



CITY OF MORRO BAY CITY COUNCIL AGENDA

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

Regular Meeting - Tuesday, October 24, 2017 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
RECOGNITION

- Presentation of Certificate of Appreciation to Connor Bradley honoring the completion of his Boy Scout Eagle Project at Cloisters Park.

CLOSED SESSION REPORT
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

- Introduction of Jennifer Callaway Schrantz, Finance Director

PRESENTATIONS

PUBLIC COMMENT PERIOD

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 city of residence 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. The public will also be provided an opportunity to comment on consent agenda items.

- A-1 APPROVAL OF MINUTES FOR THE SEPTEMBER 26, 2017 CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 ADOPTION OF RESOLUTION NO. 59-17 CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS NECESSARY FOR A NEW LOAN FOR THE LEASE AGREEMENT AT LEASE SITE 71-74/71W-74W AND 75-77/75W-77W AND ACCEPTING A DEED OF TRUST RELATED THERETO (MORRO BAY MARINA, LLC, 601-699 EMBARCADERO); (HARBOR)

RECOMMENDATION: Council adopt Resolution No. 59-17, authorizing the Mayor to execute documents necessary for a new loan regarding the leasehold interest at Lease Sites 71-74/71W-74W and 75-77/75W-77W. subject to approval of the City Attorney and accepting a deed of trust related thereto.

- A-3 APPROVAL OF FINAL MAP 2670 (1889 SUNSET AVENUE) BY ADOPTION OF RESOLUTION NO. 58-17; (PUBLIC WORKS)

RECOMMENDATION: Council adopt Resolution No. 58-17, approving the Final Map 2670.

- B. PUBLIC HEARINGS - None

- C. BUSINESS ITEMS

- C-1 INTRODUCTION OF ORDINANCE NO. 612, WHICH ESTABLISHES A COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM TO PERMIT TWO MEDICAL CANNABIS DISPENSARIES, WHOLESALE MEDICAL CANNABIS DISTRIBUTION AND MEDICAL CANNABIS DELIVERIES, WHILE PROHIBITING ALL OTHER COMMERCIAL CANNABIS OPERATIONS; REGULATES AND PERMITS PERSONAL CANNABIS CULTIVATION AND, AMENDS CURRENT SECONDHAND SMOKE REGULATIONS; (ASSISTANT CITY ATTORNEY)

RECOMMENDATION: Council discuss and introduce, for first reading by title only and with further reading waived, Ordinance No. 612: An Ordinance of the City Council of the City of Morro Bay, California, adding Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) to Title 5 of the Morro Bay Municipal Code to Permit Certain Medical Commercial Cannabis Uses (Retail Sales, Deliveries and (Wholesale) Distributor), to Prohibit All Other Medical Commercial Cannabis Uses, and to Prohibit All Adult-Use (Recreational) Commercial Cannabis Uses; Repealing Chapter 9.06 of Title 9 of the Morro Bay Municipal Code and Replacing It with a New Chapter 9.06 (Personal Cannabis Cultivation) to Regulate Personal Cannabis Cultivation; and, Amending Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 of the Morro Bay Municipal Code to Strengthen Regulation of Secondhand Smoke and Expressly Include Cannabis and Electronic Smoking Devices.

C-2 APPROVAL OF UPDATED CITY LOGO AND TAG LINE; (COMMUNITY DEVELOPMENT/TOURISM)

RECOMMENDATION: City Council:

1. Review the staff report and recommendation from the Tourism Business Improvement District Board and approve use of the preferred updated Logo option
2. Approve use of the "Put Life on Coast" Tag Line

C-3 STATUS AND CONSIDERATION OF WITHDRAWAL FROM THE MEMORANDUM OF AGREEMENT BETWEEN THE SAN LUIS OBISPO CITIES AND SAN LUIS OBISPO COUNTY FOR THE CONSTRUCTION AND FINANCING OF AN ANIMAL SERVICES SHELTER, AND PROVIDE DIRECTION DEEMED APPROPRIATE; (ADMINISTRATION)

RECOMMENDATION: City Council authorize the City Manager to withdraw from the Memorandum of Agreement (MOA) for an animal services shelter if all three of largest cities currently part of the MOA also do so by October 31, 2017.

C-4 WATER RECLAMATION FACILITY (WRF) PROJECT GOAL, WITH CHANGES DEEMED APPROPRIATE, AND AUTHORIZATION TO ADVERTISE THE DESIGN-BUILD REQUEST FOR QUALIFICATIONS (RFQ); (PUBLIC WORKS)

RECOMMENDATION: City Council consider and provide direction and/or approve:

1. Refinement of the established community goals that guide the overall WRF project
2. WRF project RFQ and approve for advertisement

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, November 14, 2017 at 6:00 p.m.** 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 REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

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MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – SEPTEMBER 26, 2017
VETERAN'S MEMORIAL HALL – 6:00 P.M.

AGENDA NO: A-1
MEETING DATE: October 24, 2017

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Martin Lomeli	Interim City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Greg Allen	Police Chief
	Matt Vierra	Fire Marshal
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:01 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION - None

CLOSED SESSION REPORT – No Closed Session Meeting was held.

MAYOR AND COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PRESENTATIONS

- Presentation of Proposed Fare Increases – Mary Gardner, RTA
<https://youtu.be/Abj2Kfai5-Q?t=15m3s>

PUBLIC COMMENT

<https://youtu.be/Abj2Kfai5-Q?t=16m52s>

Rick Gallagos, President of the White Caps Community Band, provided the business spot. The White Caps Band was established in 1984 and they rehearse at 10:00 a.m. each Saturday in the Veterans Hall. They perform a summer concert series on the Embarcadero and at other local events.

Jeff Bacon and Jon Elliott announced Morro Bay Trick-or-Treat event to be held Tuesday, October 31, from 3:00 to 5:30 p.m.

Erica Crawford, Morro Bay Chamber of Commerce, announced the Surfboard Art Festival unveiling event to be held Saturday, September 30, from 5:00 to 8:00 p.m. at Forever Stoked.

Ron Reisner, Community Foundation of Estero Bay, announced a fundraising event “Morro Bay Sings the Eagles” to be held Saturday, October 14, at the Community Center. Tickets are \$40 each and proceeds help area youth participate in sports and activities.

Barry Rands, representing SLO Bicycle Club, announced the annual Lighthouse Century Bike Ride to be held Saturday, October 14. They expect approximately 1,200 riders to participate this year and funds raised will be donated to organizations that support biking in San Luis Obispo County.

Joan Solu, Morro Bay, opposed a sewer rate increase due to the financial impact it would have on hoteliers.

Rigmor, Morro Bay, supported approval of the License Agreement with the Maritime Museum Association and encouraged the Council to move forward with site selection for the WRF. She supported the South Bay Blvd. site to prevent delays.

Cyndee Edwards, business owner and Chair of the Morro Bay Chamber of Commerce Board of Directors, urged the Council to be diligent in pursuing financial opportunities to offset the cost of the WRF and continue to look at the larger economic vitality picture.

Dorothy Cutter, Morro Bay, found the proposed WRF options unacceptable and suggested joining Cayucos as a feasible alternative.

Marla Jo Sadowski, Morro Bay, asked the Council to keep those on fixed incomes and single parents in mind when considering sewer plant costs.

Richard Sadowski, Morro Bay, expressed frustration about the cancellation of WRFCAC meetings and lack of land use discussion by the Planning Commission. He suggested a \$25 Million project is possible at or near the current location.

Barbara Doerr, Morro Bay, stated her opposition to the new speaker forms and noticing for the September 26 special meeting.

The public comment period was closed.

A. CONSENT AGENDA
<https://youtu.be/Abj2Kfai5-Q?t=43m46s>

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 SEPTEMBER 12, 2017 SPECIAL CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF PROCLAMATION DECLARING SEPTEMBER 24-30, 2017 SEA OTTER AWARENESS WEEK; (HARBOR)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF PROCLAMATION DECLARING OCTOBER 8-14, 2017 AS “FIRE PREVENTION WEEK”; (FIRE)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF A LICENSE AGREEMENT WITH CENTRAL COAST MARITIME MUSEUM ASSOCIATION FOR USE OF REAL PROPERTY IN THE FRONT STREET PARKING LOT AND "TRIANGLE" PARKING LOT AREAS; (HARBOR)

RECOMMENDATION: Council approve the License Agreement with the Central Coast Maritime Museum Association as presented.

A-5 ADOPTION OF RESOLUTION NOS. 52-17, 53-17, 54-17 AND 55-17, RESPECTIVELY APPROVING MEMORANDA OF UNDERSTANDING FOR SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 620 AND THE MORRO BAY FIREFIGHTERS ASSOCIATION IAFF LOCAL 3725, AND ESTABLISHING COMPENSTATION AND BENEFITS FOR MANAGEMENT AND CONFIDENTIAL EMPLOYEES; (ADMINISTRATION)

RECOMMENDATION: City Council:

1. **Adopt Resolution No. 52-17 approving a Memorandum of Understanding (MOU) for Morro Bay Firefighters Association (MBFFA) IAFF Local 3725.**
2. **Adopt Resolution No. 53-17 approving a MOU for Service Employees International Union (SEIU) Local 620 for the period July 1, 2017 through June 30, 2020.**
3. **Adopt Resolutions 54-17 and 55-17 establishing compensation and benefits for the City's unrepresented confidential and management designated employees.**

Regarding Item A-4, Council Member Davis announced he was a member of the Central Coast Maritime Museum Association but that he has no financial interest or anything that presents a conflict of interest.

City Attorney Pannone announced for the record that he also is a member of the Central Coast Maritime Museum 1542 Club, and the Government Code provides an exemption that allows members of an organization like that to participate in the governmental decision being made tonight.

The public comment for the Consent Agenda was opened.

Larry Newland introduced Morro Bay Maritime Museum Board Members and thanked everyone for their cooperation.

Jane Heath, Vice President of Development for the Maritime Museum Association, recommended approval of the License Agreement provided in Item A-4.

Donald Pierce spoke representing the Salinan Tribe, expressing support for the Maritime Museum project.

The public comment period for the Consent Agenda was closed.

MOTION: Council Member Headding moved the Council approve all Items on the Consent Agenda. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 ADOPTION OF RESOLUTION NO. 51-17 APPOINTING PLANNING COMMISSIONER, JOSEPH INGRAFFIA, TO THE GENERAL PLAN ADVISORY COMMITTEE (GPAC); (COMMUNITY DEVELOPMENT)
<https://youtu.be/Abj2Kfai5-Q?t=48m26s>

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

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

MOTION: Council Member Headding moved the Council adopt Resolution No. 51-17 to appoint Joseph Ingrassia to the General Plan Advisory Committee (GPAC) to serve as liaison between the Planning Commission and GPAC. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

The Council took a brief recess at 6:53 p.m. The meeting reconvened at 6:59 p.m.

C-2 WATER RECLAMATION FACILITY PROGRAM UPDATE; (PUBLIC WORKS)
<https://youtu.be/Abj2Kfai5-Q?t=52m39s>

Public Works Director Livick, WRF Program Manager Nunley, and WRF Deputy Program Manager Rickenbach presented the staff report and responded to Council inquiries.

Mr. Pannone noted for the record the Council would be choosing a preferred site, as the City cannot select a site until the EIR is complete.

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

Carol Swain, Morro Bay, urged the Council to select the South Bay Blvd site in order to manage the timeframe and gain access to grants and loans.

Laura Pick, Morro Bay, asked the Council to choose a site and commented the Coastal Commission letter appeared to be clear a site west of Highway 1 would be denied.

Tim Crowley, Morro Bay, urged the Council to choose a site east of Highway 1.

Lee Johnson, Morro Bay, urged the Council to move forward with a site east of Highway 1.

Alice Kolb, Morro Bay, opposed the Righetti site stating no neighborhood should endure negative impacts when other locations are available.

Ken Green, Morro Bay resident speaking on behalf of Citizens for Affordable Living and Morro Bay Huddle, stated careful tracking and routine reporting of City spending is necessary for public trust.

Steve Stevens, Morro Bay, expressed concern about increased sewer rates and canceled advisory committee meetings. He urged the Council to deliver the most affordable project.

Ahmed Kassem, Morro Bay, encouraged the Council to choose the most economical and logical site and not spend money on a site prone to liquefaction.

Ken Clark, The Landing at Morro Bay, expressed concern about the negative impact increased sewer rates would have on tourism.

Anne Marie Schnetzler, Morro Bay, read a statement prepared by Jeff Heller, supporting the most affordable plant at or near the current plant and encouraging the City to hire an owner agent to manage the project.

Bruce Elster, Morro Bay, was disappointed by the Coastal Commission letter and questioned the cost estimates for conveying to and from the South Bay Blvd. site.

Jacqueline Marie, Morro Bay, opposed the Righetti site and urged the Council to consider retrofitting the current WWTP site.

Donna Burke, Morro Bay, strongly opposed the Righetti location, stating lawsuits will delay the project.

Diane Playan, Morro Bay, requested these items be placed first on the agenda and suggested too many sites are still being considered.

Thomas Kessler, Morro Bay, urged the Council to move forward with a preferred site out of the flood plain.

David Burton, Morro Bay, spoke in support of the Council and encouraged an educated decision, not an emotional one.

Jeff Odell, Morro Bay, hoped at some point he would be able to thank the Council for keeping rates affordable.

Noah Smukler, Morro Bay, understood the time and effort spent looking at the issues and concerns. He stated the importance of water reclamation and encouraged the Council to make a decision and move forward.

Lawrence McNally, Morro Bay, supported a plant at or near the existing site to keep capital and operating expenses down.

The Council took a brief recess at 8:57 p.m. The meeting reconvened at 9:05 p.m. with all Members present.

Richard Clark, Los Osos property owner, supported rebuilding at the existing plant site to control costs.

Rob Kitzman, Morro Bay, shared escalating costs in many areas are affecting small businesses. He supported a project that would fit within or under the current approved rate structure.

Kristen Headland, Morro Bay, spoke in support of an affordable plant built based on the 2015 approved rate structure.

Patrick Sparks, a Morro Bay attorney, stated the City is eligible to ask for a categorical exemption to build at the current site which would drive project costs down to \$20 – 40 Million.

Kerrigan Mahan, Morro Bay, supported a more affordable project like that mentioned by Mr. Sparks or tying into the Cayucos site.

Glenn Silloway, Morro Bay, supported moving forward with a plant east of Highway 1, noting the time value of money and importance of keeping interest rates down.

Carole Truesdale, Morro Bay, was frustrated to learn the 2015 rate structure will not fund a new WRF. She hoped the Council would pursue affordable ideas being presented to reuse the existing site.

Nancy Bast, Morro Bay, opposed a rate increase and was concerned residents will not be able to afford their water / sewer bills.

Erica Crawford, Morro Bay Chamber of Commerce President and CEO, appreciated the action the Council has taken to support economic development and encouraged the Council to consider the impact this decision has on the business community.

Christine Johnson, Morro Bay, encouraged the Council to work to reduce costs in all phases, no matter the site, and make a decision as soon as possible to remain eligible for any and all funding.

Ken MacMillan, Morro Bay business owner and member of Chamber of Commerce Board of Directors, spoke as business owner in support of a project based on the current approved rates.

Chanel Channing, Morro Bay, stated citizens cannot afford double water / sewer rates and suggested more events would help bring money into the community.

Barbara Doerr, Morro Bay, requested that if a Proposition 218 vote were needed, the city provide a protest ballot on the last page. She provided an example from the City of San Diego for the record.

Jim Hayes, Morro Bay, urged the Council to listen and represent the citizens by pursuing the most affordable project.

Linda Warwick, Morro Bay, encouraged the Council to pursue tying into the Cayucos plant as the least expensive project.

Bart Beckman, Morro Bay, expressed frustration with estimates and recommendations provided by consultants and appreciated \$17 Million was saved through the peer review process.

Ed Sylvester, Morro Bay, asked why the City isn't pursuing plans for a \$36 Million plant at the current site and expressed frustration Cayucos is no longer a partner.

Janice Peters, Morro Bay, recounted the history of the project and suggested the City pursue permitting of a plant on the current site.

Betty Winholtz, Morro Bay, stated the cost of land must be factored in as well as operating and maintenance costs. She suggested when Cayucos goes offline, the current plant may meet secondary treatment requirements.

Terry Simons, Morro Bay, urged the City to present lift station plans to the Coastal Commission for approval before pursuing a plant east of Highway 1.

Cynthia Hawley, on behalf of the Morro Bay Action Team Huddle, stated the Council took action on April 25, 2017, to reduce cost by excluding reclamation. She suggested a decision should not happen until the Council reverses its action.

Tina Metzger, Morro Bay, opposed the Righetti site adding the time to work with CalTrans to lay pipe down Highway 41 had been underestimated in the report.

John Diodati, Morro Bay resident and WRFAC Chair, offered background information on the committee's work to evaluate appropriate sites. As a rate payer, he urged the Council to make a decision tonight to avoid losing the WIFIA loan.

Linda Donnelly, Morro Bay, expressed frustration with lack of public outreach and opposed a rate increase.

Bill Todd, Morro Bay, urged the Council to select the South Bay Blvd. site and use solar power to minimize its carbon footprint.

Brad Snook, Morro Bay, spoke in support of a site east of Highway 1, low interest loans, and water reclamation.

Robert Church, Morro Bay, supported a sewer treatment plant without reclamation, and continued use of State Water and Chorro Wells.

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

A brief recess was taken at 10:21 p.m. The meeting reconvened at 10:30 p.m. with all members present.

Staff and consultants responded to issues raised during public comment and further questions from the Council.

The Council agreed sufficient information and community input had been gathered to move forward with a preferred site, and that it was necessary to move forward quickly with a project that includes water reclamation to take advantage of WIFIA and SRF funding opportunities. With the understanding rates would be heavily influenced by debt service, it was critical to get funding secured as quickly as possible to keep rates down. The importance of cost containment and avoiding the potential risk of litigation associated with the Righetti site was also discussed.

MOTION: Mayor Irons moved the meeting go past 11:00 p.m. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

There was Council consensus the Coastal Commission would not permit a project west of Highway 1, the Giannini site had too many issues and no cost advantages, and due to the risk of litigation, the Righetti site was not feasible. There was stated support to proceed with planning and permitting at South Bay Blvd. as the preferred site.

Council Member McPherson read a letter to the editor submitted by Mary Schallenberger of the Coastal Commission dated December 15, 2013, into the record. As subcommittee members, Mayor Irons and Council Member McPherson expressed disappointment all residents would be required to pay an additional \$17/month to avoid delays caused by potential litigation if the Righetti site were selected.

MOTION: Council Member Headding moved the Council direct staff to proceed with planning and permitting at the South Bay Blvd. site as the preferred site. The motion was seconded by Council Member Makowetski and carried unanimously, 5-0.

MOTION: Mayor Irons moved the Council direct staff to come back with a timeline for decision making for moving this WRF project forward, to include discussion on how the Council directs and has expectations with the citizens advisory committee, to lay

out expectations from Council and staff on how to utilize and coordinate the project moving forward. The motion as seconded by Council Member Headding for discussion.

Mayor Irons clarified he wants to discuss whether the citizens advisory committee is being used correctly, or does the Council need to make decisions on a month to month basis to keep the project on schedule. Staff affirmed the timeline for Council decision making and discussion regarding the citizens advisory committee could be brought back in two weeks.

The motion was restated for clarification: Mayor Irons moved the Council direct staff to come back to Council with a timeline of the project for Council decision making to move this project forward, including discussion about expectations with our citizens advisory committee and coordinate decision making through this process to be brought back at the next meeting. The motion carried unanimously, 5-0.

MOTION: Council Member McPherson moved the Council direct staff to, in consultation with financial experts, carefully analyze the existing water and sewer rate structure put in place in 2015 for the purpose of reexamining assumptions and identifying the maximum amount of resources that could be applied to the proposed WRF. The motion was seconded by Council Member Headding and carried unanimously, 5-0.

MOTION: Council Member Headding moved the Council reexamine the existing program management process and structure and look at available resources within the Public Works Department and make decisions for possible changes based on that. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

MOTION: Council Member McPherson moved the Council revisit goals of the project to ensure that, before we go out in the bidding process, it's clear what the current project goals are. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

The timeline for these items was discussed. Staff affirmed the timeline for Council decision making will be brought back at the next meeting and cost analysis of the current rate structure, project management analysis, and review of project goals will be included in that timeline.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

https://youtu.be/FvaeWPHq_hs?t=2h13m14s

None

E. ADJOURNMENT

The meeting adjourned at 11:27 p.m. The next Regular Meeting will be held on Tuesday, October 10, 2017 at 6:00 p.m. at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson
City Clerk



AGENDA NO: A-2

MEETING DATE: October 24, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: October 10, 2017

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 59-17 Conditionally Authorizing the Mayor to Execute Documents Necessary for a New Loan for the Lease Agreement at Lease Site 71-74/71W-74W and 75-77/75W-77W and Accepting a Deed of Trust Related Thereto (Morro Bay Marina, LLC, 601-699 Embarcadero)

RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 59-17, authorizing the Mayor to execute documents necessary for a new loan regarding the leasehold interest at Lease Sites 71-74/71W-74W and 75-77/75W-77W, subject to approval of the City Attorney and accepting a deed of trust related thereto.

ALTERNATIVES

Do not approve Resolution No. 59-17.

FISCAL IMPACT

There is no fiscal impact to this action.

BACKGROUND

Stan Trapp, Morro Bay Marina, LLC, in 1991 executed two 50-year leases on lease sites 71-74/71W-74W and 75-77/75W-77W in 1991, conditioned upon complete site redevelopment projects. In 1993, the City executed an estoppel certificate for long term financing on the redevelopment project. In 2006, the City approved refinancing of this debt requested by the leaseholder, due to the availability of more favorable terms with a new bank.

DISCUSSION

Morro Bay Marina, LLC is requesting City Council approval of a Deed of Trust with Premier Valley Bank against the leasehold interest, which will again refinance the 2006 City-approved deed of trust and debt. The Harbor Department Lease Management Policy stipulates the City will not approve financing related to the lease site, unless such financing is for sole investment upon the lease site or for City requested public improvements. Resolution No. 59-17 will authorize the Mayor to allow Morro Bay Marina, LLC to encumber the leasehold with a deed of trust for those purposes.

CONCLUSION

Staff recommends the City Council adopt Resolution No. 59-17 authorizing the Mayor to execute all necessary documents for the loan to Morro Bay Marina, LLC from Premier Valley Bank, as approved by the City Attorney.

ATTACHMENTS

1. Resolution No. 59-17

Prepared By: EE

Dept Review: EE

City Manager Review: MRL

City Attorney Review: JWP

RESOLUTION NO. 59-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
CONDITIONALLY AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS
NECESSARY FOR A NEW LOAN FOR THE LEASE AGREEMENT AT LEASE SITES
71-74/71W-74W AND 75-77/75W-77W WITH MORRO BAY MARINA, LLC LOCATED
AT 601-699 EMBARCADERO ROAD, MORRO BAY AND ACCEPTING A DEED OF
TRUST RELATED THERETO**

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

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

WHEREAS, since 1991, Stan Trapp, Morro Bay Marina, LLC has been the lessee of Lease Sites 71-74/71W-74W and 75-77/75W-77W, located at 601-699 Embarcadero; and

WHEREAS, Morro Bay Marina, LLC, has satisfactorily submitted the necessary documents for a new loan and Morro Bay Marina, LLC is a tenant in good standing; and

WHEREAS, Morro Bay Marina, LLC's lender, Premier Valley Bank, is requesting approval of a deed of trust to secure the Financing using the lease as security; and

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

1. The Mayor is hereby directed to execute, as necessary, any and all documents, as approved by the City Attorney, necessary to consummate the deed of trust desired by Morro Bay Marina, LLC.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 24th day of October 2017 on the following vote:

AYES:
NOES:
ABSENT:

Jamie L. Irons, Mayor

ATTEST:

Dana Swanson, City Clerk



AGENDA NO: A-3

MEETING DATE: October 24, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** September 24, 2017

FROM: Rob Livick, PE/PLS –Director of Public Services/City Engineer
Pamela Newman, Assistant Engineer

SUBJECT: Approval of Final Map 2670 (1889 Sunset Avenue) by Adoption of Resolution No. 58-17

RECOMMENDATION

Staff recommends City Council adopt Resolution No. 58-17, approving the Final Map 2670.

ALTERNATIVES

If City Council believes that the Subdivider has not met the conditions of approval, then the City Council shall deny the approval of the Final Map.

FISCAL IMPACT

Although the project has installed the required frontage improvements, there is no significant fiscal impact as a result of this action.

BACKGROUND/ DISCUSSION

At its regular meeting on November 13, 2006 the Planning Commission approved the request for a Vesting Tentative Subdivision Map (S00-051), Use Permit (UPO-097) and Coastal Development Permit (CPO-145) for Tract 2670. This subdivision divides three (3) –0.14 acre lots (APN 068-282-027, -028, -029) into eight (8) lots for the development of 6 (six) residential parcels and two (2) common areas.

Since then, the applicant has satisfied all Conditions of Approval and Subdivision Map Act requirements for the recordation of this Final Map. The Final Map conforms to the approved tentative map, the State Subdivision Map Act, the requirements of the Morro Bay Subdivision Ordinance (Title 16 of the Morro Bay Municipal Code (MBMC)) and the conditions of the Tentative Map. Therefore, per 16.16.210 of the MBMC, the City Council must approve the Final Map since those requirements have been met.

CONCLUSION

Approval of a Final Map is a "ministerial act," pursuant to the California Subdivision Map Act (Government Code Section 66474 .1), once the map is found to be in substantial conformance with the approved tentative map. This subdivider has met all City regulations and no further discretionary approvals are required. Staff recommends the City Council approve the Final Map for Tract 2670 by adopting Resolution No. 58-17.

ATTACHMENTS

1. Resolution No. 58-17
2. Final Map 2670

Prepared By: PN
City Manager Review: MRL

Department Review: RL
City Attorney Review: JWP

RESOLUTION NO. 58-17
A RESOLUTION OF THE CITY COUNCIL OF MORRO BAY APPROVING THE FINAL MAP
FOR AN A 6-LOT RESIDENTIAL SUBDIVISION KNOWN AS TRACT 2670

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, on November 13, 2006 the Planning Commission did hold a public hearing, received public testimony, and after closing the public hearing fully considered the various issues surrounding the case; and

WHEREAS, the Planning Commission did approve the Vesting Tentative Map for Tract 2670, and associated development applications, subject to certain Conditions of Approval; and

WHEREAS, the Planning Commission has previously made findings required by the California Environmental Quality Act (CEQA) and the City of Morro Bay procedures for implementation of CEQA; and

WHEREAS the subdivider has since satisfied all Conditions of Approval and requests permission to record the Final Map; and

WHEREAS the subdivider has installed, per the approved Public Improvement Plans, the associated minor frontage improvements and the City Engineer has accepted these improvements as complete; and

WHEREAS the subdivider has warrantied the required Public Improvements for one-year and has provided the required financial security; and

WHEREAS, the recordation of the Final Map is a ministerial act pursuant to the City of Morro Bay Subdivision Ordinance and California Subdivision Map Act;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that the City hereby approves the Final Map for Tract 2670 and consents to the recording there of.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, California, at a regular meeting held on the 24th day of October 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

OWNER'S STATEMENT

WE, THE UNDERSIGNED, HEREBY STATE THAT WE ARE ALL THE OWNERS OF, AND ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION AND PROJECT SHOWN ON THIS MAP AND THAT WE HEREBY CONSENT TO THE FILING AND RECORDATION OF THIS MAP.

WE HEREBY RESERVE TO OURSELVES, OUR HEIRS AND ASSIGNS, THE COMMON OPEN SPACE EASEMENT, AND THE PRIVATE VEHICULAR ACCESS AND PARKING EASEMENT PER THIS MAP.

AS OWNER:

SAT DEVELOPMENT, LLC - A CALIFORNIA LIMITED LIABILITY COMPANY
TODD DOLEZAL - MANAGER

NOTARY ACKNOWLEDGEMENTS

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }
COUNTY OF SAN LUIS OBISPO }SS

ON SEPTEMBER 12, 2017, BEFORE ME, RYAN ALEXANDER LATHAM - NOTARY PUBLIC PERSONALLY APPEARED TODD DOLEZAL, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON, OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

Ryan Alexander Latham Ryan Alexander Latham
SIGNATURE

COUNTY OF COMMISSION: SAN LUIS OBISPO

COMMISSION NO: 2165673 EXP. DATE: 09/24/2020

TRACT 2670
SUNSET AVENUE TOWNHOMES
BEING A RESUBDIVISION OF LOTS 8,9, AND 10 IN BLOCK 8,
TRACT NO. 52, MORRO GARDEN FARMS UNIT NO. 2,
PER BOOK 5, PAGE 71 OF MAPS,
IN THE CITY OF MORRO BAY,
COUNTY OF SAN LUIS OBISPO,
STATE OF CALIFORNIA.

RECORDER'S CERTIFICATE

FILED THIS _____ DAY OF _____, 2017 AT _____ M., IN BOOK _____ OF
MAPS AT PAGE _____, AT THE REQUEST OF TWIN CITIES SURVEYING, INC.

INSTRUMENT NO. _____ FEE: _____ DOC. NO. _____

TOMMY GONG
SAN LUIS OBISPO COUNTY RECORDER

BY: _____
DEPUTY CLERK RECORDER

RECORDER'S DISCLAIMER

THE SUBDIVIDER OR LOCAL AGENCY APPROVING THE MAP HAS PROVIDED THE TABULATION, LISTING AND NUMBERING OF ANY SEPARATE DOCUMENTS AUTHORIZED TO BE RECORDED CONCURRENTLY WITH THE MAP. THE COUNTY RECORDER MAKES NO REPRESENTATIONS REGARDING THE ACCURACY OF THE TABULATION, LISTING AND NUMBERING OF ANY SEPARATE DOCUMENTS REFERRED TO ON THIS MAP.

THE FOLLOWING DOCUMENTS WERE RECORDED CONCURRENTLY WITH THE MAP:

COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNSET AVENUE TOWNHOMES PER DOCUMENT NO. 2017-_____.

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF TODD DOLEZAL ON SEPTEMBER 8TH OF 2017. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY. I ALSO STATE THAT ALL OF THE MONUMENTS SHOWN HEREON WILL BE SET IN SUCH POSITIONS WITHIN ONE YEAR OF THE APPROVAL OF THIS MAP AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

09-12-2017
Date

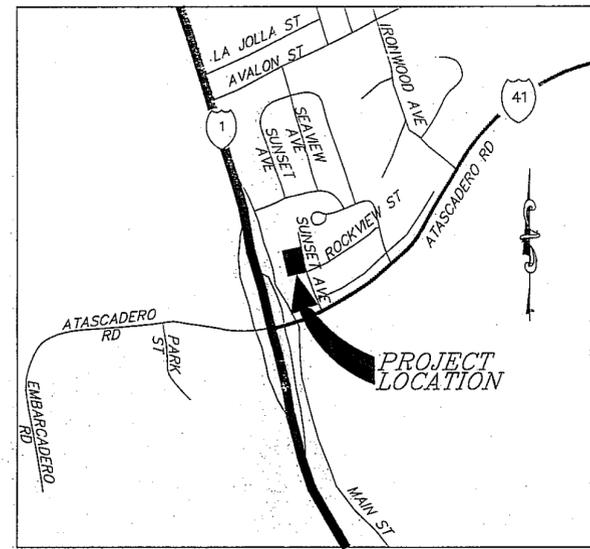


Wm. E. Touchon
WM. E. TOUCHON LS 4845

SIGNATURE OMISSIONS

THE SIGNATURES OF THE FOLLOWING HAVE BEEN OMITTED UNDER THE PROVISIONS OF SECTION 66436(a)(3)(A)(i) OF THE SUBDIVISION MAP ACT: THEIR INTEREST CANNOT RIPEN INTO A FEE TITLE AND SAID SIGNATURES ARE NOT REQUIRED BY THE GOVERNING BODY.

PUBLIC UTILITY EASEMENT PER 5 MB 71



VICINITY MAP
NO SCALE

CITY CLERK'S STATEMENT

I DO HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF MORRO BAY, STATE OF CALIFORNIA, DID ON THE _____ DAY OF _____, 2017, APPROVE THIS MAP OF TRACT 2670, SHOWN HEREON, IN ACCORDANCE WITH THE PROVISIONS OF THE SUBDIVISION MAP ACT.

DANA SWANSON, CITY CLERK
CITY OF MORRO BAY, CALIFORNIA

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE MAP, THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF AND THAT ALL THE PROVISIONS OF THE SUBDIVISION MAP ACT AND THE CITY OF MORRO BAY SUBDIVISION ORDINANCE HAVE BEEN COMPLIED WITH AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

ROBERT A. LIVICK, LS 8126,
CITY ENGINEER, CITY OF MORRO BAY

TWIN CITIES SURVEYING, INC.
615-C S. MAIN STREET / P.O. BOX 777
TEMPLETON, CALIFORNIA 93465-0777
(805) 434-1834
SHEET 1 OF 3 JN 17096

MYLAR SUBMITTED 9-12-17

TRACT 2670
SUNSET AVENUE TOWNHOMES

BEING A RESUBDIVISION OF LOTS 8, 9, AND 10 IN BLOCK 8,
TRACT NO. 52, MORRO GARDEN FARMS UNIT NO. 2,
PER BOOK 5, PAGE 71 OF MAPS,
IN THE CITY OF MORRO BAY,
COUNTY OF SAN LUIS OBISPO,
STATE OF CALIFORNIA.

