



# CITY OF MORRO BAY CITY COUNCIL AGENDA

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

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## **Regular Meeting - Tuesday, November 14, 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

- Swearing in of Scott Collins, City Manager

CLOSED SESSION REPORT  
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS  
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS  
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 OCTOBER 10, 2017 CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)
- RECOMMENDATION: Approve as submitted.**
- A-2 APPROVAL OF MINUTES FOR THE OCTOBER 11, 2017 CITY COUNCIL CLOSED SESSION MEETING; (ADMINISTRATION)
- RECOMMENDATION: Approve as submitted.**
- A-3 APPROVAL OF MINUTES FOR THE OCTOBER 23, 2017 CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)
- RECOMMENDATION: Approve as submitted.**
- A-4 APPROVAL OF MINUTES FOR THE OCTOBER 24, 2017 CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)
- RECOMMENDATION: Approve as submitted.**
- A-5 ADOPTION OF RESOLUTION NO. 60-17 AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND (LAIF) AND DESIGNATING TRANSACTION OFFICERS; (FINANCE)
- RECOMMENDATION: Council adopt Resolution No. 60-17.**
- A-6 ADOPTION OF RESOLUTION NO. 61-17 DESIGNATING AND AUTHORIZING INVESTMENT TRANSACTION OFFICERS; (FINANCE)
- RECOMMENDATION: Council adopt Resolution No. 61-17, designating and authorizing investment transaction officers.**
- A-7 APPROVAL OF HARBOR ACCUMULATION FUND BUDGET AMENDMENT FOR UP TO \$45,000 FOR ENGINEERING AND PERMIT ADMINISTRATION ASSISTANCE WITH THE CITY'S \$1.9M BOAT LAUNCH FACILITY GRANT FROM THE DIVISION OF BOATING AND WATERWAYS; (HARBOR)
- RECOMMENDATION: Council approve funding of up to \$45,000 from the Harbor Accumulation Fund for unexpected consultancy contracting needs for engineering and permit administration assistance with the \$1.9M grant project to rehabilitate the public launch ramp and associated amenities.**
- A-8 CONFIRM WATER RECLAMATION FACILITY (WRF) PROJECT GOALS AS MODIFIED AT THE OCTOBER 24, 2017 CITY COUNCIL MEETING; (PUBLIC WORKS)
- RECOMMENDATION: Council ratify and approve the WRF Project Goals as modified at the October 24, 2017, City Council Meeting.**
- B. PUBLIC HEARINGS
- B-1 CONTINUATION OF PUBLIC HEARING FOR CONCEPT CONDITIONAL USE PERMIT NO. UP0-448 FOR 945 EMBARCADERO. PROJECT INCLUDES REMODEL OF EXISTING RESTAURANT, HARBORWALK PUBLIC ACCESS IMPROVEMENTS, AND IMPROVEMENTS TO ADJACENT ANCHOR PARK; (COMMUNITY DEVELOPMENT)
- RECOMMENDATION: Council continue the public hearing item for Concept Conditional Use Permit No. UP0-448 to a date uncertain.**

C. BUSINESS ITEMS

- C-1 ADOPTION 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; (CITY ATTORNEY)

**RECOMMENDATION:** Council discuss and adopt, by second 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 CONSIDERATION OF PROPOSAL BY AND APPROVAL OF CONTRACT WITH WATER WORKS ENGINEERS FOR ENGINEERING DESIGN SERVICES FOR THE WATER RECLAMATION FACILITY (WRF) LIFT STATION AND OFFSITE PIPELINES; (PUBLIC WORKS)

**RECOMMENDATION:** Council:

1. Review the report and staff presentation.
2. Review the recommendation from staff and WRFCAC to award a contract to Water Works Engineers for Engineering Design Services for the WRF Lift Station and Offsite Pipelines.
3. Recommend the City Council authorize the City Manager to execute an agreement for the amount of \$1,353,574, with a ten-percent contingency for a total authorization of \$1,488,931.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, December 12, 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  
SPECIAL MEETING – OCTOBER 10, 2017  
VETERANS MEMORIAL HALL  
209 SURF STREET – 4:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member ( <i>arrived at 4:15 p.m.</i> )
	Marlys McPherson	Council Member
STAFF:	Martin Lomeli	Interim City Manager
	Chris Neumeyer	Assistant City Attorney
	Dana Swanson	City Clerk
	Ikani Taumoepeau	Deputy City Manager
	Scot Graham	Community Development Director
	Greg Allen	Police Chief
	Steve Knuckles	Fire Chief

ESTABLISH A QUORUM AND CALL TO ORDER

The meeting was called to order at 4:00 p.m. with all but Council Member Makowetski present.

SPECIAL MEETING AGENDA ITEM:

- I. DISCUSSION ON COUNCIL CANNABIS SUBCOMMITTEE RECOMMENDATIONS AND REQUEST FOR DIRECTION ON A CANNABIS ORDINANCE TO REGULAR BUSINESSES AND PERSONAL USE  
[https://youtu.be/ j\\_LesPW3K8?t=25s](https://youtu.be/j_LesPW3K8?t=25s)

PUBLIC COMMENT

Adam Pinterits, Ethnobotanica, recommended the City accept permit applications or grant provisional authorization contingent upon being awarded a State license, reconsider permitting adult use dispensaries, and revise ordinance language regulating packaging to specify all locally permitted cannabis businesses strictly adhere to State regulations.

The public comment period was closed.

Assistant City Attorney Neumeyer provided the staff report and responded to Council inquiries.

Council Member Makowetski jointed the meeting at 4:15 p.m.

Personal Cultivation

Mayor Irons suggested adding a 6' maximum height limit for outdoor cultivation. Council Member McPherson proposed the key issue is that it not be visible from public space. There was consensus to leave the language as is and not add a maximum height limit. Council Member Headding requested "reasonably inaccessible to minors" be changed to "inaccessible to minors." There was full Council support for that change.

Public Use / Smoking Regulations

There were no changes to this section.

Testing/Manufacturing

Following discussion, there were no changes to this section.

Dispensaries (Medical)

There were no changes to this section. It was agreed allowed locations would be discussed at a future meeting upon review of radius maps.

Dispensaries (Recreational) – Prohibited.

Commercial Cultivation (medical and recreational) – Prohibited.

Deliveries

The Council subcommittee recommended medical only, subject to reconsideration following a November 2018 tax measure.

No further action was taken by the City Council.

ADJOURNMENT

The meeting adjourned at 5:37p.m.

Recorded by:

Dana Swanson,  
City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
OCTOBER 11, 2017  
CITY HALL CONFERENCE ROOM – 4:00 P.M.

AGENDA NO: A-2  
MEETING DATE: November 14, 2017

PRESENT: Jamie Irons Mayor  
Robert Davis Council Member  
John Headding Council Member  
Matt Makowetski Council Member (arrived at 4:10 P.M.)  
Marlys McPherson Council Member

STAFF: Martin Lomeli Interim City Manager  
Joe Pannone City Attorney  
Scot Graham Community Development Director  
Eric Endersby Harbor Director  
Lori Kudzma Deputy City Clerk

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 4:00 p.m., with four members present.

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

CLOSED SESSION PUBLIC COMMENT – Mayor Irons opened the meeting for public comment for items on the agenda.

Madeline Moore, Lease Site 87-88/87W-88W, 833 Embarcadero, spoke regarding difficulties experienced with renting the lease site.

Rebecca (gave no last name) also spoke regarding Lease Site 87-88/87W-88W.

The public comment period was closed.

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

**CS-1 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: One Matter relating to Lease Site 89/89W.

**CS-2 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9.: One matter relating to Lease Site 87-88/87W-88W.

**CS-3 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8**

Property: Main Street parcel near Highway 1 onramp; APN: 068-168-022

Property Negotiators: Mark and Debby Maffei

Agency Negotiators: Scot Graham, Community Development Director, Martin Lomeli, Interim City Manager, and Joseph Pannone, City Attorney

Under Negotiation: Price and Terms of Payment

**CS-4 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9.: One matter re Charter non-payments of PEG fees.

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session and City Attorney reported the following:

No reportable action was taken for Items CS-1, CS-2 and CS-3.

On Item CS-4 the Council gave authority to bring legal action to recover PEG fees.

ADJOURNMENT

The meeting adjourned at 5:31 p.m.

Recorded by:

Lori M. Kudzma  
Deputy City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL MEETING – OCTOBER 23, 2017  
COMMUNITY CENTER MULTI-PURPOSE ROOM  
1001 KENNEDY WAY – 4:30 P.M.

PRESENT: Jamie Irons Mayor  
Robert Davis Council Member  
John Headding Council Member  
Matt Makowetski Council Member  
Marlys McPherson Council Member (*arrived at 4:31 p.m.*)

STAFF: Martin Lomeli Interim City Manager  
Joe Pannone City Attorney  
Dana Swanson City Clerk  
Jody Cox Police Commander

ESTABLISH A QUORUM AND CALL TO ORDER

The meeting was called to order at 4:30 p.m. with all but Council Member McPherson present. Council Member McPherson joined the meeting at 4:31 p.m.

SPECIAL MEETING AGENDA ITEM:

- I. **Discussion of Possible Removal of Richard Sadowski from the Planning Commission and WRFAC, and Action, if any, Deemed Appropriate by Council**  
<https://youtu.be/MuDi8qk92dE?t=17s>

Mayor Irons read Resolution No. 70-15 “Pledging to Follow Best Practices of Civility and Civil Discourse in All of its Meetings” into the record, followed by a prepared statement regarding his request this item be agendaized for Council consideration.

PUBLIC COMMENT

Carole Truesdale, Morro Bay, spoke in support of Mr. Sadowski and thanked all those who serve on the City’s advisory boards.

Aaron Ochs, Morro Bay, spoke in support of Mr. Sadowski and asked the Council to rescind its pursuit to remove him from the Planning Commission.

Barbara Doerr, Morro Bay, opposed removing Mr. Sadowski from his position and asked the Council to remove this item from the agenda and adjourn the meeting.

Paul Donnelly, Morro Bay resident and member of WRFAC, spoke in support for Mr. Sadowski, noting he is a valuable asset of that Committee.

Richard Rowe, Morro Bay, spoke in support of Mr. Sadowski.

Marla Jo Sadowski, Morro Bay, asked the Council to withdraw this item and allow Mr. Sadowski to remain on Planning Commission and WRFAC.

Richard Sadowski, Morro Bay, stated it is his responsibility to represent the interests of all citizens of the community as a Planning Commissioner and WRFAC.

Diane Playan, Morro Bay, spoke in support of Mr. Sadowski and understood his frustration that WRFAC meetings had been canceled.

Larry Rogers, Morro Bay, spoke in support of Mr. Sadowski and believed Mayor Irons owed him an apology.

David Nelson, Morro Bay, appreciated the time Mr. Sadowski has spent at public meetings and hoped the City will build a treatment plant the community can afford.

Cynthia Hawley asked the Council to vote against the removal of Mr. Sadowski or pull this item from any agenda.

Bill Woodson, Morro Bay, requested the Council give Mr. Sadowski some slack and asked Richard to rigorously observe Robert's Rules of Order.

Tina Metzger, Morro Bay, suggested the Council issue a public apology and cease all discussion about removing Mr. Sadowski from the Planning Commission and WRFCAC.

Annie Pivarski, Morro Bay, spoke in support of Mr. Sadowski.

The public comment period was closed.

Mayor Irons responded to questions raised during public comment.

The Council agreed the discussion was not based on the content of Mr. Sadowski's public comment, but his decorum, and that as a public official he was held to a higher standard. Council Members Headding, McPherson and Makowetski supported an admonishment or reprimand for the behaviors that were displayed.

Council Member Davis suggested Mr. Sadowski be provided an opportunity to state how he would conduct himself in the future if he remains on the Commission. There was Council consensus to invite him to comment but Mr. Sadowski declined.

**MOTION:** Council Member Headding moved the Council issue Mr. Sadowski a simple warning with regard to that infraction and ask that it not occur again. The motion was seconded by Council Member McPherson.

Mayor Irons commented he will vote no, adding Mr. Sadowski was asked to respond and he declined to respond on how he would move forward.

The motion carried 3-2 with Mayor Irons and Council Member Davis voting no.

The Mayor provided closing comments.

#### ADJOURNMENT

The meeting adjourned at 5:29 p.m.

Recorded by:

Dana Swanson, City Clerk

MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL MEETING – OCTOBER 24, 2017  
VETERANS MEMORIAL HALL  
209 SURF STREET – 4:30 P.M.

AGENDA NO: A-4  
MEETING DATE: November 14, 2017

PRESENT: Jamie Irons Mayor  
Robert Davis Councilmember  
John Headding Councilmember  
Matt Makowetski Councilmember  
Marlys McPherson Councilmember

STAFF: Dana Swanson City Clerk

**ESTABLISH QUORUM AND CALL TO ORDER**

Mayor Irons established a quorum and called the meeting to order at 4:30 p.m. with all members present.

