



CITY OF MORRO BAY CITY COUNCIL AGENDA

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

Regular Meeting – Tuesday, November 12, 2019 Veterans Memorial Hall - 5:30 P.M. 209 Surf St., Morro Bay, CA

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
RECOGNITION
CLOSED SESSION REPORT
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS
PRESENTATIONS

- National Hospice Month Proclamation

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.

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

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

A. CONSENT AGENDA

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

- A-1 APPROVAL OF MINUTES FOR THE SEPTEMBER 24, 2019, CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE OCTOBER 22, 2019, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 PROCLAMATION DECLARING NOVEMBER 2019 AS NATIONAL HOSPICE MONTH; (ADMINISTRATION)

RECOMMENDATION: Approved as submitted.

- A-4 ADOPTION OF ORDINANCE NO. 625 REPEALING AND REENACTING MULTIPLE CHAPTERS OF TITLE 14 (BUILDINGS AND CONSTRUCTION) OF THE CITY OF MORRO BAY MUNICIPAL CODE, SO AS TO INCORPORATE THE 2019 CALIFORNIA BUILDING STANDARDS CODE, AS ADOPTED BY THE STATE OF CALIFORNIA, AND LOCAL MODIFICATIONS THERETO AS WELL AS AMENDMENT OF FRONTAGE IMPROVEMENTS.; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Council adopt Ordinance No. 625, "An Ordinance of the City Council of the City of Morro Bay, California, repealing, amending and reenacting Chapters 14.01 – 14.12 and 14.44 of Title 14 (Buildings and Construction) of the Morro Bay Municipal Code, thereby adopting by reference and amending the 2019 California Building (Volumes 1 and 2), Residential, Electrical, Mechanical, Plumbing, Energy, Historical Building, Fire, Existing Building, Green Building, Administrative, and Reference Standards Codes, the 2018 International Property Maintenance Code, the 1997 Uniform Code for the Abatement of Dangerous Buildings, and amending regulation of Frontage Improvements."

- A-5 ACCEPT FISCAL YEAR (FY) 2018/19 STATUS REPORT ON RECEIPT AND USE OF DEVELOPMENT IMPACT FEES; (FINANCE/PUBLIC WORKS/COMMUNITY DEVELOPMENT)

RECOMMENDATION: Staff recommends Council Accept Fiscal Year (FY) 2018/19 status report on receipt and use of Development Impact Fees.

- A-6 ADOPTION OF RESOLUTION NO. 92-19 AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION FOR STATE OF CALIFORNIA DEPARTMENT OF PARKS AND RECREATION GENERAL PER CAPITA PROGRAM GRANT FUNDS; (RECREATION)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 92-19 authorizing staff to submit application(s) for State of California Department of Parks and Recreation General Per Capita Program grant funds for City of Morro Bay park rehabilitation, creation and improvement with a minimum allocation amount of \$200,000.

- A-7 ADOPTION OF RESOLUTION NO. 93-19 DECLARING THE CITY'S INTENTION TO CONSIDER THE ABANDONMENT (VACATION) OF PORTIONS OF UTILITY EASEMENT(S) ON 196 PANAY STREET USING THE AUTHORITY ESTABLISHED BY STREETS AND HIGHWAYS CODE SECTION 8333 AND PROCEDURES PROVIDED BY STREETS AND HIGHWAYS CODE, SECTIONS 8335 *ET SEQ.* (PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 93-19 Declaring the City's intention to abandon (vacate) portions of the existing utility easement(s) at 196 Panay Street, and set a public hearing for December 10, 2019.

B. PUBLIC HEARINGS

- B-1 ADOPTION OF RESOLUTION NO. 94-19 CONTINUING THE PROGRAM AND LEVYING THE ASSESSMENTS FOR THE 2019/20 FISCAL YEAR FOR THE MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT (MBTBID) AND INTRODUCE FOR FIRST READING ORDINANCE NO. 626 TO INCLUDE VACATION RENTALS IN THE MBTBID BY AMENDING MORRO BAY MUNICIPAL CODE CHAPTER 3.60; (CITY MANAGER)

RECOMMENDATION: Staff recommends the City Council conduct the public hearing, consider public comments and adopt Resolution No. 94-19 approving the supplemental MBTBID activities and assessments for Fiscal Year (FY) 2019/20 and introduce for first reading by title only, and with further reading waived, Ordinance No. 626, an ordinance to include vacation rentals into the MBTBID by amending Morro Bay Municipal Code Chapter 3.60.

C. BUSINESS ITEMS

- C-1 PARTICIPATION IN THE DELTA CONVEYANCE PROJECT, AND NEGOTIATIONS WITH CALIFORNIA POLYTECHNIC STATE UNIVERSITY (CAL POLY) REGARDING ADDITIONAL WATER SUPPLY FOR THE UNIVERSITY; (PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council provide the following direction:

1. Authorize the Public Works Director, acting as the appointed representative to the State Water Subcontractors Advisory Committee (SWSAC) to the San Luis Obispo County Flood Control and Water Conservation District (District), to vote in favor of recommending the District sign the Agreement in Principle (AIP) for the Delta Conveyance Project (DCP); and
2. Authorize staff to continue discussions with Cal Poly for the potential transfer of a portion of the City's State Water Allocation to the University.

- C-2 CERTIFY RESULTS OF REFERENDUM PETITION AGAINST THE ADOPTION OF ORDINANCE NO. 623 PRE-ZONING THE 27.6 ACRE PORTION OF THE WATER RECLAMATION FACILITY PARCEL APN 073-101-017 AS A PUBLIC FACILITY ZONE (CASE NO. MIN#19-009) AND EITHER: 1) REPEAL ORDINANCE NO. 623 IN ITS ENTIRETY; OR, 2) SUBMIT THE ORDINANCE TO THE QUALIFIED VOTERS OF THE CITY AS A PROPOSED MEASURE AT EITHER A SPECIAL OR REGULAR MUNICIPAL ELECTION; (CITY MANAGER/CITY CLERK)

RECOMMENDATION: Staff recommends the City Council receive the report, discuss the following alternatives as provided by Elections Code section 9241, and direct staff accordingly:

1. The Council may repeal Ordinance No. 623 in its entirety by introducing for first reading by title only, with further reading waived, Ordinance No. 628, An Ordinance of the City Council of the City of Morro Bay, California, Repealing Existing Ordinance No. 623 Establishing Pre-Zoning for the 27.6-acre Portion of Parcel APN #073-101-017 (Case No.#MIN19-001); or

2. The Council may adopt Resolution No. 95-19 calling for a Special Municipal Election to be held on Tuesday, March 3, 2020, for the submission of Ordinance No. 623 to the qualified voters of the City as a proposed measure, and adopt Resolution No. 96-19 setting priorities for written argument(s) and directing the City Attorney to prepare an impartial analysis, and consider the adoption of Resolution No. 97-19 providing for the filing of rebuttal arguments; or
3. The Council may direct staff to bring back election resolutions for the submission of Ordinance No. 623 to the voters at an election no less than 88 days from the order of the election, and no later than the next regular municipal election date of November 3, 2020.

