00	LS		3	1,500.00
MOBILIZATION	% OF IMPV.	10%	EA	$ 2,000.00	1	3,900.00
TRAFFIC CONTROL	% OF IMPV.	3%	EA	1000	1	1,000.00
					Subtotal	*34,695.75*

AGENDA NO: C-6

MEETING DATE: January 26, 2016

Staff Report

TO: **Honorable Mayor & City Council** **DATE: January 19, 2016**

FROM: **Dana Swanson, City Clerk**

SUBJECT: **Introduction and First Reading of Ordinance No. 598 Amending Section 3.08.070 of the Morro Bay Municipal Code relating to Bidding**

BACKGROUND

This item was continued from the January 12, 2016 City Council meeting to date uncertain. The previous staff report is attached for reference and discussion purposes.

Prepared By: __DS_____ **Dept Review: _____**

City Manager Review: _____

City Attorney Review: _____

AGENDA NO: C-5

MEETING DATE: January 12, 2016

Staff Report

TO: **Honorable Mayor and City Council** **DATE: December 15, 2015**

FROM: **Joseph W. Pannone, City Attorney**
Brooke Austin, Legal Assistant/Deputy City Clerk

SUBJECT: **Introduction and First Reading of Ordinance No. 598 Amending Section 3.08.070 of the Morro Municipal Code relating to Bidding**

RECOMMENDATION

Staff recommends the City Council review Ordinance No. 598, accept public comment, and make a motion for the introduction and first reading of Ordinance No. 598, by number and title only, amending Section 3.080.070 of the Morro Bay Municipal Code (MBMC) relating to bidding.

BACKGROUND/DISCUSSION

In August, the Council adopted Ordinance No. 594 amending various sections of Chapter 3.08 of the MBMC relating to contract authority and the purchasing process. In reviewing and implementing those changes, staff became aware of some language in MBMC Section 3.08.070 that conflicts with the changes made or is repetitive of provisions in Ordinance No. 594. Section 3.08.110 allows the purchase of up to $50,000 without a formal bid process and Section 3.08.170 gives the City Manager the authority to sign any contract, whether open market or bid, up to $125,000. In addition, language is being suggested to be added to Section 3.08.070 to clarify when bidding and open market procedures can be dispensed with and requiring notification to the Council of that. Therefore, Ordinance No. 598 is being proposed to amend Section 3.08.070 accordingly.

CONCLUSION

Staff recommends the City Council introduce Ordinance No. 598, by reading the number and title only.

01181.0001/278702.1
Prepared By: BRA **Dept Review: _____**

City Manager Review: DWB

City Attorney Review: JWP

ORDINANCE NO. 598

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING SECTION 3.08.070 OF THE
MORRO BAY MUNICIPAL CODE RELATING TO BIDDING**

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

WHEREAS, the City Council recently adopted Ordinance No. 594 that made various amendments to Chapter 3.08 of the Morro Bay Municipal Code (MBMC) relating to contract authority and the purchasing process;

WHEREAS, in reviewing and implementing those changes, staff became aware of language in MBMC subsection 3.08.070 that conflicted with the changes made; and

WHEREAS, this Ordinance rectifies that situation.

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

SECTION 1: Section 3.08.070 of the MBMC is hereby amended to read as follows:

3.08.070 – Exceptions to Requirements of this Chapter. ~~Bidding.~~

~~Purchase of supplies, equipment, materials, and public works projects shall be by bid procedures pursuant to Sections 3.08.100 and 3.08.110.~~ Notwithstanding any other provisions of this chapter and subject to applicable State laws, bidding or open market procedure may be dispensed with ~~only~~ when an emergency, as determined by the city manager, requires ~~that~~ an order be placed with the nearest available source of supply, or ~~when the amount involved is less than five hundred dollars, or~~ when the supplies and materials can be obtained from only one vendor. The city manager, or his/her designee, shall, as soon as reasonably possible after the decision, notify the City Council of the decision to proceed as permitted by this section.

SECTION 2: This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

INTRODUCED at a regular meeting of the City Council of Morro Bay, held on the 26th day of January, 2016 by motion of Councilmember _____, seconded by Councilmember _____.

PASSED AND ADOPTED on the _____ day of _____, 2016.

AYES:
NOES:
ABSENT:

_____
JAMIE L. IRONS, Mayor

ATTEST:

_____
DANA SWANSON, City Clerk

APPROVED AS TO FORM:

_____
JOSEPH W. PANNONE, City Attorney

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 26th day of January, 2016, and hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the _____ day of _____, 2016, by the following vote, to wit:

Ayes:
Noes:
Abstain:
Absent:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this _____ day of _____, 2016.