**PUBLIC COMMENT FOR ITEMS ON THE AGENDA**

None

**SPECIAL MEETING AGENDA ITEM:**

I. **ADVISORY BOARD INTERVIEWS TO FILL CURRENT VACANCIES**

<https://youtu.be/BOxQCY1yL0w?t=27s>

The following applicants were interviewed to fill a current vacancy on the Planning Commission: Jesus “Jesse” Barron, Anthony de Fazio and Terry Simons. The City Council voted by written ballot and the City Clerk read the results. Mr. Barron received three votes (Headding, Makowetski and McPherson), Mr. de Fazio received one vote (Irons) and Mr. Simons received one vote (Davis). Mr. Barron was appointed to fill the current vacancy on the Planning Commission for a term ending January 31, 2021.

**ADJOURNMENT**

The meeting adjourned at 5:23 p.m.

Recorded by:

Dana Swanson  
City Clerk

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AGENDA NO: A-5  
MEETING DATE: November 14, 2017

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** November 2, 2017

**FROM:** Jennifer Callaway, Finance Director

**SUBJECT:** Adoption of Resolution No. 60-17 Authorizing Investment of Monies in The Local Agency Investment Fund (LAIF) and Designating Transaction Officers

**RECOMMENDATION:**

Staff recommends the City Council adopt Resolution No. 60-17.

**ALTERNATIVES:**

An alternative action would be to revise the list of authorized signers or reconsider authorizing investment in the Local Agency investment Fund (LAIF).

**FISCAL IMPACT:**

There is no fiscal impact associated with the requested action.

**BACKGROUND/DISCUSSION:**

In accordance with State law, the City Council must adopt a resolution authorizing changes to designated transaction officers with LAIF. Resolution No. 37-17, adopted June 21, 2017, is the current Resolution on file with the State Treasurer’s Office, is obsolete due to recent staff changes. Further, the City’s Investment Policy under “Suitable and Authorized Investments” lists California LAIF investment pool as a suitable investment instrument. The requested action reaffirms the appropriateness in utilizing that investment tool and updates the investments officers.

The proposed resolution, based on an updated format prescribed by LAIF, accomplishes the following objectives:

- Authorizes the deposit and withdrawal of City monies in LAIF.
- Revises the list of authorized individuals.
- Proposes an enhancement to internal controls related to investments by requiring authorization from any two (2) of the authorized individuals to conduct transactions with LAIF.
- Specifies that the list of authorized individuals “or their successors in office” are authorized to conduct transactions to reduce the necessity for future resolutions when changes are made in City personnel.

**CONCLUSION**

Staff recommends the City Council adopt Resolution No. 51-17, rescinding Resolution No. 37-17, and reaffirming its desire to invest with LAIF and update the list of individuals authorized to transact with LAIF on behalf of the City.

Prepared By: _____	Dept Review: JC____
City Manager Review: __SC__	City Attorney Review: _JPW_

**ATTACHMENT**

1. Proposed Resolution No. 60-17 authorizing investment of monies in the local agency investment fund and designating transaction officers.

**RESOLUTION NO. 60-17**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
AUTHORIZING INVESTMENT OF MONIES IN THE  
LOCAL AGENCY INVESTMENT FUND,  
DESIGNATING TRANSACTION OFFICERS;  
AND RESCINDING RESOLUTION NO. 37-17**

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

**WHEREAS**, the Local Agency Investment Fund is established in the California State Treasury under Government Code section 16429.1 *et seq.* for the deposit of money of a local agency for purposes of investment by the California State Treasurer; and

**WHEREAS**, the City Council hereby finds the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with Government Code section 16429.1 *et seq.* for the purpose of investment as provided therein is in the best interests of the City of Morro Bay; and

**WHEREAS**, on June 21, 2017, the City Council adopted Resolution No. 37-17 to reaffirm Investment of Monies in the Local Agency Investment Fund and designate transaction officers.

**NOW, THEREFORE, BE IT RESOLVED**

**Section 1.** The City Council hereby authorizes the deposit and withdrawal of City monies in the Local Agency Investment Fund in the California State Treasury (LAIF), in accordance with Government Code section 16429.1 *et seq.* for the purpose of investment as provided therein.

**Section 2.** The following City employees holding the titles specified herein below or their successors in office are hereby authorized, with the authorization of any two of them, to order the deposit or withdrawal of monies in LAIF and may execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution and the transactions contemplated hereby:

Scott Collins	City Manager
Jennifer Callaway	Finance Director
Sandra Martin	Budget / Accounting Manager
Laurie Goforth	Human Resources Analyst
Dana Swanson	City Clerk
Lori Kudzma	Deputy City Clerk

**Section 3.** Resolution No. 37-17 and any and all resolutions relating to investing funds through LAIF are rescinded and replaced in their entireties with the passage of this Resolution.

**Section 4.** This resolution shall remain in full force and effect until rescinded by the City Council by resolution and a copy of the resolution rescinding this resolution is filed with the California State Treasurer's Office.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting held on the 14<sup>th</sup> day of November 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
\_\_\_\_\_  
JAMIE L. IRONS, Mayor

ATTEST:

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



AGENDA NO: A-6  
MEETING DATE: November 14, 2017

# Staff Report

**TO:** Honorable Mayor and City Council    **DATE:** November 06, 2017  
**FROM:** Jennifer Callaway, Finance Director/City Treasurer  
**SUBJECT:** Adoption of Resolution No. 61-17 Designating and Authorizing Investment Transaction Officers

**RECOMMENDATION:**

Staff recommends Council adopt Resolution No. 61-17, designating and authorizing investment transaction officers.

**ALTERNATIVES:**

An alternative action would be to alter who the designated and authorized transaction officers would be.

**FISCAL IMPACT:**

There is no fiscal impact associated with the requested action.

**SUMMARY:**

To invest money with financial institutions, a corporate resolution, identifying authorized transaction officers, is required. The City will meet this requirement by adopting this Resolution, which formalizes the officers and their ability to invest the City's money, based on the adopted Investment Policy.

**BACKGROUND/DISCUSSION:**

On December 13, 2016, the City Council enacted Resolution No. 80-16, designating investment transaction officers. With the change in City employees, a new corporate resolution is required.

Since September 11, 2001, banking regulations have become increasingly more stringent. More forms of identification are required prior to opening accounts, especially when the account is opened for an entity (such as a city). Since 2003, the Corporate Authorization Resolution has been a prerequisite for opening an account with a financial institution, but has not been consistently required. More and more banks are insisting on personal information to verify the individuals, named on the Resolutions, are valid City employees. This Resolution annually designates investment transaction officers and empowers them to invest money with any sound financial institution.

Prepared By:   JC  

Dept Review:   JC  

City Manager Review:   SC  

City Attorney Review:   JPW

## **CONCLUSION**

Staff recommends the City Council adopt Resolution No. 61-17 to designate and authorize certain individuals to act as the City's investment transaction officers.

## **ATTACHMENTS**

1. Proposed Resolution No. 61-17

**RESOLUTION NO. 61-17**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MORRO BAY, CALIFORNIA  
DESIGNATING AND AUTHORIZING  
INVESTMENT TRANSACTION OFFICERS**

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

**WHEREAS**, the City of Morro Bay has cash in its possession that exceeds the amount needed for day-to-day transactions; and

**WHEREAS**, the City of Morro Bay has an obligation to its citizens to effectively and safely manage that money while optimizing its earning potential; and

**WHEREAS**, it is necessary to designate, via Resolution, the transaction officers who have the authority to invest the City's funds; and

**WHEREAS**, on July 14, 2008, the Morro Bay City Council adopted Resolution No. 43-08, which established the transaction officers with the authority to invest the City's funds; and

**WHEREAS**, with this Resolution, the Morro Bay City Council is rescinding Resolution No. 43-08 in its entirety; and

**WHEREAS**, on January 11, 2011, the Morro Bay City Council adopted Resolution No. 02-11, which established the transaction officers with the authority to invest the City's funds; and

**WHEREAS**, with this Resolution, the Morro Bay City Council is rescinding Resolution No. 02-11 in its entirety; and

**WHEREAS**, on December 13, 2016, the Morro Bay City Council adopted Resolution No. 80-16, which established the transaction officers with the authority to invest the City's funds; and

**WHEREAS**, with this Resolution, the Morro Bay City Council is rescinding Resolution No. 80-16 in its entirety; and

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

1. Resolutions Nos. 43-08, 02-11 and 80-16, along with any and all resolution relating to designating and authorizing investment transaction officers are rescinded in their entirety and replaced with this Resolution; and
2. The individuals listed below are designated as transaction officers who are authorized to open and close investment accounts within the scope of the City's Investment Policy:

Scott Collins  
Jennifer Callaway  
Sandra Martin  
Valerie Webb

City Manager  
Finance Director/City Treasurer  
Budget/Accounting Manager  
Senior Accounting Technician

**Resolution No. 61-17**  
**Page 2 of 2**

**PASSED AND ADOPTED**, by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 14<sup>th</sup> day of November 2017, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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JAMIE IRONS, Mayor

ATTEST

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DANA SWANSON, City Clerk



AGENDA NO: A-7

MEETING DATE: November 14, 2017

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** October 31, 2017

**FROM:** Eric Endersby, Harbor Director

**SUBJECT:** Approval of Harbor Accumulation Fund Budget Amendment For Up to \$45,000 for Engineering and Permit Administration Assistance with the City's \$1.9M Boat Launch Facility Grant from the Division of Boating and Waterways

## RECOMMENDATION

Staff recommend the City Council approve funding of up to \$45,000 from the Harbor Accumulation Fund for unexpected consultancy contracting needs for engineering and permit administration assistance with the \$1.9M grant project to rehabilitate the public launch ramp and associated amenities.

## ALTERNATIVES

The Council could elect not to approve this funding, and direct staff to complete the necessary work without consultancy. Denial of this funding could, however, result in significant delays in or inability to complete the proposed project on the California Division of Boating and Waterways (DBW)-driven project schedule.

## FISCAL IMPACT

If approved, then this action will result in a one-time draw of up to \$45,000 from the Harbor Accumulation Fund. The current balance in the Fund is approximately \$482,000.

## BACKGROUND

In March 2014, a \$1.7M grant for a major rehabilitation project for the public boat launch facility (BLF) was applied for from the DBW. The proposed project scope included complete replacement of the concrete ramp itself and the ramp apron, replacement of both boarding floats and float abutments, renewing the asphalt parking lot, moving and rearranging signs, the pay kiosk and utilities, making the entire facility ADA-compliant, including the public restroom, pathways and amenities, modernizing the fish cleaning station and addition of a low-freeboard non-motorized kayak/paddle launching platform and gangway away from the regular motorized boat launch ramp.

As staff was working with DBW in 2013 on proposed project scope and cost estimation, it was DBW's preference and direction to its staff to work-up the proposed project scope and engineering concept and cost estimations for the City to then insert into its grant application. In early 2014, DBW completed this work. At the time, the cost estimate, including all soft and hard costs, was \$1.73M, for which the City applied in April 2014.

For BLF grants, DBW typically funds those projects in two phases, with Phase I being funds to get through 100% design and permitting, and Phase II being actual construction. The necessary

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

funding for Phase I, estimated by DBW at \$250,000, was not included in the Governor's budget until the 2016/2017 Fiscal Year, and was not approved by the DBW Commission until April 2017. The City Council approved this grant in March 2017, a requirement of the grant before Commission approval.

Although construction administration and management is not an allowed reimbursable expense of the grant, it was staff's understanding that permit and engineering administration and management was reimbursable. It was under that premise, after grant approval and execution, staff began submitting the various administration, engineering, architectural and other consultant contracts to DBW for approval, and it was not until very recently DBW staff informed City staff an administration/management contract for engineering and permitting was not a reimbursable cost. In addition, it was also not until very recently DBW informed staff they would only approve one "prime" engineering consultant contract, with all other consultants (architectural, electrical, surveying, estimating etc.) under the "prime." Staff had been pursuing separate contracts with those consultants.

In addition to those two new developments, as the various consultant contracts were being created, based on the scope of the proposed project as staff understood it, it became clear there were significant differences in scope and costs that would require reconciliation between DBW's 2014 project concept design, 2014 cost estimation, 2017 updated cost estimation that was in the approved grant (\$1.91M) and 2017 project feasibility study.

## **DISCUSSION**

Staff will now have to develop, issue and manage a Request for Proposals (RFP) for design engineering services for the proposed project. In order for prospective firms to submit competitive proposals for the proposed project, a definitive scope of work, with sufficient detail to enable proposers to know precisely what the proposed project could entail will need to be developed. In addition, a sufficient design engineering contract will have to be developed and managed for the successful proposer.

Harbor staff currently do not have the time and expertise to manage those needs independently, nor is there capacity in the Public Works department to undertake it at this time. It is necessary, therefore, for a construction project management consultant to assist in proposed project scope definition and development to meet DBW's requirements, and to assist in managing one "prime" design/engineering consultant via an RFP/contacting process, with Harbor and Public Works personnel assisting/augmenting where necessary. It is anticipated MarWal Construction, a firm the City has used on several occasions in the past with excellent results, will be who staff look to for those services. Currently, there are no budgeted City funds toward this proposed project as it was anticipated the grant would cover all design and engineering costs.