REFERENCES

- R1 = 5/MB/71 (1949) PORTER
- R2 = 86/LS/48 (2003) WILSON
- R3 = 24/MB/68-70 (2004) REICHARDT
- R4 = 72/PM/16-17 (2008) STANTON
- R5 = 74/PM/35-36 (2010) STANTON

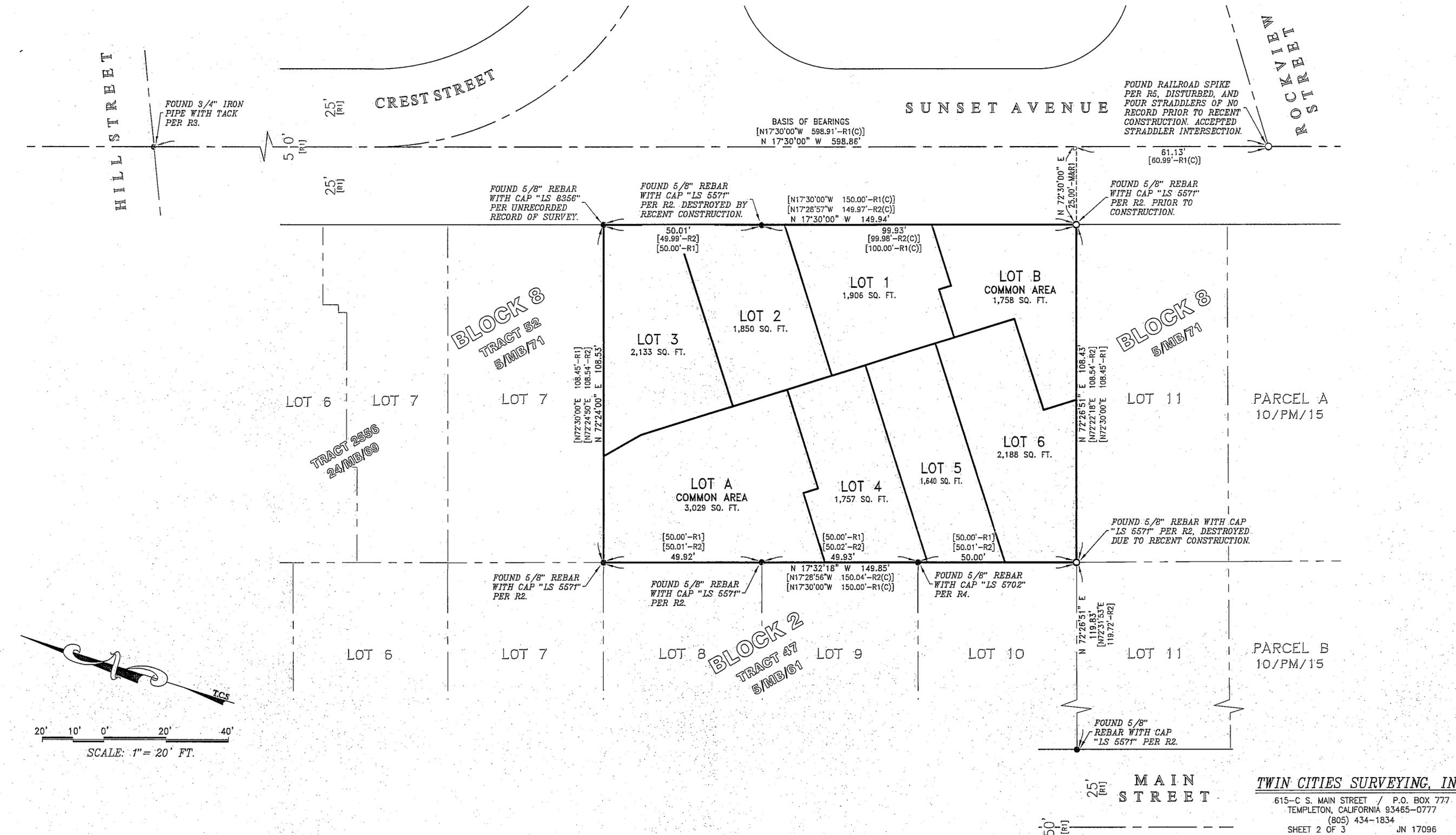
LEGEND

- = FOUND MONUMENT AS NOTED
- = SET 1" IRON PIPE WITH TAG BRASS STAMPED "LS 4845" OR GEAR SPIKE AND WASHER STAMPED "LS 4845" OR LEAD, TACK, AND TAG STAMPED "LS 4845"
- (C) = CALCULATED FROM RECORD
- M = MEASURED

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS MAP AND SURVEY IS THE CENTERLINE OF SUNSET AVENUE BETWEEN FOUND MONUMENTS, PER 5/MB/71 AND SHOWN HEREON AS N 17°30'00" W.

SEE SHEET 3 FOR LOT DIMENSIONS AND EASEMENTS



25' (R1)
MAIN STREET

TWIN CITIES SURVEYING, INC.
615-C S. MAIN STREET / P.O. BOX 777
TEMPLETON, CALIFORNIA 93465-0777
(805) 434-1834
SHEET 2 OF 3 JN 17096

TRACT 2670 SUNSET AVENUE TOWNHOMES

BEING A RESUBDIVISION OF LOTS 8, 9, AND 10 IN BLOCK 8,
TRACT NO. 52, MORRO GARDEN FARMS UNIT NO. 2,
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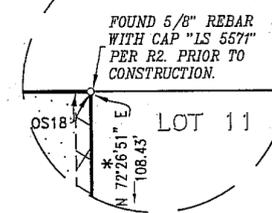
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- = SET 1" IRON PIPE WITH TAG BRASS STAMPED "LS 4845" OR GEAR SPIKE AND WASHER STAMPED "LS 4845" OR LEAD, TACK, AND TAG STAMPED "LS 4845"
- M = MEASURED
- * = DIMENSIONS USED IN THE COMMON OPEN SPACE EASEMENT IN CONJUNCTION WITH THE LINE TABLE
- [Cross-hatched] = OPEN SPACE EASEMENT PER THIS MAP
- [Dotted] = PRIVATE VEHICULAR ACCESS EASEMENT PER DOC. #2017-040726

SUNSET AVENUE



CURVE TABLE		
C1	R=10.00'	Δ=62°32'39" L=10.92'
C2	R=2.00'	Δ=100°07'39" L=3.50'
C3	R=1.00'	Δ=90°00'00" L=1.57'
C4	R=1.00'	Δ=90°00'00" L=1.57'
C5	R=1.00'	Δ=90°00'00" L=1.57'
C6	R=1.00'	Δ=90°00'00" L=1.57'
C7	R=1.00'	Δ=90°00'00" L=1.57'
C8	R=1.00'	Δ=77°12'06" L=1.35'
* C9	R=3.00'	Δ=98°24'00" L=5.15'
* C10	R=1.00'	Δ=90°00'17" L=1.57'
* C11	R=1.00'	Δ=90°00'00" L=1.57'
C12	R=1.00'	Δ=90°00'00" L=1.57'
C13	R=4.00'	Δ=90°00'00" L=6.28'
C14	R=4.00'	Δ=90°00'00" L=6.28'
C15	R=1.00'	Δ=90°00'00" L=1.57'
* C16	R=1.00'	Δ=88°24'33" L=1.54'
C17	R=30.00'	Δ=71°05'08" L=37.22'
* C18	R=30.00'	Δ=11°59'04" L=6.28'
* C19	R=30.00'	Δ=38°03'57" L=19.93'

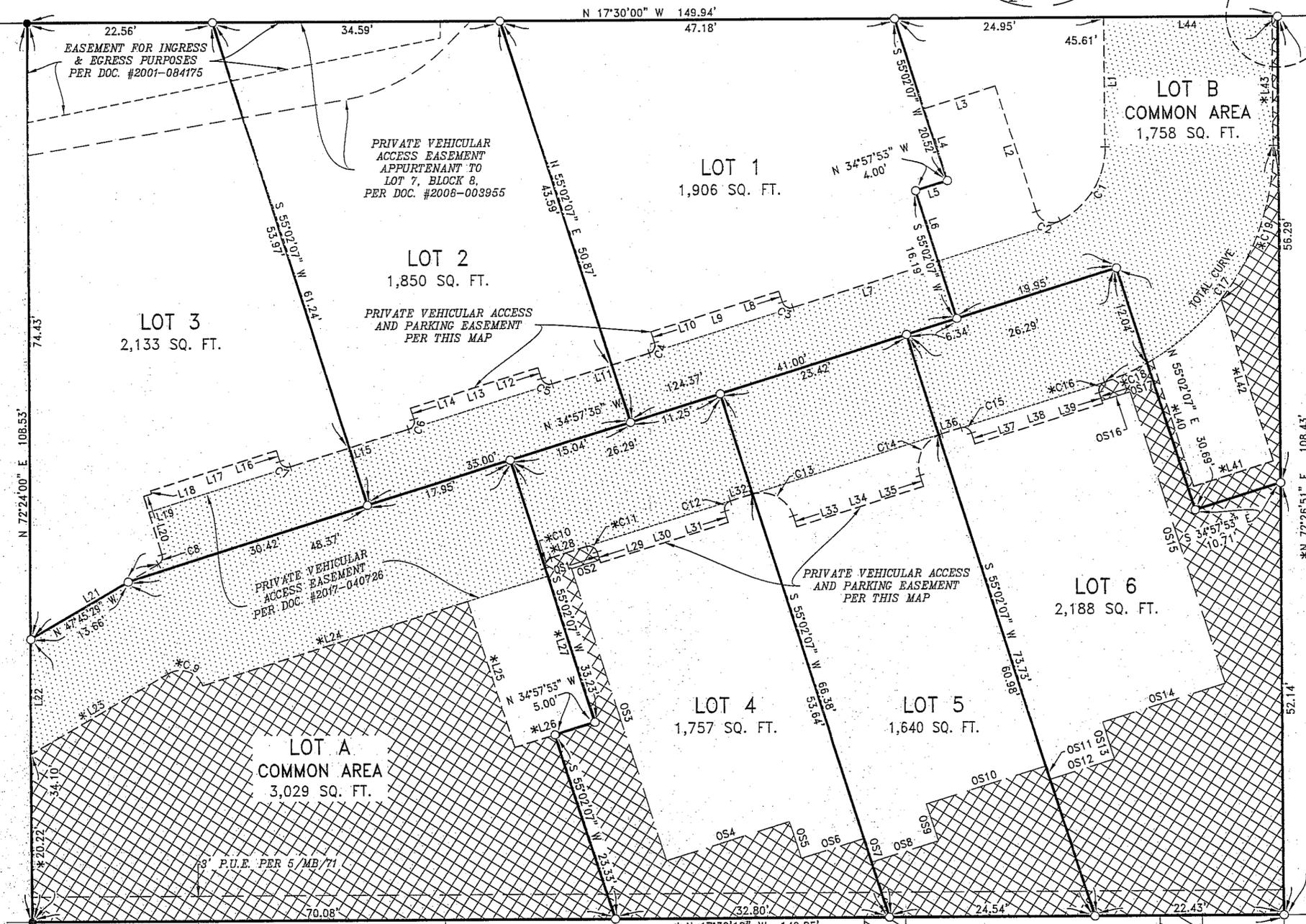
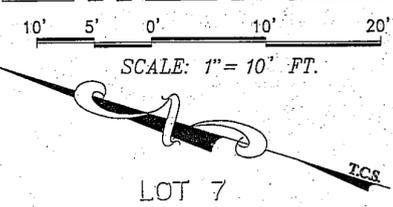
ACCESS AND PARKING EASEMENT LINE TABLE		
4,273 SQUARE FEET		
L1	S 72°21'50" W	15.64'
L2	N 55°02'07" W	15.88'
L3	N 34°57'35" W	9.00'
L4	S 55°02'07" W	9.09'
L5	N 34°57'53" W	4.00'
L6	S 55°02'07" W	8.92'
L7	N 34°57'35" W	18.33'
L8	N 55°02'25" E	1.39'
L9	N 34°57'35" W	16.00'
L10	S 55°02'25" W	1.39'
L11	N 34°57'35" W	12.17'
L12	N 55°02'25" E	1.39'
L13	N 34°57'35" W	16.00'
L14	S 55°02'25" W	1.39'
L15	N 34°57'35" W	15.00'
L16	N 55°02'25" E	1.39'
L17	N 34°57'35" W	16.00'
L18	S 55°02'25" W	0.39'
L19	N 34°57'35" W	1.00'
L20	S 55°02'25" W	7.36'
L21	N 47°45'29" W	17.90'
L22	S 72°24'00" W	13.88'
* L23	S 47°45'29" E	19.17'
* L24	S 34°57'35" E	33.49'
* L25	S 55°02'07" W	18.50'
* L26	S 34°57'53" E	10.00'
* L27	N 55°02'07" E	19.50'
* L28	S 34°57'35" E	4.50'
L29	S 55°02'25" W	1.38'
L30	S 34°57'35" E	16.00'
L31	N 55°02'25" E	1.38'
L32	S 34°57'35" E	2.58'
L33	S 55°02'25" W	1.38'
L34	S 34°57'35" E	16.00'
L35	N 55°02'25" E	1.38'
L36	S 34°57'35" E	2.42'
L37	S 55°02'25" W	1.38'
L38	S 34°57'35" E	16.00'
L39	N 55°02'25" E	1.39'
* L40	S 55°02'25" W	16.05'
* L41	S 34°57'35" E	10.00'
* L42	N 55°02'25" E	20.52'
* L43	N 72°21'50" E	15.59'
L44	N 17°30'00" W	20.00'

OPEN SPACE EASEMENT LINE TABLE		
3,851 SQUARE FEET		
OS1	S 55°02'25" W	1.01'
OS2	N 34°57'53" W	3.50'
OS3	S 55°02'07" W	37.00'
OS4	S 34°57'53" E	15.42'
OS5	S 55°02'07" W	4.67'
OS6	S 34°57'53" E	8.00'
OS7	S 55°02'07" W	3.00'
OS8	S 34°57'53" E	8.33'
OS9	S 55°02'07" W	4.67'
OS10	S 34°57'53" E	15.08'
OS11	S 55°02'07" W	1.67'
OS12	S 34°57'53" E	7.92'
OS13	S 55°02'07" W	4.67'
OS14	N 55°02'07" E	15.25'
OS15	S 55°02'07" W	37.00'
OS16	N 34°57'53" W	3.50'
OS17	S 55°02'25" W	1.02'
OS18	S 17°30'00" E	0.66'

BLOCK 8
TRACT 52
5/MB/71 LOT 7

LOT 11
BLOCK 8
5/MB/71

BLOCK 2
TRACT 47
5/MB/61



TWIN CITIES SURVEYING, INC.
 615-C S. MAIN STREET / P.O. BOX 777
 TEMPLETON, CALIFORNIA 93465-0777
 (805) 434-1834
 SHEET 3 OF 3 JUN 17096

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AGENDA NO: C-1

MEETING DATE: October 24, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: October 17, 2017

FROM: Chris F. Neumeyer, Assistant City Attorney

SUBJECT: Introduction of Ordinance No. 612, which Establishes a Commercial Cannabis Operations Regulatory Program to Permit Two Medical Cannabis Dispensaries, Wholesale Medical Cannabis Distribution and Medical Cannabis Deliveries, while Prohibiting All Other Commercial Cannabis Operations; Regulates and Permits Personal Cannabis Cultivation; and, Amends Current Secondhand Smoke Regulations

RECOMMENDATION

Staff recommends Council discuss and introduce, for first reading by title only and with further reading waived, Ordinance No. 612: An Ordinance of the City Council of the City of Morro Bay, California, adding Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) to Title 5 of the Morro Bay Municipal Code to Permit Certain Medical Commercial Cannabis Uses (Retail Sales, Deliveries and (Wholesale) Distributor), to Prohibit All Other Medical Commercial Cannabis Uses, and to Prohibit All Adult-Use (Recreational) Commercial Cannabis Uses; Repealing Chapter 9.06 of Title 9 of the Morro Bay Municipal Code and Replacing It with a New Chapter 9.06 (Personal Cannabis Cultivation) to Regulate Personal Cannabis Cultivation; and, Amending Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 of the Morro Bay Municipal Code to Strengthen Regulation of Secondhand Smoke and Expressly Include Cannabis and Electronic Smoking Devices.

FISCAL IMPACT

The ordinance being introduced allows City regulatory and administrative costs associated with permitting commercial cannabis operations to be recouped through City fees.

The ordinance also allows a fee to be charged for issuance of a personal cannabis cultivation permit. However, the intent is no fee will be charged for a personal cultivation permit until July 1, 2018, and thereafter only a nominal fee be charged. These fees will be set at a later time by Council resolution.

Council on October 10, 2017 directed staff to conduct analysis and provide a further report on a possible cannabis tax measure to be sent to the City's voters for consideration. The election would likely be the next regular election in November of 2018 (unless a special election were held). The requested report will be brought to Council for review and discussion by Summer, 2018 for timely consideration of a Fall, 2018 cannabis tax ballot measure.

The ordinance being introduced encourages revenue generating development agreements be sought with commercial cannabis operations permitted in the City.

01181.0001/418798.1 CFN Prepared By: _____	CFN
City Manager Review: _____	City Attorney Review: _____

Introduction of Ordinance No. 612, which Establishes a Commercial Cannabis Operations Regulatory Program, Regulates and Permits Personal Cannabis Cultivation, and Amends Current Secondhand Smoke Regulations

October 24, 2017

Page 2 of 7

BACKGROUND

California voters on November 8, 2016 approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). Proposition 64, in conjunction with recent SB 94 (the Medicinal and Adult Use Cannabis Regulation and Safety Act, or “MAUCRSA”), have legalized limited personal use, possession and cultivation of cannabis, and have also created a state regulatory structure to permit commercial cannabis businesses. A failure to address these operations by January 1, 2018 will cede some local control to the State.

Starting in January, 2017, the City has reviewed these issues and their impact on Morro Bay through multiple Council meetings, public workshops and the work of a Council Cannabis Subcommittee composed of Councilmembers Robert Davis and Marlys McPherson, assisted by Martin Lomeli (Interim City Manager), Chris Neumeyer (Assistant City Attorney), Chief Greg Allen (Police Chief), Chief Steve Knuckles (Fire Chief), Commander Jody Cox (Police Commander), Scot Graham (Community Development Director) and Ikani Taumoepeau (Deputy City Manager).

Please refer to attached Staff Report from October 10, 2017 City Council special meeting entitled “Discussion on Council Cannabis Subcommittee Recommendations and Request for Direction on a Cannabis Ordinance to Regulate Businesses and Personal Use” for additional background.

On October 10, 2017, the Council provided direction (after consideration of recommendations from the Council Cannabis Subcommittee) for the details of a cannabis ordinance.

DISCUSSION

The Council requested staff to prepare a cannabis ordinance for first reading at the October 24, 2017 regular Council meeting. That Ordinance No. 612 is attached. Below is a summary consistent with prior Council direction. Further changes or clarifications (since discussion on October 10, 2017) are *italicized and underlined*. Further direction is sought on **highlighted** items.

1. Personal Cultivation - Regulate as follows:

a. Limitations.

- i. Total of six plants allowed to be cultivated at a private residence.
- ii. Allow up to two of the six plants to be grown outdoors, if outdoor cultivation is at least ten feet from property line, cannot be seen from public spaces and adheres to general regulations. **No height limitation (e.g., six feet?) on outdoor cultivation, if cannot be seen from public spaces? (Section 9.06.030((B)(2).)**
- iii. Comply with all state and City regulations governing personal cannabis cultivation.

b. Reasonable Regulations. Adopt local health and safety regulations including:

01181.0001/418798.1 CFN

Introduction of Ordinance No. 612, which Establishes a Commercial Cannabis Operations Regulatory Program, Regulates and Permits Personal Cannabis Cultivation, and Amends Current Secondhand Smoke Regulations

October 24, 2017

Page 3 of 7

- i. Cultivation in a secured space inaccessible to minors and trespassers.
 - ii. Odor control so not detectable from neighboring properties or public place.
 - iii. Cultivation not visible from any public place.
 - iv. Electricity draw to not exceed maximum rating of the approved electrical panel for residence.
 - v. Artificial lighting shielded so that completely confined to private residence.
 - vi. Private residence must have fully functional and usable kitchen, as well as bathroom and bedroom areas, for use by the permit holder; and, private residence shall not be used primarily or exclusively for cannabis cultivation.
 - vii. Cultivation shall not displace required parking in a garage.
 - c. Permit.
 - i. Require local permit issued pursuant to a “self-inspection/certification program” which affirms compliance with local and state regulations.
 - ii. Charge nominal fee for permit, and waive fee for applications submitted from January 1, 2018 through June 30, 2018.
 - iii. Require property owner consent.
 - iv. Non-transferable permit.
 - v. No annual renewal.
 - vi. **Require scaled property site plan and a scaled diagram of the floor plan for the cultivation site? (Section 9.06.040(A)(5).)**
 - vii. **Require provision of itemized list of compliance measures, such as description of lighting and equipment used? (Section 9.06.040(A)(6).)**
 - d. Penalties. Violation subject to administrative citation, infraction and/or misdemeanor at City discretion; public nuisance abatement; and, revocation of permit.
2. Public Use / Smoking Regulations - Take following actions:
 - a. Maintain current strict smoking prohibitions in City code.
 - b. Amend current exemptions in order to strengthen prohibition:

Introduction of Ordinance No. 612, which Establishes a Commercial Cannabis Operations Regulatory Program, Regulates and Permits Personal Cannabis Cultivation, and Amends Current Secondhand Smoke Regulations

October 24, 2017

Page 5 of 7

the health, safety and welfare of the residents and visitors of Morro Bay. The Committee after review will recommend to City Manager whether a permit should be issued or not. Proposed criteria to be considered include the following "Merit List" factors:

1. Operation plan for the business, including attention to impact of the business on the community.
 2. Security plan for the business, including details for the non-diversion of cannabis or cannabis products to illegal uses.
 3. Health and safety plan for the business, including enhanced product and operations health and safety.
 4. Impact on the environment.
 5. Neighborhood compatibility.
 6. Employment opportunities for City of Morro Bay residents.
 7. Economic benefits to the City of Morro Bay.
 8. Community benefits to the City of Morro Bay.
 9. Experience of the operators, managers and employees.
 10. Capitalization of the business.
 11. Requirements of local law and applicable State law.
 12. Any additional criteria of benefit to making a determination of the applicant's commitment to the health, safety and welfare of the citizens and visitors of the City of Morro Bay.
- iv. Third Step is review by City Manager, or his designee, of Committee recommendations and then a final decision on whether a permit will or will not be issued. The reasons for the decision shall be articulated in writing and refer to the criteria in the Merit List. The decision shall be final and non-appealable.
- e. Term. Initial term of 1-2 years (depending on when review conducted for a renewal, see section (g) below), and thereafter a 2 year term.
- f. Type. Regulatory permit rather than a land use permit.
- g. Renewal. Biennial renewal shall generally occur. Renewal subject to three step review process established above for permit issuance, to determine if best serves community (health, safety and public welfare criteria) for permit to be renewed. Thereafter consider renewals only every other year. Intent is for City to review one permit a year (rather than both permits every year), so assuming the City initially permits two medical marijuana dispensaries, after the first year passes, the City shall select one of the two permits for review, and thereafter shall review permits every other year.
- h. Fees. Recover from each operator all City regulatory and administrative costs specific to each operator.
- i. Revenue. Seek development agreements with operators (in context of considering sending a cannabis tax measure to City voters in November, 2018).

Introduction of Ordinance No. 612, which Establishes a Commercial Cannabis Operations Regulatory Program, Regulates and Permits Personal Cannabis Cultivation, and Amends Current Secondhand Smoke Regulations

October 24, 2017

Page 6 of 7

- j. Regulations. Reasonable requirements such as:
 - i. Strict odor control.
 - ii. Strong security requirements including alarm system and development of security plan.
 - iii. Background checks on employees.
 - iv. Property owner consent.
 - v. Indemnification of the City.
 - vi. Cameras in use 24/7 and footage available to City.
 - vii. Inspection authority for City.
 - viii. Signage restrictions.
 - ix. Insurance requirements.
 - x. Record keeping requirements and records available to City.
 - xi. Development of operations plan and cash handling plan.
 - xii. Provision of floor and site plan.
 - xiii. Restriction on sales and packaging of cannabis edibles to prevent consumption by minors.
 - xiv. No medical cannabis recommendations on-site.
 - xv. Requirement for use of opaque packaging.
 - xvi. No minors allowed unless a qualified patient or primary caregiver, and accompanied by parent or guardian.

- k. Penalties. Violation subject to administrative citation, infraction and/or misdemeanor at City discretion; public nuisance abatement; and, revocation of City permit authorizing operation.

4. Dispensaries (Recreational) - Prohibit.

5. Commercial Cultivation (Medical and Recreational) - Prohibit.

6. Manufacturing and Testing (Medical and Recreational) - Prohibit with reconsideration of ban after a possible cannabis tax measure sent to City voters at regular election in November, 2018.

7. Deliveries (Medical) - Allow as follows:

- a. Require issuance of a City business license.
- b. Proof of association with lawful medical cannabis dispensary (either located in City or elsewhere).
- c. Require delivery driver to maintain records, subject to inspection by City and law enforcement, including state and local permit, personal identification and copy of delivery order(s).

8. Deliveries (Recreational) - Prohibit.

9. Wholesale Distribution (Medical) - Allow. These operators distribute cannabis between licensees (i.e., from a cultivation site to a retailer). They do not conduct retail sales. Strict

Introduction of Ordinance No. 612, which Establishes a Commercial Cannabis Operations Regulatory Program, Regulates and Permits Personal Cannabis Cultivation, and Amends Current Secondhand Smoke Regulations

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regulations similar to those governing medical cannabis dispensaries.

10. Wholesale Distribution (Recreational) - Prohibit.

11. Microbusinesses (Medical and Recreational) - Prohibit. These are combination businesses that engage in retail sales, cultivation, manufacturing and distribution.

CONCLUSION

Staff recommends Council discuss the proposed Ordinance No. 612 and introduce it for first reading by title only.

ATTACHMENTS

- 1) Proposed Ordinance No. 612
- 2) Staff Report from October 10, 2017 entitled "Discussion on Council Cannabis Subcommittee Recommendations and Request for Direction on a Cannabis Ordinance to Regulate Businesses and Personal Use."
- 3) Radius Map for Commercial Cannabis Operations – 600 Foot Buffer from Schools (including Day Care Centers and Youth Centers), Parks and Religious Institutions.
- 4) Radius Map for Commercial Cannabis Operations – 600 Foot Buffer from Schools (including Day Care Centers and Youth Centers), Parks and Religious Institutions also includes 600 Foot Buffer from Residential.
- 5) Radius Map for Commercial Cannabis Operations – 600 Foot Buffer from Schools (including Day Care Centers and Youth Centers), Parks and Religious Institutions also includes 100 Foot Buffer from Residential.

ORDINANCE NO. 612

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 5.50 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) TO TITLE 5 OF THE MORRO BAY MUNICIPAL CODE TO PERMIT CERTAIN MEDICAL COMMERCIAL CANNABIS USES (RETAIL SALES, DELIVERIES AND (WHOLESALE) DISTRIBUTOR), TO PROHIBIT ALL OTHER MEDICAL COMMERCIAL CANNABIS USES, AND TO PROHIBIT ALL ADULT-USE (RECREATIONAL) COMMERCIAL CANNABIS USES; REPEALING CHAPTER 9.06 OF TITLE 9 OF THE MORRO BAY MUNICIPAL CODE AND REPLACING IT WITH A NEW CHAPTER 9.06 (PERSONAL CANNABIS CULTIVATION) TO REGULATE PERSONAL CANNABIS CULTIVATION; AND, AMENDING CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 OF THE MORRO BAY MUNICIPAL CODE TO STRENGTHEN REGULATION OF SECONDHAND SMOKE AND EXPRESSLY INCLUDE CANNABIS AND ELECTRONIC SMOKING DEVICES

WHEREAS, in 1996 California voters approved Proposition 215, the Compassionate Use Act (“CUA”), codified as Section 11362.5 of the Health and Safety Code, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes; and

WHEREAS, in 2003 the California legislature enacted Senate Bill 420, the Medical Marijuana Program Act (“MMPA”), codified as Sections 11362.7, *et seq.*, of the Health & Safety Code, and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of cannabis for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in October 2015, the State of California adopted AB 266, AB 243, and SB 643, collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), which established a comprehensive regulatory and licensing scheme for commercial medical cannabis operations; and

WHEREAS, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, and which also legalized limited personal recreational cannabis use, possession, and cultivation; and

WHEREAS, on June 27, 2017 Governor Brown signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), which merged the regulatory regimes of MCRSA and AUMA; and

WHEREAS, the MAUCRSA provides that the State of California will begin issuing licenses in 2018 for both medical and recreational cannabis businesses in 20 different categories, which are found in Section 26050 of the Business & Professions Code, and which categories include cannabis cultivation, manufacturer, testing, retailer, distributor, and microbusiness; and

WHEREAS, the MAUCRSA, Section 26200(a)(1) of the Business & Professions Code, provides that local jurisdictions may completely prohibit the establishment or operation of any or all of the 20 different medical and recreational business operations to be licensed by the state under Section 26050 of the Business & Professions Code; and

WHEREAS, the MAUCRSA, Section 26055(d) of the Business & Professions Code, provides that a state commercial cannabis license may not be issued to an applicant whose operations would violate the provisions of any local ordinance or regulation; and

WHEREAS, the MAUCRSA, Section 26200(a)(1) of the Business & Professions Code, provides that local jurisdictions may adopt and enforce local ordinances to regulate any or all of the 20 different medical and recreational business operations to be licensed by the state under Section 26050 of the Business & Professions Code, including, but not limited to, local zoning and land use requirements; and

WHEREAS, the MAUCRSA, Section 26201 of the Business & Professions Code, provides that any standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections established by the state for the 20 different medical and recreational business operations to be licensed by the state under Business & Professions Code § 26050, shall be the minimum standards, and a local jurisdiction may establish additional standards, requirements, and regulations; and

WHEREAS, the AUMA, Health & Safety Code § 11362.1(a)(3), makes it lawful for any person 21 years of age or older to “[p]ossess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and possess the cannabis produced by the plants”; and

WHEREAS, the AUMA, Health & Safety Code § 11362.2(b)(3), explicitly allows a city to “completely prohibit persons from engaging in [the personal cultivation of cannabis] outdoors upon the grounds of a private residence”; and

WHEREAS, the AUMA, Health & Safety Code § 11362.2(b), explicitly allows a city to “enact and enforce reasonable regulations to reasonably regulate” the cultivation of cannabis permitted under Health & Safety Code § 11362.1(a)(3), so long as the city does not completely prohibit the cultivation of up to six plants “inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, the AUMA, Health & Safety Code § 11362.2(a)(2), further restricts such personal cannabis cultivation so that “[t]he living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of that private residence, are in a locked space, and are not visible by normal unaided vision from a public place”; and

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

WHEREAS, cannabis 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 or if grown indoors without proper ventilation, odor control, and other regulations; and

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

WHEREAS, the indoor cultivation of cannabis has potential adverse effects on the structural integrity of the buildings in which cannabis 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 buildings, its occupants, and neighboring buildings and residents; and

WHEREAS, unregulated indoor cultivation of cannabis can be harmful to the public health, safety and welfare, because electrical modifications risk fires, poor irrigation can cause mold, overloaded circuits can leave entire neighborhoods in the dark, plant chemicals can cause illness and can contaminate soil and water, improper carbon dioxide mixed with insufficient ventilation can cause injury or death, and structural changes put first responders in danger if they rush into the unknown; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognize that the cultivation or other concentration of cannabis 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 and/or crime; and

WHEREAS, unregulated cannabis cultivation is likely to generate these negative effects on the public health, safety, and welfare in the city, based on the experiences of other cities; and

WHEREAS, absent clear regulation, cannabis cultivation in the city poses a potential threat to the public peace, health, and safety, and, unless the city takes action to regulate it, the secondary impacts described above are likely to occur; and

WHEREAS, the City has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors, and businesses, and in preserving the peace and quiet of the neighborhoods within the city, by regulating personal cannabis cultivation; and

WHEREAS, the AUMA, Health & Safety Code § 11362.3(a)(1-2), provides that the AUMA shall not be interpreted to permit any person to smoke cannabis or cannabis products in public places or in any place where smoking tobacco is prohibited; and

WHEREAS, secondhand smoke can result from many types of smoking, including the smoking of tobacco, the smoking of cannabis, and the use of electronic smoking devices (also known as "vaping"); and

WHEREAS, the federal Environmental Protection Agency has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and

WHEREAS, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to second-hand smoke has serious health effects including asthma in children and adults; lung, sinus and breast cancer; heart disease; low birth-weight babies; Sudden Infant Death Syndrome (SIDS); increased respiratory infections in children; and death; and

WHEREAS, the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, has concluded that exposure to secondhand smoke is a leading cause of preventable death in the United States; and

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WHEREAS, the U.S. Surgeon General and the California Environmental Protection Agency have repeatedly identified secondhand smoke as a health hazard; and

WHEREAS, exposure to secondhand smoke anywhere is injurious to health, and exposure to secondhand smoke from an adjacent or nearby property can occur at sustained and significant levels, including but not limited to for reasons of the volume of smoking, the proximity of smoking, the number of smokers, or the direction and amount of wind; and

WHEREAS, non-consensual exposure to the strong odor of secondhand smoke is offensive to many people, an obstruction to the free use of property, and interferes with the comfortable enjoyment of life and property; and

WHEREAS, non-consensual exposure anywhere to secondhand smoke constitutes a public nuisance because of interference with the health, safety and welfare of members of the public; and

WHEREAS, to provide for the public health, safety and welfare of the residents and visitors of the City of Morro Bay, the City desires to protect the public from exposure to secondhand smoke where they live, work and play; and

WHEREAS, the City of Morro Bay (“City”) previously adopted Chapter 9.06 (“Medical Cannabis Regulations”) in Title 9 (“Public Peace, Morals and Welfare”) to prohibit and regulate specific cannabis commercial and individual cannabis uses in the City;

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City now desires to repeal existing Chapter 9.06, to be replaced with a new Chapter 9.06 (“Personal Cannabis Cultivation”) in Title 9, so as to permit and reasonably regulate personal cultivation of up to six cannabis plants at a private residence, so as to protect the public health, safety and welfare;

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City now desires to add a new Chapter 5.50 (Commercial Cannabis Operations Regulatory Program) to Title 5 (permit certain commercial medical cannabis uses (retail sales, deliveries and (wholesale) distributor), while also prohibiting both all other commercial medical cannabis uses as well as all commercial adult-use (recreational) cannabis uses; and

WHEREAS, the City previously adopted Chapter 9.24 (“Secondhand Smoking Regulations”) in Title 9 (“Public Peace, Morals and Welfare”) to protect the public health, safety and general welfare by prohibiting smoking in certain public places under circumstances where other persons will be exposed to secondhand smoke; and

WHEREAS, pursuant to its police power, the City now desire to amend Chapter 9.24 (“Secondhand Smoking Regulations”) in Title 9 (“Public Peace, Morals and Welfare”) to expressly include cannabis smoking and the use of electronic smoking devices, to strengthen the regulation of secondhand smoke, and to increase the penalties for violation of the regulation of secondhand smoke; and

WHEREAS, this Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act of 2003, the Medical Cannabis Regulation and Safety Act of 2015, the Adult Use of Marijuana Act of 2016, and the Medicinal and Adult Use of Cannabis Regulation and Safety Act of 2017, to protect, promote and maintain the public health, safety, and welfare of City residents and visitors in relation to cannabis related uses and activities; and

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WHEREAS, pursuant to the above-described express statutory authority and the City’s police power, the City has the authority to prohibit, permit and regulate any and all commercial cannabis activities (whether not-for-profit or for-profit) that may otherwise be permitted by the State of California under the MCRSA, the AUMA, and the MAUCRSA; and

WHEREAS, the City finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to both the exemption provided by Section 26055(h) of the Business and Professions Code as well as Sections 15060(c)(3) and 15061(b)(3) of the CEQA Guidelines; and

WHEREAS, nothing in this Ordinance shall be construed to allow any person to engage in conduct that endangers others or causes a public nuisance;

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

SECTION 1. THE CITY COUNCIL OF THE CITY OF MORRO BAY HEREBY MAKES THE FOLLOWING FINDINGS:

- A. The recitals set forth above are all true and correct and are incorporated herein.
- B. The prohibitions on, and regulations of, cannabis activities established by this Ordinance are necessary to protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.
- C. The regulations of personal cultivation of cannabis established by this Ordinance are reasonable and necessary to protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.
- D. The regulations of secondhand smoke established by this Ordinance are reasonable and necessary to protect the public health, safety and welfare, and are enacted pursuant to the authority granted to the City by state law.