C-3 INTRODUCTION OF ORDINANCE NO. 627 CONCERNING TOBACCO, VAPING AND SECONDHAND SMOKE, INCLUDING THROUGH A TOBACCO RETAILER LICENSING PROGRAM, A PROHIBITION ON THE SALE OF E-CIGARETTES (VAPING PRODUCTS), AND ENHANCING THE CITY'S CURRENT SECONDHAND SMOKING REGULATIONS BY A SMOKEFREE POLICY FOR MULTI-UNIT HOUSING; (CITY MANAGER/CITY ATTORNEY)

RECOMMENDATION: Staff Recommends:

1. Introduce for first reading, by title only with further reading waived, Ordinance No. 627 to both add Chapter 5.54 (Tobacco, Electronic Cigarettes and Vaping) to Title 5 of the Municipal Code as well as to amend Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 of the Municipal Code; and
2. Provide direction to staff on possible ordinance revisions as presented in "Issues for Council Consideration" in Section B of the Discussion Section; and
3. Provide direction to staff on whether to proceed with establishing "retailer location restrictions" within the City for tobacco retailers as discussed in the third paragraph in Section A of the Discussion Section.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, December 10, 2019 at 5:30 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 805-772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY, CALIFORNIA 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.

PRESENT: John Headding Mayor
Dawn Addis Council Member
Robert Davis Council Member
Jeff Heller Council Member
Marlys McPherson Council Member

ABSENT: None

STAFF: Scott Collins City Manager
Chris Neumeyer City Attorney
Dana Swanson City Clerk
Jennifer Callaway Finance Director
Rob Livick Public Works Director
Scot Graham Community Development Director
Steve Knuckles Fire Chief
Jody Cox Police Chief
Eric Endersby Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/6rqwDmlWakE?t=305>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/6rqwDmlWakE?t=885>

PRESENTATIONS

- Presentation of Sea Otter Awareness Proclamation to Janet Lang-Young on behalf of Sea Life Experience volunteers
<https://youtu.be/6rqwDmlWakE?t=1011>
- Morro Bay Community Power Presentation by Marc Adato
<https://youtu.be/6rqwDmlWakE?t=1209>

PUBLIC COMMENT

<https://youtu.be/6rqwDmlWakE?t=3391>

Joan Solu, Community Foundation of Estero Bay, announced its annual fundraising event, Morro Bay Sings, will be held Saturday, October 12, at 5:00 p.m. in the Morro Bay Community Center.

Linda Winters, Morro Bay, provided a progress report on mobile home park rent stabilization and spoke in favor of the proposed Utility Rebate Program (Item C-2).

Erica Crawford, Morro Bay Chamber of Commerce, announced upcoming events, including the 2nd Women Making Waves event to be held Monday, September 30, at The Siren, beginning at 6:00 p.m.

Cindy Betonte, Morro Bay, voiced her support for Item C-2, Utility Rebate Program for mobile home parks and apartment complexes, and suggested the Council consider collecting donations to assist residents eligible for utility rebate / discount programs.

Sean Green, Morro Bay, expressed concern about businesses that are not welcoming to visitors and thanked entities that provide good examples, including The Landing at Morro Bay, Historical Society of Morro Bay, and Morro Bay in Bloom.

Betty Winholtz, Morro Bay, questioned an item on Coastal Commission Director's Report for the September meeting, referring to Adopt Plan Morro Bay, Task 7, which stated the City is amending its LCP grant agreement to remove local adoption.

Mayor Heading closed public comment.

Staff responded to questions raised during public comment.

A. CONSENT AGENDA
<https://youtu.be/6rgwDmlWakE?t=4575>

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 AUGUST 27, 2019, CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 REVIEW AND RECEIVE WATER RECLAMATION FACILITY (WRF) CAPITAL
PROJECT MONTHLY UPDATE REPORT AND PROVIDE DIRECTION, IF ANY,
DEEMED APPROPRIATE; (PUBLIC WORKS)

**RECOMMENDATION: Staff recommends the Council receive WRF Capital Project
Monthly Update Report and provide direction, if any, deemed appropriate.**

A-3 2019 MORRO BAY LOCAL HAZARD MITIGATION PLAN PROCESS UPDATE; (FIRE)

**RECOMMENDATION: Staff recommends the City Council receive and file this
report.**

A-4 ADOPTION OF RESOLUTION 78-19 APPROVING A NEW INTERIM LEASE
AGREEMENT WITH TODD BASTON AND TAMARA GRAY-BASTON FOR LEASE SITE
62/62W, LOCATED AT 551 EMBARCADERO ROAD (KAYAK HORIZONS); (HARBOR)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution 78-
19 approving a five-year Interim Lease Agreement with Todd Baston and Tamara
Gray-Baston for Lease Site 62/62W, currently operating as Kayak Horizons.**

A-5 THIRD AND FOURTH QUARTER INVESTMENT REPORTS (JANUARY THROUGH
JUNE 2019) FOR FISCAL YEAR 2018/29; (FINANCE)

RECOMMENDATION:

1. Receive and file the Third Quarter Investment Report (January through March 2019) for Fiscal Year 2018/19; and
2. Receive and file the Fourth Quarter Investment Report (April through June 2019) for Fiscal Year 2018/19.

A-6 APPROVAL OF CONTRACT WITH SAN LUIS OBISPO COUNTY FOR ANIMAL CARE AND CONTROL SERVICES FOR FY 2019-22; (CITY MANAGER)

RECOMMENDATION: Staff recommends the City Council authorize the City Manager to execute a three-year contract with the County of San Luis Obispo for the continued provision of Animal Care and Control Services from July 1, 2019 to June 30, 2022.

A-7 APPROVAL OF PUBLIC WORKS ADVISORY BOARD AND TOURISM BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD MEMBER'S REQUEST FOR AN EXCUSED ABSENCE; (ADMINISTRATION)

RECOMMENDATION:

Staff recommends the City Council consider the requests submitted by:

1. Public Works Advisory Board (PWAB) Member, Ric Deschler, to excuse his absence from the October 2018, February 2019, and August 2019 Regular Public Works Advisory Board meetings and allow him to continue serving through the scheduled term ending January 31, 2021; and
2. Tourism Business Improvement District Advisory Board (TBID) Member, Isaac Su, to excuse his absence from the September 2019 Regular Tourism Business Improvement Advisory Board meeting.

A-8 PROCLAMATION RECOGNIZING SEA OTTER AWARENESS WEEK SEPTEMBER 22 – 28, 2019; (ADMINISTRATION/HARBOR)

RECOMMENDATION: Approved as submitted.

Mayor Heading opened the public comment for the Consent Agenda.

Betty Winholtz, Morro Bay, asked questions submitted as agenda correspondence for Item A-2.

The public comment period was closed.

Mayor Heading pulled Items A-2 and A-3.

MOTION: Council Member Davis moved approval of all items on Consent except Items A-2 and A-3. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

A-2 REVIEW AND RECEIVE WATER RECLAMATION FACILITY (WRF) CAPITAL PROJECT MONTHLY UPDATE REPORT AND RPROVIDE DIRECTION, IF ANY, DEEMED APPROPRIATE; (PUBLIC WORKS)
<https://youtu.be/6rgwDmlWakE?t=4777>

Staff responded to questions raised during public comment.

MOTION: Mayor Heading moved approval of Item A-2. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

A-3 2019 MORRO BAY LOCAL HAZARD MITIGATION PLAN PROCESS UPDATE; (FIRE)
<https://youtu.be/6rqwDmlWakE?t=5048>

Mayor Headding asked Fire Chief Knuckles to provide an overview of information discussed at a FEMA presentation recently attended by the Mayor, City Manager, Fire Chief, and Police Chief, and update on preparations for a potential PG&E Power Safety Shut Off (PSPS).