## **CONCLUSION**

Staff request Council approval of a one-time capital budget amendment for up to \$45,000 for those unexpected consultancy needs to keep the BLF renovation proposed project moving forward. Staff continue to work with DBW on the scope and cost estimation issues, including possible extension of the grant deadline for completion of 100% design and all permitting (currently February 1, 2019). In addition, staff continue to work on the necessary permitting for the proposed project concurrently with the design/engineering/environmental clearance elements.



Original Adopted Goal	Recommended Modification
<i>[NO CURRENT GOAL]</i>	<b>All aspects of the WRF project shall be completed ensuring economic value with a special emphasis on minimizing rate payer and City expense.</b>
<i>[NO CURRENT GOAL]</i>	<b>Communicate WRF project progress including general project status, milestones, and budget/cost information to our community members regularly.</b>
<b>Produce tertiary, disinfected wastewater in accordance with Title 22 requirements for unrestricted urban irrigation</b>	No changes are recommended.
<del>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.</del>	Recommend modifying as follows:  <b>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</b>
<del>Allow for onsite composting</del>	Remove this goal.
<del>Design for energy recovery</del>	Recommend modifying as follows:  <b>Include features in the WRF project that maximize the City's opportunities to secure funding and maximize efficiencies.</b>
Design to treat contaminants of emerging concern in the future	Recommend modifying as follows:  <b>Design to minimize the impacts from contaminants of emerging concern in the future</b>
<del>Design to allow for other possible municipal functions</del>	Remove this goal.
<b>Ensure compatibility with neighboring land uses</b>	No changes are recommended.

**CONCLUSION**

City staff recommends the City Council adopt and ratify the newly established WRF Goals.

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AGENDA NO: B-1

MEETING DATE: November 14, 2017

# Staff Report

**TO:** Honorable Mayor and City Council      **DATE:** November 2, 2017

**FROM:** Cindy Jacinth, Senior Planner

**SUBJECT:** Continuation of Public Hearing for Concept Conditional Use Permit No. UP0-448 for 945 Embarcadero. Project includes remodel of existing restaurant, harborwalk public access improvements, and improvements to adjacent Anchor Park.

## RECOMMENDATION

Council continue the public hearing item for Concept Conditional Use Permit No. UP0-448 to a date uncertain.

## ALTERNATIVES

Alternative 1. The City Council could open the public hearing item and continue the project to a date certain specifying a date upon which the hearing would be completed.

## FISCAL IMPACT

Continuing the project to a date uncertain would require the project to be re-noticed in accordance with the City's noticing procedures for a public hearing.

## BACKGROUND/DISCUSSION/CONCLUSION

On October 10, 2017, the City Council held a duly noticed public hearing to consider a Concept Conditional Use Permit (UP0-448) for 945 Embarcadero, also known as City Lease site 96, 96W. At that meeting, the hearing was continued to a date certain to allow the Applicant to bring forward revised plans which would make changes to the proposed Harborwalk and Anchor Park improvements; as well as submit to the Council engineering information regarding the status of the seawall.

The Applicant was not able to submit the items necessary in time for this City Council hearing. As such, staff is requesting the hearing be continued to a date uncertain in order to allow a complete resubmittal of all requested items. Notice for that continued public hearing will be given as required by law and at the applicant's expense.

Prepared By: <u>  CJ  </u>	Dept Review: <u>  SG  </u>
City Manager Review: <u>  SC  </u>	City Attorney Review: <u>  JWP  </u>

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AGENDA NO: C-1

MEETING DATE: November 14, 2017

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** November 5, 2017

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

**SUBJECT:** Adoption 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 adopt, by second 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

Ordinance No. 612 allows City regulatory and administrative costs associated with permitting commercial cannabis operations to be recouped through City fees. The ordinance 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. The ordinance encourages revenue generating development agreements be sought with commercial cannabis operations permitted in the City. Council has directed staff to timely provide analysis on a possible cannabis tax ballot measure for consideration by voters at the regular election to be held November 6, 2018.

## BACKGROUND

Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), was approved by California voters on November 8, 2016. The AUMA legalized limited personal use, possession and cultivation of cannabis. Pursuant to the AUMA and Senate Bill 94 (the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA)), the state will begin issuing licenses for commercial cannabis operations on or after January 1, 2018. Cities maintain limited local control

01181.0001/423648.1 CFN Prepared By: <u>CFN</u>	
City Manager Review: <u>SC</u>	City Attorney Review: _____

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

**November 14, 2017**

**Page 2 of 7**

over personal cultivation of cannabis, and have the authority to prohibit or regulate commercial cannabis operations by local ordinance. A failure of a city to address these issues will cede substantial authority to the state. Cities may also regulate cannabis secondhand smoke akin to regulation of tobacco secondhand smoke.

At the Council meeting held on October 24, 2017, Ordinance No. 612 was introduced for first reading, to establish a commercial cannabis regulatory program, regulate and permit personal cannabis cultivation, and strengthen secondhand smoke regulations. For additional background, please refer to attached Staff Report from October 24, 2017 City Council regular meeting concerning the Introduction of Ordinance No. 612, and 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."

**DISCUSSION**

The Council discussed and introduced for first reading at the October 24, 2017 regular Council meeting Ordinance No. 612 which will:

1. permit and regulate (with applications accepted no sooner than July 1, 2018) two medical cannabis dispensaries, wholesale medical cannabis distribution operations, and medical cannabis deliveries, while prohibiting all other commercial cannabis operations; and
2. regulate personal cannabis cultivation at private residences; and,
3. strengthen the regulation of secondhand smoke.

Pursuant to direction from Council at the October 24, 2017 meeting, the proposed ordinance considered at that meeting had the following modifications made, which were included in the introduction and first reading of Ordinance No. 612 on that date:

1. Section 9.06.040(A)(5) – Personal cannabis cultivation permit requirement concerning site plan and floor plan no longer requires plans to be "scaled," and clarification that "dimensioned hand sketch acceptable" was added. (See page 8.)
2. Section 5.50.120(L) – Section to now read as follows: "Retail medical operations shall not have a physician or any person licensed to recommend medical cannabis for medical use, at the location of the commercial cannabis operation, to provide a recommendation or physician's recommendation, for the use of medical cannabis." (See page 34.)
3. Section 5.50.120(C)(2-3) and Section 5.50.130(C)(2-3) – Buffer zones restricting business locations modified by removing "religious institution" and by adjusting buffer zone from "park" to 100 feet. (See pages 32 and 35.) A radius map reflecting the buffer zones is attached.

Pursuant to Government Code section 36934 the following typographical or clerical errors in Ordinance 612 have been corrected:

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

**November 14, 2017**

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1. Section 5.50.030(W) - Definition of “labeling” includes cannabis products and cannabis (not just cannabis products). (See page 14.)
2. Definition of term “Secondhand smoke” in Section 9.24.020 uses the word “device” rather than word “decide” on third line from top. (See page 40)

**CONCLUSION**

Staff recommends Council adopt Ordinance No. 612 by second reading by title only and with further reading waived.

**ATTACHMENTS**

- 1) Proposed Ordinance No. 612.
- 2) Staff Report from October 24, 2017 City Council regular meeting entitled “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.”
- 3) 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.”
- 4) Radius Map for Commercial Cannabis Operations – 600 Foot Buffer from Schools (including Youth Centers) and Day Care Facilities; and, 100 Foot Buffer from Parks.

**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.**

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.

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 ~~sealed~~-property site plan and a ~~sealed~~-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, dimensioned hand sketch acceptable.

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 [cannabis or](#) a cannabis product, upon its container or wrapper, or that accompanies any [cannabis or](#) 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

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involves digitizing fingerprints and electronically transmitting the fingerprint image data 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.

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- 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

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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).

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20. Type 12 = Microbusiness.

- 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.

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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 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.

- 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 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 Chapter 8 of Division 2 of the Health and Safety Code.

**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.~~ 2. No retail (medical) operation shall locate within six hundred (600) feet of a school, day care center, or 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.
  - ~~2.3.~~ 2.3. No retail (medical) operation shall locate within one hundred (100) feet of a park. 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.
  - ~~3.4.~~ 3.4. 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

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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 licensed to recommend medical cannabis for medical use, at the location of the commercial cannabis operation, to ~~evaluate patients, or~~ provide a recommendation or physician's recommendation, for the use of 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

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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 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, or 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.

~~2.3.~~ No distribution operation shall locate within one hundred (100) feet of a park. 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 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

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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 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*

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*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 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.

**INTRODUCED** at a regular meeting the of the City Council of Morro Bay, held on the 24<sup>th</sup> day of October, 2017 by motion of Councilmember McPherson and seconded by Councilmember Davis.

**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

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 24th day of October, 2017, and hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the 14<sup>th</sup> day of November, 2017, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this 15<sup>th</sup> day of November, 2017.

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City Clerk of the City of Morro Bay



# 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

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## 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:

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- 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:



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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**

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- 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

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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.



**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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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  
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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**  
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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**  
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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**

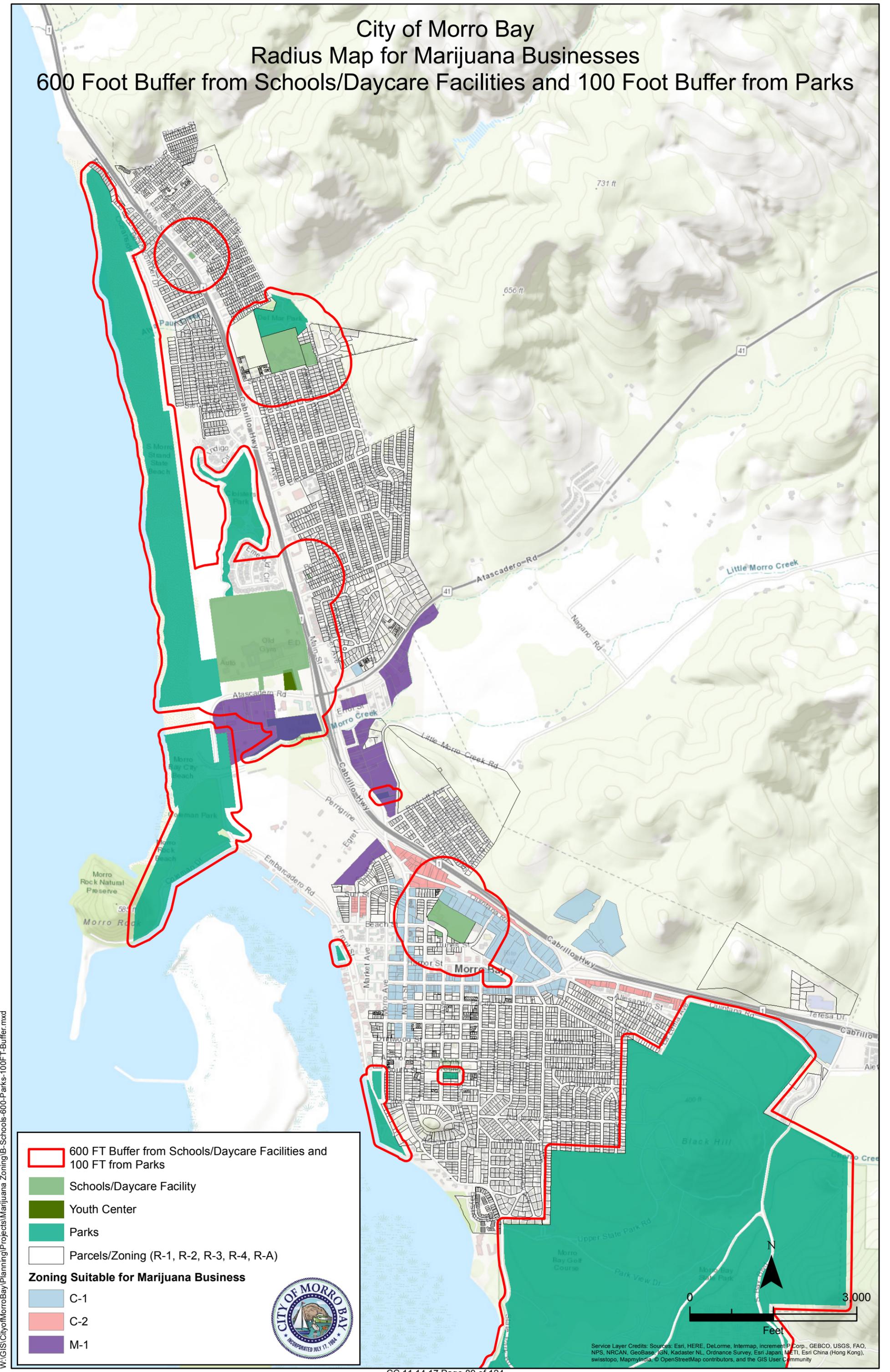
The Council Cannabis Subcommittee, with input from staff, recommends that the City Council affirm the recommendations above, or provide further direction, for a cannabis ordinance to be brought back to City Council for introduction and a first reading on October 24, 2017. The Subcommittee recommendations 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/Daycare Facilities and 100 Foot Buffer from Parks



-  600 FT Buffer from Schools/Daycare Facilities and 100 FT from Parks
  -  Schools/Daycare Facility
  -  Youth Center
  -  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

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AGENDA NO: C-2

MEETING DATE: November 14, 2017

# Staff Report

**TO:** Honorable Mayor and City Council                      **DATE:** November 6, 2017

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

**SUBJECT:** Consideration of Proposal by and Approval of Contract with Water Works Engineers for Engineering Design Services for the Water Reclamation Facility (WRF) Lift Station and Offsite Pipelines

## **RECOMMENDATION**

Staff recommends the City Council:

1. Review the report and staff presentation.
2. Review the recommendation from staff and WRFCAC to award a contract to Water Works Engineers for Engineering Design Services for the WRF Lift Station and Offsite Pipelines.
3. Recommend the City Council authorize the City Manager to execute an agreement for the amount of \$1,353,574, with a ten-percent contingency for a total authorization of \$1,488,931.