_____
City Clerk of the City of Morro Bay

AGENDA NO: C-7

MEETING DATE: January 26, 2016

Staff Report

TO: **Honorable Mayor and City Council** **DATE:** **January 19, 2016**

FROM: **Brooke Austin, Legal Assistant/Deputy City Clerk**

SUBJECT: **Adoption of Ordinance No. 599 Amending Title 9, Chapter 9.06 of the Morro Bay Municipal Code, Prohibit the Establishment of Medical Marijuana Dispensaries, to Further Prohibit Marijuana Cultivation Citywide and Provide Other Miscellaneous Edits**

SUMMARY

Ordinance No. 599 was introduced at the regular City Council meeting held on January 12, 2016. This is the legally required second reading for non-urgency ordinances. Section 9.06.040 B has been revised as proposed by Council at the first reading to clarify the marijuana cultivation exception for a primary caregiver or qualified patient. After the second reading, by title only with further reading waived, it is recommended the Council adopt the ordinance, which will then become effective on the 31st day after its adoption.

Prepared By: BRA Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

ORDINANCE NO. 599

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AMENDING TITLE 9, CHAPTER 9.06 OF THE MORRO BAY MUNICIPAL CODE, PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, TO FURTHER PROHIBIT MARIJUANA CULTIVATION CITYWIDE AND PROVIDE OTHER MISCELLANEOUS EDITS**

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

WHEREAS, in 1996, the voters of the state of California approved Proposition 215, codified at Health and Safety Code section 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" (the "CUA"); and

WHEREAS, the CUA was intended to provide seriously ill Californians the ability to possess, use and cultivate marijuana for medical use once a physician has deemed the use beneficial to a patient's health; and

WHEREAS, in 2003, California Senate Bill (SB) 420 was enacted by the Legislature to clarify the scope of the CUA and to allow California cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the CUA; and

WHEREAS, those new regulations and rules became known as the Medical Marijuana Program ("MMP"), which, among other things, enhanced the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in 2009, the City Council of the City of Morro Bay ("City") prohibited the establishment of medical marijuana dispensaries City-wide by adopting Ordinance No. 547, codified in the Morro Bay Municipal Code ("MBMC") at Title 9 (Public Peace, Morals and Welfare), Chapter 9.06, "MEDICAL MARIJUANA DISPENSARIES" (the "Ordinance"); and

WHEREAS, the Ordinance prohibits the establishment and operation of fixed medical marijuana dispensaries (MBMC §§ 9.06.010-040) and deems those uses to be a "misdemeanor" pursuant to the City's police powers, subject to criminal and infraction penalties (MBMC § 9.06.040); and

WHEREAS, in 2013, the California Supreme Court confirmed cities have the authority to ban medical marijuana land uses (*City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729); and

WHEREAS, also in 2013, the California Supreme Court further determined the CUA and MMP do "not preempt a city's police power to prohibit the cultivation of all marijuana within that city" (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 978); and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U. S. C. Section 801 *et seq.*, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed into law, three bills – Assembly Bill (AB) 243, AB 266 and SB 643 – which together form the Medical Marijuana Regulation and Safety Act (the "Act"); and

WHEREAS, the Act, which becomes effective January 1, 2016, creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis; and

WHEREAS, in addition to creating those State controls, the Act preserves the City's authority to prohibit, regulate and/or license medical marijuana uses within its jurisdiction, as it expressly provides that the Act:

- Is not intended "to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements" (Bus. & Prof. Code § 19315(a));

- Does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c));

- Authorizes local jurisdictions like the City with the power to "adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity" (Bus. & Prof. Code § 19316); and

WHEREAS, the Act further expressly allows local governments to enact ordinances expressing their intent to prohibit the ***cultivation*** of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362. 777(c)(4)); and

WHEREAS, under the dual licensing system created by the Act, before any kind of medical marijuana license will be issued by the State, the applicant must have obtained the necessary local license and/or permit for the requested marijuana-related use; and

/ / /

WHEREAS, pursuant to the following statutes created by the Act, local jurisdictions that adopt a ban on medical marijuana dispensaries and/or cultivation will effectively have a "veto" over whether a state license for the locally regulated activities can be issued:

> Business & Professions § 19320(b): "A licensee shall not commence [commercial cannabis] activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance."
>
> Health & Safety Code § 11362.777(b)(1): "A person shall not cultivate medical marijuana without first obtaining . . . A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city. . . in which the cultivation will occur."
>
> Business & Professions Code § 19320(b): "Revocation of a local license, permit or authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction. . . ."
>
> Business & Professions Code § 19312: "Each licensing authority may suspend or revoke licenses. . . ."