MOTION: Mayor Headding moved approval of Item A-3. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 COMPREHENSIVE COST ALLOCATION PLAN AND FEE STUDY UPDATE; (CITY MANAGER/FINANCE)
<https://youtu.be/6rqwDmlWakE?t=5757>

City Manager Collins and Finance Director Callaway provided the report and responded to Council questions.

The public comment period for Item C-1 was opened.

Steve Powers, Director of Morro Bay Art in the Park, commented on the impacts the proposed fees would have on their event.

Erica Crawford, Morro Bay Chamber of Commerce, encouraged the Council to consider input provided by the Chamber Government Affairs Committee on behalf of its members.

Cynthia Bunting, Morro Bay Art Association Member, was concerned about the ripple effect fee increases can have in small communities.

Patricia Newton, President of Morro Bay Art Association, hoped the Council would consider the impact fee increases may have on the Art Association and other non-profit organizations.

Tim Cleath, San Luis Obispo, supported phasing in new fees but asked the Council to consider the potential impacts on business development.

Betty Winholtz, Morro Bay, urged the Council to not increase appeal fees.

The public comment period for Item C-1 was closed.

The Council took a brief recess at 7:52 p.m. The meeting reconvened at 8:02 p.m. with all members present.

<https://youtu.be/6rqwDmlWakE?t=9253>

Following discussion, there was Council concurrence on the following points:

- Full cost recovery for discretionary services, with a phased in approach on fees that increased significantly
- Conduct the public hearing on October 22, 2019, and begin implementation of new fees January 1, 2020

- Further review and discussion of fee subsidies for non-profit organizations and/or events with potential community or economic benefit
- Continued support for existing partnership agreements and City sponsored event fee waivers
- Modest increase to appeal fees
- Eliminate direct cost method of assessing fees
- Harbor liveaboard and slip fees to be brought back in December after recommendations received by those wishing to provide input
- Consideration of economic development incentive fund postponed until the next budget cycle

No formal action was taken by the City Council.

- C-2 ADOPTION OF RESOLUTION NO. 79-19 TO APPROVE UTILITY REBATE PROGRAM FOR RESIDENTS OF MOBILE HOME PARKS AND APARTMENT COMPLEX, WITHIN CITY LIMITS, WHICH ARE NOT INDIVIDUALLY METERED RESIDENCES, AND ADOPT RESOLUTION NO. 80-19 CITY OF MORRO BAY SCHEDULED TURN ON AND TURN OFF PROCEDURE, ACCOUNT PRIVACY AND PROTECTION POLICY AND COLLECTIONS POLICY; (FINANCE)
<https://youtu.be/6rqwDmlWakE?t=11866>

Finance Director Callaway provided the report and responded to Council questions.

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

Linda Winters, Morro Bay, expressed her appreciation for the opportunity to participate in the process of developing this policy.

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

MOTION: Council Member Davis moved to approve Resolution No. 79-19, City of Morro Bay's Utility Rebate Program for residents of Mobile Home Parks and Apartment Complexes, within City limits, which are not individually metered and also approve that the Council approve Resolution No. 80-19 City of Morro Bay's Scheduled Turn on and Turn off Procedures, Account Privacy and Protection Policy and Collections Policy. The motion was seconded by Council Member McPherson for discussion.

Following discussion, the motion on the table carried 5-0 by roll call vote.

- D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/6rqwDmlWakE?t=12776>

Council Member Davis asked if it was necessary to request an agenda item to discuss Ms. Betonte's suggestion regarding donations to the utility discount program. Ms. Callaway suggested community members continue to develop the concept and, perhaps, bring it back for policy discussion next calendar year.

E. ADJOURNMENT

The meeting adjourned at 9:03 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
OCTOBER 22, 2019 – 4:00 P.M.
CITY HALL CONFERENCE ROOM.

AGENDA NO: A-2
MEETING DATE: November 12, 2019

PRESENT: John Headding Mayor
 Dawn Addis Council Member
 Robert Davis Council Member
 Jeff Heller Council Member
 Marlys McPherson Council Member

STAFF: Chris Neumeyer City Attorney
 Eric Endersby Harbor Director
 Scot Graham Community Development Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 4:00 p.m. with all members present.

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

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

Bill Martony spoke regarding his proposal for Lease Site 34W and noted an error was made in that he intended to offer an 8% lease payment, not 10% as stated in the proposal.

Jane Heath spoke on behalf of Mr. Martony and took responsibility for the proposed rent percentage error. They submitted an estimated profit/loss report for Council review.

The public comment period was closed.

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

- CS-1 GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR:**
Property: 714 Embarcadero, 781 Market Street and parking lot; APNs 066-321-028, 066-321-027, 066-321-026, 066-321-025, 066-112-007, 006-321-008
Property Negotiators: Grupe Commercial Company
Agency Negotiators: Scott Collins, City Manager; Scot Graham, Community Development Director; and Chris Neumeyer, City Attorney
Negotiation: Price and Terms of Payment
- CS-2 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8**
Property: Lease Site 69-70/69W-70W, 595 Embarcadero
Property Negotiators: Chuck Nettnin, Three Stacks and a Rock Brewing Co. LLC
Agency Negotiators: Scott Collins, City Manager; Scot Graham, Community Development Director and Chris Neumeyer, City Attorney
Under Negotiation: Price and Terms of Payment
- CS-3 CONFERENCE WITH REAL PROPERTY NEGOTIATOR – GOVERNMENT CODE SECTION 54956.8**
Property: Lease Site 34W, located adjacent to 225 Main Street
Property Negotiators: William Martony
Agency Negotiators: Scott Collins, City Manager; Eric Endersby, Harbor Director and Chris Neumeyer, City Attorney
Under Negotiation: Price and Terms of Payment

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. The Council did not take any reportable action in accordance with the Brown Act.

ADJOURNMENT - The meeting adjourned at 4:42 p.m.

Recorded by:

Dana Swanson
City Clerk

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
DECLARING NOVEMBER 2019
NATIONAL HOSPICE AND PALLIATIVE CARE MONTH**

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

WHEREAS, hospice and palliative care empower people facing a serious or life-limiting illness to live as fully as possible, ensuring people dignity, choice, and quality of life; and

WHEREAS, the hospice model involves an interdisciplinary, team-oriented approach to treatment, including expert medical care, quality symptom control, and comprehensive pain management as a foundation of care; and

WHEREAS, beyond providing physical treatment, hospice attends to the patient's emotional, spiritual and family needs, and provides family services like respite care and bereavement counseling; and

WHEREAS, in an increasingly fragmented and broken health care system, hospice is one of the few sectors that demonstrates how health care can – and should – work at its best for its patient; and

WHEREAS, a growing body of peer-reviewed research indicates that timely access to hospice and palliative care can decrease hospitalizations and Emergency Room visits and increase quality of life for patients and family caregivers; and

WHEREAS, every year more than 1.56 million Americans living with life-limiting illness, and their families, received care from the nation's hospice programs in communities throughout the United States; and

WHEREAS, more than 355,000 trained volunteers contribute 16 million hours of service to hospice programs annually in the U.S.; and

WHEREAS, Central Coast Hospice, Dignity Health Hospice, Hospice of San Luis Obispo County and Wilshire Hospice provide hospice care and bereavement counseling respectively to individuals within the County of San Luis Obispo; and

WHEREAS, hospice and palliative care organizations are advocates and educators about advance care planning that help individuals make decisions about the care they want.