## **ALTERNATIVES**

Review the proposed scope, budget, and schedule and provide any direction to staff for revision.

## **FISCAL IMPACT**

Water Works Engineers proposes to complete all work under the Engineering Design contract on a time and materials basis with a budget per task order that will not be exceeded without receiving written authorization from the City.

The City budgeted \$1.2M in FY 2016/17 for Lift Station Design services as part of the Water Reclamation Facility Capital Project Budget. The agreement includes construction-phase engineering services of \$182,680, which was anticipated for 2019 through 2021 but not included in this fiscal year's budget.

As discussed in Table B-1 from the Updated Site Comparison Report (2017, MKN), 10% of construction cost was assumed for lift station and pipeline design services (\$13,460,000), with an estimated design cost of \$1,346,000 including construction-phase engineering services (within approximately one-half of one percent of the proposed agreement amount).

## **BACKGROUND/DISCUSSION**

The WRF Project would include construction of a new facility with advanced treatment at the preferred South Bay Boulevard site, as selected for planning and permitting at the September 26, 2017, City Council meeting. It also would include construction of a new lift station near the terminus of the existing City wastewater collection system, a raw wastewater pipeline (or "force main") to the preferred South Bay Boulevard site, and a brine and wet weather discharge pipeline

to the existing WWTP ocean outfall.

On January 31, 2017, the City of Morro Bay released a Request for Proposal (RFP) for Engineering Design Services for the new WRF Lift Station and Offsite Pipelines. The RFP requested the proposing engineering firms address the following:

*The WRF Lift Station and Offsite Pipelines Project (Project) is part of a major capital improvement project intended to replace the existing Morro Bay-Cayucos WWTP with a new WRF. A lift station is required to convey the City's raw wastewater from the terminus of the existing collection system (the existing WWTP location) to the location of the proposed WRF.*

*The major design tasks for the Project, summarized below, are also discussed in more detail in the City's Draft WRF Master Plan.*

- *Coordination with City for selection of lift station location*
- *Hydraulic Analysis*
- *Pump selection*
- *Wet well design*
- *Odor control design*
- *Design of backup power supply*
- *Pipeline alignment verification*
- *Force main pipeline design*
- *Brine discharge pipeline design*

*Professional engineering design services for the Project will include:*

- *Review and verification of the preliminary design criteria presented in the Draft WRF Master Plan*
- *Development of a Site Alternatives Study to finalize selection of the lift station site*
- *Preparation of a Concept Design Report*
- *Preparation of draft construction documents including plans, specifications and cost opinions at the 60%, 90% completion milestones*
- *Preparation of final construction documents including plans, specifications and cost opinions*

The following summarizes the timeline for the selection process:

- WRFAC reviewed the RFP at the January 3, 2017, meeting and selected members Steve Shively and Valerie Levulett to serve on the proposal review and selection committee.
- A non-mandatory pre-proposal meeting was advertised in the RFP and sponsored by the City on February 9, 2017, and was attended by representatives from various consulting firms.
- Four proposals were received on March 8, 2017, by Cannon Corporation, MNS Engineers, Inc., Rick Engineering, and Water Works Engineers.
- On March 27, 2017, the review and selection team met to discuss the proposals and any questions that the team might want the proposers to address during the interview process.
- An interview for each proposer was held on April 10, 2017.

The proposals and interviews for the proposers were evaluated based on the following criteria:

- Understanding of the scope of work
- Past performance and related experience of the firm
- Expertise of technical and professional team members assigned to the project
- Proposed project approach
- Recent experience in successfully performing similar services
- Demonstrated ability to conform to City requirements

Water Works Engineers was selected unanimously, based on their qualifications and project understanding, by the selection committee, which consisted of Joe Mueller (City Utilities Manager), Rob Livick (Public Works Director), Mike Nunley (WRF Program Manager), Valerie Levulett (WRFCAC member), and Steve Shively (WRFCAC member).

City staff did not proceed with final negotiation of the scope and budget until City Council selected the South Bay Boulevard as the preferred project site at the September 26 Council meeting. Staff has spent the past few weeks finalizing the scope, budget, schedule, and agreement with Waterworks Engineers.

The City typically develops professional services authorizations with a 10% contingency to cover additional, unforeseen services that may be required as a project proceeds. The base fee requested by Water Works Engineers is \$1,353,574, with a ten-percent contingency for a total authorization of \$1,488,931.

One of the questions discussed at prior meetings has been: why this part (*lift station and pipelines*) of the process is being addressed separately from the design-build process. Some members of the community have opined the City would save money by handling the lift station and pipelines as a design-build project.

From nearly project onset, City staff has continued to recommend proceeding with this part of the project as a conventional design-bid-build effort. That means a designer and contractor are selected under separate processes and they work under separate agreements. There are several reasons for this:

- Many more designers and contractors can compete for this smaller component of the project. More local engineering firms and contractors can also compete. That helps reduce cost.
- The pipelines and lift station require development of detailed design plans for City review, since both will be constructed in areas where utilities and other structures could be in conflict and traffic control will be significant concerns. Detailed design plans are required for planned crossings at Highway 1 to acquire encroachment permits from CalTrans. In their land-use regulating authority, the Planning Commission and City Council will need to closely review plans for the lift station building and site since they will be visible from Highway 1 and from businesses and residences around the City.
- The lift station will require detailed plans for connections to the existing sewer system and to allow development of phasing plans to keep the existing plant in operation until the new WRF and lift station are completed.
- The lift station and pipeline design and construction are not on the critical path for the schedule. No time would be saved for the overall project to utilize the design-build procurement process for this portion of the work.

- The lift station and pipeline segments to be included in this design/bid/build package are not on the preferred South Bay Boulevard site. All project components currently anticipated on the preferred South Bay Boulevard site will be included in the design-build procurement, since it is more cost-effective for one team to perform all the work on the selected site.

### **CONCLUSION**

Staff recommends award of the contract for Engineering Design Services for the Lift Station and Offsite Pipelines to Water Works Engineers, based on the solicitation and review process that has taken place since January 2017.

### **ATTACHMENTS**

1. Draft Agreement Including Proposed Scope and Budget from Water Works Engineers for Engineering Design Services

## CITY OF MORRO BAY

### AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made, by and between, the City of Morro Bay, a municipal corporation (“City”) and Water Works Engineers, LLC, an Arizona limited liability company (“Consultant”). In consideration of the mutual covenants and conditions set forth herein the parties agree as follows:

1. TERM

This Agreement shall commence on November 15, 2017, and shall remain and continue in effect until tasks described herein are completed, but in no event later than March 30, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of their ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. CITY MANAGEMENT

City’s Public Works Director shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to Consultant. City’s City Manager shall be authorized to act on City’s behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change Consultant’s compensation, subject to Section 5 hereof.

5. PAYMENT

(a) City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, and based upon actual time spent on the above tasks. That amount shall not exceed One Million Three Hundred Fifty-three Thousand Five

Hundred Seventy-four Dollars and No Cents (\$1,353,574.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed One Hundred Thirty-five Thousand Three Hundred Fifty-seven Dollars and No Cents (\$135,357). Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days after receipt of each invoice as to all non-disputed fees. If City disputes any of Consultant's fees, then it shall give written notice to Consultant within fifteen (15) days of receipt of an invoice of any disputed fees set forth on the invoice.

## 6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Consultant at least ten-days' (10-days') prior written notice. Upon receipt of said notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City suspends or terminates a portion of this Agreement, then such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, City shall pay to Consultant the actual value of the work performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, Consultant will submit an invoice to City pursuant to Section 5.

## 7. DEFAULT OF CONSULTANT

(a) Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date Consultant is notified of default and can terminate this Agreement immediately by written notice to Consultant. If such failure by Consultant to make progress in the performance for work hereunder arises out of causes beyond Consultant's control, and without fault or negligence of Consultant, then it shall not be considered a default.

(b) If the City Manager or his/her delegate determines Consultant is in default in the performance of any of the terms or conditions of this Agreement, then he/she shall cause to be

served upon Consultant a written notice of the default. Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

## 8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, and full payment by City for services performed pursuant to, this Agreement, all final work product such as documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of Consultant. With respect to computer files, Consultant shall make available to City, as a service in addition to those set forth herein, at Consultant's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

## 9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent same are caused by any negligent act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement. City agrees to hold harmless and indemnify Consultant from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse or reuse by others of the computer files or any other document provided by Consultant under this Agreement.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

## 10. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached to and part of this agreement.

## 11. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall at all times observe and comply with applicable legal requirements in effect at the time the drawings and specifications are prepared. City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City if Consultant, or any of its officers, employees, agents, or subconsultants are served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within City. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate with City by providing the

opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442  
Attention: Rob. Livick, PE/LS  
Public Works Director

To Consultant: Water Works Engineering, LLC  
1730 S. El Camino Real Suite 280  
San Mateo, CA 94402  
Attention: Michael J. Fisher, PE

17. ASSIGNMENT

Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of City.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

19. GOVERNING LAW

City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over City.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MORRO BAY

CONSULTANT

By: \_\_\_\_\_  
Scott Collins, City Manager

By: \_\_\_\_\_  
(Signature)

Attest:  
  
\_\_\_\_\_  
Dana Swanson, City Clerk

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

Approved As To Form:

\_\_\_\_\_  
Joseph W. Pannone, City Attorney

**City of Morro Bay (CITY or CLIENT)  
Consultant Services Agreement with  
Water Works Engineers (CONSULTANT, ENGINEER, Water Works, or WWE)**

**Scope of Engineering Services for the Water Reclamation Facility (WRF) Lift Station and Offsite Pipelines**

**PROJECT DESCRIPTION**

The project specifics are as follows:

<b>Location</b>	Morro Bay, CA
<b>Facility Name</b>	WRF Lift Station and Offsite Pipelines
<b>Facility Type</b>	Wastewater (WW) Pump Station and Raw WW and Treated Effluent Pipelines
<b>Facility Components</b>	<ul style="list-style-type: none"> <li>• 0.5 to 7 MGD WW Pump Station with Sanks trench style self-cleaning wet well with separate electrical controls building with Radio SCADA communications</li> <li>• Electrical generator for backup power</li> <li>• ~14,500-lineal feet of raw wastewater forcemain from LS to WRF property line</li> <li>• ~14,500-lineal feet of treated effluent pipeline from WRF property line to ocean outfall connection structure (assumed to be on Atascadero Rd just west of the existing City WWTP)</li> <li>• WW gravity pipeline(s) from existing collection system to Pump Station</li> <li>• Trenchless crossing of California State Highway 1 (and potentially Morro Creek and Morro Bay Blvd &amp; Quintana Rd. intersection)</li> <li>• Connection structure for effluent pipeline to existing ocean outfall</li> </ul>
<b>General Project Objectives</b>	<ul style="list-style-type: none"> <li>• Develop, Assess, Identify and Recommend: <ul style="list-style-type: none"> <li>○ Site and design criteria for WRF Lift Station</li> <li>○ Alignment and design criteria for forcemain and effluent pipeline</li> <li>○ Clearance considerations for future recycled water main that may be added in future (or for which design contract may be amended)</li> </ul> </li> <li>• Complete final design of recommended lift station and pipelines with focus on cost effectiveness; long term quality and viability; and schedule compliance. <ul style="list-style-type: none"> <li>○ Incorporate City staff input into final design</li> <li>○ Coordinate final design with WRF design and construction</li> <li>○ Consider transition from existing lift station to future lift station in developing the contractor's coordination requirements for the contract documents</li> </ul> </li> <li>• Provide field and office support for final design, including: <ul style="list-style-type: none"> <li>○ Survey</li> <li>○ Geotechnical</li> <li>○ Existing utility research and potholing</li> <li>○ Easement identification, recommendations, and assistance (Property acquisition by other City resources)</li> <li>○ Permitting and Environmental assistance (EIR by other City resources)</li> </ul> </li> <li>• Deliver construction phase oversight to support successful implementation of design</li> </ul>

## **ASSUMPTIONS**

The following assumptions have been made in the development of this scope and fee. Additional Task Orders would be required to perform any of the work which is not listed in this scope or has been specifically identified as out of scope in the assumptions below:

1. Environmental Permitting assumptions: This project is covered under the WRF project specific Environmental Impact Report (EIR). ENGINEER will support CITY in limited areas of EIR development, however, no special studies or CEQA document preparation is included in this scope of work except as specifically delineated.
2. Special Use and Building Permitting assumptions: ENGINEER will develop plans and technical specifications in accordance with design criteria developed and delineated during preliminary and final design with input from City staff. 100% design submittal shall be used by City to acquire special use and/or building permits, as required by City and other 3<sup>rd</sup> party building officials and/or stakeholders. ENGINEER shall rely on City to identify and assist with scheduling a review meeting with the building and permitting officials to address 100% design submittal review comments (if any) from those officials. The cost of building permits will be paid for by City and all permits will be applied for with City as the applicant. If re-submittal for building department approval is required, Final Bid Documents shall be used for this purpose and shall address building review comments. Re-submittals to address new comments (if any) on Final Bid Documents shall be considered additional services.
3. Geotechnical, surveying and potholing assumptions: These services have been scoped in this project based on preliminary site and alignment alternatives. Should the preferred site and/or alignment require additional survey, field potholing and geotechnical investigations beyond those defined herein, those shall be completed as additional services.
4. Project Funding assumptions: City is handling all project funding. If a project funding source has specific contractual requirements, City shall inform ENGINEER and ENGINEER will address those requirements in the development of the design. ENGINEER shall assume funding will be provided by the State Revolving Fund and/or WIFIA programs. City also intends to pursue a United States Bureau of Reclamation WaterSmart grant.
5. Project Bid Packaging assumptions: The project will be packaged as one project (WRF LS and Pipelines). Splitting the project into multiple bid packages shall be considered additional services.
6. Engineering Services During Construction assumptions: The duration of construction and level of on-site Engineering Services During Construction specifically defined in the scope will be adequate for all parties (accommodating Contractor schedule, Regulatory Agency requirements, City requirements, etc.). Additional project duration or requirements for Services During Construction will require additional scope. This scope of services assumes that Construction Management Services (Quality Control, Inspection and documentation of construction, Contract Management, Negotiations and Payment of Change Orders, Contractor correspondence coordination, etc.) will be provided separately by City personnel, under a separate consultant services agreement, or as an additional service to this consultant services agreement.