WHEREAS, the City hereby re-affirms and confirms the City's Zoning Code is adopted and operates under the principles of permissive zoning, meaning any land use not specifically authorized or identified in the zoning code is prohibited; and

WHEREAS, California Health & Safety Code Section 11362.777(b)(3) expressly provides the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under the principles of permissive zoning; and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, including but not limited to offensive odors, criminal activity – including trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of marijuana, and public health concerns including fire hazards and problems associated with mold, fungus, and pests; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, due to the value of marijuana plants and their strong smell (which alerts others to their locations), marijuana cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety and/or "attractive nuisance;" and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the buildings in which it is cultivated, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire, which presents a clear and present danger to the building and its occupants; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, based on the experiences of other cities, those negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities; and

WHEREAS, based on the findings set forth above and herein, the potential establishment of the cultivation, processing and distribution of medical marijuana in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing, delivery, and/ or distribution will result in the aforementioned threat to public health, safety, and welfare; and

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City has determined, in addition to the existing prohibition on the establishment of medical marijuana dispensaries codified in the Ordinance, an express prohibition on the cultivation of medical marijuana is needed to protect the public health, safety and welfare; and

WHEREAS, in light of the findings and determinations set forth herein and further advanced during the public hearing on this matter, the City now desires to amend Chapter 9.06 of the Morro Bay Municipal Code to further prohibit cultivation of medical marijuana pursuant to the new state law requirements (AB 266 and AB 243), and to make other miscellaneous edits to effectuate the same (the "Amendments"); and

WHEREAS, the Amendments would affect all properties City-wide; and

WHEREAS, the City Council has duly considered all information presented to it, including written staff reports and any public comment regarding same.

/ / /

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

SECTION 1. Findings. The City Council finds and determines the recitals above are true and correct, and are hereby incorporated by reference. Additionally, the City Council finds and determines as follows:

A. The cultivation and dispensing of marijuana has significant impacts or the potential for significant impacts on the City. Those impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, and the nuisance of strong and noxious odors. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with medical marijuana dispensaries and cultivation of the same.

B. The proposed Amendments will further the public health, safety and general welfare. These proposed Amendments to the Ordinance will prohibit marijuana and medical marijuana dispensaries and cultivation within City limits and will help protect the public health, safety and general welfare of the City and its residents. They will also mitigate or reduce the crime-related secondary impacts associated with medical marijuana dispensaries, cultivation and the mobile delivery of marijuana, which is contrary to policies that are intended to promote and maintain the public's health, safety and welfare. These prohibited services will help preserve the City's law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the City's law enforcement resources.

C. The proposed Amendments will not adversely affect adjoining property as to value, precedent or be detrimental to the area. These proposed Amendments to the Ordinance will further solidify the City's stance on prohibiting medical marijuana dispensaries and cultivation. The prohibition of these uses will help protect property values in the City and discourage a wide range of illicit activities associated with the sale, cultivation and dispensing of medical marijuana.

D. The proposed Amendments are consistent with the General Plan and are in compliance with all applicable provisions of the Municipal Code and other ordinances and regulations of the City. These proposed amendments prohibiting marijuana and medical marijuana dispensaries and cultivation within City limits are consistent with the existing language of Chapter 9.06, "Medical Marijuana Dispensaries," of the MBMC.

E. The proposed Amendments are consistent with Federal Law. The possession, cultivation, use, and dispensing of marijuana continues to be illegal under Federal law. The Federal Controlled Substances Act classifies marijuana as "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse, and makes it unlawful for any person to cultivate or dispense marijuana. The Controlled Substance Act contains no statutory exemption for the possession of marijuana for medical purposes.

SECTION 2. Chapter 9.06 of Title 9 of the Morro Bay Municipal Code is hereby amended, in its entirety, to read as follows:

Chapter 9.06
MEDICAL MARIJUANA REGULATIONS

9.06.010 Purpose.
9.06.020 Findings.
9.06.030 Definitions.
9.06.040 Prohibition.
9.06.050 Use or activity prohibited by state or federal law.
9.06.060 Enforcement.

Section 9.06.010 Purpose.

The purpose of this Chapter is to prohibit the establishment of marijuana and medical marijuana dispensaries and the cultivation and processing of marijuana and medical marijuana, as defined herein, within the City of Morro Bay.

Section 9.06.020 Findings.

In adopting the prohibitions codified in this Chapter, the City Council makes the following findings and determinations:

A. The prohibitions on marijuana cultivation, processing, and dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's prohibition of such activities is within the authority conferred upon the City Council by its police power and state law.

B. On October 9, 2015, the governor signed the "Medical Marijuana Regulation and Safety Act"(the "Act") into law. The Act becomes effective January 1, 2016 and contains new statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code § 11362. 777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));

2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Bus. & Prof. Code § 19315(a));

3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Bus. & Prof. Code § 19316(c)); and

4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code § 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Bus. & Prof. Code § 19340(a)).

C. It is recognized the Federal Controlled Substances Act, codified at 21 U.S.C. Section 801 *et seq.*, classifies marijuana as "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse. The Controlled Substances Act makes it unlawful for any person to cultivate or dispense marijuana without regard to a claimed medical need.