NOW, THEREFORE, BE IT RESOLVED that the Morro Bay City Council designates November 2019 as **National Hospice and Palliative Care Month** and encourage citizens to increase their understanding and awareness of care at the end of life and to observe this month with appropriate activities and programs.

IN WITNESS WHEREOF I have
hereunto set my hand and caused the
seal of the City of Morro Bay to be
affixed this 12th day of November 2019.

JOHN HEADDING, Mayor
City of Morro Bay, California

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AGENDA NO: A-4

MEETING DATE: November 12, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** November 06, 2019

FROM: Scot Graham, Community Development Director

SUBJECT: Adoption of Ordinance No. 625 Repealing and Reenacting Multiple Chapters of Title 14 (Buildings and Construction) of the City of Morro Bay Municipal Code, so as to incorporate the 2019 California Building Standards Code, as adopted by the State of California, and local modifications thereto as well as amendment of frontage improvements.

RECOMMENDATION

Council adopt Ordinance No. 625, "An Ordinance of the City Council of the City of Morro Bay, California, repealing, amending and reenacting Chapters 14.01 – 14.12 and 14.44 of Title 14 (Buildings and Construction) of the Morro Bay Municipal Code, thereby adopting by reference and amending the 2019 California Building (Volumes 1 and 2), Residential, Electrical, Mechanical, Plumbing, Energy, Historical Building, Fire, Existing Building, Green Building, Administrative, and Reference Standards Codes, the 2018 International Property Maintenance Code, the 1997 Uniform Code for the Abatement of Dangerous Buildings, and amending regulation of Frontage Improvements."

ALTERNATIVES

Staff does not recommend any alternatives to adopting Ordinance No. 625 for the Building Code Update.

FISCAL IMPACT

None. The ordinance does not modify any of the City of Morro Bay adopted permit or impact fees.

BACKGROUND/DISCUSSION

Ordinance No. 625 was introduced for first reading at the October 22, 2019 City Council Meeting. For Additional information regarding the 2019 California Building Code update, please see the October 22, 2019 City Council Staff report, Item B-1, at the following link: <https://www.morro-bay.ca.us/ArchiveCenter/ViewFile/Item/5168>

The 2019 California Building Standards Code will become effective statewide on January 1, 2020. Adoption of Ordinance 625 will also allow the City's local amendments to become effective on January 1, 2020.

Prepared By: SG Dept Review: _____
City Manager Review: SC City Attorney Review: CFN

CONCLUSION

Staff recommends that the City Council adopt Ordinance No. 625, repealing, amending and reenacting Chapters 14.10-14.12 and 14.44 of Title 14 (Buildings and Construction) of the Morro Bay Municipal Code, to incorporate the 2019 California Building Standards Code, as adopted by the State of California, and the local modifications thereto.

ATTACHMENT

1. Ordinance No. 625

ORDINANCE NO. 625

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
REPEALING, AMENDING AND REENACTING CHAPTERS 14.01-14.12
AND 14.44 OF TITLE 14 (BUILDINGS AND CONSTRUCTION) OF THE MORRO
BAY MUNICIPAL CODE, THEREBY ADOPTING BY REFERENCE AND AMENDING
THE 2019 CALIFORNIA BUILDING (VOLUMES 1 AND 2), RESIDENTIAL,
ELECTRICAL, MECHANICAL, PLUMBING, ENERGY, HISTORICAL BUILDING,
FIRE, EXISTING BUILDING, GREEN BUILDING, ADMINISTRATIVE, AND
REFERENCE STANDARDS CODES, THE 2018 INTERNATIONAL PROPERTY
MAINTENANCE CODE, AND THE 1997 UNIFORM CODE FOR THE ABATEMENT
OF DANGEROUS BUILDINGS, AND AMENDING REGULATION OF FRONTAGE
IMPROVEMENTS.**

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

WHEREAS, there are certain state and model codes relating to buildings, construction fire and life safety as follows:

- A. 2019 California Building Code (volumes 1 and 2)
- B. 2019 California Residential Code
- C. 2019 California Electrical Code
- D. 2019 California Mechanical Code
- E. 2019 California Plumbing Code
- F. 2019 California Energy Code
- G. 2019 California Historical Building Code
- H. 2019 California Fire Code
- I. 2019 California Existing Building Code
- J. 2019 California Green Building Code
- K. 2019 California Administrative Code
- L. 2019 California Reference Standards Code
- M. 2018 International Property Maintenance Code
- N. 1997 Uniform Code for the Abatement of Dangerous Buildings

WHEREAS, Government Code § 50022.1, et seq. and Health and Safety Code § 17922 authorize the City to adopt by reference the California Building Standards Code as provided in Titles 24 and 25 of the California Code of Regulations and other codes, including, without limitation, the 2018 International Property Maintenance Code and, the Uniform Code for the Abatement of Dangerous Buildings; and

WHEREAS, pursuant to Health and Safety Code § 17950 and 18938(b), the California Building Standards Code is applicable to all occupancies throughout the State of California, whether or not the City takes affirmative action to adopt the California Building Standards Code; and

WHEREAS, Health and Safety Code § 17960, requires a local building department to enforce State Housing Law, the California Building Standards Code, and the implementing regulations of the Department of Housing and Community Development for residential structures; and

WHEREAS, Health and Safety Code § 17958.5 allows the City to make those changes or modifications to the requirements contained in the provisions published in the California Building Standards Code as it determines, pursuant to the provisions of Health and Safety Code § 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, pursuant to the immediately foregoing Health and Safety Code sections and Health and Safety Code § 18941.5, certain express findings have been made and are as follows:

FINDINGS

1. The topographic, underlying geologic and surface soil conditions of the hillsides of the City of Morro Bay are of a gradient and composition such that movement has historically been known to occur. Soils testing has revealed the presence of potentially hazardous geologic conditions, including expansive soils, questionable soils, soils prone to liquefaction and seasonally high ground-water. Therefore, it is reasonably necessary to adopt regulations for grading operations that are more detailed and restrictive than those adopted by the State of California and codified in the California Building Standards Code. More particularly, this finding supports the adoption of Section 1804.1.1 of the 2019 California Building Code.
2. Due to topographic and geologic conditions, development in Morro Bay has historically been constrained such that building occurred predominantly in the flatter areas, a scarcity of which resulted in the creation of small lots and the construction of structures in relative close proximity to one-another. Those conditions are known to be conducive to the spread of fire and, therefore, it is reasonably necessary to adopt standards more restrictive than those adopted by the State of California and codified in the California Building Standards Code and California Fire Code for the installation of automatic fire sprinklers on new and existing buildings, limiting the use of wood shakes or shingles, and to otherwise establish construction and fire prevention regulations more restrictive than those adopted by the State of California and codified in the California Building Standards Code to reduce and minimize the potential for loss of and damage to life and property resulting from fire, hazardous materials, explosions and to protect firefighters and emergency personnel during emergency operations. More particularly, this finding supports the modification of California Building Code, California Fire Code, California Residential Code and California Electrical Code.