## **SCOPE**

The following services will be provided by CONSULTANT:

<b>Task</b>	<b>Title</b>
1	Project Management
2	Site Alternatives Evaluation
3	Easement Acquisition Support
4	Survey, Geotechnical Investigation, and Potholing
5	Concept Design Report
6	Construction Documents and Specifications
7	Permitting Support
8	Engineering and Services during Construction

## Task 1: Project Management

Water Works Engineers will be responsible for providing project management and quality control for the services described herein. The following outline describes the services that will be provided under this task:

1. Project Communication and Control
  - A. Coordination/documentation of key team activities & meetings, including agenda and meeting notes
  - B. Coordination and consultation with appropriate regulatory agencies (Caltrans,
  - C. Coordination and consultation with project stakeholders (City, WRFCAC, City Council, Caltrans, PG&E)
  - D. Schedule maintenance
  - E. Monthly communication of project progress and issues to City staff / WRF Program Manager
    - Summary of work accomplished each month
    - Description of current / future activities and schedule update for each task/sub-task
    - Identification of problem areas and corrective actions
    - Invoice showing total contract, invoice amounts, cumulative amounts and remaining budget, as well as the following:
      - Hours billed by individual Water Works staff member for the billing period, including dates.
      - Subconsultant invoices.
      - Receipts for direct costs.
    - Invoice shall be submitted within 90 days of work being performed, unless authorized by PM team or City in advance. It is understood that services provided by Water Works subconsultants will be billed as expeditiously as possible, but in some instances, may be delayed based on receipt of invoice for completed work. The City operates and manages budget based on their fiscal year, so an invoice that covers all ENGINEER's remaining expenses through the end of the City's fiscal year (June 30) will be required within 60 days of the end of the fiscal year.
  - F. Availability to City staff for meetings, updates or to discuss concerns at any time
  - G. Communication and file maintenance
    - Standardized electronic and hard copy file maintenance by entire WWE team
    - Water Works will promote communication and exchange of files, including use of City's Procore project management system.
      - City will provide Water Works access to Procore
2. Quality Assurance/Quality Control
  - A. Assign QA/QC Manager for project – Sami Kader
  - B. Develop and implement project specific work plan with the entire project team, including Water Works Engineers Quality Assurance/Quality Control Policy
  - C. Ensure QA/QC procedures are being followed, recorded and reported to the City at each step in the design process
3. Facilitation of progress / coordination meeting with City staff and WRF Program Manager. Drafts of all major deliverables will be reviewed with the CLIENT at Workshops. Following the Workshop, comments from the CLIENT will be addressed and the document made FINAL and delivered to CLIENT.
  - A. Kick-off Meeting
  - B. Alternatives Site Analysis Workshop (coordinated with pertinent Task 2 workshops)
  - C. Route Study / Lift Station Site Selection Review Workshop (coordinated with Task 2 workshops)
  - D. Design Confirmation Meeting (coordinated with pertinent Task 2 workshops)
  - E. Concept Design Report Workshop
  - F. 60% Design Submittal Review Workshop
  - G. 90% Design Review Workshop
4. Presentation to Public Entities

ENGINEER will submit draft presentation materials to City staff / Program Manager one week prior to presentation date. Mutually agreed upon revisions will be incorporated and final documents produced.

  - A. WRFCAC (Qty. 2)
  - B. City Council (Qty. 2)
  - C. City Planning Commission (LS architecture) (Qty. 2)

## Task 2: Site Alternatives Evaluation

WWE will conduct a series of focused, topic-specific workshops in the development of the Site Alternatives Assessment. These workshops will not have specific deliverables, but are intended to be information gathering and detailed discussion meetings regarding each topic. At the City's option, several workshop topics can be combined into a single workshop. However, breaking up these topics is our proposed approach to keep workshops relatively short and make best use of time. The proposed workshops are as follows:

1. Workshop 1: Site Alternatives, Pipeline Routes and Construction Methodology Review
  - A. WRF LS Sites Confirmation
    - i. WRF MP Site 1A
    - ii. WRF MP Site 5A
  - B. Pipeline Route Alternatives Confirmation
    - i. WRF MP "west" Alignment
    - ii. Modified "west" alignment along Embarcadero to by-pass Quintana / Morro Bay Blvd
2. Workshop 2: Hydraulics, WRF Master Plan Design Criteria Review and Modifications
  - A. Detailed review of flow analyses from the WRF MP to confirm Peak Hour Flow and Peak Day Flow to ensure "feasible" alternatives are vetted and potential savings identified and realized in design.
  - B. Wetwell Design, Pump Type and Quantity (3+1 same size or 2+1 Wet & 1+1 Dry or other arrangements as deemed appropriate by ENGINEER and City)
    - i. Example 3D "Rotators" of similar station layouts
  - C. Pipeline Design, Size and Quantity (single versus redundant / pressurized & gravity segments)
3. Workshop 3: Desktop Geotechnical Evaluation and Trenchless Feasibility, Pipeline Route Fatal Flaws
4. Workshop 4: Environmental Constraints and EIR Support Review and Confirmation
5. Workshop 5: Pipeline Route Analysis
  - A. Discussion of pipeline route constraints:
    - i. Accessibility / O&M
    - ii. Constructability / Traffic Impacts
    - iii. Construction Method
    - iv. Environmental / Permitting
    - v. Utility Coordination
    - vi. Right-of-Way / Easement / Encroachment
    - vii. Geotechnical
    - viii. Key stakeholder coordination
    - ix. Other identified constraints
  - B. Project Location (Map of project location and key areas of concern)
  - C. Project Hydraulics (System design flows, peaking factors, dry weather versus wet weather, cleaning velocities, hydraulic profile, maximizing capacity versus minimizing depth, etc.);
  - D. Pipeline Planning (Connections/transition between existing and new pipe segments, alignment, pipe materials, trenchless versus traditional construction – with emphasis on congested areas, transportation crossings, and deep segments, etc.);
  - E. Construction standards and project delivery (review City standards and if deemed necessary possible modifications required, etc.);
  - F. Schedule confirmation (confirm critical path items, Environmental processing, encroachment permit processing, Right-of-Way procurement, etc.);
  - G. Confirm stakeholders (City, gas pipe operators, Caltrans, etc.) design requirements, discuss key areas of concern, and requirements of specific areas (bike path behind power plant, creek, roundabout, Hwy 1, etc.);
  - H. Analysis Methodology and Results
    - i. "Hard" Construction Costs (25% contingency level)
    - ii. "Soft" Constraint Costs
6. Workshop 6: Pump Selections Discussion and General Mechanical Layout
  - A. Updated DRAFT 3D "Rotators" of station layouts

7. Workshop 7: Control Building Architectural, Odor Control, Back-Up Power, Aesthetics
  - A. Draft visual simulations of building produced and delivered at this workshop
  - B. Final Draft visual simulation of building will be prepared under Task 5 in Design Concept Report.
  - C. FINAL visual simulation of building will be based on Final Design and produced under Task 6.
8. Workshop 8: Operations Planning (Bypass System, Pump and Electrical System Redundancy, Piggging, etc.)
9. Workshop 9: Electrical Systems, Local Controls and SCADA
10. Workshop 10: Construction Sequencing

Workshop presentations shall be a succinct, clear, and concise with alternatives and resultant design criteria presented as PowerPoint slides to the City at the Workshop. Water Works will field and address City questions and comments during the workshop. Discussion and decisions made at the Workshop(s) will serve several key functions as follows:

1. Identify all engineering issues and constraints and recommended resolutions;
2. Provide detailed guidance for effective and efficient execution of preliminary and final design;
3. Illustrate tie-in requirements and expectations so City can confirm;
4. Calculate cost estimations for each alternative (including both “hard” construction costs and “soft” non-construction constraint costs);
5. Coordinate environmental constraints and requirements into site assessment and route selection;
6. Confirm field studies and analysis included in scope of services is sufficient to provide design criteria for Final Design of preferred lift station and pipeline alternatives; and
7. Provide a detailed guidance on any permit, encroachment, right-of-way, easement requirements.

The resulting information gathered from the workshops, supported with select field investigations and office evaluations (Tasks 3 & 4) will be used to produce draft and final Concept Design Report (Task 5).

Task 2 Deliverables:

- ✓ Workshop PowerPoint (or similar electronic deliverable), workshop summary notes and decision log (15 copies of final work products and PDF electronic copy)

### **Task 3: Easement Acquisition Support**

WWE will provide property rights procurement support for the Project. For the CLIENT to complete the proposed sewer project permanent easement (PE), temporary construction easement (TCE), and access rights (right of entry, ROE) must be acquired from several separate parcels. Water Works and our survey Subconsultant, Praxis Consolidated International, Inc., will assist with easement and property rights research; preparation of schematics, maps and descriptions necessary for the City’s acquisition agent to complete notice, appraisal, negotiation and easement procurement.

1. Preliminary Title Report(s)
 

Praxis Consolidated International, Inc. will obtain preliminary title reports as soon possible for the following assessor parcels to identify existing easements, leases, and other encumbrances that may affect the alignment of the pipeline. Most the proposed pipeline route(s) appear to be in existing public road right of way. Small portions of the proposed lift station and pipeline route will affect about eight parcels. Praxis will obtain Preliminary Title Reports (PTR) from a local title company that will cover the affected parcels. Review PTR to confirm ownership information and plot exception items to evaluate possible impact on design and right of way acquisition. The intent of this work is to identify potential significant delays related to easement procurement (potentially “fatal flows”) for final design. The WRF MP “west” route assumes the pipeline(s) will follow a bike path after crossing the creek near the City ballfields. Preliminary analysis indicates the underlying property is owned by the power plant company and City ownership of an existing easement or other agreement for the bike path may be key to the feasibility of this alignment and associated construction cost and timeline.

  - i. 066-331-040
  - ii. 066-331-036

- iii. 068-411-002
- iv. 068-411-007
- v. 068-411-017
- vi. 068-412-001
- vii. 068-412-010
- viii. 073-100-017

The remaining segments of the proposed “west” pipeline appears to fall within street right of ways. If that changes (or if the alternate Embarcadero alignment does not have similar characteristics), we recommend obtaining preliminary title report for any other parcels affected by an alignment change. Eight PTRs at an assumed cost of \$750/PTR are included in this scope of services and fee.

2. Plat and Legal Description(s)

Praxis Consolidated International, Inc. will use proposed right of way from design team to calculate permanent and temporary easements. Prepare proposed right of way and appraisal maps. Coordinate with City during appraisal and acquisition process. Prepare legal descriptions and plats for each negotiated permanent and temporary easement or acquisition. ENGINEER has included preparation of up to nine legal descriptions with map exhibits.

Task 3 Deliverables:

- ✓ PTRs (scanned electronic copies)
- ✓ Plat and Legal Description (PDF electronic copies of Draft, 1 hard copy of FINAL signed and wet stamped and PDF electronic copy)

#### **Task 4: Survey, Geotechnical Investigation, and Potholing**

WWE teaming partners will provide the requested field studies in support of preliminary and final design.

1. Topographical Survey and Base Mapping for Design – Praxis Consolidated International, Inc. will complete topographic mapping utilizing aerial mapping augmented by ground survey and research. The area to be mapped will be the pipeline corridor from the existing WWTP area to the “South Bay Boulevard”, as well as the selected WRF Lift Station Site. The pipeline reach will include a strip approximately between edges of existing right of way (from property boundary, fence or other inaccessible or immovable feature to similar limit on alternate side) along the proposed route.