SECTION 2. CHAPTER 9.06 OF TITLE 9 OF THE MORRO BAY CITY CODE IS HEREBY REPEALED IN ITS ENTIRETY AND THE FOLLOWING NEW CHAPTER 9.06, (PERSONAL CANNABIS CULTIVATION) IS HEREBY ADDED TO TITLE 9 OF THE MORRO BAY CITY CODE AS FOLLOWS:

“Chapter 9.06 - PERSONAL CANNABIS CULTIVATION.

Sec. 9.06.010 - Purpose and intent.

Sec. 9.06.020 - Definitions.

Sec. 9.06.030 - Personal cannabis cultivation.

Sec. 9.06.040 - Personal cannabis cultivation permit.

Sec. 9.06.050 - Violations and penalties; public nuisance.

Sec. 9.06.010 - Purpose and intent.

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The purpose and intent of this chapter is to establish reasonable regulations, consistent with the meaning of Section 11362.2 of the Health & Safety Code, and as may be amended, for the cultivation of up to six (6) cannabis plants at a private residence.

Sec. 9.06.020 - Definitions.

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

- A. "Accessory structure" means a subordinate building located on the same lot as a private residence, the use of which is customarily part of, incidental and secondary to that of the private residence, and which does not change the character of the residential use of the private residence.
- B. "Applicant" means a person who files an application for a permit under this chapter.
- C. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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. 'Cannabis' also means the separated resin, whether crude or purified, obtained from cannabis. 'Cannabis' does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- D. "City Manager" means the City Manager of the City of Morro Bay, and includes his/her designees.
- E. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of one or more cannabis plants or any part thereof.
- F. "Cultivation site" means the real property on which cannabis cultivation occurs.
- G. "Director" means the Director of Community Development for the City of Morro Bay, and includes his/her designees.
- H. "Marijuana" has the same definition as provided for "cannabis" in this chapter.
- I. "Permit" means a personal cannabis cultivation permit issued pursuant to this chapter.
- J. "Person" means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.
- K. "Private residence" has the same meaning as the term is defined in Section 11362.2(b)(5) of the Health & Safety Code, and as may be amended, which provides that private residence "means a house, an apartment unit, a mobile home, or other similar dwelling."

Sec. 9.06.030 - Personal cannabis cultivation.

- A. Prohibition. Cannabis cultivation is prohibited in all zones of the city. No person shall engage in the cultivation of cannabis in the city for any purpose.

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- B. Limited Exemption. The prohibition on cannabis cultivation in above subsection (A) does not apply to the indoor cultivation of cannabis, and the outdoor cultivation of up to two (2) plants, at a private residence, conducted both pursuant to a valid and current permit as provided for in this chapter, as well as with complete adherence to the following regulations:
1. Six plants total. Total cultivation is limited to no more than six (6) living cannabis plants at any one time.
 2. Two plants outdoors. Two (2) of the six (6) living plants that may be cultivated, at any one time, may be cultivated outdoors, if the outdoor cultivation is no less than ten (10) feet from the property line of the cultivation site.
 3. Indoor cultivation. Indoor cultivation shall occur entirely within a private residence or within an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.
 4. Locked space. The six (6) living plants and any cannabis produced by the plants in excess of 28.5 grams shall be kept within a locked space, inaccessible to minors and trespassers, located either within the private residence or upon the grounds of the private residence. A locked space for purposes of outdoor cultivation means a locked and secure enclosure completely surrounding the cultivation site which renders the cultivation site inaccessible to minors and trespassers (e.g., a secured and locked garden fence, or a secured and locked backyard fence).
 5. Visibility. The six (6) living plants (whether grown indoors or outdoors) and any cannabis produced by the plants in excess of 28.5 grams shall not be visible from any public right of way, or in any manner be visible by normal unaided vision from a place regularly accessible to the general public.
 6. Odor.
 - a. The odor resulting from all cannabis cultivation shall not be detectable by human senses from any neighboring property or public right of way.
 - b. As necessary (which final determination shall be made by the Director), to ensure that no odor resulting from cannabis cultivation shall be detectable by human senses from any neighboring property or public right of way, all cultivation will occur indoors and/or a cannabis cultivation site shall install and continuously operate a functioning ventilation and filtration system which complies with all applicable building code regulations, including obtaining all required permits and approvals.
 7. Nuisance Activity. Cultivation shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gases, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or waste.
 8. Fire Extinguisher. A working portable fire extinguisher, which complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the same room as indoor cannabis cultivation.
 9. Electricity.

- a. The collective draw from all electrical appliances at the cannabis cultivation site shall not exceed the maximum rating of the approved electrical panel for the private residence where the cannabis is being cultivated.
 - b. The maximum rating shall be as established in the manufacturer specifications for the approved electrical panel.
10. Lighting. Any lighting fixture or combination of lighting fixtures used for cannabis cultivation shall:
- a. not exceed the rated wattage and capacity of the circuit breaker; and
 - b. shall be shielded so as to completely confine light and glare to the interior of the private residence or fully enclosed accessory structure.
11. Private Residence. Any private residence used for cultivation shall:
- a. include a fully functional and usable kitchen, as well as bathroom and bedroom areas, for use by the permit holder; and
 - b. shall not be used primarily or exclusively for cannabis cultivation.
12. Garage. Cultivation shall not displace required parking in a garage.

C. Additional Regulations. Further rules, regulations, procedures, and standards for the administration and implementation of this chapter may be adopted from time to time either by resolution or ordinance of the City Council, or by the Director (upon authorization by resolution of the City Council).

Sec. 9.06.040 - Personal cannabis cultivation permit.

- A. Permit Application. An applicant shall submit an application to the Director, in a form provided by the city, and the application shall contain the following information:
- 1. The address of the property where cannabis cultivation is to occur.
 - 2. The name of the applicant and a statement as to whether the applicant is an owner or tenant of the property where cultivation is to occur.
 - 3. If the applicant is not the owner of the property, property owner acknowledgement, in a form provided by the city, that the property owner consents to the cultivation of cannabis at the property.
 - 4. Applicant certification, through a form provided by the city, that the applicant has inspected the proposed cultivation site, and the proposed cultivation site meets the requirements of this chapter, state law, and any other applicable chapters of the Morro Bay City Code, including but not limited to health, safety and welfare requirements.
 - 5. A scaled property site plan and a scaled diagram of the floor plan of the residence, the fully enclosed and secure accessory structure, and/or the outdoor area to be used for cultivation at the cultivation site.

6. An itemized list of measures taken to comply with the provisions of this chapter, including identification and description of lighting and equipment to be used for the cannabis cultivation at the residence.
7. Any other information the Director deems necessary to efficiently administer applications and permits so as to further the purposes of this chapter.

B. Action on Applications.

1. Upon receipt of a completed application and payment of the application and permit fees, the Director shall review the information contained in the application to determine whether the applicant shall be issued the permit.
 2. If the Director determines that the applicant has completed the application improperly, the Director shall notify the applicant within 30 days of receipt of the application. Applicant will then have 30 days to complete the application. If the application is not submitted within that time frame, or is resubmitted incomplete, the Director shall deem the application abandoned, and the applicant may then resubmit a new application for review.
 3. Within 60 days of receipt of a completed application, the Director shall complete the review, approve or deny the application, and so notify the applicant by United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.
 4. The Director shall grant the application upon affirmative findings for all of the following requirements:
 - a. The applicant, and the cannabis cultivation site, are both in compliance with state law governing cannabis cultivation; and
 - b. The applicant, and the cannabis cultivation site, are both in compliance with all of the provisions of this chapter, including any regulations promulgated under this chapter; and
 - c. The cannabis cultivation site complies with the building code, fire code, plumbing code, and any other such applicable code adopted by the city.
 5. At the Director's sole discretion, the time limits in this Section 9.06.040(B) may be extended upon written notification from the Director to the applicant.
- C. Permit not transferable. A permit issued pursuant to this chapter is non-transferable and is specific to both the permit holder and the private residence for which it was issued.
- D. Permit revocation. Permits issued under this section may be revoked by the Director upon making any of the following findings:
1. The permit was issued in error or the application contained materially incorrect or false information.
 2. The cannabis cultivated at the cultivation site has been sold or used for any commercial use, or any other use or activity prohibited by city or state law, including but not limited to Sections 11362.1, 11362.2, and 11352.3 of the Health & Safety Code, and as they may be amended.

3. The cannabis cultivation site has become a public nuisance or has been operated in a manner constituting a public nuisance.
 4. The cannabis cultivation is not in compliance with the provisions of this chapter.
- E. Appeals. Any decision regarding an application for, or the revocation of, a personal cannabis cultivation permit may be appealed to the City Manager by an applicant or (former) permit holder as follows:
1. Appellant must file a written appeal with the Morro Bay City Clerk within 10 calendar days of the decision. The written appeal shall specify the person making the appeal, identify the decision appealed from, state the reasons for the appeal, and include any evidence in support of the appeal.
 2. Notice of the time and place of an appeal hearing shall be provided to the appellant within 30 days of receipt of the written appeal by the Morro Bay City Clerk.
 3. The appeal hearing shall be held within 60 days of the filing of the written appeal with the Morro Bay City Clerk, unless the 60-day time limit is waived by the appellant, or unless the City Manager continues the appeal hearing date for good cause and upon written notification to the appellant.
 4. The City Manager shall review the facts of the matter, written documents submitted for review, the basis for making the decision which is under appeal, and then determine whether the Director's decision should be reversed or affirmed. The determination made shall be in writing, shall set forth the reasons for the determination, and shall be final.
 5. The provisions of Sections 1094.5 and 1094.6 of the Code of Civil Procedure set forth the procedure for judicial review of any final determination.
- F. Fees. An application fee set by resolution of the City Council may be required for formal processing of every application and appeal made under this chapter. The City Council is authorized to pass resolutions to recover any and all fees and costs incurred by the administration and implementation of this chapter through an appropriate fee recovery mechanism to be imposed upon indoor cannabis cultivators and their operations.

Sec. 9.06.050 - Violations and penalties; public nuisance.

- A. Any violation of the provisions of this chapter is punishable as a misdemeanor or an infraction, at the discretion of the city prosecutor, pursuant to Chapter 1.16 of the Morro Bay City Code, except for as preempted by state law; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the City, pursuant to Chapter 1.03 of the Morro Bay City Code.
- B. Public nuisance abatement.
1. Cannabis cultivation that is conducted in violation of any provisions of this chapter is deemed a public nuisance, which may be abated or enjoined from further operation, in accordance with the procedures set forth in Chapter 8.14 of the Morro Bay City Code.

2. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the person causing the nuisance and the property owner where the nuisance is occurring.
- C. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.
- D. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.”

SECTION 3. CHAPTER 5.50 (COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM) IS HEREBY ADDED TO TITLE 5 OF THE MORRO BAY MUNICIPAL CODE AS FOLLOWS:

“CHAPTER 5.50 - COMMERCIAL CANNABIS OPERATIONS REGULATORY PROGRAM

- Sec. 5.50.010 - Purpose and intent.
- Sec. 5.50.020 - Commercial cannabis operations prohibited without City permit.
- Sec. 5.50.030 - Definitions.
- Sec. 5.50.040 - Prohibited commercial cannabis operations.
- Sec. 5.50.050 - Permitted commercial cannabis operations.
- Sec. 5.50.060 - Commercial cannabis operation permit.
- Sec. 5.50.070 - Applications for commercial cannabis operation permit.
- Sec. 5.50.080 - Compliance review of commercial cannabis operation permit application.
- Sec. 5.50.090 - Issuance of commercial cannabis operation permit.
- Sec. 5.50.100 - Renewal of commercial cannabis operation permit.
- Sec. 5.50.110 - General operating standards and restrictions.
- Sec. 5.50.120 - Retail (medical) operating standards and restrictions.
- Sec. 5.50.130 - Wholesale distribution (medical) operating standards and restrictions.
- Sec. 5.50.140 - Delivery (medical) operating standards and restrictions.
- Sec. 5.50.150 - Administration.
- Sec. 5.50.160 - Fees.
- Sec. 5.50.170 - Suspension and revocation.

Sec. 5.50.180 - Violations and penalties; public nuisance

Sec. 5.50.190 - Service of notices.

Sec. 5.50.200 - Prohibitions.

Sec. 5.50.210 - Nonconforming use.

Sec. 5.50.220 - Severability.

Sec. 5.50.010 - Purpose and intent.

- A. The purpose of this chapter is to establish a comprehensive set of regulations with an attendant regulatory permit applicable to the operation of certain types of commercial cannabis operations, while simultaneously establishing an express prohibition on certain other types of commercial cannabis operations.
- B. The regulations for, and prohibitions on, specific types of commercial cannabis operations are enacted to preserve the public health, safety, and welfare of the residents and visitors of the City of Morro Bay, consistent with California’s Compassionate Use Act of 1996, California’s Medical Marijuana Program Act of 2003, the Adult Use of Marijuana Act of 2016 (AUMA) (Proposition 64), the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017 (MAUCRSA) and all applicable state laws governing commercial cannabis activities.
- C. The issuance of a Commercial Cannabis Operation Permit shall constitute a revocable privilege and shall not create or establish any vested rights for the development or use of a property.
- D. This chapter and its regulations shall be known as the “Commercial Cannabis Operations Regulatory Program.”

Sec. 5.50.020 - Commercial cannabis operation prohibited without City permit.

It shall be unlawful to own, establish, operate, use, or permit the establishment or activity of a commercial cannabis operation, or to participate in commercial cannabis operations as an employee, contractor, agent, volunteer, or in any manner or capacity, other than as provided in this chapter and pursuant to both a current and valid City of Morro Bay Commercial Cannabis Operation Permit, as well as the equivalent state license for such commercial cannabis operation as provided for by Section 26050 of the Business & Professions Code, and as amended. The prohibition contained in this section shall include renting, leasing, or otherwise permitting a commercial cannabis operation to occupy or use a location, vehicle, or other mode of transportation.

Sec. 5.50.030 - Definitions.

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

- A. “Adult use” (i.e., “recreational” or “non-medical”) refers to activity involving cannabis or cannabis products, which is restricted to adults 21 years of age and older and who do not possess a physician’s recommendation, in contrast to an activity involving medical cannabis or medical cannabis products.

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- B. "Applicant" means a person who files an application for a permit under this chapter.
- C. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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. 'Cannabis' also means the separated resin, whether crude or purified, obtained from cannabis. 'Cannabis' does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- D. "Cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- E. "Cannabis Permit Committee" is composed of the Fire Chief, Police Chief, Finance Director, City Attorney, and/or their designees.
- F. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- G. "City Attorney" means the City of Morro Bay City Attorney, and includes his/her designee(s).
- H. "City Manager" means the City of Morro Bay City Manager, and includes his/her designee(s).
- I. "Commercial cannabis operation" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale (including retail and wholesale) of cannabis and cannabis products; except, as applicable, as set forth in Chapter 9.06 ("Personal Cultivation of Cannabis") of this Code or as preempted by state law.
- J. "Commercial Cannabis Operation Permit" shall mean a City of Morro Bay permit issued pursuant to the procedures provided for in this chapter and which shall allow the permit holder to operate a specific type of commercial cannabis operation in the City of Morro Bay subject to the requirements of this chapter, state law, and the specific permit.
- K. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- L. "Day care center" means, as the term is understood by Section 26001(o) of the Business and Profession Code, and as may be amended, any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers.

- M. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer, and includes the use of any technology platform owned and controlled by the same person making such use.
- N. “Director” means the City of Morro Bay Community Development Director, and includes his/her designee(s).
- O. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed for and/or engaged in commercial cannabis activities.
- P. “Distributor” means a person engaged in distribution.
- Q. “Edible” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- R. “Employee” means any person (whether paid or unpaid) who provides regular labor or regular services for a commercial cannabis operation, including, but not limited to, at the location of a commercial cannabis operation. The term “employee” includes managers and owners as used in this chapter.
- S. “Extraction” means the process of obtaining cannabis concentrates from cannabis plants, including but not limited to through the use of solvents like butane, alcohol or carbon dioxide.
- T. “Finance Director” means the City of Morro Bay Finance Director, and includes his/her designee(s).
- U. “Fire Chief” means the City of Morro Bay Fire Department Chief, and includes his/her designee(s).
- V. “Identification card” has the same definition as provided for in Health and Safety Code section 11362.7(g), and as may be amended, defined as “a document issued by the [State Department of Health Services] that identifies a person authorized to engage in the medical use of cannabis and the person’s designated primary caregiver, if any.”
- W. “Labeling” means any label or other written, printed, or graphic matter upon a cannabis product, upon its container or wrapper, or that accompanies any cannabis product.
- X. “Location” means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.
- Y. “Lighting” means the act of illuminating as well as the effect achieved by the arrangement of lights.
- Z. “Live scan” means a system for inkless electronic fingerprinting and the automated background check developed by the California Department of Justice (DOJ) which involves digitizing fingerprints and electronically transmitting the fingerprint image data

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along with personal descriptor information to computers at the DOJ for completion of a criminal record check; or such other comparable inkless electronic fingerprinting and automated background check process as determined by the City Council.

- AA. “Manager” means an employee responsible for management and/or supervision of a commercial cannabis operation.
- BB. “Manufacture” or “manufacturing” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product; includes the activities of a manufacturer.
- CC. “Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container; includes the activity of manufacturing.
- DD. “Marijuana” has the same definition as provided for “cannabis” in this chapter.
- EE. “Medical” refers to activity involving medical cannabis or medical cannabis products, in contrast to an activity involving adult-use cannabis or adult-use cannabis products.
- FF. “Medical cannabis” or “medical cannabis product” means cannabis or a cannabis product used in compliance with state law for medical purposes, pursuant to the Compassionate Use Act (Health and Safety Code § 11362.5), the Medical Marijuana Program Act (Health and Safety Code §§ 11362.7, *et seq.*), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code §§ 26000, *et seq.*).
- GG. “Merit List” shall refer to the criteria listed in Section 5.50.090(C) of this chapter.
- HH. “Minor” means a person under twenty-one (21) years of age.
- II. “Owner” means the owner of a commercial cannabis operation.
- JJ. “Microbusiness” shall have the same definition as provided for in Section 26070 of the Business and Professions Code, and as may be amended.
- KK. “Nursery” means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- LL. “Operations Officer(s)” shall refer to the Director, the Fire Chief, the Police Chief, the Finance Director and the City Manager, individually or collectively.
- MM. “Package” means any container or receptacle used for holding cannabis or cannabis products.
- NN. “Packaging” or “packages” means an activity involved with placing cannabis or cannabis products in a package.

- OO. “Park” means public land which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, athletic field, basketball court, tennis court, pedestrian or bicycle paths, beaches, open space, or similar public land within the city or which is under the control, operation or management of the city recreation and parks department.
- PP. “Permittee” means a person issued a Commercial Cannabis Operation Permit by the City of Morro Bay.
- QQ. “Person” means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.
- RR. “Person with an identification card” has the same definition as provided for in Health and Safety Code section 11362.7(c), and as may be amended, defined as “an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.”
- SS. “Physician’s recommendation” means a determination from a physician that a patient’s medical cannabis use is deemed appropriate and is recommended by the physician on the basis of the physician has determined that the patient’s health would benefit from the use of cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief, in strict accordance with the Compassionate Use Act of 1996 (Proposition 215), and as understood by Section 11362.5 of the Health and Safety Code.
- TT. “Religious institution” means any church, synagogue, mosque, temple, or building which is used primarily for religious worship, religious education and related religious activities.
- UU. “Police Chief” means the City of Morro Bay Police Chief, and includes his/her designee(s).
- VV. “Police Department” means the City of Morro Bay Police Department.
- WW. “Premises” means a single parcel of property. Where contiguous parcels are under common ownership or control, such contiguous parcels shall be counted as a single “premises.”
- XX. “Primary caregiver” has the same definition as provided for in Section 11362.7(d) of the Health and Safety Code, and as may be amended, including being “the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person” A “primary caregiver” shall also meet the requirements of Health and Safety Code section 11362.7(e), and as may be amended, which provide that a “primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.”
- YY. “Qualified Patient” has the same definition as provided for in Health and Safety Code section 11362.7(f), and as may be amended, defined as “a person who is entitled to

the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.”

ZZ. “Retailer” means a person engaged in the retail sale or delivery of cannabis or cannabis products to a customer.

AAA. “School” means, as the term is understood by Section 26054(b) of the Business and Profession Code, and as may be amended, as a place of instruction in kindergarten or any grades 1 through 12.

BBB. “Site” means the premises and actual physical location of a Commercial Cannabis Operation, as well as its accessory structures and parking areas.

CCC. “Testing laboratory” or “testing” refers to a laboratory, facility, or entity that offers or performs tests on cannabis or cannabis products; includes the activity of laboratory testing.

DDD. “Youth center” means, as the term is understood by Section 26001(av) of the Business and Profession Code, and as may be amended, any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

Sec. 5.50.040 - Prohibited commercial cannabis operations.

A. Commercial cannabis operations (including non-profit operations) within the City which involve the activities of cultivation, manufacturer, testing, retail (adult-use), distributor (adult-use), or microbusiness are prohibited, including but not limited to commercial cannabis activities licensed by the state license classifications listed below as provided in Business and Professions Code § 26050:

1. Type 1 = Cultivation; Specialty outdoor; Small.
2. Type 1A = Cultivation; Specialty indoor; Small.
3. Type 1B = Cultivation; Specialty mixed-light; Small.
4. Type 1C = Cultivation; Specialty cottage; Small.
5. Type 2 = Cultivation; Outdoor; Small.
6. Type 2A = Cultivation; Indoor; Small.
7. Type 2B = Cultivation; Mixed-light; Small.
8. Type 3 = Cultivation; Outdoor; Medium.
9. Type 3A = Cultivation; Indoor; Medium.
10. Type 3B = Cultivation; Mixed-light; Medium.
11. Type 4 = Cultivation; Nursery.
12. Type 5 = Cultivation; Outdoor; Large.
13. Type 5A = Cultivation; Indoor; Large
14. Type 5B = Cultivation; Mixed-light; Large.
15. Type 6 = Manufacturer 1.
16. Type 7 = Manufacturer 2.
17. Type 8 = Testing.
18. Type 10 = Retailer (adult-use / non-medical).
19. Type 11 = Distributor (adult-use / non-medical).
20. Type 12 = Microbusiness.

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- B. The prohibition provided by above subsection (A) includes any similar activities authorized under new or revised state licenses, or any other state authorization, to allow any type, category or classification of cannabis commercial activities which involve the activities of cultivation, manufacturer, testing, retail (adult-use), distributor (adult-use), microbusiness, or similar operations (including non-profit, collective or cooperative operations).

Sec. 5.50.050 - Permitted commercial cannabis operations.

- A. Commercial cannabis operations (including non-profit operations) within the City which involve the activities of retail (medical) or distributor (medical) are allowed subject to issuance and maintenance of a valid and current City Commercial Cannabis Operation Permit, continuing adherence to this entire chapter and all applicable city and state regulations and laws, and issuance and maintenance of a valid and current equivalent state license type listed below, as provided for in Business and Professions Code § 26050:
 - 1. Type 10 = Retailer (medical).
 - 2. Type 11 = Distributor (medical).
- B. The requirements provided by above subsection (A) apply to any similar activities authorized under new or revised state licenses, or any other state authorization, to allow any type, category or classification of cannabis commercial activities which involve the activities of retail (medical), distribution (medical), or similar operations (including non-profit, collective or cooperative operations).

Sec. 5.50.060 - Commercial cannabis operation permit.

- A. Prior to initiating operation as a commercial cannabis operation and as a continuing requisite to conducting operations, the owner of a commercial cannabis operation shall obtain a regulatory permit from the City under the terms and conditions set forth in this chapter.
- B. Issuance of a Commercial Cannabis Operation Permit is governed by a three-step procedure (as provided for in more detail in Sections 5.50.080 and 5.50.090).
 - 1. The first step (as provided for in Section 5.50.080) is a review by the Director to determine whether an applicant meets the minimum qualifications for a Commercial Cannabis Operation Permit, such minimum qualifications being the requirements of this chapter, the Morro Bay City Code, and applicable state law. If the Director makes a positive determination, then the application will be deemed compliant, and eligible for review by the Cannabis Permit Committee as to whether the permit should issue.
 - 2. The second step (as provided for in Section 5.50.090) is a review by the Cannabis Permit Committee of the thoroughness of applicant's adherence to Merit List criteria specified in Section 5.50.090(C). Upon conclusion of this review, the Cannabis Permit Committee shall make a recommendation to the City Manager as to whether or not a permit should be issued. The recommendation shall articulate in writing reasons for the recommendation and refer to Merit List criteria.

3. The third step (as provided for in Section 50.50.90) is review by City Manager of Cannabis Permit Committee recommendations, and then a decision on whether a permit will or will not be issued. The reasons for the decision shall be articulated in writing and refer to Merit List criteria specified in Section 5.50.090(C). The decision shall be final and non-appealable.
- C. Commercial Cannabis Operation Permits issued pursuant to this chapter shall automatically expire one year from the date of issuance, unless provided for otherwise.
- D. Conditions necessary for the continuing validity of a Commercial Cannabis Operation Permit include:
1. Strict adherence to each and every requirement of this chapter, as well as any requirements, including administrative regulations, adopted by the City pursuant to the authority of this chapter.
 2. Maintaining a current and valid state license under Section 26200 of the Business and Professions Code, and as amended. Revocation, suspension or expiration of the state license shall automatically invalidate the equivalent City Commercial Cannabis Operation Permit.
 3. Allowing Operations Officers to conduct reasonable inspections of the location of the commercial cannabis operation at the discretion of the City, including but not limited to inspection of security, inventory, and written records and files pertaining to the commercial cannabis operation, for the purposes of ensuring compliance with local and state law.
 4. Maintaining with the City current and valid contact information of the owner(s) and manager(s) of the commercial cannabis operation.
 5. Maintaining with the City current and valid contact information of a legal representative of the commercial cannabis operation.
 6. Transferable only if transferee successfully completes all of the requirements that a new applicant for a Commercial Cannabis Operation Permit would otherwise need to meet.

Sec. 5.50.070 - Applications for commercial cannabis operation permit.

- A. The owner of a proposed commercial cannabis operation shall file an application with the Director upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council, as may be amended from time to time. Applications will be accepted beginning on July 1, 2018.
- B. An application for a Commercial Cannabis Operation Permit shall include, but not be limited to, the following information:
1. Business.
 - a. Activities. A general description of the proposed operation, including how the proposed operation will operate in compliance with this Code and state law, plans for handling cash and transporting cannabis and

cannabis products to and from the premises, and the proposed use of all areas on the premises, including but not limited to specific activities, storage, lighting and signage.

- b. Security. A security plan detailing measures to the satisfaction of the Director that all applicable security-related requirements under State or local law, including but not limited to the requirements of Section 550.110(B), are and will be met.
- c. Development Agreement. Applicants seeking to enter into a development agreement with the City pursuant to Government Code sections 65864, *et seq.*, are encouraged to propose terms and conditions, including but not limited to applicant benefits, public outreach and education, community service, and payment of fees and other charges as mutually agreed.
- d. Odor Control. An odor control plan detailing odor control measures in accordance with Section 550.110(C), to the satisfaction of the Director.
- e. Ownership. A description of the statutory entity or business form that will serve as the legal structure for the applicant, the ownership structure of the applicant as filed with the California Secretary of State (e.g. limited liability company, joint partnership, S-Corporation) (an applicant that is a foreign corporation shall include in its application the certificate of qualification issued by the Secretary of State of California), and a copy of the entity's formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement.
- f. Seller's Permit. The seller's permit number issued by the Board of Equalization or evidence that the applicant has applied for a seller's permit from the Board of Equalization, as applicable.
- g. Other Licenses and Permits. Identification of any other licenses or permits for commercial cannabis operations, whether for the City of Morro Bay or for any other licensing or permitting authority:
 - i. held currently by the applicant;
 - ii. pending approval for the applicant; or
 - iii. denied to, revoked from or suspended for the applicant.
- h. Physical. A general description of the proposed operation, including the street address, parcel number, the total square footage of the site, and the characteristics of the surrounding area.
- i. Floor plan. A scaled floor plan for each level of each building that is part of the business site, including the entrances, exits, walls, and

operating areas. The floor plan must be professionally prepared by a licensed civil engineer or architect.

- j. Site plan. A scaled site plan of the business site, that will include at a minimum all buildings, structures, driveways, parking lots, landscape areas, and boundaries. The site plan must be professionally prepared by a licensed civil engineer or architect.
- k. Hours of Operation. Proposed hours and days of operation.

2. Individuals.

- a. Managers. The name, address, e-mail and phone number of any person who is managing or responsible for the commercial cannabis operation's activities.
- b. Community Outreach Manager. The name, e-mail and phone number of an employee designated as Community Outreach Manager, who will be responsible for outreach and communication with the surrounding community, including the neighborhood and nearby businesses.
- c. Employees. A list of the names of all current and prospective employees of the commercial cannabis operation, along with any other identifying information requested by the Director.
- d. Consent to Criminal Investigation. Written consent from all employees to fingerprinting and a criminal background investigation by the City, upon a form provided by the City, accompanied with payment of appropriate fees to City to cover the costs of performing such criminal background check. At the discretion of the City and in compliance with State law, the City may use live scan to perform criminal background checks.
- e. Identification. For each employee, a color photocopy of either a valid California Driver's License or equivalent identification approved by the Director.
- f. Land Owner. The name, address, e-mail and phone number of the owner and lessor of the real property upon which the commercial cannabis operation is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a notarized acknowledgement from the owner of the property that a commercial cannabis operation will be operated on his/her property.

3. Miscellaneous.

- a. Any additional application requirements specific to the type of Commercial Cannabis Operation Permit being sought, including but not limited to as provided for by this chapter.
- b. Evidence satisfactory to the Director of compliance with all local and

state law requirements governing commercial cannabis operations.

- c. Evidence satisfactory to the Director of compliance with all applicable insurance requirements as provided for by this chapter, local law and state law. Minimum insurance levels shall be determined by the Director after an assessment of the risks posed by the commercial cannabis operation, including provision for meeting the requirements of Section 5.50.080(D)(2).
- d. Authorization for the Director to seek verification of the information contained within the application.
- e. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.
- f. Any such additional and further information as is deemed necessary by the Director to administer this chapter.

Sec. 5.50.080 - Compliance review of commercial cannabis operation permit application.

- A. Upon receipt of a completed application and payment of all applicable fees, the Director shall investigate the information contained in the application to determine whether the applicant meets the minimum qualifications for a Commercial Cannabis Operation Permit. These minimum qualifications are the requirements of this chapter, the Morro Bay City Code, and applicable state law. If the Director makes a positive determination then the application will be deemed compliant and eligible for review as to whether the permit should issue pursuant to the provisions in Section 5.50.090.
- B. If the Director determines that the application is incomplete, the Director shall notify the applicant in writing explaining the reasons thereof within sixty (60) days of receipt of the application. Applicant shall have 30 days to submit a completed application, in accordance with the Director's notification. If the application is resubmitted as incomplete, it shall be deemed abandoned. The applicant may then resubmit a new application for a new review pursuant to the requirements of this section.
- C. Within ninety (90) days of receipt of the completed application, the Director shall complete the investigation, approve, conditionally approve, or deny the application as being in compliance with the requirements of this chapter, and so notify the applicant by United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.
- D. An applicant shall not be deemed compliant for purposes of review under Section 5.50.090, until and unless an applicant meets all of the following requirements:
 - 1. Provides written authorization to the Operations Officers to conduct reasonable unannounced inspections of the location of the commercial cannabis operation at the discretion of the City, including but not limited to inspection of security, inventory, and written records and files pertaining to the commercial cannabis operation, for the purposes of ensuring compliance with this chapter and all laws of the City and the State of California.
 - 2. Executes an agreement: to indemnify, defend and hold harmless (at the

Commercial Cannabis Operation Permit holder's sole expense, the ability to do so demonstrated through proof of sufficient insurance coverage to the satisfaction of the City) the City, its elected officials, employees, agents, officers, and representatives, and each and all of them individually, from all liability or harm arising from or in connection with all claims, damages, attorney's fees, costs and allegations arising from or in any way related to the operation of the commercial cannabis operation; and, to reimburse the City for any costs and attorney's fees that the City may be required to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action.

- E. Upon successfully completing the review process, the permit application shall be deemed compliant and eligible for review under Section 5.50.090, unless the Director finds:
 - 1. The applicant has made one or more false or misleading statements or omissions, either on the written application or during the application process; or
 - 2. A proposed location for the commercial cannabis operation is not allowed by state or local law, statute, ordinance, or regulation (including this Code); or
 - 3. The applicant has not satisfied each and every requirement of this chapter and Code; or
 - 4. The applicant is not in compliance with applicable state law, including, but not limited to, applicable requirements and minimum standards of the Adult Use of Marijuana Act of 2016 (AUMA) (Proposition 64), the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017 (MAUCRSA) and any applicable State regulations.
- F. Based on the information set forth in the application and the Director's review, the Director may impose, as a condition of being deemed compliant and thereby eligible for review under Section 5.50.090, reasonable terms and conditions on the use of the permit, in addition to those specified in this chapter, to ensure the safe operation of the commercial cannabis operation, and to ensure the health, safety and welfare of the residents and visitors of the City of Morro Bay.
- G. At the Director's sole discretion, the time limits in this Section may be extended upon written notification from the Director to the applicant.

Sec. 5.50.090 - Issuance of commercial cannabis operation permit.

- A. Issuance of a Commercial Cannabis Operation Permit constitutes a revocable privilege and shall not create or establish any vested rights for the development or use of a property. The City may determine that it is in the best interests of the health, safety and welfare of the residents and visitors of the City of Morro Bay that no Commercial Cannabis Operation Permits are to be granted by the City.
- B. Upon determination by the Director that an applicant is compliant with the requirements of this chapter, the Morro Bay City Code, and applicable state law (and thereby eligible for review by the Cannabis Permit Committee to determine whether or not a City of Morro Bay Commercial Cannabis Operation Permit will be issued), the Director shall promptly prepare for the application a written Merit List for provision to the Cannabis Permit Committee.
- C. A Merit List shall detail and rank in writing the thoroughness of an applicant's adherence

to the following criteria, as they relate to the maintenance and promotion of the health, safety and welfare of the residents and visitors of the City of Morro Bay:

1. Operation plan for the business, including attention to community concerns about the impact of the business.
 2. Security plan for the business, including details for the non-diversion of cannabis or cannabis products to illegal uses.
 3. Health and safety plan for the business, including enhanced product and operations health and safety.
 4. Impact on the environment.
 5. Neighborhood compatibility.
 6. Employment opportunities for City of Morro Bay residents.
 7. Economic benefits to the City of Morro Bay.
 8. Community benefits to the City of Morro Bay.
 9. Experience of the operators, managers and employees.
 10. Capitalization of the business.
 11. Requirements of this chapter, this Code and applicable State law.
 12. Any additional criteria the Director determines is of benefit to making a determination of the applicant's commitment to the health, safety and welfare of the residents and visitors of the City of Morro Bay.
- D. The Cannabis Permit Committee shall determine in writing, within a reasonable amount of time after receipt from the Director of the Merit List, whether to recommend to the City Manager that the requested Commercial Cannabis Operation Permit shall be issued. The recommendation shall use the criteria contained within Section 5.50.090(C).
1. Factors to be considered shall include the written Merit List, as well as all pertinent evidence timely submitted (at the determination of the Cannabis Permit Committee) by the applicant, the public, and interested parties. No pre-determined weight shall be given to one criterion or another.
 2. Each application shall be considered in its totality with weight given to one criterion over another as determined appropriate by the Cannabis Permit Committee to further the maintenance and promotion of the health, safety and welfare of the residents and visitors of the City of Morro Bay.
 3. Upon conclusion of this review, the Cannabis Permit Committee shall make a recommendation to the City Manager as to whether or not a permit should be issued. The recommendation shall articulate reasons in writing for the recommendation and refer to Merit List criteria.
- E. The City Manager shall make a final determination in writing, within a reasonable amount of time after receipt from the Cannabis Permit Committee of a recommendation, whether the applicant shall be issued a Commercial Cannabis Operation Permit.
1. Factors to be considered shall include the written Merit List, as well as all pertinent evidence timely submitted (at the determination of the City Manager) by the applicant, the public, and interested parties. No pre-determined weight shall be given to one criterion or another.
 2. Each application shall be considered in its totality with weight given to one criterion over another as determined appropriate by the City Manager to further

the maintenance and promotion of the health, safety and welfare of the residents and visitors of the City of Morro Bay.