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3. Due to topographic conditions and in order to protect the estuarine environment of and adjacent to the City of Morro Bay, it is reasonably necessary to adopt regulations more restrictive than those adopted by the State of California and codified in the California Building Standards Code, creating more stringent thresholds for when a building permit is required for construction of sidewalks, driveways, decks, paving, or flatwork, prohibiting the construction of private sewage disposal systems and requiring the installation of sewer backwater valves. More particularly, this finding supports the modification of California Building Code Section 105.2, California Plumbing Code section 713.0, and the addition of Plumbing Code section 709.5.

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

SECTION 1. The City Council hereby declares and adopts the foregoing recitals and findings as true and correct and they are incorporated herein.

SECTION 2. Effective January 1, 2020, Chapters 14.01-14.12 and 14.44 of the Morro Bay Municipal Code are hereby repealed and reenacted to read as follows (with redline changes below to show amendments made):

Chapter 14.01

GENERAL

Sections:

- | | |
|------------------|---|
| 14.01.010 | Title and Purpose. |
| 14.01.020 | Adoption of Codes. |
| 14.01.030 | Building Official and Fire Chief Designated. |

14.01.010 Title and Purpose.

This title shall be known and may be cited as "The Buildings and Construction Ordinance of the City of Morro Bay," Title 14 of the Morro Bay Municipal Code (MBMC). These regulations are hereby established and adopted to protect and promote public health, safety and welfare. This title establishes minimum regulations for construction, fire prevention, and the use and occupancy of buildings and other structures. This title prescribes regulations and standards that are consistent with the State Housing Law of California.

14.01.020 Adoption of Codes.

Fourteen documents, one each of which are on file in office of the Building Official, identified by the seal of the City of Morro Bay, marked and designated as the:

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- A. 2019 California Building Code (volumes 1 and 2),
- B. 2019 California Residential Code,
- C. 2019 California Electrical Code,
- D. 2019 California Mechanical Code,
- E. 2019 California Plumbing Code,
- F. 2019 California Energy Code,
- G. 2019 California Historical Building Code,
- H. 2019 California Fire Code,
- I. 2019 California Existing Building Code,
- J. 2019 California Green Building Code,
- K. 2019 California Administrative Code
- L. 2019 California Reference Standards Code
- M. 2018 International Property Maintenance Code,
- N. 1997 Uniform Code for the Abatement of Dangerous Buildings, published by the International Conference of Building Officials;

are hereby adopted, including chapters and sections not otherwise adopted by agencies of the State of California, and the appendices thereto as the buildings, construction, and fire prevention regulations of the City of Morro Bay. The provisions of the above-mentioned are hereby referred to, adopted, and made a part hereof as if fully set out in this title except as modified hereinafter.

14.01.030 Building Official and Fire Chief Designated.

The City’s community development director is hereby designated as the Building Official and Building Code Official for the City of Morro Bay. The Fire Chief is hereby designated as the Fire Code Official for the City of Morro Bay. Where the “authority having jurisdiction” is used in the adopted codes, it shall mean the Building Official or the Fire Chief, as applicable.

Chapter 14.02

ADMINISTRATION AND ENFORCEMENT

Sections:

- 14.02.010 Administration and Enforcement.**
- 14.02.020 Modification of Division II of Chapter 1 of the California Building Code.**

14.02.010 Administration and Enforcement.

The Administration and Enforcement of this title shall be in accordance with Division II of Chapter 1 of the California Building Code as adopted, modified, amended, and supplemented herein.

14.02.020 Modifications of Division II of Chapter 1 of the California Building Code.

The California Building Code, adopted in Section 14.01.020, is hereby modified, amended, and supplemented as follows:

A. Amend Section 103.1 to read as follows:

103.1 Creation of Enforcement Agency. The Building Division of the Community Development Department of the City of Morro Bay is hereby created and the official in charge thereof shall be known as the Building Official. Where reference is made to the Authority Having Jurisdiction or Code Official in the adopted Codes, it shall mean the Building Official.

B. Add Section 104.8.1 to read as follows:

104.8.1 Liability or Responsibility due to Error or Omission. This title shall not be construed so as to impose upon the City, or upon any of its officials or employees, any liability or responsibility for injury or damage resulting from any work approved or performed with respect to this title, or by reason of any inspection performed hereunder. No person shall be relieved of the responsibility of compliance with this title because of an error or omission made by a city official or employee.

C. Add Section 104.9.2 to read as follows:

104.9.2 Cargo Containers, Rail Cars, and Vehicle Bodies. Any person who intends to bring into the City or otherwise use, alter or relocate within the City any cargo container, streetcar, boxcar, refrigerator car, motorbus body or similar vehicle body for the purpose of use or occupancy, shall first make application to the Building Official and obtain the required permit. The application shall demonstrate the proposed use, occupancy, structure, construction, and alteration will conform to the provisions of this title.

D. Amend Section 105.2, Building Exception 6 to read as follows:

6. Sidewalks, driveways, decks, paving, or flatwork not more than 30 inches (762 mm) above adjacent grade, not exceeding 200 square feet, not over any basement or story below, and not part of an accessible route.

E. Amend Section 109.2 to read as follows:

109.2 Schedule of permit fees. Permit fees shall be as prescribed in the City's Master Fee Schedule.

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F. Amend Section 113 to read as follows:

**SECTION 113
BOARD OF APPEALS**

113.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the Building Official relative to the application and interpretation of the technical provisions this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the City Council and hold office at its pleasure. The Building Official shall be an ex officio member and shall act as secretary to the board but shall have no vote upon any matter before the board. The board shall adopt rules of procedure for conducting its business.

The board of appeals shall also serve as the Local Appeals Board, Housing Appeals Board, and Accessibility Appeals Board, as defined in Health and Safety Code § 17920.5, 17920.6 and 19957.5.

113.2 Limitations on authority. An application for appeal shall be based on a claim the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code, nor shall the board have any authority relative to the administration of this code.

113.3 Qualifications. The board of appeals shall consist of five members who are qualified by experience and training to pass on matters pertaining to the appeal and are not employees of the City. Two members of the board of appeals shall be physically handicapped, two members shall be persons experienced in construction, and one member shall be a public member.

113.4 Appointment. Upon receipt by the Building Official, of a qualified application for appeal, the Building Official shall within 60 days, recommend to the City Council five persons who, based on their qualifications and experience, appear to be suited to hear and decide the appeal. Upon finding those individuals indeed appear to be qualified to hear and deciding the appeal, the City Council shall appoint those persons and they shall be known as the Board of Appeals and shall have the authority and be tasked with the duties thereof for the purposes of hearing and deciding that specific appeal.

G. Amend Section 114.4 to read as follows:

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114.4 Violation Penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters, extends, repairs, moves, removes, demolishes or occupies any building, structure, or equipment in violation of the approved construction documents, a directive of the Building Official, or of a permit or certificate issued under the provisions of this Code, shall be subject to fines and penalties as established in Title 1 of the MBMC, in addition to other penalties as prescribed by law.

Chapter 14.03

BUILDING CODE

14.03.010 Modifications of the California Building Code.

The California Building Code, adopted in Section 14.01.020, is hereby modified, amended, and supplemented as follows:

- A. Adopt appendices H, I and J. Delete appendices A, B, C, D, E, F, G, K, L, M, N and O.
- B. Amend section 1808.1 (Foundations) and adopt section 1808.1.1 which shall have the same force and effect as if printed here in its entirety and is hereby modified, amended, and supplemented as follows:

1808.1.1 Foundation setback verification. Prior to the placement of concrete and upon completed form installation, a licensed surveyor is required to measure and record the distance from the proposed foundation walls to the established lot lines. The contractor shall submit these findings in letter format to the building inspector upon the request for a foundation inspection. Letter shall specify the findings of front, sides and rear yard setbacks as defined in Title 17 of the MBMC.