A. Aerial Mapping

Services will be executed using softcopy digital stereo plotters. The mapping scale will be 1"=40' with 1' CI. This job will consist of approx. 2.97 miles 150' wide and developed in an AutoCAD (.dwg) format. (Note that while mapping scale will be 1"=40', pipeline plan and profile design sheets will be produced at a more refined scale, likely 1"=20', to promote ease of viewing existing utilities and proposed improvements in tight utility corridors along the pipe alignment.)

B. Ground Survey

Services will include development of a control network survey that will serve as the basis of mapping surveys and future construction layout and as-built surveys. Notification of affected landowners and arrange access for ground survey. Set ground control and coordinate with aerial mapping subconsultant. Perform supplemental field surveys to obtain additional detail as directed by WWE. Work will include “dipping” of storm drainage and culverts crossing of roads to obtain inverts.

C. Existing Utility Research and Subsurface Utility Engineering

Services will include coordination with existing utility providers to obtain mapping necessary to display these utilities on base mapping. ENGINEER team will request record drawings and schematics from City, utilities, locate paint markings by City and other utilities if available, request record drawings and schematics from Caltrans, SLO County, and other identified utility providers near the project work. ENGINEER team will identify utility providers in the project area and prepare utility information request letters on City letterhead. Follow up and organize maps and atlases received and post for use by the project team. Perform field survey of visible surface utility features, including cover, paint, patches and signs. Open sewer and storm manholes and inlets to measure invert depths. Compute alignments of subsurface utilities from record maps and atlases. Subsurface alignments will be

oriented and adjusted to the topographic mapping using the surveyed locations of surface features where possible. (Quality Level C&D) Consultant team will perform field survey as deemed necessary by ENGINEER after utility location consultant uses underground locating techniques, or performs air vacuum potholing. Adjust subsurface mapping with information. (Quality Level B & A)

D. Right of Way Mapping

Services will include research record maps, right of way maps, and recorded deeds. Perform field survey to search for existing monuments and obtain measurements. Analyze measurements, maps and found monuments, and determine location of existing public street right of way and parcel lines along pipeline route and lift station site. ENGINEER team will prepare Record of Survey map to document land net and right of way survey as required by PLS Act. These services will be provided in two phases. Phase 1 will include initial records research and mapping analysis in support of pipeline alignment feasibility assessment. Phase 2 will include record deed research and Record of Survey map to document land net and right of way survey in support of Design Concept Report and Final Desing of selected alignment.

E. Biological & Cultural Resource Mapping

ENGINEER team will add existing and readily available biological and cultural resource features (provided in AutoCAD compatible electronic format) from EIR consultants to project mapping as deemed necessary by ENGINEER and City. An allowance has been included in the scope of services and fee under Task 7 specific to additional mapping and work related to environmental requirements that may be requested by City. See Task 7 for additional details.

2. Geotechnical Investigation – Yeh and Associates, Inc will perform a program of data review, field exploration, laboratory testing and engineering analysis and prepare a Preliminary Geotechnical Report and a Geotechnical Report for the design of the new lift station and pipelines. Services will be provided in two phases. Phase 1 - Preliminary Geotechnical Services to support lift station site selection and preferred pipeline route, and Phase 2 - Design Geotechnical Services for design of preferred improvements.

A. Phase 1 - Preliminary Geotechnical Services

- i. Initiation and Review Existing Data. Consult with the design team and City to coordinate project initiation, collect project information and existing geotechnical data available from the site, and to request a map showing the layout of the improvements and pipeline alignment be provided for use in planning the field exploration program. Collect available geologic and geotechnical data from published maps; reports for the existing wastewater treatment facility; Caltrans Log of Test Borings for the Highway 1 bridges over Morro Creek, the Main Street Undercrossing at Highway 1, the South Bay Boulevard Overcrossing at Highway 1; and previous geotechnical studies prepared for the City for public improvements along the alignment if available. Update and submit a Field Exploration Plan for the project showing the locations of planned field explorations and phasing of exploration.
- ii. Coordination, Health and Safety, and Permits. Coordinate the locations of field exploration with the design team and City relative to access and existing buried utilities or structures. Mark the locations along the alignment and contact Underground Services Alert (USA) to notify utility companies. Prepare a health and safety plan for the field work to be performed by Yeh. Procure an encroachment permit from the City of Morro Bay for work in city streets. Coordinate field exploration with the subcontractors and procure well permits from the County of San Luis Obispo for qualifying borings.
  - a. Borings for the Highway 1 pipeline crossing will be drilled outside of the Caltrans right-of-way and no encroachment permit with that agency will be required. We assume that if any environmental studies, reports or monitors are required for this work that those will be provided by others. Yeh will not be responsible for locating utilities or buried structures or damages resulting from encountering unmarked or improperly marked utilities for the project.
- iii. Field Exploration Program. Yeh will provide a 3-day drilling program to explore the subsurface conditions at the lift station site, Morro Creek Crossing, Quintana Road/Morro Bay Boulevard

Crossing, and Highway 1 Crossing. During this period, we expect to drill one (1) boring for the lift station and three (3) borings (one each) at the trenchless crossings to depths of 40 to 60 feet. Traffic control will be provided by a subcontractor (Associated Traffic Safety of Atascadero, California) and will consist of lane closures with flagging for boring locations. The multi-use path should be closed during drilling operations because of the restricted width of the path relative to the rig.

- a. Drilling will be subcontracted to S/G Drilling Company of Lompoc, California. The borings for the pipeline and lift station will be drilled using hollow-stem augers and supplemented with drilling mud when needed. Borings will typically be sampled at 5-foot intervals by driving 2-inch or 3-inch split spoon samplers using Standard Penetration Test protocols or by pushing thin-walled (Shelby) tubes. The types and depths of the samples may be varied depending on subsurface conditions. Bulk samples will be collected from auger flights during drilling. Pavement sections will be measured and documented where borings are drilled in pavement. Excess spoils and drill fluid from the drilling will be drummed and Yeh will arrange for disposal of drummed material as needed. The cost for required testing and disposal of drums has been included.
  - b. Borings for the preliminary phase of work will be completed as standpipe piezometers (2-inch diameter PVC) equipped with flush mount or elevated locking well-heads as needed. Yeh will obtain field measurements of groundwater depths in the piezometers using a hand-held well-sounder on a monthly basis for 12 months. Data will be presented as updated in monthly memorandums and in the design Geotechnical Report.
  - c. Perform laboratory tests on selected samples collected from the drilling. Tests for classification, strength, corrosion, consolidation, and compaction will be performed on selected samples recovered from the borings. The types and numbers of tests will be selected based on the results of the field exploration program.
- iv. Geotechnical Constraints Report. Yeh will prepare a Preliminary Geotechnical Report (Geotechnical Constraints Report / Desktop Study) for the design of the project. The report will describe the project understanding, existing site conditions, work performed, and subsurface conditions encountered. The report will include the data collected during the field and laboratory test program including boring logs, laboratory test results, and graphics showing the boring locations. The report will be prepared and issued in portable document file (PDF) format to the City and design team. The report will provide conclusions and recommendations regarding:
- a. Geologic setting;
  - b. Soil and groundwater conditions encountered;
  - c. Potential for the pipeline alignment to be impacted by geologic hazards such as from seismic shaking, faulting, liquefaction, coastal flooding or tsunamis, or landsliding based on review of published data and the work performed;
  - d. Subsurface conditions and suitability of using jack and bore, HDD, or microtunneling to complete the installation;
  - e. Ground conditions relative to groundwater, hard rock, presence of cobbles or boulders, heading stability, caving or running ground;
  - f. Preliminary gassy estimation per tunneling guidelines;
  - g. Results of preliminary seismic hazard analyses;
  - h. Estimated liquefaction potential and seismic settlement based on the results of the field exploration program and the need to include any special geotechnical considerations or mitigation in the design of the project;
  - i. Suitable foundation type(s) for the subsurface conditions encountered; and
  - j. Construction considerations regarding excavation characteristics of soil encountered, temporary slopes and shoring, and construction dewatering.
- B. Phase 2 – Design Geotechnical Services

Once the final LS site layout and preferred pipeline route for the project has been determined, Yeh will prepare a design-level Geotechnical Report for the design of the project. The scope of the design-level work should be reviewed at that time to evaluate of the scope of the proposed geotechnical services is sufficient to address the proposed improvements, any special mitigations that should be included in the project based on the results of the preliminary study, or changes that may occur to the project.

- i. Initiation and Review Existing Data. Consult with the design team and City to update project alignment and design. Update and submit a Field Exploration Plan for the project showing the locations of planned field explorations for Phase II.
- ii. Coordination, Health and Safety, and Permits. Coordinate the locations of field exploration with the design team and City relative to access and existing buried utilities or structures. Mark the locations along the alignment and contact Underground Services Alert (USA) to notify utility companies. Prepare a health and safety plan for the field work to be performed by Yeh. Procure an encroachment permit from the City of Morro Bay for work in city streets. Coordinate field exploration with the subcontractors and procure well permits from the County of San Luis Obispo for qualifying borings.
  - a. We assume that if any environmental studies, reports or monitors are required for this work that those will be provided by others. Yeh will not be responsible for locating utilities or buried structures or damages resulting from encountering unmarked or improperly marked utilities for the project.
- iii. Field Exploration Program. Yeh will provide a 3-day drilling program to explore the subsurface conditions along pipeline alignment not investigated in Phase I. The field exploration program will consist of drilling and sampling at no more than approximately 1,500-foot intervals along the pipeline alignment. During this period, we expect to drill twelve (12) borings along the offsite pipeline route to depths ranging from 20 to 40 feet. Traffic control will be provided by a subcontractor (Associated Traffic Safety of Atascadero, California) and will consist of lane closures with flagging for boring locations along Main Street, Quintana Road and on Atascadero Road. The multi-use path should be closed during drilling operations because of the restricted width of the path relative to the rig.
  - a. Drilling will be subcontracted to S/G Drilling Company of Lompoc, California. The borings for the pipeline will be drilled using hollow-stem augers and supplemented with drilling mud when needed. Borings will typically be sampled at 5-foot intervals by driving 2-inch or 3-inch split spoon samplers using Standard Penetration Test protocols or by pushing thin-walled (Shelby) tubes. The types and depths of the samples may be varied depending on subsurface conditions. Bulk samples will be collected from auger flights during drilling. Pavement sections will be measured and documented where borings are drilled in pavement. Coring of boring locations will also be provided for borings on Quintana Road south of the intersection of Morro Bay Boulevard where concrete is known to be under the asphalt concrete pavement. Borings will be backfilled with bentonite cement grout, cement slurry and/or approved native fill in accordance with permit requirements. Borings drilled in roadway areas will be capped with rapid setting quickcrete. Excess spoils and drill fluid from the drilling will be drummed and Yeh will arrange for disposal of drummed material as needed. The cost for required testing and disposal of drums has been included.
  - b. Perform laboratory tests on selected samples collected from the drilling. Tests for classification, strength, corrosion, consolidation, and compaction will be performed on selected samples recovered from the borings. The types and numbers of tests will be selected based on the results of the field exploration program.
- iv. Evaluation and Draft – Geotechnical Report. Yeh will prepare a Geotechnical Report for the design of the project. The report will describe the project understanding, existing site conditions,

work performed, and subsurface conditions encountered. The report will include findings presented in the Preliminary Geotechnical Report, the data collected during the field and laboratory test program in both phases of work including boring logs, laboratory test results, and graphics showing the boring locations. Interpreted subsurface profiles will be prepared summarizing boring information along the pipeline route and at the trenchless installations. A draft of the report will be prepared and issued in portable document file (PDF) format for review by the City and design team. The report will provide conclusions and recommendations regarding:

- a. Geologic setting;
  - b. Soil and groundwater conditions encountered;
  - c. Groundwater elevations from standpipe piezometers;
- The design of the new pipelines:
- a. Foundation support for the pipe and subexcavation of the trench bottom, if needed;
  - b. Material and compaction requirements for bedding, pipe zone and trench backfill;
  - c. Suitability of the materials encountered in the borings for reuse as fill or backfill material;
  - d. Pipe buoyancy considerations relative to groundwater, flooding and liquefaction, if needed;
  - e. Typical trench detail for use with City standards;
  - f. Existing pavement thicknesses encountered and pavement structural section(s) for trench patching;
  - g. Backfill loading on underground conduits;
  - h. Soil moduli ( $E'$ ) for estimating pipe deflection;
  - i. Passive resistance,  $K_0$  and pipe-backfill friction to resist thrust along the pipe and for sizing thrust blocks, if needed;
  - j. Corrosion test data; and
  - k. Construction considerations regarding excavation characteristics of soil and rock encountered, temporary excavations, shoring requirements, and groundwater.

The design of trenchless pipe installations at Morro Creek, Quintana Road/Morro Bay Boulevard Roundabout, and Highway 1:

- o Subsurface conditions and suitability of using jack and bore, HDD, or microtunneling to complete the installation;
- o Ground conditions relative to groundwater, hard rock, presence of cobbles or boulder, heading stability, caving or running ground;
- o Preliminary gassy estimation per tunneling guidelines;
- o Jacking or thrust resistance for launching the pipe;
- o Monitoring requirements for settlement or heave; and
- o Frac-out potential and response planning.