3. Notice of the written determination shall be provided promptly to the applicant upon final determination. The determination shall articulate reasons in writing for the final determination and refer to Merit List criteria. The determination shall be final and not appealable.
- F. The City Manager may impose reasonable terms and conditions on the use of the permit, in addition to those specified in this chapter, to ensure the safe operation of the commercial cannabis operation, and to ensure the health, safety and welfare of the residents and visitors of the City of Morro Bay.
- G. As determined appropriate by the City, multiple qualified applications for Commercial Cannabis Operation Permits may be considered at the same time, for reasons including but not limited to comparison of applicants for limited permits using the criteria contained within Section 5.50.090(C). The permit process timelines provided by this chapter may be modified by the City to facilitate such review of multiple applications.

Sec 5.50.100 - Renewal of commercial cannabis operation permit.

- A. Issuance of a Commercial Cannabis Operation Permit constitutes a revocable privilege and shall not create or establish any vested rights for the development or use of a property. The City may determine through the procedures provided in this chapter that for reasons of the health, safety and welfare of the residents and visitors of the City of Morro Bay that a Commercial Cannabis Operation Permit will not be renewed.
- B. Commercial Cannabis Operation Permits issued pursuant to this chapter shall automatically expire one year from the date of issuance, unless specifically provided for otherwise by this chapter.
- C. The following procedures shall govern the process for the renewal of a Commercial Cannabis Operation Permit:
 1. A holder of a Commercial Cannabis Operation Permit may apply for the renewal of an existing permit no less than 60 days prior to the permit's expiration date upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council as amended from time to time.
 2. Renewal applications shall comply with all of the requirements in this chapter for applying for a new Commercial Cannabis Operation Permit. At the discretion of the City, renewal applications may consist of updating any changes to an original application or previous renewal application.
 3. The Director will review permit renewal applications and make a determination as to whether the commercial cannabis operation has remained in compliance with all the requirements of this chapter and State law during the prior term of the permit. If the Director makes a contrary determination, the application for a permit renewal shall be denied.
 4. If the Director determines the commercial cannabis operation has remained in compliance with all the requirements of this chapter and state law during the prior

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term of the permit, the permit renewal application shall then be subject to the requirements of Section 5.50.090 (including the attendant preparation of a Merit List applicable to the prior term's operations), and the Director shall provide to the Cannabis Permit Committee a written Merit List. The Cannabis Permit Committee shall then recommend to the City Manager in writing whether the permit should be renewed. The City Manager shall review the recommendation and then make a final decision on whether to grant an application for a permit renewal. The decision shall be final and non-appealable.

5. If the holder of a Commercial Cannabis Operation Permit files a renewal application less than 60 days prior to expiration, the holder must provide a written explanation detailing the circumstances surrounding the late filing. The Director may deny the untimely application after review of the explanation. If the Director accepts the application, then the Director may elect to administratively extend the permit beyond the expiration date while the Director completes the renewal permitting process. Untimely applications for renewal which are nevertheless accepted by the Director pursuant to this section are subject to a late penalty.

- D. A Commercial Cannabis Operation Permit is immediately invalid upon expiration if the permit holder has not filed a timely and/or accepted renewal application and remitted all of the required renewal fees. In the event the permit is not renewed prior to expiration, the affected commercial cannabis operation shall cease operation upon the expiration of the permit and is thereafter considered to be unlawful.

Sec. 5.50.110 - General operating standards and restrictions.

A commercial cannabis operation shall operate in conformance with the following minimum standards, and such standards shall be deemed to be part of the conditions on the permit for a commercial cannabis operation to ensure that its operation is in compliance with California law and the Morro Bay Municipal Code, and to mitigate any potential adverse impacts of the commercial cannabis operation on the public health, safety or welfare.

Additional minimum standards may be adopted from time to time either by resolution or ordinance from the City Council, or by the Director (upon authorization by resolution from the City Council).

- A. State Standards. All state requirements and regulations that govern the operation of a commercial cannabis operation, including but not limited to ones related specifically to certain types of commercial cannabis operations, shall apply as minimum requirements and regulations and requirements for commercial cannabis operations within the City of Morro Bay, in addition to the requirements and regulations of this chapter and this Code.

B. Security.

1. General. All cannabis, cannabis products and cash present or kept at the premises shall be securely stored against both unauthorized access as well as theft.
2. Security Cameras.
 - a. Security cameras shall be installed and maintained in good condition, with at least 30 days of digitally recorded documentation in a format approved by the Director and the Police Chief.

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- b. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present at the site of the commercial cannabis operation.
 - c. The cameras shall be in continuous use 24 hours per day, 7 days per week.
 - d. The recording system must be capable of exporting the recorded video in standard MPEG formats to another common medium approved by the Director, such as DVD and/or a USB drive.
 - e. The areas to be covered by the security cameras include, but are not limited to, the storage areas, operation areas, all doors and windows, the parking lot, all exterior sides of the property adjacent to the public rights of way, and any other areas as determined by the Director and Police Chief.
 - f. Remote log-in information will be provided to the Operations Officers to allow them to view live and recorded security camera images remotely at any time.
3. Alarm System. The location of the commercial cannabis operation shall be alarmed with a centrally-monitored fire and burglar alarm system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code section 7590, *et seq.* and whose agents are properly licensed and registered under applicable law.
 4. Locked Entrances. All entrances into the building housing a commercial cannabis operation shall be locked from the exterior at all times with entry controlled by employees.
 5. Windows. All windows on the building that houses the commercial cannabis operation shall be secured against entry from the outside.
 6. No employee shall refuse, impede, obstruct or interfere with an inspection conducted pursuant to the authorizations provided by this chapter.

C. Odors.

1. A commercial cannabis operation shall have an air treatment system that ensures off-site odors shall not result from its activities.
2. This requirement at a minimum means that the commercial cannabis operation shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location of the commercial cannabis operation is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the commercial cannabis operation, if the use only occupies a portion of a building.

D. Authorizations.

1. The Operations Officers shall have the right to enter all areas of the commercial cannabis operation from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter and all laws of the City and State of California.
2. Recordings made by security cameras required pursuant to this chapter shall be made available to the Operations Officers upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.

E. Records.

1. Commercial cannabis operations shall maintain on-site the following records either in paper or electronic form:
 - a. The full name, address, and telephone numbers of the owner and lessee of the property.
 - b. The name, date of birth, address, and telephone number of each employee of the commercial cannabis operation; the date each was hired; and the nature of each employee's participation in the commercial cannabis operation.
 - c. Copies of all required state licenses.
 - d. An inventory record documenting the dates and amounts of cannabis and cannabis products received at the site, the daily amounts of cannabis and cannabis products on the site, and the daily amounts of cannabis and cannabis products leaving the site for any reason, including but not limited to being sold, delivered, or distributed.
 - e. A written accounting of all expenditures, costs, revenues and profits of the commercial cannabis operation, including but not limited to cash and in-kind transactions.
 - f. A copy of all insurance policies related to the operation of the commercial cannabis operation.
 - g. A copy of the commercial cannabis operation's most recent year's financial statement and tax return.
 - h. Proof of a valid and current permit issued by the City in accordance with this chapter, and the equivalent State of California license to operate the commercial cannabis operation. Every commercial cannabis operation shall display at all times during business hours the City permit issued pursuant to the provisions of this chapter, and the equivalent State license, in a conspicuous place so that it may be readily seen by all persons entering the location of the commercial cannabis operation.
2. All records required to be maintained by the commercial cannabis operation must be maintained for no less than three (3) years and are subject to immediate inspection (consistent with requirements pertaining to patient confidentiality pursuant to applicable State and Federal law) upon a lawful written request by an

Operation Officer.

3. A commercial cannabis operation shall report any loss, damage, or destruction of these records to the Operation Officers within twenty-four (24) hours of the loss, damage, or destruction.

F. Site Management.

1. Commercial cannabis operations shall not result in a nuisance or adversely affect the health, welfare, or safety of nearby persons by creating dust, glare, heat, noise, noxious gases, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or waste. The permittee shall promptly and diligently both prevent as well as eliminate conditions on the site of the commercial cannabis operation that constitute a nuisance.
2. The Commercial Cannabis Operation permittee shall maintain the exterior of the site, including any parking lots under the control of the permittee, free of litter, debris, and trash.
3. The Commercial Cannabis Operation permittee shall properly store and dispose of all waste generated on the site, including chemical and organic waste, in accordance with all applicable laws and regulations.
4. Notwithstanding any provisions of this code to the contrary, the Commercial Cannabis Operation permittee shall remove all graffiti from the site and parking lots under the control of the Commercial Cannabis Operation Permittee within 72 hours of its application.

G. State Board of Equalization Seller's Permit Required.

1. Commercial cannabis operations must obtain a Seller's Permit from the State Board of Equalization as applicable.
2. Such permit shall be displayed in a conspicuous place so that it may be readily seen by all persons entering the location of the commercial cannabis operation.

H. Employees.

1. All employees must submit to fingerprinting and criminal background checks by the City.
 - a. No employee convicted within the last ten years of a felony substantially related to the qualifications, functions or duties of an employee of a commercial cannabis operation (such as a felony conviction for distribution of controlled substances, money laundering, racketeering, etc.) shall be employed by a commercial cannabis operation, unless such employee has obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar federal statute or state law where the expungement was granted.
 - b. At the request of the commercial cannabis operation, the Director and Police Chief shall determine the applicability of this section to a potential

employee within a reasonable period of time after a written request has been made to the Director and Police Chief for such determination.

2. All employees must possess a valid government issued (or equivalent) form of identification containing an identifying photograph of the employee, the name of the employee, the date of birth of the employee, and the residential address of the employee. Color copies of such identification shall be maintained at the location of the commercial cannabis operation. A valid California Driver's license will satisfy this requirement.

I. Cannabis Transfer Between Permitted Operations Only.

A commercial cannabis operation shall not transfer cannabis or cannabis products to or from another commercial cannabis operation, unless both operations are in possession of all required state and local licenses and permits.

J. Commercial Cannabis Operation Signage.

1. Signs on the premises shall not obstruct the entrance or the video surveillance system. The size, location, and design of any signage must conform to the sign provisions in the Morro Bay Municipal Code.
2. Business identification signage shall be limited to that needed for identification only, consisting of a single window sign or wall sign that shall comply with the appropriate sign requirements within the applicable zoning district.

K. Prohibited Personal Activities.

1. Cannabis Use. No person shall smoke, ingest, or otherwise consume cannabis in any form on, or within 20 feet of, the site of the commercial cannabis operation.
2. Alcohol Use. No person shall possess, consume, or store any alcoholic beverage on the site of the commercial cannabis operation.

L. No Minors. No minor shall be an employee of, or participate in, a commercial cannabis operation in any capacity, including but not limited to, as a manager, employee, contractor, adviser, or volunteer.

M. Exterior Lighting. The exterior of the premises upon which the commercial cannabis operation is operated shall be equipped with and, at all times between sunset and sunrise, shall remain illuminated with fixtures of sufficient intensity and number to illuminate every portion of the property with an illumination level of not less than one foot-candle as measured at the ground level, including, but not limited to, landscaped areas, parking lots, driveways, walkways, entry areas, and refuse storage areas.

N. Building Design. A Commercial Cannabis Operation permittee must maintain the design of the buildings on the site in accordance with the plans that are approved by the City pursuant to this chapter and otherwise approved by the City. No permittee shall modify the buildings on the site contrary to the approved plans, without the approval of the Director.

O. Nuisance. The Commercial Cannabis Operation permittee shall take all reasonable steps

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to discourage and correct conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours if related to the members of the subject commercial cannabis operation.

1. "Reasonable steps" shall include immediately calling the police upon observation of the activity, and requesting that those engaging in activities that constitute a nuisance or are otherwise illegal to cease those activities, unless personal safety would be threatened in making the request.
 2. "Nuisance" includes but is not limited to disturbances of peace, open public consumption of cannabis, alcohol or controlled substances, excessive pedestrian or vehicular traffic, including the formation of any pedestrian lines outside the building, illegal drug activity, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.
- P. Upon and after receiving possession of a Commercial Cannabis Operation Permit as provided for in this chapter, the Commercial Cannabis Operation Permit holder shall:
1. Immediately update the Director in writing upon the change in status of any of the information previously submitted to the City concerning the commercial cannabis operation, including but not limited to when there is any change in the address, email, phone number, or other identifying information, previously provided to the City in compliance with this chapter, for any owner, manager, community outreach manager, property owner, or legal representative of the commercial cannabis operation.
 2. Maintain continuing compliance with criminal background check requirements of this chapter by ensuring that:
 - a. upon the hiring, association or retention of an employee by the commercial cannabis operation, the requirements of Section 5.50.070(B)(2)(d) are immediately met for such employee by provision of appropriate documentation to the Director; and
 - b. the Director and Police Chief are immediately informed in writing of any felony conviction as described in Section 5.50.110(H)(1)(a) for any current employee.
 3. Maintain continuing compliance with all applicable insurance requirements, including, but not limited to, those imposed by City and this chapter.
- Q. Exemption. The regulations contained in this chapter shall not apply to a commercial cannabis operation engaged in the following uses, as long as such use complies strictly with applicable law, including this Code, regulating such use and the location of such use, including, but not limited to, Sections 11362.5, *et seq.* of the Health and Safety: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; 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; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; and, a residential hospice or a home health agency licensed pursuant to

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Sec. 5.50.120 - Retail (medical) operating standards and restrictions.

A commercial cannabis operation engaged in retail (medical) shall operate in conformance with both the General Operating Standards and Restrictions provided for in Section 5.50.110, as well as the following minimum standards, and such standards shall be deemed to be part of the conditions of the permit for a retail (medical) commercial cannabis operation to ensure that its operation is in compliance with California law and the Morro Bay Municipal Code, and to mitigate any potential adverse impacts of the commercial cannabis operation on the public health, safety or welfare.

Additional minimum standards may be adopted from time to time either by resolution or ordinance from the City Council, or by the Director (upon authorization by resolution from the City Council).

- A. City Permit and State License. No person shall engage in retail (medical) without both a current and valid City Commercial Cannabis Operation Permit issued for retail (medical) as well as a current and valid equivalent state license as provided for under Section 26200 of the Business and Professions Code, and as may be amended.
- B. State Standards. All state requirements and regulations that govern retail (medical) operations, including but not limited to the regulations promulgated by the California Bureau of Cannabis Control within the Department of Consumer Affairs, and as may be amended, shall apply as minimum requirements and regulations and requirements for retail (medical) commercial cannabis operations within the City of Morro Bay, in addition to the requirements and regulations of this chapter and this Code.
- C. Location Restrictions.
 - 1. No retail (medical) operation shall locate or operate in any zone of the City of Morro Bay, other than in the central business (C-1) district, the general commercial (C-2) district, or the light industrial (M-1) district.
 - 2. No retail (medical) operation shall locate within six hundred (600) feet of a school, day care center, youth center, park, or religious institution. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.
 - 3. No retail (medical) operation shall locate within one hundred (100) feet from another retail (medical) operation. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.
- D. Number of Permits. No more than two permits shall be active and valid in the City at any one time. In the event less than two permits are active and valid in the City, in its sole discretion the City may accept permit applications pursuant to the provisions of this chapter.
- E. Renewal of Permits. Subject to the requirements of Section 5.50.100, the City in its sole discretion may elect to extend the term, of one of the two permits initially issued (or thereafter, to achieve staggered review of permit renewal applications), so that each year

thereafter the City shall only review one request for a permit renewal.

- F. Customers. Retail (medical) operations shall only sell, dispense, or provide cannabis or cannabis products to a qualified patient with a written physician's recommendation, a person with an identification card, or a primary caregiver with written documentation attesting to lawful status as a primary caregiver.
- G. Opaque Packaging. All cannabis or cannabis products sold to a customer shall be prohibited from leaving the site unless placed in opaque packaging which conceals the nature of the product from human vision.
- H. Dispensing and Storage Areas. Entrance to the dispensing area and any storage areas shall be locked at all times, and under the control of employees.
- I. Edibles.
 - 1. All edible cannabis products available for sale must be clearly labeled as medical cannabis.
 - 2. No edible cannabis products shall be available for sale which are appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis.
 - 3. All edible cannabis products shall be provided to customers with sufficient information to enable the informed consumption of the product, including the potential effects of the cannabis product and directions as to how to consume the cannabis product, as necessary.
 - 4. All edibles cannabis products for sale shall be marked with a universal symbol, as determined by the State Department of Public Health through regulation, pursuant to Section 26130(c)(7) of the Business and Professions Code.
- J. Interior Lighting. The premises within which the commercial cannabis operation is operated shall be equipped with and, at all times during which is open to the public, shall remain illuminated with overhead lighting fixtures of sufficient intensity to illuminate every place to which members of the public or portions thereof are permitted access with an illumination of not less than two foot-candles as measured at the floor level.
- K. Signs. A permittee shall display conspicuously in the lobby of the site the following signs, so that each sign may be readily seen by persons entering the site, and each sign must be at least 8 inches by 10 inches in size:
 - 1. "Minors are prohibited from entering this site unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or legal guardian."
 - 2. "Smoking, ingesting, or consuming cannabis on or within 20 feet of this site is prohibited."
- L. No Recommendations On-site. Retail (medical) operations shall not have a physician or any other person at the location of the commercial cannabis operation to evaluate patients, or provide a recommendation or physician's recommendation, for the use of

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medical cannabis.

- M. Sanitation. The permittee shall establish and implement written procedures that maintain the highest industry standards of sanitation and cleanliness for the operation so as to ensure cannabis and cannabis products sold to the public are free of harmful contaminants.
- N. Training. The permittee shall establish and implement written procedures that provide for the highest industry standards of training for employees.
- O. Prohibited Activities. No cannabis cultivation, testing or manufacturing shall occur at the location of the retail (medical) operation.
- P. No Alcohol. Retail (medical) operations shall not hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.
- Q. No Lounge or Cafe. Retail (medical) operations shall not operate as a lounge, cafe or restaurant serving food or drinks for consumption on-site. There shall be no seating area, tables, couches, or chairs for the gathering or congregating of members.
- R. Age Restriction. Minors are prohibited from entering the location of the retail (medical) operation unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or legal guardian.
- S. Public Information. The permittee shall make available to customers a list of the rules and regulations governing medical cannabis use and consumption within the City and recommendations on sensible medical cannabis etiquette.

Sec. 5.50.130 - Wholesale distribution (medical) operating standards and restrictions.

A commercial cannabis operation engaged in distribution shall operate in conformance with both the General Operating Standards and Restrictions for all Commercial Cannabis Operations provided for in Section 5.50.110, as well as with the following minimum standards, and such standards shall be deemed to be part of the conditions of the permit for a distribution commercial cannabis operation to ensure that its operation is in compliance with California law and the Morro Bay Municipal Code, and to mitigate any potential adverse impacts of the commercial cannabis operation on the public health, safety or welfare.

Additional minimum standards may be adopted from time to time either by resolution or ordinance from the City Council, or by the Director (upon authorization by resolution from the City Council).

- A. City Permit and State License. No person shall engage in distribution without both a current and valid City Commercial Cannabis Operation Permit issued for distribution as well as a current and valid equivalent state license as provided for under Section 26200 of the Business and Professions Code, and as may be amended.
- B. State Standards. All state requirements and regulations that govern distribution operations, including but not limited to the regulations promulgated by the California Bureau of Cannabis Control within the Department of Consumer Affairs, and as may be amended, shall apply as minimum requirements and regulations and requirements for

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distribution commercial cannabis operations within the City of Morro Bay, in addition the requirements and regulations of this chapter and this Code.

C. Location Restrictions.

1. No distribution operation shall locate or operate in any zone of the City of Morro Bay, other than in the central business (C-1) district, the general commercial (C-2) district, or the light industrial (M-1) district.
2. No distribution operation shall locate within six hundred (600) feet of a school, day care center, youth center, park, or religious institution. The distance shall be measured as the horizontal distance measured in a straight line from the property line of one site to the property line of another site.

D. Distribution Restrictions.

1. Distribution operations shall distribute cannabis and cannabis products only between licensed cannabis commercial operations.
2. Distribution operations shall not conduct retail sales of cannabis or cannabis products.
3. Distribution operations shall not distribute any cannabis or cannabis products to retail operations unless such cannabis or cannabis products has been properly tested and approved for retail sale pursuant to State law.
4. Upon demand by any Operation Officer a distributor shall make immediately available copies of any required shipping manifests as understood by Section 26070(f) of the Business and Professions Code.

E. Site Requirements. The site shall comply with the following requirements:

1. Visibility. Neither cannabis nor cannabis products shall be visible from the public right-of-way, the unsecured areas surrounding the buildings on the site, or the site's main entrance and lobby.
2. Main Entrance and Lobby. The site shall have a building with a main entrance that is clearly visible from the public street or sidewalk. The main entrance shall be maintained clear of barriers, landscaping, and other obstructions. Inside of the main entrance, there shall be a lobby to receive persons into the site and to verify whether they are allowed in the distribution commercial cannabis operation areas. Members of the general public shall not be allowed in the distribution commercial cannabis operation areas except for reasons of lawful business.
3. Secure Product. All cannabis and cannabis products at the site shall be kept in a secured manner at all times.
4. Transport Area. Each building with a storage area shall have an area designed for the secure transfer of cannabis from vehicles to the storage area.
5. Storage Area. Each building shall have adequate storage space for cannabis. The storage areas shall be separated from the main entrance and lobby, and shall be

secured by a lock accessible only to employees of the permittee.

- F. Sanitation. The permittee shall establish and implement written procedures that maintain the highest industry standards of sanitation and cleanliness for the operation so as to ensure the distribution of cannabis and cannabis products free of harmful contaminants.
- G. Training. The permittee shall establish and implement written procedures that provide for the highest industry standards of training for employees engaged in distribution operations.
- H. Signs. A permittee shall display conspicuously in the lobby of the site the following signs, so that each sign may be readily seen by persons entering the site, and each sign must be at least 8 inches by 10 inches in size:
 - 1. "This site is not open to the public."
 - 2. "Retail sales of any goods and services is prohibited"
 - 3. "Minors are prohibited from entering this site."
 - 4. "Smoking, ingesting, or consuming cannabis on or within 20 feet of this site is prohibited."
- I. Prohibited Activities.
 - 1. No cannabis cultivation, manufacturing or testing shall occur at the site.
 - 2. No retail sales of cannabis or cannabis products shall occur at the site.
- J. Restricted Access.
 - 1. The site shall be closed to the general public.
 - 2. Minors are prohibited from entering the location of the site.

Sec. 5.50.140 - Delivery (medical) operating standards and restrictions.

- A. Deliveries Allowed.
 - 1. Medical cannabis deliveries are allowed in the City subject to the requirements of this chapter and compliance with applicable state law.
 - 2. Adult-use (recreational) cannabis deliveries in the City are prohibited.
- B. Licenses and Permits. Deliveries of cannabis and cannabis products shall only occur within the City by a commercial cannabis operation properly licensed or permitted to engage in cannabis deliveries by both the State of California as well as the originating jurisdiction of the delivery.
- C. Documentation Required for Deliveries.
 - 1. During deliveries the person making the actual delivery shall maintain at all times

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on his or her person a physical copy of the delivery request being fulfilled, a government-issued identification of the delivery person with a photograph, a copy of the State license which authorizes the delivery activity, and any other license or permit required by the originating jurisdiction to engage in the delivery of cannabis or cannabis products

2. Upon request made by any Operations Officer or law enforcement officer the person shall make these documents immediately available for review.

D. Business License. Commercial cannabis operations that conduct deliveries of cannabis or cannabis products to customers located in the City, regardless of the originating jurisdiction of the delivery, are required to have a valid and current City business license to engage in such commercial activity.

Sec. 5.50.150 - Administration.

Further rules, regulations, procedures and standards for the administration and implementation of this chapter may be adopted from time to time either by resolution or ordinance from the City Council, by the Director (upon authorization by resolution from the City Council), or as further provided by this chapter.

Sec. 5.50.160 - Fees.

An application fee set by resolution of the City Council shall be required for formal processing of every application made under this chapter. The City Council is authorized to pass resolutions to recover any and all fees and costs incurred by the administration and implementation of this chapter through an appropriate fee recovery mechanism to be imposed upon commercial cannabis operations.

Sec. 5.50.170 - Suspension and revocation.

- A. The Director is authorized to suspend and/or revoke a Commercial Cannabis Operation Permit issued pursuant to this chapter upon the determination through written findings of a failure to comply with any provision of this chapter, any permit condition, or any agreement or covenant as required pursuant to this chapter.
- B. The Director may suspend or revoke a Commercial Cannabis Operation Permit if any of the following occur, and the suspension or revocation shall be final:
 1. The Director determines that the commercial cannabis operation has failed to comply with any aspect of this chapter, any permit condition, or any agreement or covenant as required pursuant to this chapter; or
 2. The equivalent State license has been suspended or revoked by the State of California; or
 3. Operations cease for more than 180 calendar days (including during any change of ownership, if applicable); or
 4. Ownership is changed without securing a new Commercial Cannabis Operation Permit; or

5. The commercial cannabis operation fails to maintain required security camera recordings; or
 6. The commercial cannabis operation fails to allow inspection of the security recordings, the activity logs, the records, or of the site by Operations Officers pursuant to this chapter.
- C. Conditions (if any) of suspension or revocation are at the discretion of the Director and may include, but are not limited to, a prohibition on all owners, operators, managers and employees of the suspended or revoked commercial cannabis operation from operating within the City for a period of time set forth in writing and/or a requirement (when operations may resume, if at all, pursuant to the Director's determination) for the holder of the suspended or revoked permit to resubmit an application for a Commercial Cannabis Operation Permit pursuant to the requirements of this chapter.

Sec. 5.50.180 - Violations and penalties; public nuisance.

- A. Any violation of the provisions of this chapter is punishable as a misdemeanor or an infraction, at the discretion of the city prosecutor, pursuant to Chapter 1.16 of the Morro Bay City Code, except for as preempted by state law; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the City, pursuant to Chapter 1.03 of the Morro Bay City Code.
- B. Public nuisance abatement.
1. Any commercial cannabis operation that is conducted in violation of any provision of this chapter is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation, in accordance with the procedures set forth in Chapter 8.14 of the Morro Bay City Code.
 2. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the person causing the nuisance, including the commercial cannabis operation permittee and the property owner where the nuisance is occurring.
- C. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.
- D. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

Sec. 5.50.190 - Service of notices.

Any notice required by this chapter is deemed issued and served upon the earliest date that either: the notice is deposited in the United States mail, postage pre-paid, addressed to the most recent mailing address provided to the City pursuant to the requirements of this chapter; or, the date upon which personal service of the notice is provided to a responsible party.

Sec. 5.50.200 - Prohibitions.

- A. Any commercial cannabis operation in violation of The Adult Use of Marijuana Act, The

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Medicinal and Adult-Use of Cannabis Regulation and Safety Act, this chapter, or any other applicable State law is expressly prohibited.

- B. It is unlawful for any commercial cannabis operation in the City, or any agent, employee or representative of such commercial cannabis operation, to permit any breach of peace or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct at the site of the commercial cannabis operation.

Sec. 5.50.210 - Nonconforming use.

No use which purports to have engaged in a commercial cannabis activity of any nature prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of this Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

Sec. 5.50.220 - Severability.

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

SECTION 4, CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 OF THE MORRO BAY CITY CODE IS HEREBY AMENDED AS FOLLOWS:

1. Section 9.24.020 (“Definitions”) shall have the following terms and definitions added:
 - “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from cannabis. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
 - “Electronic smoking device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances (including but not limited to cannabis), including any component, part or accessory of such a device, whether or not sold separately. Includes any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
2. The definitions for the following terms in Section 9.24.020 (“Definitions”) are hereby amended to read in their entirety as follows (new text is identified in ***bold & italics***, deleted text in ~~strike through~~):

- “Secondhand smoke” means smoke that is generated *either* from the burning end of a lighted tobacco, weed, *cannabis* or plant product, *or from an electronic smoking device*; or, smoke that is exhaled by a smoker, after inhaling or ingesting a lit tobacco, weed, *cannabis* or plant product, *or after use of an electronic smoking device*.
- "Smoke or smoking" means the carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, *cannabis*, or any other combustible substance. Smoking includes emitting or exhaling the fumes of any pipe, cigar, cigarette, or any other lighted smoking equipment, *including an electronic smoking device, used* for burning any tobacco product, weed, plant, *cannabis*, or any other combustible substance.

3. Section 9.24.030 (“Secondhand smoke generally.”) is hereby amended to read in its entirety as follows (new text is identified in ***bold & italics***, deleted text in ~~strike through~~):

“9.24.030 - Secondhand smoke generally.

- A. For all purposes within the jurisdiction of the city, the nonconsensual exposure to secondhand smoke and the uninvited presence of secondhand smoke on property in violation of this chapter shall constitute a nuisance, as is further described by Title 8 of the Morro Bay Municipal Code.
- B. For all purposes within the jurisdiction of the city, no person shall cause secondhand smoke to unreasonably interfere with the reasonable use and enjoyment of another person’s private residence.”***

4. Section 9.24.060 (“Places where smoking may be permitted”) is hereby amended to read in its entirety as follows (new text is identified in ***bold & italics***, deleted text in ~~strike through~~):

“9.24.060 - Places where smoking may be permitted.

Except where prohibited by *local*, state or federal law, smoking may be permitted in the following locations within the city notwithstanding Section 9.24.040:

- A. Private residential and multifamily properties. This chapter does not preclude private regulation of smoking on private residential and multifamily properties.
- B. Designated unenclosed areas (“smokers' outposts”) provided that all of the following conditions are met:
 1. The area is located a reasonable distance away from any doorway or opening into an enclosed area and any access way to a public place;
 2. The area has a clearly marked perimeter;
 3. The area is posted with one or more conspicuously displayed sign(s) identifying the area as a designated outdoor smoking area pursuant to Section 9.24.060 of this

code;

4. Smoke is not permitted to enter adjacent areas in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property;
 5. Appropriate ash can(s) are placed in the smoking area and are maintained regularly by the owner, operator or manager of the smoking area; and
 6. No consistent complaints of secondhand smoke are filed with the city.
- C. Smoking areas at public events which have been approved as part of the special event permit or temporary use permit issued by the city.
- D. Inside a private automobile when no minor child is present, *except for as prohibited by State law.*
- ~~E. Any unenclosed area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive.”~~
5. Section 9.24.120 (“Enforcement and penalties”) is hereby amended to read in its entirety as follows (new text is identified in ***bold & italics***, deleted text in ~~strike through~~):

“9.24.120 – Enforcement and penalties.

- A. *Any violation of the provisions of this chapter is punishable as a misdemeanor or an infraction, at the discretion of the city prosecutor, pursuant to Chapter 1.16 of the Morro Bay City Code; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the City, pursuant to Chapter 1.03 of the Morro Bay City Code. ~~A violation of this section is an infraction.~~*
- B. Punishment under this section shall not preclude punishment pursuant to Health and Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.
- C. *Any violation of this chapter shall be deemed a public nuisance which may be abated in accordance with the procedures set forth in Chapter 8.14 of the Morro Bay City Code. All costs to abate such public nuisance, including attorneys’ fees and court costs, shall be paid by the person causing the nuisance, including the property owner where the nuisance is occurring.*
- E. *The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.*
- F. *Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.”*

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this

01181.0001/418796.1

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 6. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to both the exemption provided by Section 26055(h) of the Business and Professions Code as well as Sections 15060(c)(3) and 15061(b)(3) of the CEQA Guidelines.

SECTION 7. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage.

SECTION 8. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

PASSED AND ADOPTED on the ____ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney

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Discussion on Council Cannabis Subcommittee Recommendations and Request for Direction on a Cannabis Ordinance to Regulate Businesses and Personal Use
October 10, 2017
Page 2 of 7

Adult Use of Marijuana Act (“AUMA”). The AUMA legalized for individuals 21 years of age or older the personal use of cannabis, personal possession of up to one ounce of cannabis (and eight grams of concentrated cannabis), and (limited) personal cultivation of up to six cannabis plants. The AUMA also provides for the statewide regulation and licensing of commercial *recreational* cannabis operations (starting by January 1, 2018).

Similar to the provisions of the AUMA, the State of California has also provided for the statewide regulation and licensing of commercial *medical* cannabis operations (starting by January 1, 2018) through first the Medical Cannabis Regulation and Safety Act of 2015 (“MCRSA”), and then recently passed SB 94 (the Medicinal and Adult Use Cannabis Regulation and Safety Act, or “MAUCRSA”). SB 94 merges the separate cannabis regulatory regimes of MCRSA, governing medical cannabis, and Proposition 64, governing recreational cannabis. SB 94 also provides for a statewide cannabis regulatory system to be administered by a new Bureau of Cannabis Control.

On January 24, 2017, staff presented a summary of Proposition 64 (the Adult Use of Marijuana Act) and City Council directed staff to host an educational session addressing Proposition 64, including prospective community outreach and involvement in the discussion. The Assistant City Attorney presented an educational workshop on Proposition 64 at the March 1st meeting. The Council Cannabis Subcommittee was formed at that meeting with Council Member Robert Davis and Marlys McPherson being appointed. At the April 11, 2017 meeting, the Council directed staff to hold a public workshop for community input. On June 14, 2017, staff and Council reached out to the community through a public forum, allowing individuals the opportunity to express their opinion on Proposition 64, and approximately 75 individuals attended. The Subcommittee met with staff twice in July 2017 to discuss and prepare recommendations. On August 8, 2017, the City Council considered Subcommittee recommendations for a cannabis ordinance, and the City Council provided further direction. On September 6 and 29, 2017, the Council Cannabis Subcommittee met with staff to discuss further specific details for a cannabis ordinance.

The Subcommittee was assisted by the following staff:

- Martin Lomeli (Interim City Manager)
- Chris Neumeyer (Assistant City Attorney)
- Chief Greg Allen (Police Chief)
- Chief Steve Knuckles (Fire Chief)
- Commander Jody Cox (Police Commander)
- Scot Graham (Community Development Director)
- Ikani Taumoepeau (Deputy City Manager)

1. State Licenses for Commercial Cannabis Operations

On or about January 1, 2018 the State of California will begin issuing state licenses for commercial cannabis operations (both medical and recreational). The state cannabis licenses will be for retail sales, cultivation, manufacturing, testing, distribution and microbusinesses.