- C. Amend section 2304.8.2 (Structural Roof Sheathing) and adopt section 2304.8.2.1 which shall have the same force and effect as if printed here in its entirety and is hereby modified, amended, and supplemented as follows:

2304.8.2.1 Building height verification. Prior to roof sheathing or shear wall inspection, a licensed surveyor is required to measure and record the height of the structure. The contractor shall submit this finding in letter format to the building inspector upon the request for roof sheathing/shear wall inspection. Letter shall specify the recorded height of structure as defined in Title 17 of the MBMC.

- D. Amend Appendix J section J103.2 (Permits Required) and adopt section J103.2.1 which

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shall have the same force and effect as if printed here in its entirety and is hereby modified, amended, and supplemented as follows:

8. An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation or exempt any excavation having an unsupported height greater than 5 feet (1524 mm) after the completion of such structure.

9. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1524 mm) in height and steeper than 1 unit vertical in 1 ½ units horizontal (66.7% slope).

10. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage course.

Chapter 14.04

RESIDENTIAL CODE

14.04.010 Modifications of the California Residential Code.

The California Residential Code, adopted in Section 14.01.020, is hereby modified, amended, and supplemented as follows:

- A. Delete Division II of Chapter 1. Administration and Enforcement of the Residential Code shall be as set forth in the California Building Code, as modified, amended and supplemented by Chapter 14.02 of this code. Fees shall be as prescribed in the City's Master Fee Schedule.
- B. Adopt Appendices H, S, T and X. Delete Appendices A, B, C, D, E, F, G, I, J, K, L, M, N, O P and Q, R, V, and W.
- C. Amend Section R313.1 and R313.2 to read as follows:

R313.1 Townhouse and One- and Two-family dwellings automatic fire sprinkler systems. An automatic residential fire sprinkler system shall be installed in all new townhouses and one and two family dwellings, and in all existing townhouses and one and two family dwellings where alteration results in an increase in floor area in excess of 50 percent, or 1000 square feet.

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This section shall be applicable to mobile homes and factory-built housing not located in a mobile home or special occupancy park.

R313.2 Determination of Floor Area. For the purposes of this section, floor area shall be defined as the area within the exterior walls of the building under consideration. The floor area of a building, or portion thereof, not provided with surrounding walls, shall include the usable area under the horizontal projection of the roof or floor above.

For the purposes of this section, buildings shall be considered separate when:

1. The fire separation distance as defined in CBC Sec. 702.1 is not less than that permitted in CBC Table 705.8 where unprotected openings are allowed in an exterior wall of a non-sprinklered building, or
2. The buildings are structurally independent, the adjoining walls are constructed of fire-resistant construction as prescribed in CBC Table 602 without openings or penetrations, projections comply with CBC Section 705.2, and parapets are constructed where required by CBC Section 705.11.

D. Add Section R313.3.3.5 to read as follows:

R313.3.3.5 Waterflow Alarm. A local waterflow alarm and remote inspector's test valve, installed in accordance with NFPA 13, shall be installed on all sprinkler systems.

E. Amend Section R105.2 (Work exempt from permit), No. 3, to read as follows:

3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or a sloping backfill. Retaining walls supporting a surcharge or a sloping backfill exceeding 20%, require calculations and plans signed by a registered civil or structural engineer.

Chapter 14.05

ELECTRICAL CODE

14.05.010 Modifications of the California Electrical Code.

The California Electrical Code, adopted in Section 14.01.020, is hereby modified, amended, and/or supplemented as follows:

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A. Delete annexes A, B, C, D, E, F, G, H, I, and J. Administration and Enforcement of the Electrical Code shall be as set forth in the California Building Code as modified, amended and supplemented by Chapter 14.02 of this code. Fees shall be as prescribed in the City's Master Fee Schedule.

B. Amend Article 230-70(A)(1) to read as follows:

230-70(A)(1) Readily Accessible Location. A service disconnecting means shall be installed at a readily accessible location either outside the building or structure, or inside nearest the point of entrance of the service conductors.

The disconnecting means shall be accessible to emergency personnel, either directly or by a remote actuating device, without requiring travel through the building interior.

Chapter 14.06

MECHANICAL CODE

14.06.010 Modifications of the California Mechanical Code.

The California Mechanical Code, adopted in Section 14.01.020, is hereby modified, amended, and/ or supplemented as follows:

A. Delete Division II of Chapter 1. Administration and Enforcement of the Mechanical Code shall be as set forth in the California Building Code as modified, amended and supplemented by Chapter 14.02 of this code. Fees shall be as prescribed in the City's Master Fee Schedule.

B. Adopt appendices A, B, C, D, E, F and G.

Chapter 14.07

PLUMBING CODE

Sections:

14.07.010 Modifications of the California Plumbing Code
14.07.020 Retrofitting with water-saving devices required.
14.07.030 Required sewer backwater valve.

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14.07.010 Modifications of the California Plumbing Code.

The California Plumbing Code, adopted in Section 14.01.020, is hereby modified, amended, and supplemented as follows:

- A. Delete Division II of Chapter 1. Administration and Enforcement of the Plumbing Code shall be as set forth in the California Building Code as modified, amended and supplemented by Chapter 14.02 of this code. Fees shall be as prescribed in the City's Master Fee Schedule.
- B. Adopt Appendix K . Delete appendices A, B, C, D, E, F, G, H, I, J, and L.
- C. Amend Section 709.5 to read as follows:

709.5 A Backwater Valve, extended to and accessible from grade for maintenance, shall be installed on every Building Sewer.

Exception: In new construction, plumbing fixtures installed on a floor level that is above the next upstream manhole cover elevation shall not discharge through the required backwater valve.

- D. Amend Section 713.0 to read as follows:

713.0 Sewer Required.

713.1 Every building in which plumbing fixtures are installed and every premises having drainage piping thereon shall have a connection directly to a public or private sewer.

713.2 Private Sewage Disposal Systems shall not be permitted.

14.07.020 Retrofitting with water-saving devices required.

A. Every property owner, prior to the sale or transfer of any real property upon which is located any structure connected to the city's water supply shall retrofit the structure with the water-saving devices required for new construction as set forth in this title. In cases where the Building Official determines the use of such fixtures in existing structures would fail to meet the requirements of the Plumbing Code, fixtures using the least amount of water which do meet the requirements of the Plumbing Code shall be utilized.

B. In cases where a buyer intends to demolish all structures on such property within ninety days from the date of transfer, the structure need not be retrofitted prior to transfer; provided a covenant and a bond are filed with the city as follows:

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1. The property owner shall file with the city clerk a notarized covenant agreeing to either demolish all structures located on the property connected to the city water system, within ninety days from the date of transfer or to perform the retrofit required in subsection A of this section, together with a faithful performance bond, in a form satisfactory to the city in an amount equal to one hundred and fifty percent of the full cost of retrofitting all such structures securing faithful performance of the agreement.

2. The agreement shall also authorize and grant the city permission to enter onto the property and to perform such retrofit in the event the property owner fails to do so. Further, the property owner shall agree to reimburse the city for all cost incurred by the City in the event the bond is insufficient.