Recommendations for design of the lift station and control building:

- o Seismic data for use with the California Building Code;
- o Mitigation of liquefaction using seismic settlement considerations, deepened foundations, pile support, or compaction grouting, if needed;
- o Grading and site preparation for surface structures (generator pad, odor control pad, and control building);
- o Stabilization and foundation preparation for the lift station considering depth of excavation, groundwater and subgrade conditions encountered;
- o Material and compaction requirements for backfill around the lift station;
- o Resistance to buoyancy forces associated with groundwater or flooding;
- o Shallow foundation design (allowable bearing resistance, estimated total and differential settlements considering static and seismic loads, and minimum footing embedment and widths);

- o Mat foundation design (allowable bearing resistance and subgrade modulus (spring constant) from settlement analyses);
  - o Expansive soil considerations;
  - o Resistance to lateral loads from friction and passive resistance;
  - o Lateral earth pressures for buried structures;
  - o Downdrag due to seismic settlement on buried structures, if needed;
  - o Construction considerations regarding excavation characteristics of soil encountered, temporary slopes and shoring, and construction dewatering.
- v. Final - Geotechnical Report. Prepare and issue the final Geotechnical Report incorporating comments and input from the design team. This scope of work assumes that the final report will not involve addressing new alignments, changes in the project or additional field exploration. One PDF and one (1) hard copy of the final report will be submitted unless otherwise requested.
- vi. Plan and Specification Review. Provide consultation and review project plans and specifications to confirm the geotechnical recommendations have been incorporated into the construction documents. Provide comments via email or memorandum, and review the revised plans to confirm the comments have been addressed. Issue a letter confirming that the construction plans have been prepared in general accordance with the Geotechnical Report.
3. Potholing - Based on previously completed tasks, ENGINEER will identify select utility locations where the proposed pipe improvements are near one another and more precise utility location data is required to avoid or mitigate conflict. ENGINEER will communicate these locations to CLIENT and confirm that expenditure of funds to locate utility is consistent with Client's desire to mitigate utility conflict risk on this project. Water Works utility potholing subconsultant, EXARO Technologies Corporation or other local utility locating firm as deemed appropriate by ENGINEER at time of work, will complete vacuum excavation to confirm underground utility location and depth. For budgeting purposes, our team has included three (3) days of vacuum excavation in the budget, where typical production is 4-8 pothole locations per day.

#### Task 4 Deliverables:

- ✓ Survey (AutoCAD electronic files incorporated into and delivered with FINAL Design)
- ✓ Geotechnical Report(s) (PDF electronic copies of Draft, 1 hard copy of FINAL signed and wet stamped and PDF electronic copy)

### **Task 5: Concept Design Report**

The resulting information gathered from the workshops, field investigations and office analysis will be used as the basis for the Concept Design Report, which shall include, at a minimum, the following:

1. Description of existing facilities, proposed new facility alternatives and the selected improvements;
  - a. Lift Station Site Alternatives and Selection Summary, including copies and/or reference to pertinent Task 2 workshop materials, meeting notes and decision logs.
  - b. Pipeline Route Study and Preferred Alignment Selection Summary, including copies and/or reference to pertinent Task 2 workshop materials, meeting notes and decision logs.
2. Design criteria;
3. Hydraulic analysis and pump schematic;
4. Electrical, controls, instrumentation, SCADA, HVAC, and power supply / backup power details;
5. Flood protection
6. Pipeline leak detection
7. Site layout considerations including vector truck access
8. Construction sequencing plan;
9. Schedule;

10. Cost opinion (with design and construction contingencies)
11. Major equipment cut sheets and catalog cuts; and
12. Summary of all field investigations (including survey, Geotech and potholing).

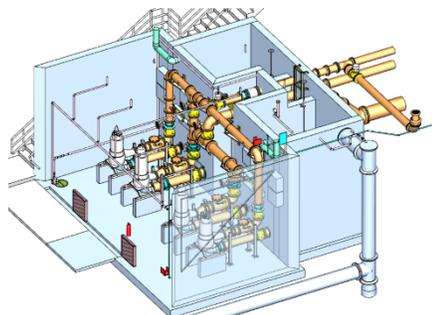
Task 5 Deliverables:

- ✓ WRF Lift Station and Offsite Pipelines Concept Design Report (15 hard copies, Draft and Final, 1 hard copy of FINAL signed and wet stamped and PDF electronic copy)

## Task 6: Construction Documents and Specifications

WWE will prepare contract documents (improvement plans, technical specifications and cost estimates) in three submittals: 60%, 90% and 100% (Final Bid Documents). The Concept Design Report will serve as the foundation for detailed design and the effort put into producing a very high quality and detailed preliminary design will pay off exponentially in detailed design execution. Prior to each submittal, the work product will be reviewed and revised through Water Works QA/QC process. Submittal of the 60% and 90% review documents will occur at Project Review Workshops with the entire project team. The submittal will be presented to City staff to familiarize the group with the information submitted and the design thought process behind the work. Following the Project Review Workshop, City staff will have a 2-week review period to provide any additional comments which were not brought forward in the Project Review Workshop. In our experience, this kind of active review of submittal documents more fully engages the entire project team in the design process.

### 60% Improvement Plans and Technical Specifications



3-Dimensional CADD Modeling - WWE will perform all detailed design using 3-dimensional CADD tools. This is our standard practice and leads to better coordination, integrated cross-checking and clearer contract documents. The 3-dimensional CADD models also function as an invaluable communications tool, especially at the 60% design stage. At this stage, all the facilities will be completely modeled. Water Works Engineers design staff will present the model to City staff so that staff can more easily and thoroughly visualize how the finished facilities will look and function. This approach to the 60% submittal allows for a clearer understanding of facility

geometry, access and clearance issues, and overall system functionality. The 3-dimensional design model is provided in addition to the standard drawings and specifications for the 60% deliverable (the 3-dimensional design model is used to create the plans and sections presented in the 60% design drawings).

### 90% Improvement Plans and Technical Specifications

In general, the 90% design submittal will be a complete project package, with all design drawings, details and specifications completed. The period between 90% and 100% will solely be dedicated to minor inter-disciplinary coordination and final QA/QC checking of all documents. In the 90% submittal, we incorporate both 2-dimensional plan and section drawings with 3-dimensional isometrics to clearly show how complex piping systems are to be constructed. This provides for clear drawings and reduced risk on the bidding contractors' part. The 90% design will be reviewed the City and each review comment that was received during the design process and how it was addressed will be discussed to ensure that all comments have been recognized and addressed. Updated cost opinion will be provided.

### 100% Design and Bid Documents

The 100% Bid-Ready Design Documents Submittal incorporates comments provided by the CLIENT at the 90% design stage and/or QA/QC comments generated by WWE's QA/QC review team. The result is clear, complete, cross-checked bid-ready design documents. The City will complete one final review of the 100% set to confirm compliance with all permitting and other final coordination items, and ENGINEER will make minimal final revisions and produce a Final set of Bid Documents.

The following is a preliminary technical specification list and sheet count for the anticipated improvements.

**Technical Specifications:**

SUMMARY OF WORK  
SPECIAL PROJECT CONSTRAINTS  
MEASUREMENT AND PAYMENT  
PROJECT MEETINGS  
PROGRESS SCHEDULE  
SUBMITTAL PROCEDURES  
QUALITY CONTROL  
REFERENCE STANDARDS AND  
ABBREVIATIONS  
TEMPORARY CONSTRUCTION FACILITIES  
AND UTILITIES  
MOBILIZATION  
GENERAL PRODUCT REQUIREMENTS  
OPERATIONAL COMPLETION AND PROJECT  
CLOSEOUT  
CLEANING  
SITE PREPARATION  
EARTHWORK  
PIPE BORE AND JACK REQUIREMENTS  
RIPRAP  
ASPHALT CONCRETE PAVEMENT  
FABRICATED STEEL GATES AND OPERATORS  
HYDROSEEDING  
CONCRETE FORMWORK  
CONCRETE REINFORCING  
CONCRETE JOINTS  
CAST-IN-PLACE CONCRETE  
PRECAST CONCRETE  
GROUT  
CONCRETE UNIT MASONRY  
ANCHORS, INSERTS, AND DOWELS  
MISCELLANEOUS METALS  
ALUMINUM HANDRAILS AND RAILINGS  
GRATING AND CHECKERED PLATE  
ROUGH CARPENTRY  
PLASTIC LINER FOR CONCRETE PIPE AND  
STRUCTURES  
CEMENTITIOUS WATERPROOFING  
BUILDING INSULATION  
CONCRETE ROOF TILE  
METAL FLASHING, GUTTERS, DOWNSPOUTS  
AND OTHER ROOFING SPECIALTIES  
JOINT SEALANTS  
METAL DOORS  
ACCESS HATCHES  
DOOR HARDWARE  
GYPSUM WALLBOARD  
CONCRETE COATINGS FOR WASTEWATER  
STRUCTURES  
PAINTING  
IDENTIFICATION DEVICES  
SAFETY EQUIPMENT  
FABRICATED SLIDE GATE  
SUBMERSIBLE SEWAGE PUMPS  
RAW SEWAGE GRINDER  
MISCELLANEOUS FURNISHINGS  
ODOR CONTROL UNIT  
PIPING SUPPORT SYSTEMS  
PIPING INSULATION  
PIPE AND FITTINGS  
PIPE SCHEDULE  
PIPING SYSTEM DATA SHEET – COPPER PIPE  
PIPING SYSTEM DATA SHEET – DUCTILE IRON  
PIPE  
PIPING SYSTEM DATA SHEET – FUSIBLE  
POLYVINYL CHLORIDE PIPE  
PIPING SYSTEM DATA SHEET – GALVANIZED  
STEEL PIPE  
PIPING SYSTEM DATA SHEET – FUSIBLE HIGH  
DENSITY POLYETHYLENE PIPE  
PIPING SYSTEM DATA SHEET – HIGH DENSITY  
POLYETHYLENE DRAINAGE PIPE  
PIPING SYSTEM DATA SHEET – SOLVENT  
WELDED POLYVINYL CHLORIDE PIPE  
PIPING SYSTEM DATA SHEET – POLYVINYL  
CHLORIDE DRAIN, WASTE AND VENT PIPE  
PVC SEWER PIPE  
PIPING SYSTEM DATA SHEET – REINFORCED  
CONCRETE PRESSURE PIPE  
PIPING SPECIALTIES  
VALVES AND OPERATORS  
VALVE SCHEDULE  
PLUMBING FIXTURES  
HEATING, VENTILATION AND AIR  
CONDITIONING EQUIPMENT  
DUCTWORK AND ACCESSORIES  
PRESSURE TESTING OF PIPING SYSTEMS  
ELECTRICAL GENERAL  
CONDUIT, BOXES AND GROUNDING  
WIRE, FUSES AND TERMINAL BOXES  
ENGINE GENERATOR  
AUTOMATIC TRANSFER SWITCH  
LOW VOLTAGE SWITCHBOARD  
PANELBOARD AND POWER TRANSFORMER  
VARIABLE FREQUENCY DRIVE  
FACTORY AND FIELD TESTING  
TEST FORMS  
CONTROL PANEL  
PLC & OI HARDWARE  
INSTRUMENTATION

**General Sheets (qty 12)**

COVER SHEET, VICINITY AND LOCATION MAPS  
 INDEX TO DRAWINGS  
 ABBREVIATIONS  
 GENERAL DESIGNATIONS  
 CIVIL LEGEND  
 ARCHITECTURAL LEGEND AND MATERIAL SYMBOLS  
 STRUCTURAL LEGEND ABBREVIATIONS AND NOTES  
 STRUCTURAL NOTES  
 STRUCTURAL NOTES  
 STRUCTURAL SPECIAL INSPECTIONS TABLES  
 MECHANICAL LEGEND  
 BUILDING SERVICES LEGEND  
 GENERAL NOTES  
 PROCESS FLOW DIAGRAM

**Civil / Yard Piping (Qty. 24-38)**

OVERALL PLAN  
 DEMOLITION PLAN  
 TREE REMOVAL AND PRESERVATION PLAN  
 PUMP STATION SITE PLAN  
 PUMP STATION SECTIONS  
 PLAN AND PROFILE (14-28 sheets)  
 BORE AND JACK DETAIL (2 Sheets)  
 HDD DETAIL  
 YARD PIPING  
 EMERGENCY STORAGE DETAIL

**Structural / Mechanical (Qty. 15)**

LIFT STATION RENDERING  
 LIFT STATION TOP PLAN- STRUCTURAL  
 LIFT STATION LOWER PLAN AND SECTION-  
 STRUCTURAL

LIFT STATION SECTIONS - STRUCTURAL (5 sheets)  
 LIFT STATION TOP PLAN- MECHANICAL  
 LIFT STATION LOWER PLAN AND SECTION-  
 MECHANICAL  
 LIFT STATION SECTIONS - MECHANICAL (5 sheets)

**Electrical/Instrumentation (Qty. 18)**

PROCESS AND INSTRUMENTATION DIAGRAM  
 FLOOR AND ROOF PLAN  
 SECTION – ELECTRICAL  
 ELEVATIONS – ELECTRICAL  
 NOTES, SYMBOLS AND ABBREVIATIONS  
 MASTER / MAIN ONE-LINE AND ELEVATION  
 ATS AND DISTRIBUTION ONE-LINE AND ELEVATION  
 ELEMENTARY DIAGRAMS  
 CONTROL PANEL ELEVATION AND BACKPANEL  
 LAYOUT  
 POWER DISTRIBUTION AND COMMUNICATION  
 BLOCK DIAGRAMS  
 CONTROL PANEL ELEVATION AND BACKPANEL  
 LAYOUT  
 BACK-UP CONTROLS AND PLC WIRING DIAGRAMS  
 ELECTRICAL ROOM, DRY WELL/ WET WELL POWER  
 AND CONTROL PLAN  
 DRY WELL/WET WELL LIGHTING AND RECEPTACLE  
 PLAN  
 BUILDING LIGHTING AND RECEPTACLE PLAN, TOP  
 DECK ELECTRICAL PLAN  
 AREA ELECTRICAL PLAN  
 ELECTRICAL DETAILS  
 CONDUIT SCHEDULE

**Standard Details (8 sheets)**

Water Works standard details can be provided within the Plans or Technical Specifications as directed by City. It has been our experience that City Building Department Reviewers prefer that the standard details are included within the Plans, so we have made that assumption for this scope of services.