A state license will be required to engage in any of these commercial cannabis operations.

Pursuant to recently passed SB 94 there will be the same twenty different license types available for medical and recreational commercial operations, to be distinguished by either an “A” for adult-use (i.e., recreational) or a “M” for medical use. (Business & Professions Code § 26050.)

2. Local Control of Commercial Cannabis Operations

Local governments maintain regulatory and land use authority over all of these new commercial cannabis operations which the state will be licensing. Cities may completely prohibit these businesses, allow some but not others, or allow all of them. Cities may also impose stricter regulations than the state (if a certain business type is allowed). (Business & Professions Code § 26200.)

However, to maintain local control over these businesses, local governments are advised to expressly determine through local ordinance whether each different type of business operation will be allowed in a city. A failure to affirmatively address these operations through local ordinance may reasonably allow commercial cannabis operations to conduct business in a city pursuant to a valid state license, if that city doesn't expressly prohibit that license type.

The Morro Bay Municipal Code ("MBMC") currently expressly prohibits medical cannabis dispensaries and all cannabis cultivation (with an exception for personal medical cannabis cultivation). The MBMC also prohibits the issuance of a license or permit for "marijuana processing" which includes creation of cannabis products and concentrates (e.g., edibles). (MBMC § 9.06.040(A-C).)

3. Personal Cannabis Cultivation

Proposition 64 also legalized statewide the personal cultivation of up to six cannabis plants at a private residence. A "private residence" is defined as "a house, an apartment unit, a mobile home, or similar dwelling." (Health and Safety Code § 11362.2(b)(5).)

Cities may prohibit outdoor personal cannabis cultivation. However, cities are preempted from prohibiting indoor personal cannabis cultivation of up to six plants. (Health and Safety Code § 11362(b)(2).)

While cities may not prohibit such indoor personal cultivation, cities may "enact and enforce reasonable regulations to reasonably regulate" indoor cultivation which do not act to effectively prohibit indoor cultivation. (Health & Safety Code § 11362.2(b)(1).)

Current MBMC § 9.06.040(B) already prohibits "marijuana cultivation by any person... in all zones throughout the city" 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." That current code acts to prohibit outdoor recreational cannabis cultivation. However, indoor cultivation (which cannot be banned), at present, is unregulated.

4. Smoking and Second-Hand Smoke Regulations

Proposition 64 further provides that the new laws permitting use and possession of cannabis shall not be interpreted to permit any person to smoke cannabis or cannabis products in public places **or** in any place where smoking tobacco is prohibited. (Health & Safety Code § 11362.3(a)(1-2).) Chapter 9.24 ("Secondhand Smoking Regulations") of the Morro Bay Municipal Code ("MBMC") provides smoking in Morro Bay is generally prohibited in public places, with some limited exceptions.

DISCUSSION

The Council Cannabis Subcommittee, with input from staff, recommends the Council direct staff to introduce a cannabis ordinance for first reading at the October 24, 2017 regular Council meeting as detailed below, as well as direct staff to provide analysis to the Council on the merits of the Council submitting a cannabis tax ballot measure to the City's voters for consideration at the November 6, 2018 general election. A cannabis tax ballot measure would need to be approved for submission to the voters by the City Council no less than 88 days before election day. (Election Code section 9222.) If directed to do so, staff would timely provide analysis on a potential cannabis tax ballot measure for review to the City Council by Summer, 2018.

Most of the Subcommittee recommendations below are consistent with prior Council direction. Exceptions include a recommendation that testing, manufacturing and recreational deliveries not be allowed (with reconsideration if a cannabis tax ballot measure is approved by the City's voters), and that applications for City medical cannabis dispensary permits be accepted no earlier than July 1, 2018.

1. Personal Cultivation - Regulate as follows (consistent generally with prior Council direction):
 - a. Limitations.
 - i. Total of six plants allowed to be cultivated at a private residence.
 - ii. Allow up to two of the six plants to be grown outdoors, if outdoor cultivation is at least ten feet from property line, cannot be seen from public spaces and adheres to general regulations.
 - iii. Comply with all state and City regulations governing personal cannabis cultivation.
 - b. Reasonable Regulations. Adopt local health and safety regulations including:
 - i. Cultivation in a secured space and reasonably inaccessible to minors.
 - ii. Odor control so not detectable from neighboring properties or public place.
 - iii. Cultivation not visible from any public place.
 - iv. Electricity draw to not exceed maximum rating of the approved electrical panel for residence.
 - v. Artificial lighting shielded so that completely confined to private residence.
 - vi. Private residence must have fully functional and usable kitchen, as well as bathroom and bedroom areas, for use by the permit holder; and, private residence shall not be used primarily or exclusively for cannabis cultivation.
 - vii. Cultivation shall not displace required parking in a garage.
 - c. Permit.
 - i. Require local permit issued pursuant to a "self-inspection/certification program" which affirms compliance with local and state regulations.
 - ii. Charge nominal fee for permit, and waive fee for applications submitted from January 1, 2018 through June 30, 2018.
 - iii. Require property owner consent.
 - iv. Non-transferable permit.
 - d. Penalties. Violation subject to administrative citation, infraction and/or misdemeanor at City discretion; public nuisance abatement; and, revocation of permit.

Discussion on Council Cannabis Subcommittee Recommendations and Request for Direction on a Cannabis Ordinance to Regulate Businesses and Personal Use
October 10, 2017
Page 5 of 7

2. Public Use / Smoking Regulations: Take following actions (consistent generally with prior Council direction):
 - a. Maintain current strict smoking prohibitions in City code.
 - b. Amend current exemptions in order to strengthen prohibition.
 - c. Expand penalties to include misdemeanor violations.
 - d. Provide that excessive smoking can constitute a public nuisance subject to civil enforcement action.
 - e. Expressly prohibit vaping.

3. Dispensaries (Medical) - Allow as follows (consistent generally with prior Council direction):
 - a. Number. Allow two fixed location (not mobile) medical cannabis dispensaries.

 - b. When. Applications to be accepted no sooner than July 1, 2018.

 - c. Locations (subject to generation of final radius map).
 - i. Allow only in central business district (C-1) district, general commercial (C-2) district, and the light industrial (M-1) district.
 - ii. Prohibited within six hundred feet of a school, park, place of worship or a residential zone.
 - iii. One hundred foot distance restriction between dispensaries.

 - d. Permit Issuance.
 - i. Three-step process for permit issuance.
 - ii. First step is Community Development Director vets applications for meeting City regulations and state law, and then potentially analyzes and ranks applicants using criteria itemized below in the "Merit List."
 - iii. Second step is a Committee review (with membership proposed of Fire Chief, Police Chief and City Attorney, or their designees) to determine whether issuance of requested permit maintains and promotes the health, safety and welfare of the residents and visitors of Morro Bay. The Committee after review will recommend to City Manager whether a permit should be issued or not. Proposed criteria to be considered include the following "Merit List" factors:
 1. Operation plan for the business, including attention to impact of the business on the community.
 2. Security plan for the business, including details for the non-diversion of cannabis or cannabis products to illegal uses.
 3. Health and safety plan for the business, including enhanced product and operations health and safety.
 4. Impact on the environment.
 5. Neighborhood compatibility.
 6. Employment opportunities for City of Morro Bay residents.
 7. Economic benefits to the City of Morro Bay.
 8. Community benefits to the City of Morro Bay.
 9. Experience of the operators, managers and employees.
 10. Capitalization of the business.

Discussion on Council Cannabis Subcommittee Recommendations and Request for Direction on a Cannabis Ordinance to Regulate Businesses and Personal Use
October 10, 2017
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11. Requirements of local law and applicable State law.
 12. Any additional criteria of benefit to making a determination of the applicant's commitment to the health, safety and welfare of the citizens and visitors of the City of Morro Bay.
- iv. Third Step is review by City Manager, or his designee, of Committee recommendations and then a final decision on whether a permit will or will not be issued. The reasons for the decision shall be articulated in writing and refer to the criteria in the Merit List. The decision shall be final and non-appealable.
- e. Term. Initial term of 1-2 years (depending on when review conducted for a renewal, see section (g) below), and thereafter a 2 year term.
 - f. Type. Regulatory permit rather than a land use permit.
 - g. Renewal. Biennial renewal shall generally occur. Renewal subject to three step review process established above for permit issuance, to determine if best serves community (health, safety and public welfare criteria) for permit to be renewed. Thereafter consider renewals only every other year. Intent is for City to review one permit a year (rather than both permits every year), so assuming the City initially permits two medical marijuana dispensaries, after the first year passes, the City shall select one of the two permits for review, and thereafter shall review permits every other year.
 - h. Fees. Recover from each operator all City regulatory and administrative costs specific to each operator.
 - i. Revenue. Seek development agreements with operators (in context of sending a cannabis tax measure to City voters in November, 2018).
 - j. Regulations. Reasonable requirements such as:
 - i. Strict odor control.
 - ii. Strong security requirements including alarm system and development of security plan.
 - iii. Background checks on employees.
 - iv. Property owner consent.
 - v. Indemnification of the City.
 - vi. Cameras in use 24/7 and footage available to City.
 - vii. Inspection authority for City.
 - viii. Signage restrictions.
 - ix. Insurance requirements.
 - x. Record keeping requirements and records available to City.
 - xi. Development of operations plan and cash handling plan.
 - xii. Provision of floor and site plan.
 - xiii. Restriction on sales and packaging of cannabis edibles to prevent consumption by minors.
 - xiv. No medical cannabis recommendations on-site.
 - xv. Requirement for use of opaque packaging.

Discussion on Council Cannabis Subcommittee Recommendations and Request for Direction on a Cannabis Ordinance to Regulate Businesses and Personal Use
October 10, 2017
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- xvi. No minors allowed unless a qualified patient or primary caregiver, and accompanied by parent or guardian.
- k. Penalties. Violation subject to administrative citation, infraction and/or misdemeanor at City discretion; public nuisance abatement; and, revocation of City permit authorizing operation.
- 4. Dispensaries (Recreational) – Prohibit (consistent with prior Council direction).
- 5. Commercial Cultivation (Medical and Recreational) – Prohibit (consistent with prior Council direction).
- 6. Manufacturing and Testing (Medical and Recreational) - Prohibit with reconsideration of ban after a cannabis tax measure sent to City voters at regular election in November, 2018. **New recommendation from Subcommittee.** Reasons for (temporary) prohibition are:
 - a. Provide City the opportunity to study experiences of other cities which will allow these uses in 2018.
 - b. Concerns expressed by Fire Chief over health and safety.
 - c. Allow time for City to review state regulations which are pending issuance in November, 2017.
 - d. Allow time for consideration by City voters of a cannabis tax measure.
- 7. Deliveries (Medical) - Allow as follows (consistent generally with prior Council direction):
 - a. Require issuance of a City business license.
 - b. Proof of association with lawful medical cannabis dispensary (either located in City or elsewhere).
 - c. Require delivery driver to maintain records, subject to inspection by City and law enforcement, including state and local permit, personal identification and copy of delivery order(s).
- 8. Deliveries (Recreational) – Prohibit. **New recommendation from Subcommittee.**

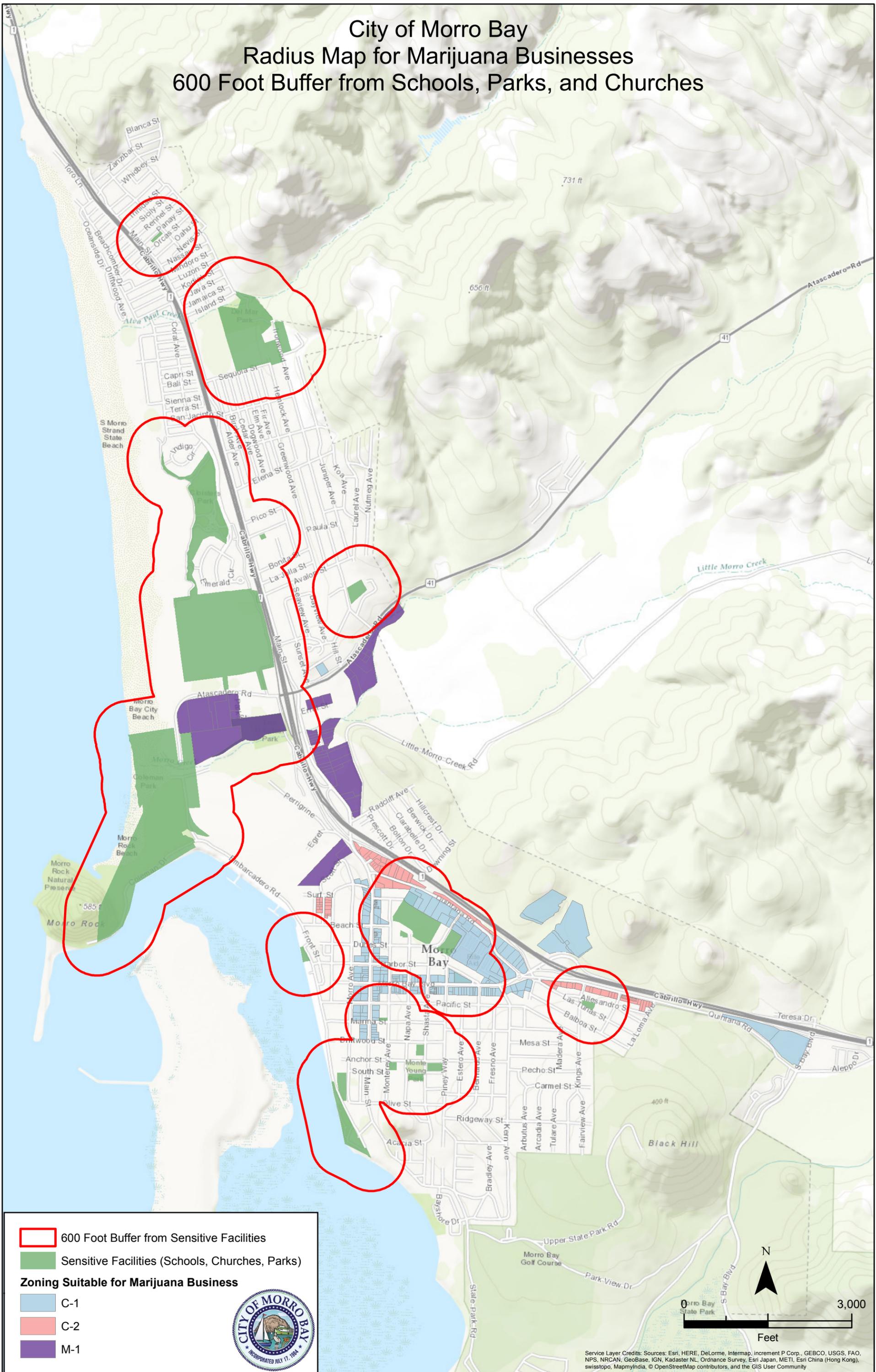
CONCLUSION

The Council Cannabis Subcommittee, with input from staff, recommends that the City Council affirm the recommendations above, or provide further direction, for a cannabis ordinance to be brought back to City Council for introduction and a first reading on October 24, 2017. The Subcommittee recommendations above are generally consistent with prior Council direction, with new recommendations that testing, manufacturing and recreational deliveries not be allowed (with reconsideration if City voters approve a future cannabis tax ballot measure), and applications for City medical cannabis dispensary permits be accepted no earlier than July 1, 2018.

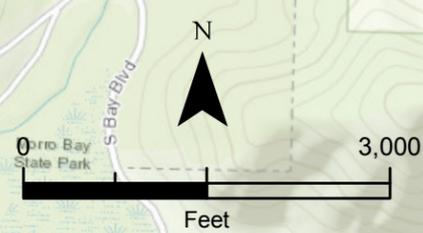
ATTACHMENT

None.

City of Morro Bay Radius Map for Marijuana Businesses 600 Foot Buffer from Schools, Parks, and Churches



	600 Foot Buffer from Sensitive Facilities
	Sensitive Facilities (Schools, Churches, Parks)
Zoning Suitable for Marijuana Business	
	C-1
	C-2
	M-1

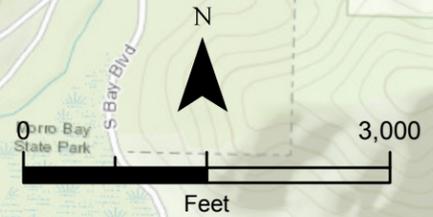


Service Layer Credits: Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

City of Morro Bay Radius Map for Marijuana Businesses 600 Foot Buffer from Schools, Parks, Churches, and Residential Parcels



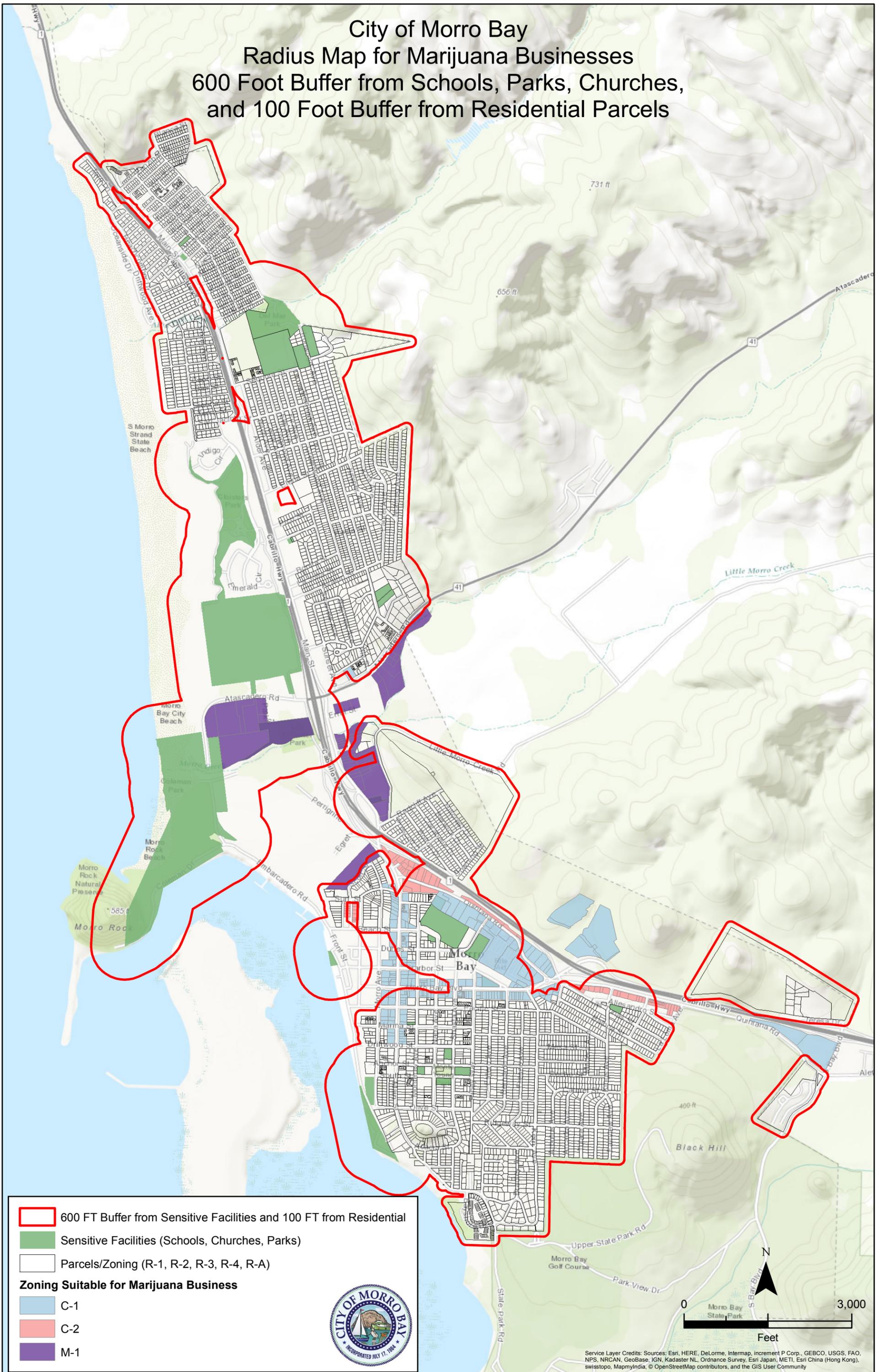
	600 Foot Buffer from Sensitive Facilities/Residential Areas
	Sensitive Facilities (Schools, Churches, Parks)
	Parcels/Zoning (R-1, R-2, R-3, R-4, R-A)
Zoning Suitable for Marijuana Business	
	C-1
	C-2
	M-1



Service Layer Credits: Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

City of Morro Bay Radius Map for Marijuana Businesses

600 Foot Buffer from Schools, Parks, Churches,
and 100 Foot Buffer from Residential Parcels



	600 FT Buffer from Sensitive Facilities and 100 FT from Residential
	Sensitive Facilities (Schools, Churches, Parks)
	Parcels/Zoning (R-1, R-2, R-3, R-4, R-A)
Zoning Suitable for Marijuana Business	
	C-1
	C-2
	M-1



Service Layer Credits: Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community



AGENDA NO: C-2

MEETING DATE: October 24, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** October 13, 2017
FROM: Scot Graham, Community Development Director
SUBJECT: Approval of Updated City Logo and Tag Line

RECOMMENDATION

Staff recommends the City Council:

1. Review the staff report and recommendation from the Tourism Business Improvement District Board and approve use of the preferred updated Logo option
2. Approve use of the "Put Life On Coast" Tag Line

ALTERNATIVES

Logo

1. Approve other Logo Options
2. Continue use of existing Logo
3. Direct Staff to pursue some other course of action deemed acceptable to a majority of the Council.

Tag Line

1. Approve either the "Eat. Play. Love." or "Discover Your Better Nature" Tag Line
2. Continue use of the "Discover Morro Bay" Tag Line
3. Direct Staff to pursue some other course of action deemed acceptable to a majority of the Council

BACKGROUND

Part of the Downtown Waterfront Strategic Plan process included the development of a new logo and tag line to be used on new signage and promotional materials for the City. Two Logo options were developed and incorporated into one of the Plan Morro Bay workshops to obtain input from the public. The public rated the new logo options similarly with no clear favorite identified. See Proposed Logo Option Below:

Prepared By: SG Dept Review: SG
City Manager Review: MRL City Attorney Review: JWP



Three tag lines were also vetted through the workshop process:

1. Put Life On Coast
2. Discover Your Better Nature (tag line discontinued several years ago)
3. Eat. Play. Love.

“Put Life on Coast” and “Eat. Play. Love” received the most votes, but again no clear favorite was identified. Given the intent is to use the new Logo and Tag Line for promotional/branding purposes, Staff made the decision to conduct out of market testing in Southern California. “Put Life on Coast” was preferred by 57% of the research group, which was comprised of 35 females and 15 males with a household income over \$100,000 and ages ranging from 35-75.

The two new Logo concepts were presented to the Tourism Business Improvement District (TBID) Board, along with the tag lines to obtain their input. The TBID Board found the new Logos to be a significant departure from the existing Logo (*See current Logo and Tag Line below*) and questioned the need for change. City and Tourism staff met subsequent to the TBID Board meeting to develop a course of action to move the Logo and Tag Line project forward, eventually settling on an update to the current Logo, combined with the “Put Life on Coast” tag line. Staff reached out to a local artist, John O’Brien, to have updated logo options prepared. Attachment “A” includes the updated Logo package.

Current City Logo and Tag Line



Note: The “Discover Your Better Nature” tag line was discontinued several years ago.

The TBID board reviewed the updated Logo package at their August 17, 2017 meeting and made two recommendations to Council (see Attachment B for TBID August 17, 2017 Draft minutes):

1. Keep the tag line for at least 10-years because it takes time, from a branding standpoint, for the tag line to become recognized and associated with Morro Bay.

2. Remove the Logo options that utilize gradient color (See gradient color logo example below). Reasoning was because it is more costly and gradient color will likely vary widely based on the media used.

Gradient Color Logo Concept



DISCUSSION/CONCLUSION

The TBID Board did not make a specific recommendation in relation to the preferred Logo alternative. City Staff reviewed the remaining Logo options and recommend the squared edge Logo option with offset or overhanging Tag Line. See Preferred Alternative Logo Examples below:

Preferred Logo Alternative

Squared Edge Logo



Squared Edge Logo with overhanging text

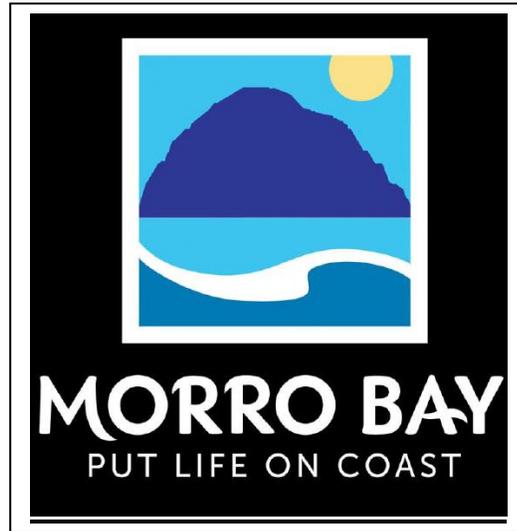


MORRO BAY
PUT LIFE ON COAST

Squared Edge Logo with overhanging text
Black Background



Squared Edge Logo with overhanging text,
Black Background and white Keyline



Black and White Versions (Preferred Alternative)



Logo Alternatives NOT Recommended

The Logo alternatives that are not recommended include those with a yellow sky, those with rounded edges and those with tag line text that is in-line with the logo. See examples below:

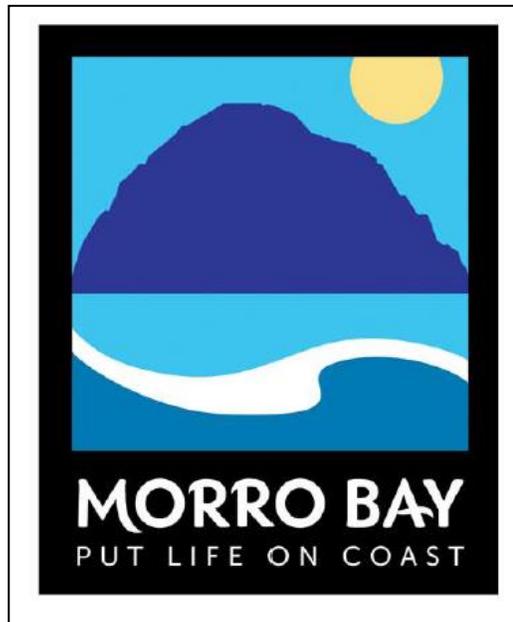
Yellow Sky Option



Rounded Edge Option



Squared Edge Option with In-line Text



ATTACHMENTS

- A. Logo Package
- B. "DRAFT" August 17, 2017, TBID Meeting Minutes



A



B



A



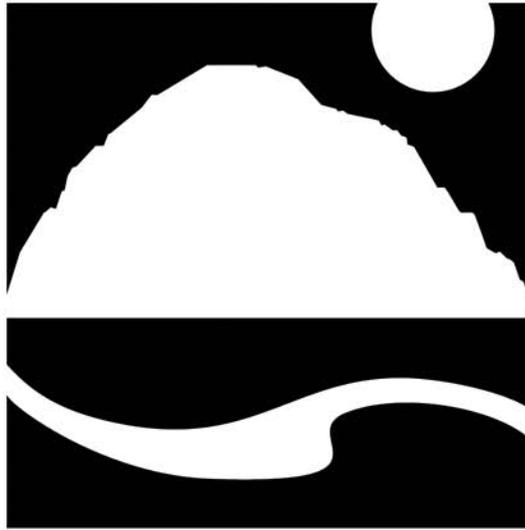
B



A



B



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST

Morro Bay Logo Refresh
Finished Logo Option A & B / R2
Comp 5 - B & W with TYPE Reductions 4.19.17
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MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST



MORRO BAY
PUT LIFE ON COAST

Morro Bay Logo Refresh
Finished Logo Option A & B / R2
Comp 5 - B & W with TYPE Reductions 4.19.17
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Morro Bay Logo Refresh
Finished Logo Option A & B / R2
Comp 7 - 3 Color 4.19.17
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Morro Bay Logo Refresh
Finished Logo Option A & B / R2
Comp 8 - 4 Color CMYK Print 4.19.17
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Morro Bay Logo Refresh
Finished Logo Option A & B / R2
Comp 9 - 4 Color Sea Foam Green
4.19.17
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Morro Bay Logo Refresh
Finished Logo Option A & B / R2
Comp 10 - 3 Color 4.19.17
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Morro Bay Logo Refresh
Finished Logo Option A & B / R2
Comp 11 - 4 Color 4.19.17
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Morro Bay Logo Refresh
Finished Logo Option A & B / R2
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A



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AGENDA NO: C-3
MEETING DATE: October 24, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** October 16, 2017

FROM: Martin R. Lomeli, Interim City Manager

SUBJECT: Status and Consideration of Withdrawal from the Memorandum of Agreement between the San Luis Obispo Cities and San Luis Obispo County for the Construction and Financing of an Animal Services Shelter, and Provide Direction Deemed Appropriate

RECOMMENDATION:

City Council authorize the City Manager to withdraw from the Memorandum of Agreement (MOA) for an animal services shelter if all three of largest cities currently part of the MOA also do so by October 31, 2017.

FISCAL IMPACT:

If other cities withdraw from the MOA, then the City of Morro Bay's cost will increase. The increased cost will depend on the number and share of the animal control shelter services of the remaining parties to the MOA. Currently, Morro Bay's share of the project is 3.23%, which could rise to almost 6% if the 3 larger cities pull out of the agreement.

ALTERNATIVES:

1. Take no action and allow the City's costs of the project be determined by the County and the remaining parties to the MOA.
2. Direct the Interim City Manager to withdraw from the MOA and allow the incoming City Manager to develop a new agreement with the County and remaining cities.
3. Other action as deemed appropriate

BACKGROUND:

State law requires every city in California to provide for animal services and shelters within it community. The cities in San Luis Obispo County have historically met that requirement by contracting with the County of San Luis Obispo for those services.

As a continuation of the approach, in February of 2017, the Morro Bay City Council approved the MOA (attached) with the six other cities in the County and the County of San Luis Obispo for the construction and financing costs for a new animal services shelter, due to the condition of the existing facilities. Morro Bay's cost for that project is estimated to be between \$17,000 - \$40,000 per year over the next 25 years based on shelter usage over that period.

The MOA allows for withdrawal from the MOA provided it is done before October 31, 2017. If a

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Prepared By: ___ MRL ___	Dept Review: _____
City Manager Review: _____	City Attorney Review: _JWP_

party withdraws prior to October 31, 2017, then it shall not be required to pay any portion of the financing costs, but it would still have to pay their proportional share of other costs incurred as of the withdrawal date. After the project is constructed, cities have the option to withdraw from future participation in the animal shelter by providing a minimum of one-year's written notice to all of the other parties and prepaying its entire allocation of the total project cost by the effective date of the withdrawal.

Recently, the cities of Atascadero and Paso Robles have announced they are considering withdrawing from the MOA. The cities of San Luis Obispo and Pismo Beach are also considering other options, if the northern cities opt out of the MOA.

The northern cities have special Council meetings on October 30th to evaluate alternative proposals for animal control services. Arroyo Grande is having a meeting October 24th to give the city manager the option to pull out of the agreement by the October 31st deadline dependent upon the northern cities action. San Luis Obispo and Pismo Beach City Council's may also be taking similar action by the end of the month.

The analysis in the chart below was provided by another party to the MOA.

Party	Current	If Atascadero withdraws	If Paso Robles withdraws	If both Paso Robles & Atascadero withdraw	If SLO withdraws	If Paso Robles, Atascadero & SLO all withdraw
Arroyo Grande	8.39%	9.80%	10.34%	12.56%	9.55%	15.33%
Atascadero	14.37%	0.00%	17.70%	0.00%	16.34%	0.00%
Grover Beach	3.71%	4.33%	4.57%	5.55%	4.22%	6.78%
Morro Bay	3.23%	3.78%	3.98%	4.84%	3.68%	5.91%
Paso Robles	18.81%	21.96%	0.00%	0.00%	21.39%	0.00%
Pismo Beach	1.44%	1.68%	1.77%	2.15%	1.64%	2.63%
SLO City	12.09%	14.12%	14.90%	18.10%	0.00%	0.00%
County	37.96%	44.32%	46.75%	56.80%	43.18%	69.35%
	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>

As reflected in the chart, the City's proportional share of costs nearly doubles if Atascadero, Paso Robles and San Luis Obispo withdraw from the MOA. The City's proportional share could go from 3.23% to 5.91%. The total estimated cost when the MOA was signed was estimated not to exceed \$14,500,000. At 3.23% the City's share would be \$468,350 (approximately \$19,000 annually) over a 25-year period. If the City's proportional share is increased to 5.91%, then the City's share would be \$856,950 (approximately \$34,000 annually) over a 25-year period. In addition, the City current pays approximately \$50,000 a year for animal control services.

Even if the three largest cities withdraw, and the City's proportional share increases to 5.91%, it is still cost effective for the City to contract with the County, rather than withdraw from the MOA. The combined cost of animal control services (approximately \$50,000 for FY 17/18) and the City's share of the construction costs for a new shelter (approximately \$19,000 - \$34,000 per year) are estimated to be \$69,000 - \$84,000 a year and still the most cost effective way for the City to maintain animal control services. However, it may be more beneficial to withdraw only if the three largest contributing cities (Atascadero, Paso Robles, SLO) withdraw from the MOA, which could lead to the negotiation of a new agreement with the County.

CONCLUSION:

Council authorize (i) the Interim City Manager to withdraw from the MOA for an animal services shelter only if the three largest cities all do so by October 31, 2017, with language to be provided by the City Attorney and (ii) negotiate with the County or other cities within the County for a new agreement for provision of animal services and shelter. If the Council decides to remain a participant of the MOA, it would still be cost effective to continue with the current MOA, it may be beneficial to pursue the possibilities that might result from a renegotiation with the County or negotiation with the cities that remove themselves from the MOA.

ATTACHMENTS:

1. Memorandum of Agreement for construction and financing costs for an animal services shelter
2. February 28, 2017 staff report

AGREEMENT FOR ALLOCATION OF CONSTRUCTION AND FINANCING COSTS FOR AN
ANIMAL SERVICES SHELTER AT 865 OKLAHOMA AVENUE IN SAN LUIS OBISPO,
CALIFORNIA, BETWEEN THE CITIES OF ATASCADERO, ARROYO GRANDE, GROVER
BEACH, MORRO BAY, PASO ROBLES, PISMO BEACH, AND SAN LUIS OBISPO AND THE
COUNTY OF SAN LUIS OBISPO

THIS AGREEMENT, dated for reference as of February 1, 2017 (the "Agreement"), is entered into by and between the COUNTY OF SAN LUIS OBISPO (the "County"), and the cities of ATASCADERO, ARROYO GRANDE, GROVER BEACH, MORRO BAY, PASO ROBLES, PISMO BEACH, AND SAN LUIS OBISPO (each, a "City," and collectively, the "Cities," and, together with the County, the "Parties", or individually "Party").