C. Determination of compliance with the requirements of subsection A shall be made by the Building Official after an inspection performed by the Building Official or a qualified plumbing contractor under the supervision of the Building Official, who shall issue a certificate indicating same to the seller or title company involved. Seller shall pay the fee set forth in the Master Fee Schedule for such retrofit inspection at the time seller submits the request for the retrofit inspection. No property transfer shall be recorded until such certificate has been received by the seller and transferred with the title to the buyer. If noncompliance is found, the property owner (both seller and buyer) and any title company involved in the transfer shall be in violation of this code and subject to those penalties as prescribed in Title 1 of this code.

14.07.030 Required sewer backwater valve.

A. Any existing lateral sewer piping upon any premises which services fixtures whose elevation is lower than the elevation of the first upstream sewer manhole rim, lamp hole, or pump station receiving manhole, and for which the city has record of a previous sewage backflow incident involving a clogged sewer main shall be protected from backflow of sewage by installing backwater valves of a type approved by the Building Official. The property owner shall be required to provide and install such device.

B. If the property owner fails to install and maintain a backwater valve in good working condition when required under this section, then the Building Official may declare said sewer connection to be a nuisance and abate such nuisance pursuant to Section 8.12.010 et seq. of this code by installing an approved-type backwater valve at the owner's expense. Said property owner may, in addition, be subject to fines as outlined in subsection E of this section.

C. All house connection sewers, industrial sewers, private sewage disposal systems and appurtenances thereto, now existing, or hereafter constructed, shall be maintained by the owner of the property in a safe and sanitary condition and all devices or safeguards which are required by this section for the operation thereof shall also be maintained in a good working order by the

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owner. It shall be the property owner's responsibility to maintain that portion of the sewer to the public main, including the connection to the public main.

D. The Public Works Director, the health officer, and other duly authorized employees of the city and the health department bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this section. The Public Works Director, the health officer, or their representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways of facilities for waste treatment.

E. Violations and Penalties. Any person who is convicted of violation of any provisions of this section is guilty of an infraction punishable as provided in Chapter 1.16 of this code.

Chapter 14.08

FIRE CODE

Sections:

14.08.010.	Purpose.
14.08.020.	Bureau of fire prevention.
14.08.030.	Fire district established.
14.08.040.	Penalties for turning in false alarms.
14.08.050.	Fire injury report.
14.08.060.	Storage of gasoline driven vehicles.
14.08.070.	Citation powers.
14.08.080.	Fire Hazard Severity Zones
14.08.090.	Modifications of the California Fire Code
14.08.010.	Purpose.

This chapter shall be known and may be cited as "The Fire Prevention Regulations of the City of Morro Bay," Chapter 14.08 of Title 14 of the Morro Bay Municipal Code. This chapter prescribes minimum regulations to reduce and minimize the potential for loss of and damage to life and property resulting from fire, panic, hazardous materials, and explosions.

14.08.020. Bureau of fire prevention.

The California Fire Code shall be enforced by the fire department or building division of the Community Development Department under the supervision of the Fire Chief.

14.08.030. Fire district established.

The entire incorporated area of the city is declared to be and is established a fire district.

14.08.040. Penalties for turning in false alarms or for conviction of intentionally setting a fire.

Individuals responsible for turning in false alarms shall be responsible for the cost the fire department incurs while responding to the alarm. The cost of the false alarm shall be determined in accordance with the master fee schedule. The intent of this section is not to penalize those persons who make honest mistakes. Persons convicted of intentionally setting a fire in violation of any law or ordinance within the city limits shall pay the cost of fighting that respective fire.

14.08.050. Fire injury report.

Any physician, first aid station, ambulance company or persons who treat or aid any person injured by a fire, explosion or chemical burn within the City shall, within twenty-four hours, report such treatment and pertinent information to the fire department.

14.08.060. Storage of gasoline driven vehicles.

No one shall store, repair or use any motorcycle, moped or any other gasoline driven vehicle inside of any dwelling. Storage and repair of gasoline driven vehicles are permitted in garage areas adjacent to dwellings.

14.08.070. Citation powers.

The Morro Bay Fire Chief (Fire Chief), Fire Marshal and full-time safety members of the Fire Department authority to issue citations as provided in Title 1 of this code. Arson investigators who are full-time members of the Fire Department shall have the powers of a peace officer in performing their duties under this Code, and shall have the powers of a peace officer as provided in California Penal Code, Sections 830.37

14.08.080. Fire Hazard Severity Zones.

A. Purpose and Intent. The purpose of this chapter is to provide authority for the identification of local fire hazard severity zones and provide authority for enforcement of state and local codes in these zones. The intent of this chapter is to reduce the potential for fire losses by providing minimum requirements for the protection of properties constructed in very high hazard severity zones and other wildland/urban interface areas designated by the fire chief and supported by substantial evidence.

B. Designation-Recommendation. The Fire Chief is hereby authorized to designate very high fire hazard severity zones within one hundred twenty days of receiving recommendations from the California Department of Forestry and Fire Protection.

C. Designation-Not identified. The Fire Chief may designate areas not identified as very high fire hazard Severity Zones by the California Department of Forestry and Fire Protection following a finding supported by substantial evidence in the record that the requirements for very high fire hazard severity zones are necessary for effective fire protection within the area(s).

D. Designation-Declined. The Fire Chief may decline to designate areas identified by the California Department of Forestry and Fire Protection as Very high fire hazard severity zones following a finding, supported by substantial evidence in the record, the requirements for very high fire hazard severity zones are not necessary for effective fire protection with the area(s).

E. Supported by substantial evidence in the record. "Supported by substantial evidence in the record" shall require the City Council to hold a public hearing and make findings there is competent substantial evidence in the record to support the Fire Chief's designation as fire hazard areas.

F. Enforcement. The Building Official shall enforce the provisions of Chapter 7A of the California Building Code and Chapter 49 of the California Fire Code in all very high fire hazard severity zones and other areas designated by the Fire Chief and supported by substantial evidence in the record.

G. Permits. All submittals for subdivision, entitlement, or building permits shall demonstrate that the proposed project allows for compliance with the provisions of Government Code Section 51182 and Public Resource Code Section 4291, except where otherwise allowed by law, to the satisfaction of the Fire Chief and the Building Official.

14.08.090. Modifications of the California Fire Code.

The California Fire Code, adopted in Section 14.01.020, is hereby modified, amended, and/or supplemented as follows:

A. Adopt Appendix Chapter 4 and appendices B, BB, C, CC, D, H, I, K, and N. Delete appendices A, E, F, G and J.

B. Section 101.1 is amended to read as follows:

Section 101.1 Title. These regulations shall be known as the Fire Code of the City of Morro Bay.

C. Section 103.1 is amended to read as follows:

Section 103.1 General. The Fire Department of the City of Morro Bay is hereby established and the person in charge thereof shall be known as the Fire Chief. Where the Code uses the term Fire Official, it shall mean the Fire Chief.

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D. Section 113.2 is amended to read as follows:

113.2 Schedule of permit fees. Fees shall be paid in accordance with the City’s Master Fee Schedule.

E. Section 302.1, “Definitions,” is amended to add the following definition in correct alphabetical order:

SKY LANTERN. An airborne lantern typically made of paper with a wood frame containing a candle, fuel cell composed of waxy flammable material or other open flame which serves as a heat source to heat the air inside the lantern to cause it to lift into the air. Sky candles, fire balloons and airborne paper lanterns mean the same as sky lanterns.