D. The City Council finds this chapter: (1) expresses its intent to prohibit the cultivation of marijuana in the City and not to administer a conditional permit program pursuant to Health & Safety Code § 11362.777 for the cultivation of marijuana in the City; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; and (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and (4) expressly prohibits the dispensing, cultivation and processing of marijuana in the City.

Section 9.06.030 **Definitions.**

A. **"Marijuana"** means any or all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or authorized in strict compliance with the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

B. **"Marijuana Cultivation"** means the growing, planting, harvesting, drying, curing, grading, trimming or processing of marijuana or any part thereof.

C. **"Marijuana Processing"** means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

D. **"Marijuana Dispensary"** means any for-profit or not-for-profit facility or location, whether permanent or temporary, where the owner(s) or operator(s) intends to or does possess and distribute marijuana, or allows others to possess and distribute marijuana, to more

than one person, such as a qualified patient, primary caregiver or a person with an identification card issued in accordance with California Health and Safety Code Sections 11362.5 to 11362.83. A "medical marijuana dispensary" includes a "collective" or "cooperative" as described in Health and Safety Code Section 11362.775, and includes an establishment that delivers marijuana to offsite locations. A "medical marijuana dispensary" shall not include the following uses; provided, that the location of such uses is permitted by the Code and the uses comply with all applicable state laws including Health and Safety Code Section 11362.5 *et seq.*:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;

2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;

3. A facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;

4. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;

5. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or

6. A residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

E. **"Operation"** means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a marijuana dispensary, fixed or mobile.

F. **"Person"** means any person, firm, corporation, association, club, society, or other organization. The term person shall include any owner, manager, proprietor, employee, volunteer or salesperson.

G. **"Primary caregiver"** means the individual (or individuals) older than 18 years of age, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that qualified patient.

H. **"Qualified patient"** means a seriously ill person who obtains a recommendation from a physician, licensed to practice medicine in the State of California, to use marijuana for personal medical purposes. In addition, persons currently under the care of a physician for certain medical conditions including, but not limited to, HIV/AIDS, cancer, glaucoma, epilepsy or other spasticity related illnesses, migraine, anorexia, severe nausea are presumed to be "qualified patients."

/ / /

Section 9.06.040 **Prohibition.**

A. Marijuana Dispensaries. The establishment or operation of a medical marijuana dispensary, as defined in this Chapter, is prohibited in all zones throughout the City.

B. Marijuana Cultivation. With the exception of personal individual cultivation by a primary caregiver or qualified patient for use of medical marijuana, as permitted by the Compassionate Use Act of 1996, marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives and dispensaries, is prohibited in all zones throughout the City.

C. Marijuana-Related Licenses and Permits. No permit or any other applicable license or entitlement for use, whether administrative or discretionary, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a marijuana dispensary within the City limits, marijuana cultivation or marijuana processing, and no person shall otherwise establish or conduct such activities in the City, except as otherwise expressly allowed by federal or state law.

Section 9.06.050 **Use or activity prohibited by state or federal law.**

Nothing contained in this Chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

Section 9.06.060 **Enforcement.**

A. Public Nuisance. The violation of any provision in this Chapter shall be and is declared to be a public nuisance and contrary to the public interest and shall, in addition to any other remedy and, at the discretion of the city, create a cause of action for injunctive relief.

B. Penalties. The following nonexclusive remedies may be used by the City as penalties for violations of this Chapter:

1. Criminal. Violation of the prohibition against the establishment or operation of a medical marijuana dispensary, fixed or mobile, as set forth at Section 9.06.040 of this Chapter, or the causing or permitting another to violate said prohibition, is a misdemeanor.

2. Civil. The violation of any provision of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief as well as any other available civil remedies.

3. Separate Offense for Each Day. Any person who violates any provision of this Chapter is guilty of a separate offense for each day during any portion of which such person commits, continues, permits, or causes a violation of this Chapter and shall be penalized accordingly.

SECTION 3. This ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this ordinance and shall cause this ordinance to be posted in the manner required by law.

INTRODUCED at a regular meeting of the City Council of Morro Bay, held on the 12th day of January, 2016, by motion of Councilmember Smukler and seconded by Mayor Irons.

PASSED AND ADOPTED on the 26th day of January, 2016.

AYES:
NOES:
ABSENT:

_____
JAMIE L. IRONS, Mayor

ATTEST:

_____
DANA SWANSON, City Clerk

APPROVED AS TO FORM:

_____
JOSEPH W. PANNONE, City Attorney

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 12th day of January, 2016, and hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the 26th day of January, 2016, by the following vote, to wit:

Ayes:
Noes:
Abstain:
Absent:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this _____ day of _____, 2016.

_____
City Clerk of the City of Morro Bay