RECITALS

The County and each of the Cities are parties to a separate but similar Contract for Animal Care and Control Services ("Services Contract") effective as of July 1, 2016 and expiring, unless sooner terminated, on June 30, 2019, pursuant to which the County provides animal control services throughout San Luis Obispo County, including within the jurisdictional boundaries of each of the Cities.

In conjunction with and pursuant to the Services Contract, the County operates an existing Animal Services Shelter located at 885 Oklahoma Avenue in San Luis Obispo, California. Owing to the obsolescence of the existing shelter, it is necessary to construct a new Animal Services Shelter ("Shelter" or "Project") as generally described in Exhibit A, at an address preliminarily identified as 865 Oklahoma Avenue, and as generally depicted in Exhibit B ("Shelter Property").

The Parties acknowledge the benefit of collaborative and joint efforts in constructing the Shelter.

The Parties enter into this Agreement to memorialize their participation and corresponding obligations with regards to the allocation and repayment of the construction and financing costs for the Shelter.

NOW, THEREFORE, the Parties agree as follows:

1. Recitals.
The above Recitals are true and correct.
2. Estimated Project Construction Costs.
 - a) The Project construction costs, excluding the portion of the Oklahoma Ave./Utility Extension costs to be borne solely by the County, and excluding the County-only costs of the remaining depreciation value of the existing facility, demolition of the existing facility, and land costs, and excluding costs to be shared proportionally only by the Cities, for the Shelter are estimated at this time to be Thirteen Million One Hundred Seventy Six Thousand Five Hundred Dollars (\$13,176,500) as shown in Exhibit D (the "Estimated Project Construction Costs"). The Estimated Project Construction Costs include expenses for soft costs, such as architectural and engineering services; County costs for administration, project management service, environmental review, planning and building fees, and inspections; and hard costs, such as actual construction costs.
 - b) The Estimated Project Construction Costs shall only include those expenses and costs generally described above, which are incurred by the County specifically for the Shelter construction project. Notwithstanding anything to the contrary below, the total Project Costs, as defined in Paragraph 5(a) below shall not exceed Fourteen Million Five Hundred Thousand Dollars (\$14,500,000) without a written amendment to this agreement signed by all Parties.

- c) The Project will be managed as a “Design / Build” project, as approved by the County of San Luis Obispo Board of Supervisors on April 12, 2016.

3. Excess Construction Costs

- a) Prior to Authorization for Construction to Begin (“Construction Contract”).
 - (i) If the County receives information in the design or bidding process indicating that the Estimated Project Construction Costs for the Shelter will exceed \$13,176,500 by less than ten percent (10%), the County shall provide written notice to each member of the Executive Board (as defined in Section 9(b) below) of the revised estimated construction costs within a reasonable period of time before such additional construction costs are incurred. The Executive Board shall either approve or disapprove the additional construction costs, if any, by written notice to the County, delivered within ninety (90) days after receipt of the County’s notice of the revised construction costs. If any Executive Board member fails to timely approve in writing, the Executive Board shall be deemed to have not approved and the County shall promptly confer with all Cities regarding the additional construction costs and any means by which such additional construction costs may be minimized.
 - (ii) If the County receives information as part of the design or bidding process indicating that the Estimated Project Construction Costs for the Shelter will exceed \$14,500,000, the County shall immediately provide written notice to each City of the revised estimated construction costs (“Excess Construction Costs”) and confer with the Cities as to whether to authorize the Construction Contract or reject all bids. Each City shall either approve or disapprove the Excess Construction Costs resulting in Estimated Project Construction Costs exceeding \$14,500,000 by written amendment delivered to the County within ninety (90) days after receipt of the County’s written amendment. If the decision is to authorize the contract, the County shall prepare and deliver to the Cities a written amendment to this Agreement amending Section 2(b) to increase the not-to-exceed amount. If any City fails to timely approve in writing, the City shall be deemed to have disapproved. Should a City(ies) disapprove the Excess Construction Costs, the County will immediately confer with all Cities in an attempt to reconcile the disagreement. Should the Parties be unable to reach agreement, the measures shall be taken to reduce the costs below \$14,500,000 and in no such event shall the Parties be liable for Excess Construction Costs absent a written amendment to this agreement.
 - (iii) If a City chooses to not participate in the shelter construction at that time, the City is allowed to withdraw from this agreement and pay its proportionate share of all costs incurred as of the date of withdrawal. The date of withdrawal shall be defined as the date that written notice is received by the County of the City's desire to withdraw due to Excess Construction Costs beyond amounts previously agreed. The County will recalculate future payments of the remaining Parties using revised percentages of shelter use with the methodology in Section 6(a).
- b) Authorization for Construction to Begin
 - (i) Upon County’s authorization for Construction to begin, total costs for the Project including any incurred or future hard costs, soft costs, contingencies, and other miscellaneous costs related to Shelter construction will be added to the estimated final construction costs (“Estimated Final Construction Costs”). The Estimated Final Construction Costs will not exceed the Estimated Project Construction Costs (or Excess Construction Costs), unless agreed to in writing by all of the Parties in a written amendment to this Agreement. Should the Parties be unable to reach agreement, measures shall be taken to reduce the costs below

\$14,500,000 and in no such event shall the Parties be liable for Excess Construction Costs absent a written amendment to this agreement.

(ii) If a City chooses to not participate in the shelter construction at that time, the City is allowed to withdraw from this agreement and pay its proportionate share of all costs incurred as of the date of withdrawal. The date of withdrawal shall be defined as the date that written notice is received by the County of the City's desire to withdraw due to Excess Construction Costs beyond amounts previously agreed. The County will recalculate future payments of the remaining Parties using revised percentages of shelter use with the methodology in Section 6(a).

c) After Authorization for Construction to Begin

(i) If the County becomes aware, after its authorization for Construction to begin, that the costs of construction will exceed the Estimated Final Construction Costs due to unforeseen or other conditions, the County shall provide written notice, to each City of the revised estimated construction costs within a reasonable period of time before such additional construction costs are incurred. Each City shall either approve or disapprove the additional construction costs, if any, by written notice to the County, delivered within ninety (90) days after receipt of the County's notice of the revised construction costs. If any City fails to timely approve in writing, the City shall be deemed to have not approved and the County shall promptly confer with all Cities regarding the additional construction costs and any means by which such additional construction costs may be minimized. No additional construction costs shall be incurred that exceed \$14,500,000 without a written amendment signed by all the Parties. Should the Parties be unable to reach agreement, measures shall be taken to reduce the costs below \$14,500,000 and in no such event shall the Parties be liable for Excess Construction Costs absent a written amendment to this agreement.

(ii) If a City chooses to not participate in the shelter construction at that time, the City is allowed to withdraw from this agreement and pay its proportionate share of all costs incurred as of the date of withdrawal. The date of withdrawal shall be defined as the date that written notice is received by the County of the City's desire to withdraw due to Excess Construction Costs beyond amounts previously agreed. The County will recalculate future payments of the remaining Parties using revised percentages of shelter use with the methodology in Section 6(a).

4. Financing

a) County Advance of Funds. The County shall advance funds required to pay for the costs of construction of the Shelter. The County intends to finance the funds it advances, including County in house soft costs.

i) County Sole Discretion as to Financing Terms. The County, at its sole discretion, shall determine financing terms based on market rates and terms available at the time of financing. The anticipated financing interest rate is estimated to be between 3.5%-5%, based on a 25-year term, see Exhibit D. The County may finance the Estimated Final Construction Costs (hard, soft, design, etc.) for the Shelter in addition to customary out of pocket costs to obtain financing, if any. The County may choose to provide in-house financing, provided the interest rate charged to the Cities does not exceed commercially available rates for like projects and terms of financing are equal to or more favorable to Cities than terms otherwise available to the County.

(1) The County will provide notification to the Shelter Executive Board of its intentions regarding external or in-house financing at least 30 days prior to taking action on

financing. Said notification will include final estimates of financing costs and anticipated interest rates.

- (2) Should the Cities desire to have costs identified as “Costs Shared Proportionally by Cities Only” in Exhibit D included in any financing, the Cities shall provide written notification to the County by October 31, 2017. Should all Cities fail to provide written notice, the “Costs Shared Proportionally by Cities Only” will be proportionally allocated to each of the Cities as shown in Exhibit C and billed accordingly, with a payment due date of January 1, 2018.
 - ii) Estimated Project Financing Costs. The financing costs are estimated to range from \$7,556,392 to \$11,618,328, as shown in Exhibit D, depending on the applicable interest rate and whether there are out of pocket costs to obtain financing (collectively “Estimated Project Financing Costs”). If the actual interest rate is higher or lower than that estimated on Exhibit D, the actual financing costs will vary.
5. Total Estimated Project Costs/Total Project Costs.
- a) The Estimated Final Construction Costs and the Estimated Project Financing Costs are jointly referred to as the Total Estimated Project Costs. Once the Shelter has been constructed and financed, the County will prepare a final cost summary of the actual construction and financing costs incurred by County in connection with the Shelter, excluding any costs that this Agreement expressly provides shall be excluded from the calculation, to establish the total project costs and annual repayment schedule based on the financing. Upon request, a City may review back up material for the summary. After review and adjustment (if any) of the final cost summary by all Parties, the approved final cost summary shall be known as the Total Project Costs. No City shall unreasonably delay or disapprove the Total Project Costs.
6. Allocation of Total Project Costs.
- (a) Allocation Based on Percentage of Shelter Use. Each Party shall pay its share of the Total Project Costs, based on the annual repayment schedule associated with the financing. Each Party’s share shall be based upon that individual Party’s percentage of shelter use. Shelter use is defined as the number of shelter services (impounds, quarantines, animal surrenders, confiscations, euthanasia requests, etc.) originating from, or requested by, an individual Party’s jurisdiction and/or its residents. Each Party’s share shall be determined annually by the County as part of their normal record keeping processes. The individual Party’s shelter use percentage shall be calculated using the total number of shelter services allocated to an individual Party over the preceding three full fiscal year periods, divided by the total number of all shelter services provided to all Parties over the same preceding three full fiscal year periods.

$$\%Shelter\ Use = \frac{(Party\#\Shelter\ Services_{Year\ 1} + Party\#\Shelter\ Services_{Year\ 2} + Party\#\Shelter\ Services_{Year\ 3})}{(Total\#\Shelter\ Services_{Year\ 1} + Total\#\Shelter\ Services_{Year\ 2} + Total\#\Shelter\ Services_{Year\ 3})}$$

Exhibit C indicates the percentage of each Party's actual use of the existing Animal Services shelter for the Fiscal Years 2013-14, 2014-15, and 2015-16. Adjustments to each Party’s annual allocation of Total Project Costs shall be adjusted annually based on the previous 3-year trailing average of the percentages of shelter use.

- b) Reallocation in the Event of Withdrawal or Termination. In the event that a Party withdraws or terminates under Section 8 below, the allocation of each Party’s share of Total Project Costs shall be adjusted upward for the remaining parties for the subsequent calendar year. The annual calculation and any associated adjustments shall be made by December 31st of each year and shall be due on July 1st of the next fiscal year.

7. Use of Shelter
 - a) The Shelter shall only be used as an Animal Services facility. No other County department or agency or other person or entity shall use any portion of the Shelter without the prior written consent of the Operations Committee (as defined in Section 9 (a) below). Such use shall be accompanied by the payment of an appropriate rental charge.

8. Termination and Withdrawal
 - a) Withdrawal Prior to Authorization of Construction/Payment of Allocation of Soft Costs.
 - i) Any Party may withdraw from this Agreement prior to County's authorization of the Construction to begin by giving a minimum of one (1) year's written notice to all Parties and by payment of its share, based on the allocation set forth in Section 6, above, of costs incurred by County prior to date of receipt of notice of withdrawal. Notice shall be deemed received on the date of personal delivery, or if mailed by U.S. mail, five (5) days after date of mailing. Such costs shall be reasonably determined by County and a majority of the Parties of the Executive Board, excluding any Party(ies) electing to withdraw. Any withdrawing Party shall pay its share by the effective date of its withdrawal. A withdrawing Party who withdraws prior to October 31, 2017 shall not be required to pay any portion of financing costs, regardless of whether outside financing or in-house County financing is ultimately provided. Any payment of soft or hard costs by a withdrawing Party shall be deleted from the amount to be financed. The County will recalculate future payments of the remaining Parties using revised percentages of shelter use with the methodology in Section 6(a).
 - b) Withdrawal After Construction Begins /Payment of Allocation.
 - i) Any Party may withdraw from this Agreement after the County's authorization of construction begin, by providing a minimum of one (1) year's written notice to all of the other Parties and prepaying its entire allocation of the Total Project Costs by the effective date of its withdrawal. If a Party withdraws from this Agreement prior to October 31, 2017, any estimated financing costs shall be deducted from the Total Project Costs before calculating the withdrawing Party's Total Project Costs share. If County provides in-house financing, any finance or interest charge accruing or payable after the withdrawal shall be deducted from the Total Project Costs before calculating the withdrawing Party's share of the Total Project Costs. Withdrawal from the Agreement shall be effective as of December 31 of the year stated in the written notice. The County will recalculate future payments of the remaining Parties using revised percentages of shelter use with the methodology in Section 6(a).
 - c) The County shall not terminate a City's access to or use of the Shelter if the City is not in default of its payment obligations. For the purposes of this Agreement, a City shall be deemed to be in default if said City is sixty (60) calendar days or more in arrears on any payment required under this Agreement.
 - (i) Should the County desire to terminate a City's access or use of the Shelter for default of its payment obligations, the County shall include any non-defaulted Cities, at the non-defaulted Cities' sole discretion, in negotiations with the defaulted City, prior to their termination.
 - (ii) The County shall retain final decision authority to terminate any City's access to or use of the Shelter for default of said City's payment obligations.

9. Termination for Government Non-appropriation
 - a) For each annual payment any City may owe related to repayment of the Total Project Costs as defined herein, whether a proportionate annual payment or lump sum payment pursuant to, but not limited to, provisions 4, 5, 6 and 8 of this Agreement, Cities represent and

warrant: that they have appropriated and budgeted the necessary funds to make all necessary payments required pursuant to this Agreement for the remainder of the fiscal year in which this Agreement commences, if any; and that it currently intends to make further payments for the full term of this Agreement as scheduled in the above enumerated provisions if funds are appropriated for such payments in each succeeding fiscal year by its governing body. Without contractually committing itself to do so, Cities reasonably believe that moneys in an amount sufficient to make all payments can and will lawfully be appropriated therefor. Cities will direct the persons in charge of their budget requests to include the subject payments required under this Agreement payable during each fiscal year in the budget request presented to Cities' governing body for such fiscal year; provided, that Cities' governing body retains authority within their sole discretion to approve or reject any such budget request. All payments shall be payable out of legally available revenues of Cities appropriated therefore. County agrees that no payment or obligation under this Agreement will be a general obligation of Cities and no payment herein shall constitute a pledge of either the full faith and credit of Cities or the taxing power of Cities.

- b) If Cities' governing body fails to appropriate sufficient funds in any fiscal year for annual payments under this Agreement, then a "Non-Appropriation Event" shall be deemed to have occurred. If a Non-Appropriation Event occurs, then the Non-Appropriating City shall give County immediate notice of such Non-Appropriation Event and provide written evidence of such failure by the City's Governing Body; and this Agreement shall terminate as to the City giving notice of a Non-Appropriation Event without penalty or costs to that City, provided that the City shall pay all payments and other amounts payable under this Agreement for which funds have been appropriated by the City's governing body.

10. Animal Shelter Operations

- a) An Operations Committee comprised of the County's Health Agency Director or his/her designee and a subset of City Managers or their designees shall be formed. At their sole discretion, all Parties may be represented on the Operations Committee.
- b) An Executive Board composed of the County Administrative Officer (CAO) and a subset of the City Managers (2-3) for each of the Cities, or their designees, shall consider significant policy or budget changes and make recommendations prior to policy implementation or budget adoption for the Shelter.
- c) The Executive Board meetings shall be held as needed and in conjunction with the existing monthly City Manager/CAO meeting. At a minimum, "*Animal Services*" shall be a standing item that is considered twice in a calendar year. While any Party may request that "*Animal Services*" be added to the agenda of any City Manager/CAO monthly meeting, it will be the responsibility of the chair of the meeting to ensure *Animal Services* is placed on the agenda and satisfies the minimum number of meetings required by this Agreement.
- d) If the City Managers' recommendation is different from that of the CAO on budget or policy matters, the County shall include the City Managers' recommendation in any related staff report to the Board of Supervisors and provide a summary of the nature of any disagreement.
- e) Final policy and budgetary authority for Shelter operations reside with the County Board of Supervisors.
- f) Future Services Contracts shall be for 3-year terms.
- g) If a City chooses to provide its own field services, it must provide to all Parties, a one (1) year's written notice of its intent to provide its own services and to terminate, or (if applicable) not to

renew, its Services Contract with the County, except as otherwise expressly provided in its Services Contract with the County,

- h) Service Contracts shall be separate from the Parties' obligations to finance and pay their proportional and allocated shares of Total Project Costs for the Shelter.
- i) The County's repayment obligation of its share of the Total Project Costs shall not be included in the calculation of the Shelter's operating costs. The County shall charge no rent for the Shelter or Shelter Property or otherwise attempt to obtain compensation from the Cities for those items identified in Appendix D as "County Only Costs".
- j) Any City shall have the ability to provide its own separate field services. The costs for accessing the Shelter shall be reasonably determined by the County after consulting with the Executive Board and shall only be for the fair share reasonable operating costs for Shelter operations.
- k) Any City that elects to not participate in Shelter Total Project Costs shall immediately cease as a Party to this Agreement and the County shall not be required to provide any animal services to such City. Such City shall be required to provide its own animal services and shelter, in accordance with all applicable laws and statutes, effective on a date mutually agreed to by the City and the County. If the City and the County are unable to mutually agree to a date, termination will be effective upon the expiration of the City's existing Service Contract or the date a Certificate of Occupancy is issued for the new Shelter, whichever occurs first.

11. Animal Shelter Planning

- a) The Parties agree to form an ad-hoc value engineering team consisting of up to three (3) City representatives and a minimum of two (2) County representatives. City representatives shall fully participate with the County to assist with investigating and identifying the most effective and efficient methods to construct a Shelter that meets all Parties' existing and future animal service's needs. The value engineering team shall meet as needed and provide input with architects, designers, construction managers, and engineers during the development of plans and specifications for the Shelter.
- b) Prior to the authorization of the Construction Contract, the Executive Board shall be presented project plans and estimated budgets, and provide a recommendation that will be included in the CAO staff report to approve the contract by the Board of Supervisors.

12. Effective Date

- a) Except as set forth above, this Agreement shall be effective for the period from January 5, 2017 until each Party has made the last payment required under Section 6 or, if applicable, Section 8, of this Agreement

13. Entire Agreement

- a) This is the entire agreement among the Parties with respect to the Project and supersedes any prior written or oral agreements with respect to the Project. In the event of a conflict between the terms of this Agreement and the Services Contract, the terms of this Agreement shall prevail.

14. Assignability

- a) Except as otherwise expressly provided for herein, no Party shall assign any of its obligations or rights hereunder without the written consent of all Parties.

15. Notices

- a) Any notices required to be given pursuant to this Agreement shall be given in writing and shall be mailed to all Parties to the Agreement, directed to the County Administrative Officer and County Counsel, and to the City Manager or City Administrative Officer and City Attorney of each City.

16. Audit

- a) The Cities may inspect and/or audit all records and other written materials used by County in preparing the Total Project Costs and annual invoices to each City.

17. Good Faith Efforts

- a) The Parties shall each act in good faith in performing their respective obligations as set forth in this Agreement and shall work diligently to maintain their longstanding cooperative relationships.

18. Amendment

- a) This Agreement may only be amended in writing, signed by all Parties.

IN WITNESS WHEREOF, by their execution below, the Parties agree to be bound to the obligations stated herein, and the Board of Supervisors of the COUNTY OF SAN LUIS OBISPO has authorized and directed the Chairperson of the Board of Supervisors to execute this Agreement for and on behalf of the County, and the Cities of ATASCADERO, ARROYO GRANDE, GROVER BEACH, MORRO BAY, PASO ROBLES, PISMO BEACH, AND SAN LUIS OBISPO have caused this Agreement to be subscribed by each of their duly authorized officers and attested by their Clerks.

Dated: _____

COUNTY OF SAN LUIS OBISPO

 Clerk of the Board

Dated: _____

CITY OF ATASCADERO

 City Clerk

 By:

Dated: _____

CITY OF ARROYO GRANDE

 City Clerk

 By:

Dated: _____

CITY OF GROVER BEACH

 City Clerk

 By:

Dated: 3/2/17

CITY OF MORRO BAY

Dana Swanson
 City Clerk

[Signature]
 By: David W. Buckingham, City Manager

Dated: _____

CITY OF PASO ROBLES

City Clerk

Dated: _____

City Clerk

Dated: _____

City Clerk

By:

CITY OF PISMO BEACH

By:

CITY OF SAN LUIS OBISPO

By:

EXHIBIT A

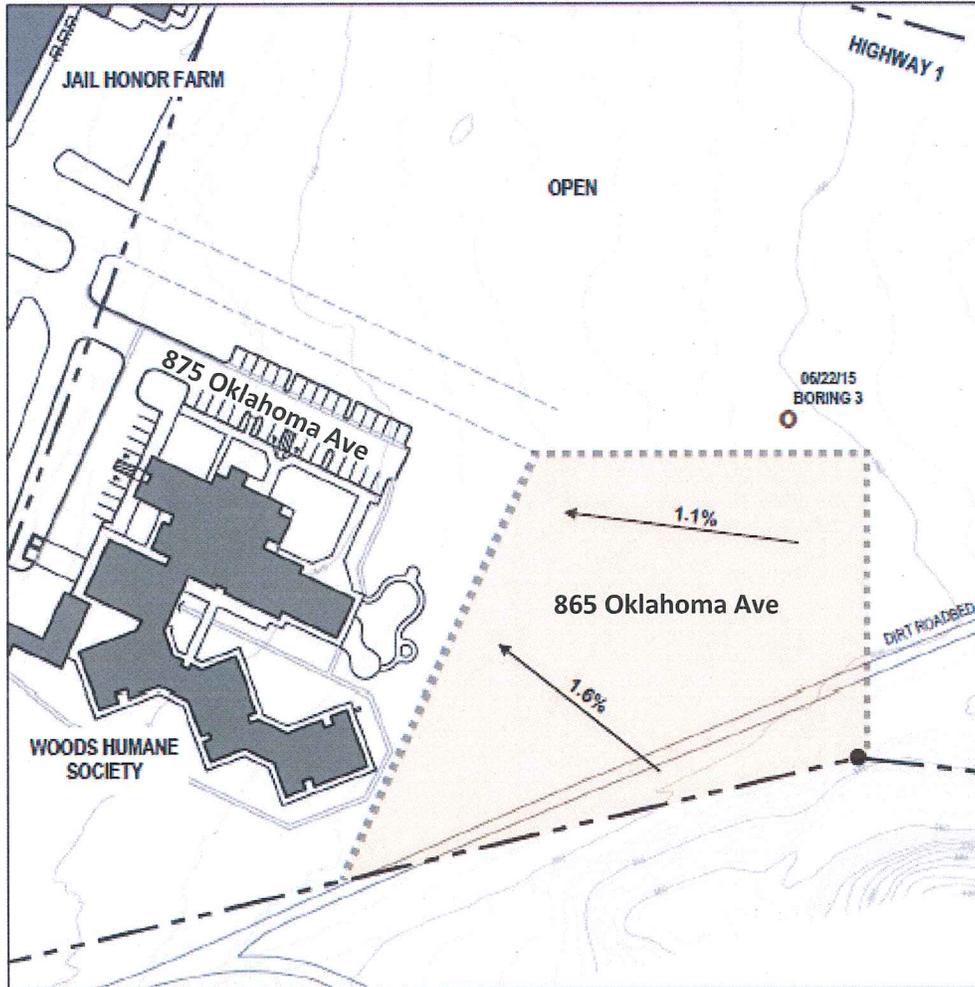
Animal Services Facility

The quantities listed below were derived from a review of the existing Animal Services facility, the 2010 "Needs Assessment, Feasibility, and Building Program Study" by Shelter Planners of America, and meetings with Animal Services Manager Eric Anderson.

Building Floor Area:	16,000 square feet
Outdoor Runs:	3,000
Incinerator, Cold Storage:	2,000
Sally Port, Truck Wash, Truck Parking (8 trucks):	4,200
Disaster Response Equipment:	1,200
Visitor Parking (15 spaces):	5,300
Staff Parking (20 spaces):	7,000
Large Animal Pens:	27,000
Subtotal:	65,700
Additional 20% for Circulation, Landscaping:	13,140

TOTAL: 78,840 square feet

EXHIBIT B



LEGEND
■■■■■ SITE BOUNDARY

SAN LUIS OBISPO COUNTY OPERATIONS CENTER
PHASE 1 MASTER PLAN

EXHIBIT C

Cities	City Name	(Number of Shelter Service Provided)						Total	Percent
		2013-14		2014-15		2015-16			
		Full Yr.		Full Yr.		Full Yr.			
1	Arroyo Grande	286	7%	427	11%	291	8%	1,004	8.39%
2	Atascadero	476	12%	600	15%	643	17%	1,719	14.37%
3	Grover Beach	167	4%	142	4%	135	4%	444	3.71%
4	Morro Bay	126	3%	143	4%	118	3%	387	3.23%
5	Paso Robles	724	18%	734	18%	792	21%	2,250	18.81%
6	Pismo Beach	57	1%	61	2%	54	1%	172	1.44%
	San Luis								
7	Obispo	482	12%	486	12%	479	12%	1,447	12.09%
99	Unincorporated	1,745	43%	1,464	36%	1,332	35%	4,541	37.96%
		4,063		4,057		3,844		11,964	100.00%

EXHIBIT D

	Initial Estimate (a)	County-Only Costs (b)	Estimated Costs after County-Only costs (a-b)	Costs Shared Proportionally by Cities Only (c)	"Estimated Project Construction Costs" (a-b-c)
BUILDING & SITE HARD COSTS					
Construction (Building & Site Improvements)	\$ 7,840,000		\$ 7,840,000		\$ 7,840,000
Construction Contingency	836,500		836,500		836,500
Oklahoma Ave./ Utility Extension	525,000	348,967	176,033	176,033	
BLDG & SITE HARD COSTS SUBTOTAL:	9,201,500	348,967	8,852,533	176,033	8,676,500
INTERIOR HARD COSTS					
Fixtures, Furniture & Equipment	400,000		400,000		400,000
Telephone/Data/Security	160,000		160,000		160,000
INTERIOR HARD COSTS SUBTOTAL:	560,000		560,000		560,000
HARD COSTS SUBTOTAL:	9,761,500	348,967	9,412,533	176,033	9,236,500
SOFT COSTS					
ADMINISTRATION					
County Administration & Project Management	500,000		500,000		500,000
PROFESSIONAL SERVICES					
Architectural/Engineering Design Consultants	920,000		920,000		920,000
Construction Management	450,000		450,000		450,000
Testing & Inspection	310,000		310,000		310,000
Surveys, Geotech., Env. Mitigation	250,000		250,000		250,000
Permits & Fees	105,000		105,000		105,000
Storm Water Pollution Prevention Plan	170,000		170,000		170,000
MISCELLANEOUS					
Project Development Contingency	650,000		650,000		650,000
Escalation	585,000		585,000		585,000
SOFT COSTS SUBTOTAL:	3,940,000		3,940,000		3,940,000
OTHER COSTS					
Remaining depreciation value of existing facility	168,800	168,800			
Demolition of existing facility	200,000	200,000			
Land Cost (2 acres)	737,500	737,500			
OTHER COSTS SUBTOTAL:	1,106,300	1,106,300			
	\$ 14,807,800	\$ 1,455,267	\$ 13,352,533	\$ 176,033	\$ 13,176,500
Financing Costs- Low end estimate					
Estimated Project Construction Costs					\$ 13,176,500
Estimated Project Financing Costs @ 3.5%					\$ 7,556,392
Annual Debt Service					\$ 829,316
Financing Costs- High end estimate					
Estimated Project Construction Costs plus 10%					\$ 14,494,150
Estimated Project Financing Costs @ 5.0%					\$ 11,618,328
Annual Debt Service					\$ 1,044,499



AGENDA NO: A-13
MEETING DATE: February 28, 2017

Staff Report

TO: Honorable Mayor & City Council **DATE:** February 21, 2017

FROM: Dave Buckingham, City Manager
Jody Cox, Acting Police Chief

SUBJECT: Authorization to Enter into an Agreement for Allocation of Construction and Financing Costs for an Animal Services Shelter

RECOMMENDATION

Council authorize the City Manager to execute an Agreement for Allocation of Construction and Financing Costs for an Animal Services Shelter at 865 Oklahoma Avenue in San Luis Obispo, California, between the Cities of Atascadero, Arroyo Grande, Grover Beach, Morro Bay, Paso Robles, Pismo Beach, San Luis Obispo, and the County of San Luis Obispo.

ALTERNATIVES

The City Council could opt not to approve the contract with San Luis Obispo County and build a City owned/operated Animal Services Shelter to provide its own sheltering and field services, as required by State law and at its sole expense. That project would need to be completed before the expiration of current contract. That is not likely and those costs are estimated to be significantly higher than partnering with the six other cities and County, and would mean the City would not benefit from the economies of scale of sharing both capital and service costs. Staff has determined the City cannot provide its own animal field services or shelter costs for less than the County's proposal and in a timely manner.

FISCAL IMPACT

The proposed agreement apportions the estimated contracting agency costs of between \$13.176 Million and \$14.494 Million based on the average use of the shelter for a rolling three-year period. Participation in the Animal Services Shelter Agreement is estimated to cost the City of Morro Bay approximately \$27-\$34K per year in addition to the \$50,074 as noted below. That is currently estimated at 3.23% of the estimated total costs based on average use of shelter for July 2013 – June 2016, but would adjust upward or downward based on Morro Bay shelter usage over the financing period. With financing costs variables, coupled with a range for construction costs, total estimated payments are anticipated to be approximately \$17,000-\$40,000 per year over the next 25 years (in addition to the annual contract fees currently in place). That amount would adjust upward or downward based on Morro Bay shelter usage over the financing period.

Additionally, the agreement contains cost containment provisions with respect to actual costs and provides a mechanism to reduce costs or allow a participating City to terminate the agreement if costs exceed the estimated capital budget of \$14.5 Million. If the Agreement is approved, then the annual payments to the County will be incorporated into the FY 17/18 budget and budget forecast.

BACKGROUND/DISCUSSION

Prepared By: <u>JC/DS</u>	Dept Review: _____
City Manager Review: <u>DWB</u>	City Attorney Review: <u>JWP</u>

Under State law, each incorporated City has the option of contracting with the County or providing their own animal services consistent with State standards. The City of Morro Bay approved a three-year contract for field and shelter services in September 2016. Services provided under that contract include: 1) Emergency and non-emergency response of Animal Services Officers for injured or stray animals, 2) Investigative services for animal bites, abuse, and neglect, 3) Sheltering and Quarantine services, 4) Dog licensing and 5) Animal adoption and other services required by State law or City Municipal Code. Capital costs for the replacement of the shelter are not included in the costs charged to cities for field services or shelter services.

The County Animal Services Division (Division) provides animal field services/ care and shelter services throughout the unincorporated regions of the County, as well as within each of the seven incorporated communities. Each city contracting with the Division is assessed an annual service fee based upon their proportionate use of both field services and animal sheltering together with the operational costs associated with each of these functions. The City's current contract for those services expires on June 30, 2019. Current contract costs charged to the City are \$45,425 for the first year of the agreement, July 1 2016-June 30 2017. However, we have recently been informed administrative overhead was not taken into account with that amount, so for next fiscal year's fees (FY 2017-18), the annual contract costs are anticipated to rise to \$50,074.

The Division operates a single animal shelter to house and care for stray and owner relinquished animals. That shelter, located at 885 Oklahoma Avenue in San Luis Obispo, is the County's only open intake animal shelter and receives approximately 4,500 animals annually. Dogs and cats account for roughly 92% of the animals handled at the shelter with the remainder comprised of a wide variety of animals ranging from rabbits, alligators, and emus to guinea pigs, monkeys, and snakes.

Existing Shelter

The Animal Services shelter was constructed in approximately 1975 on a site which had formerly been a landfill utilized in the 1940's by the US Army and Camp San Luis Obispo. As initially designed, the structure totaled 6,600 square feet and was intended primarily for the kenneling of dogs, with less than 38 square feet dedicated to the care and housing of cats; no accommodations were made for other types of animals. Since then, additional building modifications were constructed to accommodate dog runs adjacent to the kennels, corrals for ranch animals, a small structure for cats, night drop-off kennels, an expansion for staff administration, and renovation for the public lobby.

Current industry standards and public expectations of animal shelters have shifted substantially and many of the shelter's original design features and characteristics are now outdated or inconsistent with the current understanding of humane animal sheltering. The consequences of those design issues relative to their impact on humane animal care are further compounded by the effects of deferred maintenance. Over time, roofing leaks have developed, walls and door frames have begun to deteriorate, and the capacity of electrical and drainage systems have been overloaded. A report released by the County cites the lack of heating, poor ventilation, and the general facility as promoting stress, illness, and behavioral problems in sheltered animals.

In 2010, the County contracted with Ravatt Albrecht & Associates to develop design plans for Phase I of the remodel. Quickly, it became apparent the scope of that project exceeded the available funding and the dog kennel remodel component of the remodel was dropped. The ability to design a remodel, which could be constructed within budget, was further complicated by soil stability and potential methane off-gassing issues resulting from the shelter's location on an abandoned landfill. During the environmental permitting process, it was determined a permit was required through CalRecycle¹, adding additional time and cost to the development process. Since then, the project received a post

¹ CalRecycle oversees the permitting of land use or other activities on active or abandoned land fill sites.

landfill closure permit through CalRecycle, and a permit from the Air and Water Quality Control Boards.

Proposed Shelter and Agreement

In April 2015, after exploring alternatives such as rehabilitating the current animal shelter facility and the possibility of partnering with Woods Humane Society, the County Board of Supervisors directed staff to pursue the construction of a new facility. At approximately 15,000 square feet, that building will be able to fully address the facility needs, as well as implement many of the recommendations contained in the Humane Society of the United States (“HSUS”) and Shelter Planners of America Needs Assessment (Attachment 2).

The proposed animal service shelter facility will serve the County and each of the seven cities. Shortly after the County’s decision to build a new facility, the County reached out to the cities and advised the County would require contracting cities to pay a proportionate share of the costs associated with the County Animal Shelter Project (“Project”). Preliminary budget estimates for the Project were \$12 - \$14 Million.

After some starts and stops in 2016, the County and cities began negotiations regarding scope, cost, governance and construction cost containment for the Project. Staff representatives from three of the contracting cities worked with the County on behalf of all the contracting cities to incorporate some protections and sureties to the Project for the contracting cities. The result of those negotiations is the attached agreement, which will be brought to the governing boards of each of the participating jurisdictions.