Task 6 Deliverables shall include:

- ✓ 60% Design Submittal (PDF)
- ✓ 90% Design Submittal (PDF)
- ✓ 100% Design Submittal (PDF)
- ✓ Bid Documents (PDF and source files)
- ✓ Final cost opinion

## **Task 7: Permitting Support**

Water Works team shall be available to provide support for permitting efforts related to the WRF Lift Station and Offsite Pipeline Project. Work shall be completed on an as-needed / on-call basis as directed by the City or the WRF Program Manager (as approved by the City). ENGINEER will provide technical information, exhibits and other requested items as part of the Permitting Support allowance budget.

Also included under this task as part of the Permitting Support allowance budget and as requested in Addendum 2, Water Works subconsultant, Praxis, will shall be available on an as-needed basis to complete mapping of biological and cultural resources depicted by the City's environmental consultant.

Also included under this task as part of the Permitting Support allowance budget, Water Works shall be available to provide support for Planning Commissions review and approval efforts related to the WRF Lift Station and Offsite Pipeline Project. Participation in two (2) Planning Commission Meeting(s) is included as part of Task 1: Project Management under Presentation to Public Entities. However, it is anticipated that additional services shall be completed on an as-needed / on-call basis as directed by the City or the WRF Program Manager (as approved by the City) to support efforts related to Planning Commission approval outside of these meetings. ENGINEER will provide coordination, technical information, exhibits and other requested items to support these activities.

## **Task 8: Engineering and Services during Construction**

ENGINEER will provide the following Engineering Services During Construction for the project. This assumes an 18-month concurrent construction schedule for both Lift Station and Forcemain construction.

### ***Bid Period Assistance***

WWE will provide bid period assistance for the Lift Station and Offsite Pipelines as follows:

1. Participate in Pre-bid Conferences and preparation (assume 1 meeting) – to be led by PM team
2. Provide responses to contractor inquiries during bid advertisement for City use (assume qty. 4)
3. Prepare addenda as required for City use (assume qty. 2)
4. Review bids received with City

### ***Construction Phase Assistance***

1. Pre-Construction Conference Attendance (assume 1 meeting)
2. It is understood that the City intends to use Procore as the construction management software for tracking and documentation of RFIs, submittals, etc. Procore software platform will be provided and maintained by the City and PM team. ENGINEER will be responsible for inputting responses via this software platform.
3. Complete all submittal reviews (assume qty. 80)
4. Request for Information (RFI) and Request for Clarification (RFC) review, documentation and tracking (assume qty. 30)
  - a.
5. Change Order Request review, documentation and tracking (assume qty, 6)
6. Attend Weekly Jobsite Meetings (assume 12 months at 2x per month = qty. 24)
7. Assist in observing operational test of lift station (assume 3 site visits, one each for planning, initial, and final operational test)
8. Final Inspection, Report and Project Completion Recommendation Letter (assume 3 site visits, one each for development, progress review, and final punch list acceptance)
9. Record Drawings (assume redlines provided from Contractor and City Inspector, assume 80 hours for pump station and 40 hours for pipelines)

The following additional post-construction services could be provided by WWE should the City request additional services:

1. Arc-Flash and Device Coordination Study (per NFPA 70E and IEEE 1584)
2. O&M Manual Preparation





## PROPOSED COMPENSATION

Water Works Engineers proposes to complete the services described herein on a Time and Expense basis not to exceed \$1,353,574 without written consent from CLIENT and invoiced in accordance with our Hourly Billing Rates table below.

The total budget for each task will be as follows:

Subtask	Title	Budget*
1	Task 1: Project Management	\$64,090
2	Task 2: Site Alternatives Evaluation	\$106,236
3	Task 3: Easement Acquisition Support (Allowance)	\$34,090
4	Task 4: Survey, Geotechnical Investigation, and Potholing	\$254,423
5	Task 5: Concept Design Report	\$159,806
6	Task 6: Construction Documents and Specifications	\$506,749
7	Task 7: Permitting Support (Allowance)	\$45,500
8	Task 8: Engineering and Services during Construction	\$182,680
	<b>Total Budget</b>	<b>\$1,353,574</b>

\*A detailed fee basis work plan is provided on the following page for reference.

Classification	Title	Hourly Rate
AA	Administrative	\$96
E1	Staff Engineer	\$119
E2	Associate Engineer	\$146
E3	Project / Structural Engineer	\$165
E4	Senior Project Engineer / Manager	\$191
E5	Principal Engineer	\$221
I1	Field Inspector	\$129
I2	Senior Inspector	\$144
I3	Supervising Inspector	\$160
T1	CADD Tech 1	\$81
T2	CADD Tech 2	\$109
T3	CADD Tech 3	\$133

**Notes:**

1. A markup of 10% will be applied to all project related Direct Costs and Expenses.
2. An additional premium of 25% will be added to the above rates for Expert Witness and Testimony Services.
3. Rate effective through December 31, 2017. A 3% increase will be added for any services performed in each year thereafter.

Water Works Engineers Fee Estimate

Client City of Morro Bay  
 Project WRF List Station and Offsite Pipelines  
 Prepared by Mike Fisher  
 Date 11/2/2017



Hours and Fee

		Phase 1										Phase 2					
		Subtask 1		Subtask 2		Subtask 3		Subtask 4		Subtask 5		Subtask 6		Subtask 7		Subtask 8	
		2017		2017		2017		2018		2018		2018		2018		2019	
		PM & QAQC / Meetings & Workshops		Site Alternatives Evaluation		Easement Acquisition Support		Survey, Geotechnical Investigation, and Potholing		Concept Design Report		Construction Documents and Specifications		Permitting Support		Engineering and Services during Construction	
		hrs	fee	hrs	fee	hrs	fee	hrs	fee	hrs	fee	hrs	fee	hrs	fee	hrs	fee
<i>Water Works Engineers</i>	<b>2017</b>																
<b>Classification</b>	<b>Title</b>																
E4	Mike Fisher - PM & Technical Lead	\$191	176	\$33,616	84	\$16,044			64	\$12,591	210	\$41,313				20	\$4,053
E5	Sami Kader - QAQC & Technical Oversight	\$221	48	\$10,608	8	\$1,768			16	\$3,642	40	\$9,105				8	\$1,876
E4	Joe Riess - Process / Mechanical	\$191	40	\$7,640	84	\$16,044			104	\$20,460	370	\$72,790				40	\$8,105
E3	Kristina Alacon - Civil / Mechanical	\$165			92	\$15,180			172	\$29,231	360	\$61,182				241	\$42,187
E3	Jeremy Kellogg - Structural / Architectural	\$165			24	\$3,960			48	\$8,158	80	\$13,596				32	\$5,602
E3	Jigar Shah - Pipeline / Trenchless	\$165			88	\$14,520			168	\$28,552	172	\$29,231				121	\$21,181
E3	Alma Reantaso - EI&C / SCADA	\$165			24	\$3,960			48	\$8,158	412	\$70,019				102	\$17,855
E4	Steve Hooper - Constructability / CM	\$191			8	\$1,528			16	\$3,148	24	\$4,722					
E1	Staff Engineer	\$119			120	\$14,280			240	\$29,417	440	\$53,931				340	\$42,924
T3	Senior Designer	\$133									600	\$82,194				40	\$5,644
T1	Drafter / Technician	\$81									520	\$43,384				136	\$11,687
AA	Administrative	\$96	24	\$2,304	16	\$1,536			40	\$3,955	120	\$11,866				24	\$2,444
<b>ALLOWANCE</b>	Included per RFP and Addendum 1&2			\$500			\$13,850								\$40,000		
	WWE Expenses (including mark-up)			\$5,000		\$2,500				\$3,750		\$1,250					\$2,029
Praxis	Easement Acquisition Support (qty. 8 PTRs)	LS					\$8,560										
Praxis	Plat & legal (qty. 9)	LS					\$9,840										
Praxis	Aerial Mapping (CCAM)	LS						\$10,140									\$5,000
Praxis	Ground Survey (Mapping)	LS						\$27,120									
Praxis	Existing Utility Research & Engineering	LS						\$17,960									
Praxis	Right of Way Mapping	LS						\$56,560									
Praxis	Biological & Cultural Resource Mapping	LS												\$5,000			
<i>Yeh and Associates, Inc. - Geotechnical Studies and Analysis</i>																	\$5,000
	Preliminary Geotechnical Services	LS						\$37,080									
	Design Geotechnical Services	LS						\$55,614									
<i>DCM Consulting, Inc. (Dave Mathy) Trenchless Geotechnical</i>																	
	Trenchless Feasibility Assessment	\$210	8	\$1,680	36	\$7,560		32	\$6,720	20	\$4,200						
	Trenchless Geotechnical Design	\$210	4	\$840								36	\$7,560			24	\$5,040
	Expenses			\$1,500													\$500
<i>ZZ Technologies (Larry Crosley) - Transient Analysis</i>						\$3,500				\$1,250		\$2,250					
<i>Environmental Management Consulting (Tom Card) - Odor Control</i>						\$2,500				\$2,500		\$1,250					
<i>Exaro Technologies (Jose Dominguez) - Potholing</i>								\$20,100									
Subconsultant Markup	10%		\$402		\$1,356		\$1,840		\$23,129		\$795		\$1,106		\$500		\$1,554
<b>Subtask Totals</b>		<b>300</b>	<b>\$64,090</b>	<b>584</b>	<b>\$106,236</b>	<b>0</b>	<b>\$34,090</b>	<b>32</b>	<b>\$254,423</b>	<b>936</b>	<b>\$159,806</b>	<b>3384</b>	<b>\$506,749</b>	<b>0</b>	<b>\$45,500</b>	<b>1128</b>	<b>\$182,680</b>
		<b>Subtask 1</b>		<b>Subtask 2</b>		<b>Subtask 3</b>		<b>Subtask 4</b>		<b>Subtask 5</b>		<b>Subtask 6</b>		<b>Subtask 7</b>		<b>Subtask 8</b>	<b>Total</b>
		<b>\$64,090</b>		<b>\$106,236</b>		<b>\$34,090</b>		<b>\$254,423</b>		<b>\$159,806</b>		<b>\$506,749</b>		<b>\$45,500</b>		<b>\$182,680</b>	<b>\$1,353,574</b>

## **INSURANCE REQUIREMENTS**

*Prior to the beginning of and throughout the duration of the Agreement, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.*

*Consultant shall provide the following types and amounts of insurance:*

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy from CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant’s employees will use personal autos in any way to perform the Scope of Services, then Consultant shall provide evidence of personal auto liability coverage for each such person.

Property Damage Insurance in an amount of not less than \$1,000,000 for damage to the property of each person on account of any one occurrence.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subContractors or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy

form coverage specifically designated to protect against acts, errors or omissions of the Consultant and “Covered Professional Services” as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$2,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

*Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state California and with an A.M. Bests rating of A- or better and a minimum financial size VII.*

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City of Morro Bay and its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all Consultants, and sub-Contractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant’s employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all Consultants and sub-Contractors to do likewise.
3. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called “third party action over” claims, including any exclusion for bodily injury to an employee of the insured or of any Consultant or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City’s protection without City’s prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to

Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City's option.

8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any sub-Contractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self-insurance available to City.
9. Consultant agrees to ensure that subcontractors, and any other party involved with the Scope of Services who is brought onto or involved in the Scope of Services by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Scope of Services will be submitted to City for review.
10. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any Consultant, subContractor, Architect, Engineer or other entity or person in any way involved in the performance of the Scope of Services to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At the time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
11. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increase benefit to City.
12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
13. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirements in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
14. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason.

Termination of this obligation is not effective until City executes a written statement to that effect.

15. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
16. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
20. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the Scope of Services reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted regarding City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
21. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.