The proposed agreement provides for the following:

- The total budgeted cost of the Project (\$14.5 Million) and the portion that the County will exclusively pay (\$1.45 Million). The County will be paying 100% of the land costs, the demolition costs for the existing facility and the remaining depreciation value of the existing facility. The County will also pay for a larger portion of the utility extension along Oklahoma Avenue (see Exhibit D of the Agreement for project budget details).
- A procedure for authorization of excess construction costs. Any projected costs that would bring the Project in 10% or more above the budget must be approved by all cities.
- The County to provide competitive long-term financing for the Project.
- Allocation of costs based on a rolling three-year proportionate use calculation. As shown in Exhibit C of the agreement, the City of Morro Bay has averaged 3.23% of total shelter use over the last three years. That percentage will change each year based on the average of the previous three years.
- Governance of animal shelter operations. An operations committee comprised of a County representative and 2-3 contracting city representatives will review significant policy and budget decisions for the shelter.
- A city may opt out of service contracts; however, each City is still responsible for their proportionate share of the Project costs.
- A committee comprised of three contracting city representatives and two County representatives shall participate in an ad-hoc value engineering team tasked with investigating and identifying the most effective and efficient methods to construct a shelter.
- Exhibit A to the agreement outlines the general scope of the Project. After the initial direction of the County Board of Supervisors, additional programming was required to define the proper size for the facility. The scope of the Project was derived from a review of the existing needs of the facility and a needs assessment study.

CONCLUSION

Staff is recommending the approval of the proposed agreement, as it provides a mechanism to:1)

share costs based on proportionate use, 2) clarifies service and shelter governance, 3) contains mechanisms to control construction costs and is a most efficient way to construct a shelter consistent with State law and local service preferences and standards, and 4) is the most cost effective way of providing required animal shelter services.

The agreement must be approved by each of the seven City Councils in the County along with the Board of Supervisors.

It is expected the final approved agreement will be in conformance with the draft agreement attached to this report (Attachment 1). Due to the compressed time frame for approval, there may be minor clarifications and small changes made to the final agreement prior to execution. Those changes would be subject to approval as to form by the City Attorney. Any financial or substantive changes to the Agreement would be brought back to Council for approval prior to execution.

ATTACHMENTS

1. County of San Luis Obispo agreement for Allocation of Construction and Financing Costs
2. Shelter Planners of America Needs Assessment, Feasibility & Building Program Study for the County of San Luis Obispo Animal Services Division

associated with the project. The currently established goals are comprised of the following:

- *Produce tertiary, disinfected wastewater in accordance with Title 22 requirements for unrestricted urban irrigation*
- *Design to be able to produce reclaimed wastewater for potential users, which could include public and private landscape areas, agriculture, or groundwater recharge. A master reclamation plan should include a construction schedule and allow for bringing on customers in a cost effective manner.*
- *Allow for onsite composting*
- *Design for energy recovery*
- *Design to treat contaminants of emerging concern in the future*
- *Design to allow for other possible municipal functions*
- *Ensure compatibility with neighboring land uses*

As the process has evolved, it is clear certain goals have become infeasible (such as onsite composting), because of the technologies being considered, or because of the economics of including such features. In addition, other goals, such as the possibility of designing the site to allow for other municipal functions, have been informally de-prioritized because of their potential cost implications in the site design. That said, the Council has taken no formal action to reconsider those or any other goals, so they remain as potential project drivers.

At this time, staff recommends the Council formally consider revising these goals, especially in the context of minimizing project costs. Staff recommends the changes as indicated in the following table:

Original Adopted Goal	Recommended Modification
<i>[NO CURRENT GOAL]</i>	<i>All facilities related to the WRF project shall be designed and built in the most cost-effective manner, while still addressing all other project goals.</i>
<i>Produce tertiary, disinfected wastewater in accordance with Title 22 requirements for unrestricted urban irrigation</i>	No changes are recommended.
<i>Design to be able to produce reclaimed wastewater for potential users, which could include public and private landscape areas, agriculture, or groundwater recharge. A master reclamation plan should include a construction schedule and for bringing on customers in a cost-effective manner.</i>	Recommend modifying as follows: <i>Design to produce reclaimed wastewater to augment the City's water supply, by either direct or indirect means, as described in a master water reclamation plan and to maximize funding opportunities</i>
<i>Allow for onsite composting</i>	Remove this goal.
<i>Design for energy recovery</i>	Recommend modifying as follows: <i>The project should include features intended to maximize the City's opportunities to secure funding, including, but not limited to, features that offset some of the project's</i>

Original Adopted Goal	Recommended Modification
	<i>energy usage.</i>
<i>Design to treat contaminants of emerging concern in the future</i>	No changes are recommended.
<i>Design to allow for other possible municipal functions</i>	Remove this goal.
<i>Ensure compatibility with neighboring land uses</i>	No changes are recommended.

Procurement Process. As presented to the City Council on August 8, 2017, the following briefly summarizes the design-build procurement process, specified in the Senate Bill 785 and codified in the California Public Contracts Code (CPC) starting with Section 22160, and as it applies to the City.

Staff continues to recommend following a design-build construction approach, because combining the design and construction teams into one entity will expedite the project, since design does not have to be complete before construction can begin. Also, one entity will own the risk for both the design and construction, reducing the potential for change orders since that entity controls both design and construction.

The process has been completely vetted with input from the City Attorney to ensure all legal requirements and safeguards established by law and sound public works practices for design-build procurement are followed. We are following, to the extent possible, best practices from the Design Build Institute of America, which is a professional society dedicated to proper application of that approach and familiar to the private sector, which has used the design-build approach for many, many years. That approach will attract the greatest number of qualified consultants. Because of the high level of anticipated consultant/contractor team interest from this process, it is expected that the resulting competition will result in more creativity from potential design-build teams both in terms of design and approaches to reducing costs than other approaches might.

The City, as a general law city, must follow the minimum requirements specified in the CPC for procurement. The applicable design-build process requires proposals and cost estimates to be based on preliminary engineering and master planning with some level of conceptual planning to allow those interested design-build teams to compete on a fair, “apples to-apples” basis. Additionally, there is significant legal precedent for following a best-value fixed price selection process, where prospective contractors are provided preliminary design information that allows them to prepare a complete project cost, including design and construction, within their proposals.

The applicable provisions of law that authorize the City to use the design-build approach are found at Public Contract Code section 22160 *et seq*, which became effective January 1, 2015, for construction of a building or buildings and improvements directly related to the construction of a building or buildings with a cost more than \$1 Million. That relatively new law requires the City to engage in a two-step process to hire its design/construction team. It first must seek submittals, through a Request for Qualifications (RFQ) process, from potential design-build teams. Those submittals must then be reviewed based on objective criteria set forth in the RFQ. The California Department of Industrial Relations (DIR) has developed a model prequalification questionnaire as one source for such criteria.

The attached RFQ is submitted for City Council review. The model DIR questionnaire has been modified and incorporated into the draft RFQ. City staff has also included forms bidders to provide for specific project experience; key staff information; safety records; project staffing approach; and financial history. That information will allow the City to select teams that have a successful track record and the full capability to deliver the project within the proposed budget and timeframe, reducing risk to the City.

After the RFQ is advertised and Statements of Qualifications (SOQs) are received, the City's selection team will review all submittals. Some or all of those teams the City determines meet the criteria will then be provided the opportunity to respond to a Request for Proposals (RFP). The RFP will also include criteria for selecting the winning proposal. The only three legally required criteria are price, technical design and construction expertise, and life-cycle costs over 15 or more years.

As part of either the RFQ or RFP process some agencies have provided a stipend for those submitting responses to cover some of the significant costs those responding will incur, with no certainty as to the result. That initial investment by the City can increase the chances of receiving several competitive proposals from readily recognized and qualified groups. That compensation has ranged from the lower tens of thousands to over \$1 Million, depending on the cost of the project. City staff recommends including a stipend of \$100,000 for those respondents to the RFQ RFP, However, that stipend would only be provided to respondents who would not be awarded the project. The City will require a significant amount of detail from the design-build team so the City is sure it understands what will be achieved for the guaranteed maximum price (GMP). The stipend does not fully fund the design-builders' investment in the proposal, but does provide some amount of compensation to offset their proposal costs. It is a standard practice recommended by the Design-Build Institute of America (DBIA) to demonstrate the City is committed to moving forward with the project. Payment of the stipend also allows the City to take advantage of the design work prepared by unsuccessful firms and incorporate that work into the project if it desires.

The City must also adopt a conflict of interest policy related to the design-build process. That policy is to ensure entities involved in the solicitation (such as the program management support team) cannot submit proposals.

In order to minimize any bid protest claims, beginning with the publication of the RFQ, there will be only one point of contact for inquiries from vendors or design build teams. The Public Works Director/City Engineer is the designated contact person. He will either answer directly or refer questions to the appropriate parties. Failure to follow this requirement could result in the disqualification of a design-build team.

A design and construction cost of \$89M, cited in the RFQ, includes only the design and construction of the WRF treatment and operations center, including advanced water treatment and pipelines within the site boundary. As discussed in the City Council meeting on September 26, the current conservatively protective project cost opinion is \$150M including the influent lift station, offsite pipelines, contingency, injection wells, and soft costs.

The recommended procurement process is described below:

- Prepare and advertise a RFQ for design-build procurement (Presented for Council review at this meeting)
- Prepare and facilitate a mandatory pre-SOQ conference for respondents to the EOI (To be scheduled in the RFQ)

- Develop a “short list” of no more than four of the most qualified consultant teams.
- Prepare and advertise Request for Proposals for Design-Build Procurement. The RFP will require submittal of a GMP which may be refined through contract negotiation.
- Coordinate and attend in-person meetings with proposers to discuss design concepts
- Negotiate a final agreement and GMP with the selected proposer

It should be noted, for the GMP to serve its intended purpose, the City will need to limit its owner-requested changes to the project after the contract is signed. Such changes would likely provide a platform for the selected design-builder to seek increases in compensation. That is why it is helpful for the RFP process to include some level of conceptual design.

By not completing the Environmental Impact Report (EIR) prior to release of the RFP, and not being able to start construction for 8 to 9 months until funding is in place, the City will risk change orders due to unforeseen environmental mitigation requirements and cost escalation. City staff will reduce risk by including a methodology for handling cost escalation based on an applicable cost index (to be developed with the City’s project finance/rate study expert) and including an allowance for environmental mitigation. Those will be addressed in the RFP.

CONCLUSION

City staff recommends the City Council revisit goals as discussed herein, and provide any necessary clarifications or any direction to staff regarding understanding of the goals. City staff also recommends City Council authorize the release of the RFQ for Design-Build Construction of the WRF Onsite Improvements.

ATTACHMENTS

1. Draft Request for Qualifications for Design-Build of WRF Onsite Improvements
2. Statement of Qualifications Submittal Template



**REQUEST FOR QUALIFICATIONS
FOR
DESIGN-BUILD SERVICES
WATER RECLAMATION FACILITY (WRF)
Onsite Improvements
October __, 2017**

Issued by:

X _____
Rob Livick, PE/PLS – Public Works Director/City Engineer

QUALIFICATIONS DUE December 7, 2017 BY 2:00 PM

at

City of Morro Bay Public Works Department
955 Shasta Avenue
Morro Bay, California 93442



CITY OF MORRO BAY

Mailing Address: 595 Harbor Street, Morro Bay, California 93442
Physical Address: 955 Shasta Avenue, Morro Bay, California 93442
Telephone (805) 772-6261 FAX (805) 772-6268
<http://www.morrobayca.gov/>

October 18, 2017

Subject: Request for Qualifications for Design-Build Services for the City of Morro Bay WRF Project

The City of Morro Bay (City) is requesting sealed statements of qualifications (SOQ) for design-build services for the City of Morro Bay Water Reclamation Facility (WRF) Project (Project). The Project will replace the aging Morro Bay-Cayucos Sanitary District Wastewater Treatment Plant (WWTP) with a new Water Reclamation Facility to be located near South Bay Blvd and Highway 1.

All SOQs must be received by the City of Morro Bay Public Works Department by 2:00 PM on December 7, 2017

SOQs received after said time will not be considered. To guard against premature opening, each SOQ shall be submitted to the City of Morro Bay Public Works Department in a sealed package plainly marked as follows:

*City of Morro Bay Water Reclamation Facility
Design-Build Services Statement of Qualifications
Design-Build Team's Name
Design-Build Team's Address
Design-Build Team's Primary Contact Person, Phone Number, and Email Address*

SOQ packages may be obtained on the City's WRF Project website at www.morrobaywrf.com

Questions may only be submitted to the City's Public Works Director, Robert S. Livick, PE/LS, via e-mail at rlivick@morrobayca.gov until November [redacted], 2017, at 5:00 PM. All questions will be answered and posted to the WRF Program website (www.morrobaywrf.com) by November [redacted], 2017.

Onsite review of information related to the City's Water Reclamation Facility Project will be provided at a **mandatory** Pre-SOQ Submittal Meeting to be held at [redacted] AM on November [redacted], 2017, at the Veteran's Memorial Building located at 209 Surf Street, Morro Bay, CA.

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DRAFT

VI. OWNER’S INFORMATION

A. City of Morro Bay

The City of Morro Bay is a coastal City along Highway 1 located in western San Luis Obispo County. The City provides water treatment and distribution, as well as wastewater collection, treatment, and disposal services, to residential and commercial customers within their service area. According to the 2015 City of Morro Bay Water and Sewer Rate Studies (“Rate Study”, Bartle Wells Associates, May, 2015) the City currently provides approximately 5,468 residential and 494 commercial units with wastewater collection and disposal services.

The City of Morro Bay is a general law city and operates under the “Council-Manager” form of municipal government. The City Council is the legislative authority and has the authority to adopt ordinances and resolutions, appropriate funds, adopt budgets, and approve contracts.

B. Project Funding

The project will be funded by a combination of grants and loans. Loans will be repaid through the City’s water and sewer rates.

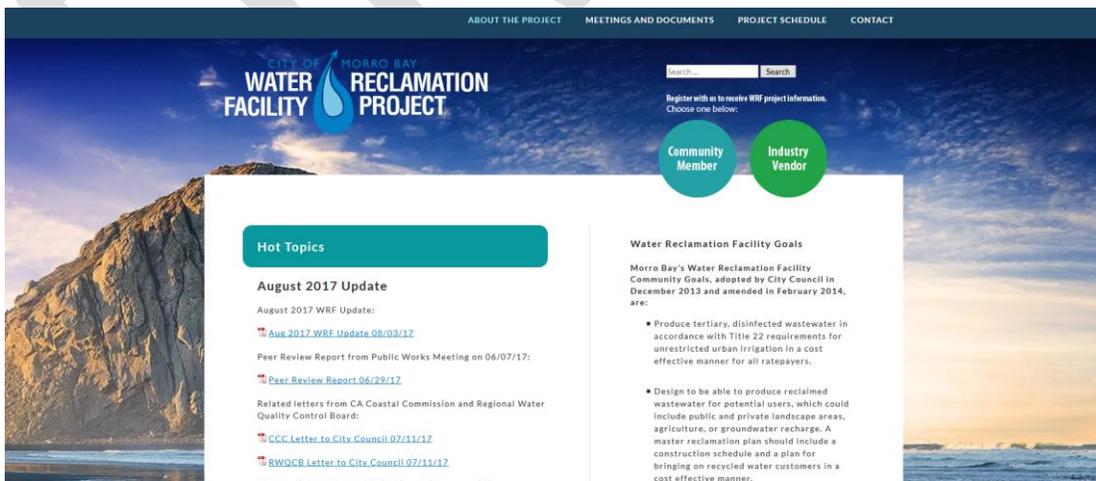
The City was awarded a Planning and Design Loan from the Clean Water State Revolving Fund (CWSRF) program, administered by the State Water Resources Control Board (SWRCB), for \$10.375M. It was also awarded a Recycled Water Feasibility Planning Study grant for \$75,000.

The City is currently pursuing a construction loan from the CWSRF and the United States Environmental Protection Agency (USEPA) Water Infrastructure Financing and Investment Act (WIFIA) loan programs. Morro Bay is one of eleven (11) agencies across the United States that has been invited to apply for a WIFIA loan, which will fund up to 49% of the project. It is assumed the remainder of the project will be funded by the CWSRF loan program and other state and federal grants. The City may also issue municipal bonds to partially fund the project.

The City is also pursuing a United State Bureau of Reclamation WaterSMART grant.

C. Program Website

The City’s WRF program website can be accessed at: <http://morrobaywrf.com/>



VII. PROJECT OVERVIEW

A. Background

The existing WWTP was originally constructed in 1953, and the WWTP has been upgraded in 1964, 1982, and 1984. The WWTP is jointly owned and operated by the City of Morro Bay and Cayucos Sanitary District (CSD) under a Joint Powers Agreement, and currently serves approximately 14,000 people between the two communities. The WWTP has been operated under National Pollutant Discharge Elimination System (NPDES) Permit No. CA007881 and a 301(h) modified discharge permit since its last upgrade in 1984. The Central Coast Regional Water Quality Control Board (RWQCB) recently released the draft tentative order and renewal of the NPDES permit, which includes removal of the 301(h) waiver, meaning compliance with the California Ocean Plan (full secondary treatment) will be required. The permit indicates a time schedule order will be developed, with a time limit not to exceed 5 years. A link to the draft permit is provided on the City WRF website.

The WRF will be solely owned and operated by the City of Morro Bay, and will serve residents of the City as well as any customers under contract with the City. The CSD is pursuing their own wastewater treatment project.

B. Objectives

The WRF shall meet all NPDES permit requirements as determined by the Central Coast RWQCB and recycled water reuse requirements for indirect potable reuse through groundwater injection as determined by the Department of Drinking Water and the RWQCB. The project objectives were developed throughout the planning process and are as follows:

- Provide a facility that is fully operational within five years of issuance of the NPDES renewal and Waste Discharge Requirement Orders
- Produce tertiary disinfected wastewater in accordance with the California Code of Regulations (CCR) Title 22 requirements at all times
- Cost effectively produce recycled water
- Design to treat contaminants of emerging concern in the future
- Provide energy generation and recovery opportunities (e.g. solar power)
- Ensure aesthetic, noise, traffic and odor compatibility with neighboring land uses

C. Project Components

The WRF shall provide complete treatment to meet the standards and regulations for indirect potable reuse through groundwater injection. The intent of the Draft Water Reclamation Facility Master Plan (FMP) was to develop a project description and anticipated budget based on input from the City. Based on work provided in the Draft FMP, it is anticipated that the WRF may consist of the following major components:

- Headworks
- Odor control facility
- Equalization storage, as required to handle peak flows

- Secondary and tertiary treatment, such as Membrane Bioreactor, or equivalent technologies approved for Title 22 reuse
- Sludge dewatering equipment for offsite disposal
- Emergency generator
- Administrative and operations facility
- Advanced treatment facilities, consisting of reverse osmosis, ultraviolet disinfection, and advanced oxidation
- Treated effluent pump station and recycled water storage tank
- Brine pump station
- Instrumentation & controls system
- Site work, utilities, access roads, and additional support facilities required for a full and operational WRF
- Space planning for future solar power facilities (by others)

The City is procuring design services through a separate process for the WRF Lift Station and Offsite Pipelines, which will be constructed under a separate contract.

The required scope of work for this Project will be provided in the RFP. At a minimum the following main tasks are anticipated to be included in the scope of work for the selected Design-Build team:

- Design and construct the fully functioning WRF project including at a minimum all components stated above in accordance with all applicable City, County, State, and Federal permitting requirements
- Coordinate with the City and the WRF Lift Station and Offsite Pipelines design consultant and contractor for connections to the offsite pipelines
- Provide as-needed design support for CEQA compliance
- Design and construct entrance roadway to the WRF site from South Bay Boulevard at Highway 1
- Provide as-needed design support for CalTrans encroachment permit for entrance road from Highway 1 at South Bay Boulevard to the WRF site
- Obtain the following utility services for the WRF
 - Electrical service from PG&E
 - Natural gas service from Southern California Gas Company
 - Water service from the City
- Provide startup and commissioning services, plus 6 months of operations services for verification of performance requirements and systems optimization
- Provide decommissioning of the existing WWTP

Per the FMP, it is anticipated that the WRF will be sized for the following design flows and loadings:

Projected Future Wastewater Flows and Loads			
Parameter	Annual Average	Maximum Month	Maximum Day
Flow (mgd)	0.97	1.16	2.75(1)
Biological Oxygen Demand (BOD)			
Concentration (mg/L)	440	470	-
Load (lb/d)	3,600	4,500	5,900
Load Peaking Factor	-	1.26	1.65
Total Suspended Solids (TSS)			
Concentration (mg/L)	490	540	-
Load (lb/d)	4,000	5,300	7,500
Load Peaking Factor	-	1.33	1.90
Total Kjeldahl Nitrogen (TKN)			
Concentration (mg/L)	70	74	-
Load (lb/d)	570	720	940
Load Peaking Factor	-	1.26	1.65

Note (1): The design peak hour flow is 7.03 MGD

D. Project Budget

The City's program management team developed a program budget based on information provided in the Draft Facility Master Plan, Draft Master Water Reclamation Plan, and Final Updated WRF Site Report. (Full references to these documents are provided below). The budgetary cost for the WRF onsite improvements identified in Section C (Project Components) is \$89 million, including design and construction of the WRF components, but not including cost escalation (ENR September 2017 = 10822.9).

E. Funding Requirements

The Project, and the Design-Build Team, will be required to meet requirements of all Project funding sources. If requirements differ between EPA, SRF, and Bureau of Reclamation, the proposer will need to meet most stringent requirements of the appropriate funding programs.

The Clean Water State Revolving Fund and Water Infrastructure Financing and Investment Act Programs include the following requirements:

- Disadvantaged Business Enterprise (DBE) "Good Faith" effort requirements and reporting of DBE utilization
- Minority and Women-Owned Business Enterprise (MBE/WBE) "Good Faith" effort requirements and reporting of MBE/WBE utilization
- Davis-Bacon Act prevailing wage requirements or California prevailing wage requirements, whichever is greater

- State Revolving Fund American Iron and Steel Requirements
- All federal cross-cutter provisions

F. Schedule

The City desires to execute the Design-Build agreement by August 2018. The design, permitting, construction, and startup of the WRF should be completed by October 2021 with commissioning and verification to extend through April 2022. The schedule for the Program can be found at: <http://morrobaywrf.com/...>

G. Reference Documents

Several reports providing relevant project background information are available for download on the City’s Project website, under project documents (LINK: <http://morrobaywrf.com/wrf-project-documents/>). The CEQA process is currently underway for the Project, and a Draft EIR is anticipated to be available by March 2018. Biological and cultural surveys have been completed in support of these efforts, and these reports will be made available to the shortlisted teams. Some of the main project documents currently available are listed below:

- Final Updated WRF Site Report, MKN & Associates, September 21, 2017
- Screening-Level Groundwater Modeling for Injection Feasibility, GSI Water Solutions, May 16, 2017
- Draft Master Water Reclamation Plan, MKN & Associates, March 2017 (Water Recycling Study)
- Draft Water Reclamation Facility Master Plan, Black & Veatch, November 2016
- Effluent Disposal Feasibility Alternatives Study of the Morro Valley, GSI Water Solutions, August 2016
- Draft Order No. R3-2017-0050, NPDES No. CA0047881,
- Notice of Preparation of an Environmental Report, August 5, 2016

VIII. PROCUREMENT INFORMATION

A. Mandatory Pre-SOQ Submittal Meeting

A mandatory pre-SOQ submittal meeting for this RFQ will be held at _____ on _____, 2017, at the Veteran’s Memorial Building, located at 209 Surf Street, Morro Bay, CA 93442.

B. Procurement Schedule

The procurement schedule for the WRF Design-Build Services is as follows:

Task	Date
Issue RFQ	October 27, 2017
Mandatory Pre-SOQ Meeting	X:XX AM November __, 2017
RFQ Questions Deadline	5:00 PM November __, 2017
SOQs Due	2:00 PM December 7, 2017

Interviews (if necessary)	January 8-12, 2018
Select and Notify Top 3-4 Teams	January 15, 2017
Issue RFP	January 24, 2018
Proposals Due	April 24, 2018
Proposal Review Process	April 24-June 18, 2018
EIR Certification	June XX, 2018
Contract Negotiations	June-July 2018
Contract Award	August 2018
Construction Complete	Fall 2021
Commissioning Complete	Spring 2022

C. Communication with the City and the City’s Representatives

All requests for information must be provided in writing and directed via email to the City’s Public Works Director, Robert S. Livick, at rlivick@morrobayca.gov. Any oral communication shall not be binding on the City. To be considered, all requests for information must be received by 5:00 PM on November 7, 2017. Responses and addenda will be posted on the WRF Project website (<http://morrobaywrf.com/>) by 5:00 PM on November 14, 2017.

Any communications initiated by a Design-Build Team with the City, City’s representatives, and/or project stakeholders other than with Mr. Livick about the Water Reclamation Facility via email may result in disqualification. All communications shall be directed to Rob Livick.

D. Precluded Firms and Individuals

The following firms and individuals from those firms are precluded from participating on a Design-Build team.

- MKN & Associates, Inc.
- Smith Structural Group
- Yeh & Associates, Inc.
- John F. Rickenbach Consulting
- RRM Design Group
- MNS Engineers, Inc.
- Mark Laquidara
- IRJ Engineers Inc.
- Kevin Merk Associates

E. Payment of Stipend

Those Design-Build Teams approved and added to the short list that respond to the upcoming Request for Proposal (RFP), submit a complete and responsive proposal, and are not selected for the project will be awarded a \$100,000 stipend. The City will not award a stipend to the selected Design-Build Team. Other conditions of the stipend will be described in the RFP.

F. SOQ Document Ownership and Confidentiality

All submitted SOQ documents will become the property of the City, and the City reserves the right to use SOQ materials at its sole discretion. SOQ documents are subject to public inspection and disclosure under the California Public Records Act, except for any financial statements or proprietary information. The City will make the final determination on whether any requested content to be withheld from public records is exempt.

G. Protests

Any protests shall be received by the City Clerk at 595 Harbor Street, Morro Bay, California 93442, by 5:00 PM PT on the 10th day following the City's written notice of the selected Design-Build Teams. The protest shall be a letter correspondence submitted via US Mail or hand-delivery (not email or fax) and state the specific grounds for the protest, including facts supporting those specific grounds. Protests received after the stated deadline will not be considered.

Protests will be reviewed by the Public Works Director/City Engineer, and the City's response to protests will be issued within 20 business days from receipt of the protest. The Public Works Director/City Engineer will make the final determination, and no further appeals will be allowed.

H. City's Rights

The City reserves the right to:

- Terminate the RFQ or RFP process at any time
- Re-issue the RFQ if the City determines the SOQs received are non-responsive or the public interest is best served by reissuance
- Not conduct interviews for the shortlist process
- Modify the number of shortlisted firms
- Add or remove project components throughout the RFQ and RFP process

I. Overview of Project Delivery and Two-Step Procurement Process

The City's procurement process for the WRF Onsite Improvements will follow the steps listed below:

1. Request for Qualifications (RFQ)
2. Interviews and shortlist
3. Request for Proposals (RFP) from shortlisted firms
4. Proposal review process
5. Final interviews and in-person meetings as necessary

6. Submittal of final price proposals
7. Recommendation to City Council for selection
8. Execution of design-build agreement

J. Obligation to Keep Project Team Intact

The Design-Build Team shall make every effort to keep the Key Team Members identified in the Design Build Team’s SOQ forms intact throughout the project procurement and execution process. If a Key Team Member changes at any time during the procurement process, the Design Build Team shall submit a formal request to change the Key Team Member and provide qualifications of the new Key Team Member proposed. The City reserves the right to reject the proposed Key Team Member, and the City may disqualify a team from consideration if the key team member change is determined to be not equal to the original team proposed.

K. Skilled and Trained Workforce Commitment

The Design-Build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the City that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeship occupation in the building and construction trades.

L. Examination of Requirements

Each Design-Build Team shall carefully examine the requirements of this RFQ. Each Design-Build Team shall meet all of the terms and conditions of the RFQ. By submitting a SOQ, the Design-Build Team acknowledges acceptance of all provisions of the RFQ.

IX. Submittal Requirements and Evaluation Criteria

A. SOQ Submittal Deadline and Location

All SOQs must be received by the City of Morro Bay Public Works Department by 2:00 PM on December 7, 2017, located at:

Mailing Address: City of Morro Bay Public Works Department
Attn: Public Works Director
595 Harbor Street
Morro Bay, CA 93442

Hand Delivery: City of Morro Bay Public Works Department
Attn: Public Works Director
955 Shasta Avenue
Morro Bay, CA 93442.

SOQs received after the deadline will not be considered.

B. Format

Design-Build Team’s shall submit ten (10) hard copies and a USB flash drive containing an electronic copy in Adobe .pdf format.

C. SOQ Organization

The SOQ shall be organized accordingly to the following outline. Design-Build Teams shall use the SOQ Forms provided in Attachment 1.

- a. Cover Letter and Transmittal Form
- b. *Part 1 – Design-Build Team Profile*
 - i. *Team Contact Information*
 - ii. *Legal/Corporate Structure*
 - iii. *Team Organization*
 - iv. *Staffing Plan and Colocation*
 - v. *Key Team Members*
 - vi. *Project Office Location*
- c. *Part 2 – Relevant Past Experience and Reference Projects*
 - i. *Relevant Projects List*
 - ii. *Reference Projects*
- d. *Part 3 - Financial Qualifications*
- e. *Part 4 - Minimum Qualifications*
 - i. *Performance and Payment Bond*
 - ii. *Insurance*
- f. *Part 5 - Safety Record*
- g. *Part 6 – Certified Under Penalty of Perjury*
- h. *Surety Letter of Intent*
- i. *City of Morro Bay Safety Program Worksheet and Certification*
- j. *Statement of Qualifications Standard Questionnaire (from DIR Model Questionnaire)*

D. Evaluation Criteria

The criteria below will be used to evaluate the Statement of Qualifications. The basis of award for the Design-Build contract will be submitted, explained and further detailed in the pending Request for Proposals.

Criterion	Possible Score
Financial Capability	20
Qualifications of Key Staff	30
Past Performance on Similar Projects By Proposer	30
Final Cost Comparison to Guaranteed Maximum Price and/or Indicative Price (from Reference Projects)	20
Total	100

- X. Attachment:**
Statement of Qualifications Forms

DRAFT



**STATEMENT OF QUALIFICATIONS
FOR
DESIGN-BUILD SERVICES
WATER RECLAMATION FACILITY (WRF)**

Design-Build Team: _____

Date: _____

**Primary Contact Name
Number & Email:** _____

[Insert Cover Letter]
2 Pages Maximum

DRAFT

Qualification Criteria

General: Design-Build team’s information is to be clearly stated and complete. If the City finds any discrepancies in the information shown on the Qualification Statement or failure to provide necessary information, Proposer may be ruled nonresponsive. Overall impression of Proposer’s questionnaire is important.

Part 1 – Design-Build Team Profile

The Design-Build Team shall provide all information requested in this form.

I. Team Contact Information

- a. Design-Build Team Name _____
- b. Design-Build Team Address _____
- c. Primary Contact Person _____
 - i. Company _____
 - ii. Phone Number _____
 - iii. Email _____

II. Legal/Corporate Structure

- a. Design-Build Entity _____
(e.g. corporation, partnership, joint venture, etc.)
- b. How many years has your business been under present name? _____
- c. How many years under former names? (List name and number of years)

- d. Have there been any contract terminations for the services your firm performs before fulfillment of the contract within the past three years? Yes___ No___
If so, list the date, client, and reason for termination below:

- e. Has any member of the Design-Build Team been assessed any penalties for noncompliance violations of the Federal or State labor laws and/or regulations within the past five (5) years? Yes___ No___ If yes, provide details, including dates:

- f. Does any member of the Design-Build Team have any ongoing investigations by any agency regarding violations of the State Labor Code, Business and Professions Code, or State Licensing laws? Yes ___ No ___ If yes, provide details, including dates:

Provide a copy of organizational documents (e.g. articles of incorporation, bylaws outlining company formation, etc.) as an attachment to the SOQ. Provide a listing of all shareholders, partners, or members of the design-build entity known at the time of statement of qualification submission of the design-build entity who will perform work on the project. Provide all licenses and registration required to design and construct the project. See SOQ Attachment 3: Statement of Qualification Standard Questionnaire

III. Team Organization

- a. General Contractor _____

License Number _____

- b. Subcontractors (discipline) _____

(list subcontractors anticipated to perform at least \$1M in work) _____

- c. Design Firm Name _____

- d. Subconsultants (discipline) _____

(list subconsultants anticipated to perform at least \$200k in fee) _____

- e. Organizational Chart – Provide an organizational chart illustrating the project team, Key Team Members, and the roles, responsibilities, and reporting structure of the Design-Build Team. Key Team Members shall include at least the Design-Build Team CEO/President, Project Manager, Project Superintendent, Construction Manager, Design Manager, and Engineer(s) of Record.

IV. Staffing Plan and Colocation

- a. Staffing Plan: The City of Morro Bay is aware of the staffing and housing challenges faced by many design-build entities while performing work in California. The City also

expects that the design and construction of a project of this size, complexity and schedule on the Central California coast will bring additional staffing challenges. Please provide, in as much detail as possible, the Respondent’s staffing plan for the project. This plan should include design team, construction team, including field tradesmen. How will the respondent ensure that a sufficient, skilled workforce is available in order to complete the project on schedule?

- b. Co-Location: In order to promote effective communication and the exchange of information, the City considers that co-location of key staff to Morro Bay may have potential benefit to the project. This co-location could include design, construction management and estimating team members. The City may have sufficient office space available to support a co-located team. Please explain how the Respondent can make best use of its co-located team in order to provide an effective communication framework with the City that will facilitate the decision – making process. Please indicate which Key Team Member(s) from Section IV.e will be co-located with City staff in Morro Bay on a full-time basis.

V.Key Team Members: For each key team member, provide a resume (two single-sided pages maximum) as an attachment to the SOQ. The resume shall include total years of experience in design and/or construction of municipal water/wastewater infrastructure, academic qualifications, professional registrations, certifications, employment history and relevant work experience on similar projects. Key team members must have sufficient experience and training to competently manage and complete the design and construction of the project. Add copies of sections of this form as needed to completely list key team members.

- a. DB Team CEO/President Name _____
 - i. Company _____
 - ii. Current Location _____
 - iii. Phone Number _____
 - iv. Email _____
 - v. Percent of Time Allocated to Project _____

- b. Project Manager Name _____
 - i. Company _____
 - ii. Current Location _____
 - iii. Phone Number _____
 - iv. Email _____
 - v. Percent of Time _____

Allocated to Project

- c. Project Superintendent Name _____
 - i. Company _____
 - ii. Current Location _____
 - iii. Phone Number _____
 - iv. Email _____
 - v. Percent of Time Allocated to Project _____

- d. Construction Project Manager Name _____
 - i. Company _____
 - ii. Current Location _____
 - iii. Phone Number _____
 - iv. Email _____
 - v. Percent of Time Allocated to Project _____

- e. Design Manager Name _____
 - i. Company _____
 - ii. Current Location _____
 - iii. Phone Number _____
 - iv. Email _____
 - v. Percent of Time Allocated to Project _____

- f. Engineer of Record Name _____
 - i. Company _____
 - ii. Responsible Discipline(s) _____
 - iii. Current Location _____
 - iv. Phone Number _____
 - v. Email _____
 - vi. Percent of Time Allocated to Project _____

- g. Engineer of Record Name _____
 - i. Company _____
 - ii. Responsible Discipline(s) _____
 - iii. Current Location _____
 - iv. Phone Number _____
 - v. Email _____
 - vi. Percent of Time Allocated to Project _____

- h. Engineer of Record Name _____
 - i. Company _____
 - ii. Responsible Discipline(s) _____
 - iii. Current Location _____
 - iv. Phone Number _____
 - v. Email _____
 - vi. Percent of Time Allocated to Project _____

VI. Project Office Location(s)

- a. Office Location 1 City _____
 - i. Discipline(s) at Location _____
 - ii. Location Manager _____
 - iii. Phone Number _____
 - iv. Address(if known) _____
 - v. Key Team Member(s) At Location _____

- b. Office Location 2 City _____
 - i. Discipline(s) at Location _____
 - ii. Location Manager _____
 - iii. Phone Number _____
 - iv. Address(if known) _____
 - v. Key Team Member(s) At Location _____

- c. Office Location 3 City _____
 - i. Discipline(s) at Location _____
 - ii. Location Manager _____
 - iii. Phone Number _____
 - iv. Address(if known) _____
 - v. Key Team Member(s) _____
At Location

- d. Office Location 4 City _____
 - i. Discipline(s) at Location _____
 - ii. Location Manager _____
 - iii. Phone Number _____
 - iv. Address(if known) _____
 - v. Key Team Member(s) _____
At Location

- e. Office Location 5 City _____
 - i. Discipline(s) at Location _____
 - ii. Location Manager _____
 - iii. Phone Number _____
 - iv. Address(if known) _____
 - v. Key Team Member(s) _____
At Location

Part 2 – Relevant Past Experience and Reference Projects

The Design-Build Team shall provide the following past experience information for up to ten relevant projects similar in size and complexity to the WRF, using additional pages as needed to provide the requested information. The Design-Build team must have self-performed at least 50% of the work on each project listed. All projects listed shall be completed within the last 10 years from the date of this RFQ. Information provided must be evidence that members of the design build team have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity.

The City will contact references for up to five representative projects. Please complete the reference project forms for five of the relevant projects listed. At least two of the five projects shall be design-build projects with a guaranteed maximum price of at least \$100M. The Design-Build Team entities must have self-performed at least two of the reference projects as the General Contractor and at least two of the projects as the Lead Designer/Engineer of Record. If the Design-Build Team is a joint venture, each party within the joint-venture must have self-performed at least two of the reference project as either the General Contractor or Lead Designer/Engineer of Record. If Joint Venture or prime/sub list each participant’s projects separately.

i. Relevant Projects List

I. Project 1

- a. Owner Name _____
- b. Project Name _____
- c. Project Location _____
- d. Delivery Method (DBB/DB) _____
- e. Year Completed _____
- f. Final Construction Value (\$) _____
- g. Key Team Members Involved (Name and role on project) _____

- h. Summary of Work Performed _____

i. Indicate whether the project included the following components (provide additional details or explanation on attached pages, where needed):

- Construction of new wastewater treatment facilities on a “greenfield” site
- Installation of membrane bioreactor or equivalent processes
- Installation of reverse osmosis
- Installation of ultraviolet disinfection
- Installation of advanced oxidation facilities
- Major earthwork and grading
- Construction of reinforced concrete basins

II. Project 2

a. Owner Name _____

b. Project Name _____

c. Project Location _____

d. Delivery Method (DBB/DB) _____

e. Year Completed _____

f. Final Construction Value (\$) _____

g. Key Team Members Involved
(Name and role on project) _____

h. Summary of Work Performed _____

i. Indicate whether the project included the following components (provide additional details or explanation on attached pages, where needed):

- Construction of new wastewater treatment facilities on a “greenfield” site

- Installation of membrane bioreactor or similar treatment process
- Installation of reverse osmosis
- Installation of ultraviolet disinfection
- Installation of advanced oxidation facilities
- Major earthwork and grading
- Construction of reinforced concrete basins

III. Project 3

- a. Owner Name _____
- b. Project Name _____
- c. Project Location _____
- d. Delivery Method (DBB/DB) _____
- e. Year Completed _____
- f. Final Construction Value (\$) _____
- g. Key Team Members Involved
(Name and role on project) _____

- h. Summary of Work Performed _____

- i. Indicate whether the project included the following components (provide additional details or explanation on attached pages, where needed):
 - Construction of new wastewater treatment facilities on a "greenfield" site
 - Installation of membrane bioreactor or similar treatment process
 - Installation of reverse osmosis

- Installation of ultraviolet disinfection
- Installation of advanced oxidation facilities
- Major earthwork and grading
- Construction of reinforced concrete basins

IV. Project 4

a. Owner Name _____

b. Project Name _____

c. Project Location _____

d. Delivery Method (DBB/DB) _____

e. Year Completed _____

f. Final Construction Value (\$) _____

g. Key Team Members Involved
(Name and role on project) _____

h. Summary of Work Performed _____

i. Indicate whether the project included the following components (provide additional details or explanation on attached pages, where needed):

- Construction of new wastewater treatment facilities on a "greenfield" site
- Installation of membrane bioreactor or similar treatment process
- Installation of reverse osmosis
- Installation of ultraviolet disinfection
- Installation of advanced oxidation facilities
- Major earthwork and grading

- Construction of reinforced concrete basins

V. Project 5

a. Owner Name _____

b. Project Name _____

c. Project Location _____

d. Delivery Method (DBB/DB) _____

e. Year Completed _____

f. Final Construction Value (\$) _____

g. Key Team Members Involved
(Name and role on project) _____

h. Summary of Work Performed _____

i. Indicate whether the project included the following components (provide additional details or explanation on attached pages, where needed):

- Construction of new wastewater treatment facilities on a "greenfield" site
- Installation of membrane bioreactor or similar treatment process
- Installation of reverse osmosis
- Installation of ultraviolet disinfection
- Installation of advanced oxidation facilities
- Major earthwork and grading
- Construction of reinforced concrete basins

VI. Project 6

- a. Owner Name _____
- b. Project Name _____
- c. Project Location _____
- d. Delivery Method (DBB/DB) _____
- e. Year Completed _____
- f. Final Construction Value (\$) _____
- g. Key Team Members Involved
(Name and role on project) _____

- h. Summary of Work Performed _____

i. Indicate whether the project included the following components (provide additional details or explanation on attached pages, where needed):

- Construction of new wastewater treatment facilities on a “greenfield” site
- Installation of membrane bioreactor or similar treatment process
- Installation of reverse osmosis
- Installation of ultraviolet disinfection
- Installation of advanced oxidation facilities
- Major earthwork and grading
- Construction of reinforced concrete basins

VII. Project 7

- a. Owner Name _____
- b. Project Name _____
- c. Project Location _____
- d. Delivery Method (DBB/DB) _____
- e. Year Completed _____
- f. Final Construction Value (\$) _____
- g. Key Team Members Involved
(Name and role on project) _____

- h. Summary of Work Performed _____

i. Indicate whether the project included the following components (provide additional details or explanation on attached pages, where needed):

- Construction of new wastewater treatment facilities on a “greenfield” site
- Installation of membrane bioreactor or similar treatment process
- Installation of reverse osmosis
- Installation of ultraviolet disinfection
- Installation of advanced oxidation facilities
- Major earthwork and grading
- Construction of reinforced concrete basins

VIII. Project 8

- a. Owner Name _____
- b. Project Name _____
- c. Project Location _____
- d. Delivery Method (DBB/DB) _____
- e. Year Completed _____
- f. Final Construction Value (\$) _____
- g. Key Team Members Involved
(Name and role on project) _____

- h. Summary of Work Performed _____

- i. Indicate whether the project included the following components (provide additional details or explanation on attached pages, where needed):
 - Construction of new wastewater treatment facilities on a "greenfield" site
 - Installation of membrane bioreactor or similar treatment process
 - Installation of reverse osmosis
 - Installation of ultraviolet disinfection
 - Installation of advanced oxidation facilities
 - Major earthwork and grading
 - Construction of reinforced concrete basins

IX. Project 9

- a. Owner Name _____
- b. Project Name _____

- c. Project Location _____
- d. Delivery Method (DBB/DB) _____
- e. Year Completed _____
- f. Final Construction Value (\$) _____
- g. Key Team Members Involved
(Name and role on project) _____

- h. Summary of Work Performed _____

i. Indicate whether the project included the following components (provide additional details or explanation on attached pages, where needed):

- Construction of new wastewater treatment facilities on a "greenfield" site
- Installation of membrane bioreactor or similar treatment process
- Installation of reverse osmosis
- Installation of ultraviolet disinfection
- Installation of advanced oxidation facilities
- Major earthwork and grading
- Construction of reinforced concrete basins

X. Project 10

- a. Owner Name _____
- b. Project Name _____
- c. Project Location _____

d. Delivery Method (DBB/DB) _____

e. Year Completed _____

f. Final Construction Value (\$) _____

g. Key Team Members Involved
(Name and role on project) _____

h. Summary of Work Performed _____

i. Indicate whether the project included the following components (provide additional details or explanation on attached pages, where needed):

- Construction of new wastewater treatment facilities on a “greenfield” site
- Installation of membrane bioreactor or similar treatment process
- Installation of reverse osmosis
- Installation of ultraviolet disinfection
- Installation of advanced oxidation facilities
- Major earthwork and grading
- Construction of reinforced concrete basins

ii. Reference Projects Form

Complete the following Project Reference Form for at least five of the relevant projects listed above.

j. Owner Name _____

k. Project Name _____

l. Owner Contact Name _____

m. Owner Contact Phone Number _____ Email _____

n. Contract Start and End Date _____

o. Initial Guaranteed Maximum Price _____

p. Final Construction Value (\$) _____

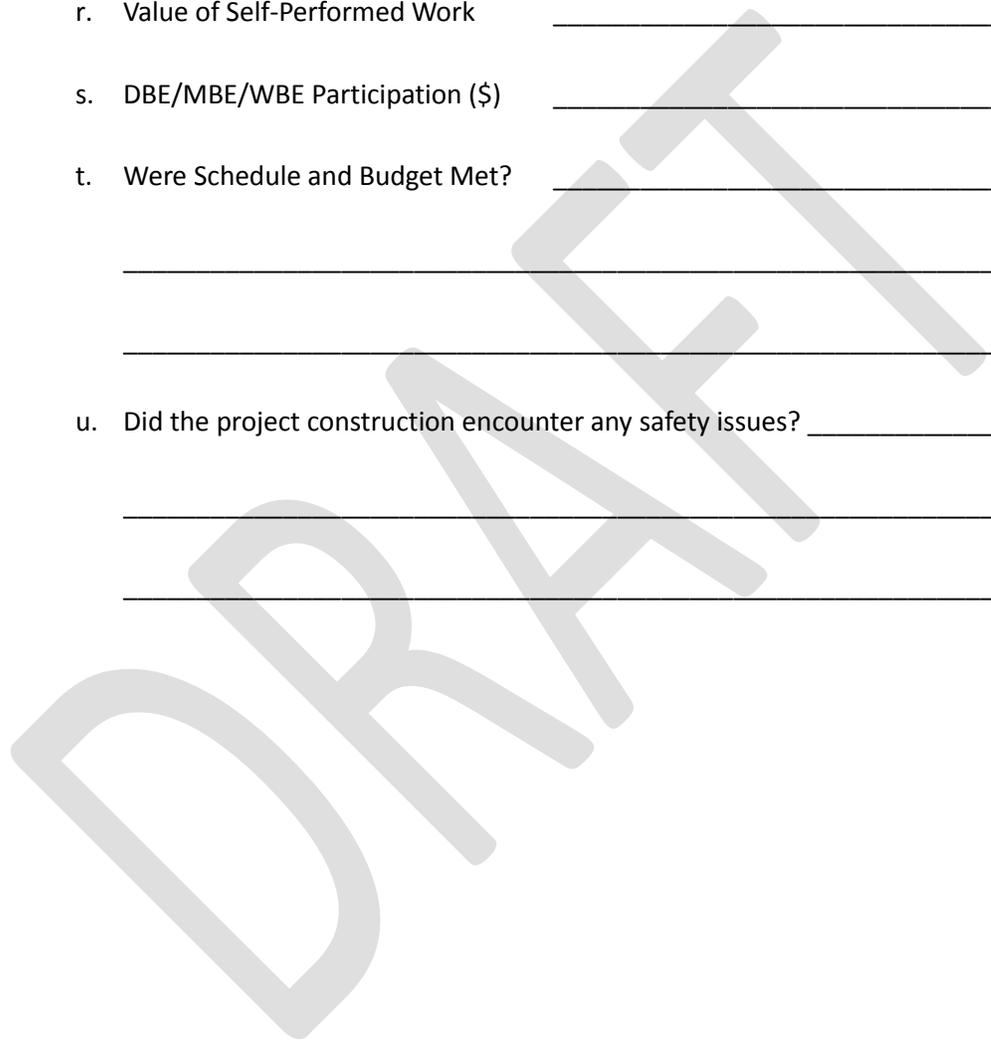
q. Total Change Orders (\$) _____

r. Value of Self-Performed Work _____

s. DBE/MBE/WBE Participation (\$) _____

t. Were Schedule and Budget Met? _____

u. Did the project construction encounter any safety issues? _____



Part 3 – Financial Qualifications

The Design-Build Team shall provide the following financial information below and audited financial statements for the past three most recent fiscal years as attachments. The financial statements shall include the balance sheet and statement of cash flows. If the Design-Build Team is a joint venture, the financial information shall be provided for each party. The Design-Build Team shall also provide a Bonding Capacity Letter issued by its surety company stating the current bonding capacity for a single job and total aggregate amount.

	Year		
	2014	2015	2016
Gross Revenue			
Net Income			
Total Assets			
Total Liabilities			
Total Net Worth (Assets-Liabilities)			
Current Ratio (Assets/Liabilities)			

Part 4 – Minimum Qualifications

i. Performance and Payment Bond

The Design-Build Team shall provide a Bonding Capacity Letter issued by its surety company stating the current bonding capacity for a single job and total aggregate amount (see Attachment 1: Surety Letter of Intent).

ii. Insurance

The Design-Build Team shall provide evidence it has the capacity to obtain all insurance policies and coverages listed below.. The Design-Build Team shall also maintain the minimum limits of insurance:

- Commercial General Liability: \$50M per Incident and Aggregate
- Automobile Liability: \$10M
- Worker’s Compensation and Employer’s Liability: Meet State Requirements
- Contractor’s Environmental/Pollution Liability: \$10M
- Builder’s Risk: Total Project Cost
- Professional Liability: \$50M per Incident and Aggregate

Part 5 – Safety Record

Does each member of the Design-Build Team have a documented written safety plan?

Yes _____ No _____ (If yes provide a copy of the “Table of Contents”)

Provide information concerning workers’ compensation experience history by completing the three page form (Attachment 2) titled City of Morro Bay Safety Program Worksheet and Certification. Design-Build Team must have an acceptable safety record. The safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the proposer is a party to an alternative dispute resolution system as provided for in section 3201.5 of the Labor Code.

Part 6 – Certification Under Penalty of Perjury

Refer to following Signature page attached. The information required under RFQ shall be certified under penalty of perjury by the Design-Build Team and its general partners or joint venture members.

Attachments

1. Surety Letter of Intent
2. City of Morro Bay Safety Program Worksheet and Certification
3. Statement of Qualifications Standard Questionnaire

To: CITY OF MORRO BAY -THE PUBLIC WORKS DIRECTOR

The undersigned Design-Build Team submits the information included with this in accordance with the Request for Qualifications: (Use additional sheets as needed)

The undersigned declares under penalty of perjury under the laws of the State of California that all of the information submitted with this form is true and correct and that this Declaration was executed by persons having express authority to provide qualification information on behalf of the Design-Build Team.

PROPOSER AND Design/Builder:
[GENERAL CONTRACTOR NAME]

_____	For partnership only: List all General Partners
Signature and Title	_____

Typed Name and Title	_____

Signature and Title	_____

Typed Name and Title	_____

Signature and Title	_____

Typed Name and Title	_____

Signature and Title	_____

Typed Name and Title	_____

Surety Letter of Intent

(to be typed on Surety Company Letterhead)

Attn: Rob Livick, PE/PLS
595 Harbor Street
Morro Bay, California 93442

SUBJECT: City of Morro Bay Design-Build Services Water Reclamation Facility –
Letter of Intent to issue Security

Dear Mr. Livick:

_____ (“the Respondent”) has submitted herewith Statement of Qualifications (SOQ) in response to the Request for Qualifications (RFQ) for the Design-Build Services Water Reclamation Facility issued by the City of Morro Bay (the “Owner” on _____, 2017, as amended, pursuant to which it is seeking to be selected by the Owner to deliver the Water Reclamation Facility Project generally described in the RFQ and to be further described in the RFP.

The Surety has reviewed the Owner’s RFQ and the Respondent’s SOQ. The Surety hereby certifies Respondent has the required total and available bonding capacity and per-project bonding limits to meet the requirements of the RFQ. The Surety(ies) further certify that, in the event the Respondent is selected as the Design-Builder and subject to review of the RFP and draft Design-Build Agreement by the Surety(ies), that the Surety(ies) intend to issue on behalf of the Respondent, as security for performance of Design-Build Services for the Water Reclamation Facility under the Design-Build Agreement , a Performance Bond and a Payment Bond for the benefit of the Owner. The Performance Bond and the Payment Bond will each be in an amount equal to the value of the price established for the Design-Build Services and shall be increased to reflect any price adjustment.

Name of Surety

Name of Authorized Signatory

Signature

Title

CITY OF MORRO BAY SAFETY PROGRAM WORKSHEET AND CERTIFICATION

A. EXPERIENCE MODIFICATION RATE

City of Morro Bay Safety Program requires that all contractors awarded a contract have a three-year average Workers' Compensation Experience Modification Rate less than or equal to 1.0 (100%).

YEAR	EMR
2016	_____
2015	_____
2014	_____
Three year average:	_____

B. RECORDABLE INCIDENT RATE

City of Morro Bay's Safety Program requires that all contractors awarded a contract have a three-year average Recordable Incident Rate less than or equal to 4.0. The Recordable Incident Rate (or RIR) is calculated by multiplying the number of recordable cases by 200,000, and then dividing that number by the number of labor hours at the company.

Please calculate the RIR for the last three complete years as follows. Incident rate information should be available on your OSHA Log 300 and available from your insurance carrier.

1.0 Recordable Incidents:

Year	(a) Number of Recordable Cases	(b) Multiplier	(c) Annual Rate = (a)x(b)
2016	_____	200,000	_____
2015	_____	200,000	_____
2014	_____	200,000	_____

2.0 Total Employee Hours Worked:

Year	(d) Number of Employee labor hours worked
2016	_____
2015	_____
2014	_____

3.0 Recordable Incident Rate:

Year	Recordable Incident Rate = (c/d)
2016	_____
2015	_____
2014	_____

C. LOST TIME INCIDENT RATE

City of Morro Bay Safety Program requires that all contractors awarded a contract have a three-year average Lost Time Incident Rate less than or equal to 1.0. The Lost Time Incident Rate (or LTIR) is calculated by multiplying the number of incidents that were lost time cases by 200,000 and then dividing that by the employee labor hours at the company.

Please calculate the LTIR for the last three complete years as follows. Incident rate information should be available on your OSHA Log 300 and available from your insurance carrier.

1.0 LostTimeIncidents:

Year	(e) Number of Lost Time Cases	(f) Multiplier	(g) Annual Rate = (e)x(f)
2016	_____	200,000	_____
2015	_____	200,000	_____
2014	_____	200,000	_____

2.0 Total Employee Hours Worked:

(h)

Year	Number of Employee labor hours worked
2016	_____
2015	_____
2014	_____

3.0 Recordable Incident Rate:

Year	Lost Time Incident Rate = (g)/(h)
2016	_____
2015	_____
2014	_____
Three year Average:	_____

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D. RESPONDENT DECLARATION

I declare under penalty of perjury under the laws of the State of California that the information provided in this City of Morro Bay Safety Program Worksheet and Certification is true and correct. I understand and agree that the above information is subject to verification by my insurance carrier and/or agent and I will make all such information available upon request. I further understand and agree that failure to provide accurate information and meet the City of Morro Bay's Safety Program requirements is an express condition of award of contract. I waive any right to contest the rejection of my bid as nonresponsive for failure to meet the City of Morro Bay Safety Program requirements set forth above.

Name of Respondent _____

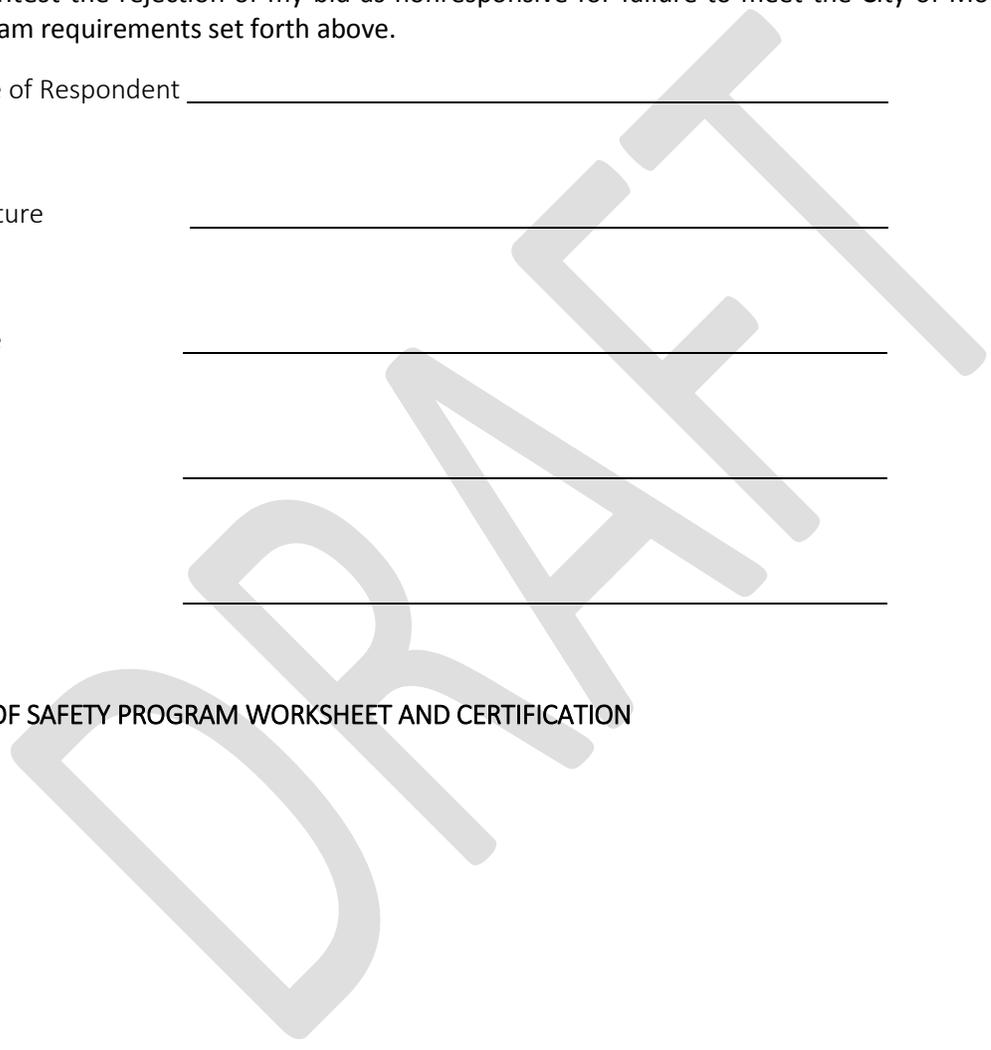
Signature _____

Name _____

Title _____

Date _____

END OF SAFETY PROGRAM WORKSHEET AND CERTIFICATION



Statement of Qualifications Standard Questionnaire

Adapted from Model Questionnaire, CA Department of Industrial Relations, 1999

City of Morro Bay

Water Reclamation Facility Onsite Improvements

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PART I. ESSENTIAL REQUIREMENTS FOR QUALIFICATION

Contractor will be immediately disqualified if the answer to any of questions 1 through 5 is “no.”¹

Contractor will be immediately disqualified if the answer to any of questions 6, 7, 8 or 9 is “yes.”² If the answer to question 8 is “yes,” and if debarment would be the sole reason for denial of pre-qualification, any pre-qualification issued will exclude the debarment period.

1. Contractor possesses a valid and current California General Engineering Contractor’s license for the project or projects for which it intends to submit a bid.
 Yes No
2. General Contractor has or can acquire a liability insurance policy that includes coverage for subcontractors with policy limits per RFQ Attachment 3: Insurance Requirements.
 Yes No
3. Contractor has current workers’ compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq.
 Yes No Contractor is exempt from this requirement, because it has no employees
4. Has your contractor’s license in any state been revoked at any time in the last five years?
 Yes No
5. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?
 Yes No

If the answer is “Yes”, provide explanation (attach necessary pages).

¹ A “no” answer to Question 4 will not be disqualifying if the contractor is exempt from complying with Question 4, for reasons explained in footnote 7.

² A contractor disqualified solely because of a “Yes” answer given to question 6, 7, or 9 may appeal the disqualification and provide an explanation of the relevant circumstances during the appeal procedure.

6. At the time of submitting this pre-qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?

Yes No

If the answer is "Yes," state the beginning and ending dates of the period of debarment:

7. At any time during the last five years, has your firm, or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?

Yes No

8. Have you submitted written responses/documents in response to Section 12 of the Instructions?

Yes No

PART II. ORGANIZATION, HISTORY, ORGANIZATIONAL PERFORMANCE, COMPLIANCE WITH CIVIL AND CRIMINAL LAWS

A. Current Organization and Structure of the Prime Contractor, Prime Consultant or Joint Venture

For Firms That Are Corporations:

1a. Date incorporated: _____

1b. Under the laws of what state: _____

1c. Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten per cent of the corporation's stock.

Name	Position	Years with Co.	% Ownership

- 1d. Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, “owner” and “partner” refer to ownership of ten per cent or more of the business, or 10 per cent or more of its stock, if the business is a corporation.

Person’s Name	Construction Firm	Dates of Person’s Participation with Firm

For Firms That Are Partnerships:

- 1a. Date of formation: _____
- 1b. Under the laws of what state: _____
- 1c. Provide all the following information for each partner who owns 10 per cent or more of the firm.

Name	Position	Years with Co.	% Ownership

- 1d. Identify every construction company that any partner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, “owner” and “partner” refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person’s Name	Construction Company	Dates of Person’s Participation with Company

For Firms That Are Sole Proprietorships:

- 1a. Date of commencement of business. _____
- 1b. Social security number of company owner. _____
- 1c. Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, “owner” and “partner” refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person’s Name	Construction Company	Dates of Person’s Participation with Company

For Firms That Intend to Make a Bid as Part of a Joint Venture:

- 1a. Date of commencement of joint venture. _____
- 1b. Provide all of the following information for each firm that is a member of the joint venture that expects to bid on one or more projects:

Name of firm	% Ownership of Joint Venture

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B. History of the Business and Organizational Performance

2. Has there been any change in ownership of the firm at any time during the last three years?

NOTE: A corporation whose shares are publicly traded is not required to answer this question.

Yes No

If “yes,” explain on a separate signed page.

3. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?

NOTE: Include information about other firms if one firm owns 50 per cent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If “yes,” explain on a separate signed page.

4. Are any corporate officers, partners or owners connected to any other construction firms.

NOTE: Include information about other firms if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If “yes,” explain on a separate signed page.

5. How many years has your organization been in business in California as a contractor under your present business name and license number? _____ years

6. Is your firm currently the debtor in a bankruptcy case?

Yes No

If “yes,” please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

7. Was your firm in bankruptcy at any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 7, above)
- Yes No

If "yes," please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

Licenses

8. List all California construction license numbers, classifications and expiration dates of the California contractor licenses held by your firm:

9. If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the CSLB records who meet(s) the experience and examination requirements for each license.

10. Has your firm changed names or license number in the past five years?

Yes No

If "yes," explain on a separate signed page, including the reason for the change.

11. Has any owner, partner or (for corporations:) officer of your firm operated a construction firm under any other name in the last five years?

Yes No

If "yes," explain on a separate signed page, including the reason for the change.

12. Has any CSLB license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended within the last five years?

Yes No

If "yes," please explain on a separate signed sheet.

Disputes

13. At any time in the last five years has your firm been assessed and paid liquidated damages after completion of a project under a construction contract with either a public or private owner?
 Yes No

If yes, explain on a separate signed page, identifying all such projects by owner, owner's address, the date of completion of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

14. In the last five years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

NOTE: "Associated with" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 1c or 1d on this form.

Yes No

If "yes," explain on a separate signed page. State whether the firm involved was the firm applying for pre-qualification here or another firm. Identify by name of the company, the name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

15. In the last five years has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

Yes No

If "yes," explain on a separate signed page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

* * * * *

NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor. You need not include information about "pass-through" disputes in which the actual dispute is between a sub-contractor and a project owner. Also, you may omit reference to all disputes about amounts of less than \$50,000.

16. In the past five years has any claim against your firm concerning your firm's work on a construction project been filed in court or arbitration?

Yes No

If "yes," on separate signed sheets of paper identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

17. In the past five years has your firm made any claim against a project owner concerning work on a project or payment for a contract and filed that claim in court or arbitration?

Yes No

If "yes," on separate signed sheets of paper identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

18. At any time during the past five years, has any surety company made any payments on your firm's behalf as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm's behalf, in connection with a construction project, either public or private?

Yes No

If "yes," explain on a separate signed page the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved if resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

19. In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No

If "yes," explain on a separate signed page. Name the insurance carrier, the form of insurance and the year of the refusal.

Criminal Matters and Related Civil Suits

20. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

Yes No

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

21. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

Yes No

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the conviction and the grounds for the conviction.

22. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

Yes No

If "yes," identify on a separate signed page the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.

Bonding (General Contractors only)

23. If your firm was required to pay a premium of more than one per cent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three years, state the percentage that your firm was required to pay. You may provide an explanation for a percentage rate higher than one per cent, if you wish to do so.

24. List all other sureties (name and full address) that have written bonds for your firm during the last five years, including the dates during which each wrote the bonds:

25. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

Yes No

If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company or companies which denied coverage; and the period during which you had no surety bond in place.

C. Compliance with Occupational Safety and Health Laws and with Other Labor Legislation Safety

26. Has CAL OSHA cited and assessed penalties against your firm for any “serious,” “willful” or “repeat” violations of its safety or health regulations in the past five years?

NOTE: If you have filed an appeal of a citation, and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.

Yes No

If "yes," attached a separate signed page describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

27. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

Yes No

If "yes," attach a separate signed page describing each citation.

28. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

Yes No

If "yes," attach a separate signed page describing each citation.

29. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?
-

30. Within the last five years has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

Yes No

If "yes," please explain the reason for the absence of workers' compensation insurance on a separate signed page. If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years. (If your firm has been in the construction business for less than five years, provide a statement by your workers')

compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in the construction business.)

Prevailing Wage and Apprenticeship Compliance Record

- 31. Has there been more than one occasion during the last five years in which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the state's prevailing wage laws?

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

Yes No

If "yes," attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

- 32. During the last five years, has there been more than one occasion in which your own firm has been penalized or required to pay back wages for failure to comply with the federal Davis-Bacon prevailing wage requirements?

Yes No

If "yes," attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

- 33. Provide the name, address and telephone number of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your company for use on any public work project for which you are awarded a contract by the City of Morro Bay.

- 34. If your firm operates its own State-approved apprenticeship program:

- (a) Identify the craft or crafts in which your firm provided apprenticeship training in the past year.

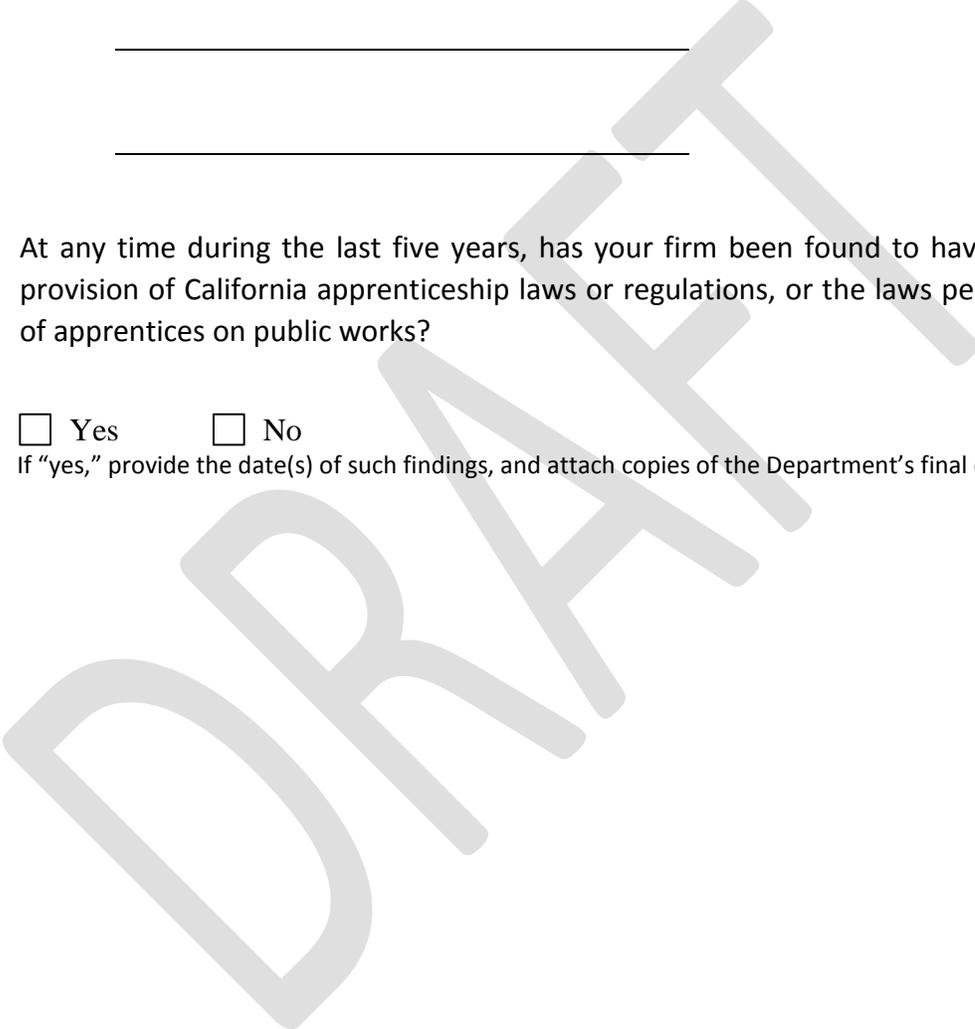
(b) State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s).

(c) State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three years, completed apprenticeships in each craft while employed by your firm.

35. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

Yes No

If "yes," provide the date(s) of such findings, and attach copies of the Department's final decision(s).



* * * * *

I, the undersigned, certify and declare that I have read all the foregoing answers to this prequalification questionnaire and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

Dated:

(Name)

DRAFT