F. Section 507.5.4 is amended to read as follows:

507.5.4 Obstruction. Unobstructed access to fire hydrants shall be maintained at all times. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.

The Fire Chief shall have the authority to remove or cause to be removed, without notice, any vehicle, vessel, or object that is in violation of this section. The owner of said item, so removed, shall be responsible for all towing, storage, or other costs incurred therein.

G. Section 308.1.1.1 is added to read as follows:

308.1.1.1 Burning Prohibited. Open burning, bon fires, recreational fires, and all other outdoor fires are prohibited.

Exception: Barbeques and portable outdoor fireplaces that conform with the following provision are allowed.

1. Fires shall be conducted at a safe distance from and in accordance with the applicable manufacturer’s instructions to prevent the spread of fire to a minimum of 15-feet from adjacent structures or other combustible materials.
2. Fire shall be contained in a non-combustible container, not to exceed 3 feet in diameter and 2 feet in height.
3. Fuel loading shall not exceed 3 feet in diameter or 2 feet in height.
4. Fire shall be fueled by propane, natural gas, charcoal, dried wood, commercial fire logs, or pellets. Fuels shall not include green waste, yard trimmings, pressure treated wood, trash, plastic, or other noxious or hazardous materials.

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5. Ground fires, sub-surface or pit fires, and earth floored fire rings are prohibited.
6. If in the opinion of the Fire Chief or his or her designee, a fire is potentially hazardous or smoke is causing a nuisance, the fire shall be extinguished immediately.

H. Section 308.1.6.3 is amended to read as follows:

308.1.6.3 Sky Lanterns. The ignition and launching of sky lanterns is prohibited.

Exception: The ignition and launching of sky lanterns may be allowed, subject to the approval of a permit by the Chief, where it has been determined that adequate safeguards will be in place.

I. Section 511 is added to read as follows:

**SECTION 511
FIRE SERVICE ELEVATOR**

511.1 Elevator car to accommodate ambulance stretcher. Where elevators are provided, at least one elevator shall be provided for fire department emergency access to all floors. The elevator car shall be of such a size and arrangement to accommodate an ambulance stretcher 24 inches by 84 inches with not less than 5-inch radius corners, in the horizontal, open position and shall be identified by the international symbol for emergency medical services (star of life). The symbol shall not be less than 3 inches high and shall be placed inside on both sides of the hoistway door frame.

Exception: Elevators located within one- and two-family dwellings and townhouses.

J. Section 901.4.7 is added to read as follows:

901.4.7 Partial Sprinkling of Buildings. Partial sprinkling of buildings shall not be permitted, except where otherwise allowed by NFPA 13R, 13D, and Section 903.3.1.1.1.

K. Delete Sections 903.2 through 903.2.1.4 and 903.2.2 through 903.2.10.1.

L. Add Section 903.2 to read as follows:

903.2 Where Required. An approved automatic fire sprinkler system shall be installed throughout:

1. In all new buildings and structures with more than Zero (0) square feet regardless of type or use.
2. In all new buildings and structures with more than Zero (0) square feet regardless of type or use, on the west side of the Embarcadero road
3. In additions or alterations for all buildings or structures as follows:
 - a. Throughout structures where additions to existing buildings adds more than 50% of the existing square footage to the structure AND/OR is in excess of 500 square feet;
 - b. Throughout existing structures where alterations encompass more than 50% of the existing square footage of the structure AND/OR is in excess of 500 square feet OR where there is a change of occupancy to a more hazardous use as determined by the Building Official or Fire Chief;
 - c. When alterations and/or repairs result in the removal, alteration, modification, replacement of 50% or more of the external walls of a building, or result in the removal, modification, replacement and/or repair of 50% or more of the existing internal structural and/or non-structural framework. The determination under this section of the requirement for upgrading any existing structure shall be at the sole discretion of the Fire Code Official.

Exceptions:

- a. group R-3 and U occupancies

903.2.1 Where Required. An approved automatic fire sprinkler system shall be installed throughout:

1. In all new R-3 and U occupancies private garages and carports accessory to:
 - a. Including all attached structures;
 - b. Including all structures within 10 feet.
2. In additions or alterations for all buildings or structures as follows:
 - a. Throughout structures where additions to existing buildings adds more than 50% of the existing square footage to the structure AND/OR is in excess of 300 square feet;
 - b. Throughout existing structures where alterations encompass more than 50% of the existing square footage of the structure AND/OR is in excess of 300 square feet OR where there is a change of occupancy to a more hazardous use as determined by the Building Official or Fire Chief;

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When alterations and/or repairs result in the removal, alteration, modification, replacement of 50% or more of the external walls of a building, or result in the removal, modification, replacement and/or repair of 50% or more of the existing internal structural and/or non-structural framework. The determination under this section of the requirement for upgrading any existing structure shall be at the sole discretion of the Fire Code Official.

Exception:

Installation of an automatic fire sprinkler system shall not be required when, to the satisfaction of the Fire Chief and the Building Official, it is demonstrated the proposed construction, use, and occupancy are minor in scope and nature, the installation of an automatic fire sprinkler system would be impractical, and the intent and purpose of this section is otherwise met.

M. Amend Section 903.3.1.1 to read as follows:

903.3.1.1 NFPA 13 sprinkler systems. Where other provisions of this code require a building or portion thereof be equipped throughout with an automatic sprinkler system in accordance with this section, or where a building contains two or more occupancies or uses, sprinklers shall be installed throughout in accordance with NFPA 13 as amended in Chapter 47 except as provided in Section 903.3.1.1.1.

M. Section 3604.1 is amended to read as follows:

3604.1 General. Piers, marinas, docks, fuel docks, wharves and similar boat mooring facilities shall be equipped with fire protection equipment in accordance with Section 3604.1 through 3604.6 and as otherwise required by the Chief.

N. Section 5609 is added to read as follows:

SECTION 5609.1
SALE AND USE OF FIREWORKS

5609.1 Sale and Use of Fireworks Unlawful. The sale or use of fireworks, pyrotechnics, and others explosives shall be unlawful.

Exceptions:

1. The sale of fireworks, approved by the State Fire Marshal as “safe and sane,” shall be permitted, subject to the approval of a permit by the Fire Chief.

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2. The use of fireworks, approved by the State Fire Marshal as “safe and sane,” shall be permitted on private property only.
3. Public fireworks displays may be allowed, subject to the approval of a permit by the Fire Chief.
4. Pyrotechnics for use in movie industry operations may be allowed, subject to the approval of a permit by the Fire Chief.
5. This section shall not apply to the sale and use of State Fire Marshal approved and listed party poppers and snap caps.
6. Any person violating this provision will be guilty of a misdemeanor and subject to a \$1,000 fine for each offense.
7. Notwithstanding any other provision of this code, any Morro Bay Police Officer may issue an administrative citation for a first offense without first issuing a warning; and the administrative fine shall be \$1,000 for each offense.

Chapter 14.09

EXISTING BUILDING CODE

14.09.010 Modifications of the California Existing Building Code

The California Existing Building Code, adopted in Section 14.01.020, is hereby modified, amended, and supplemented as follows and shall be the technical strengthening provisions for buildings subject to Chapter 14.18 of this title:

Amend Section 505.3 Replacement window emergency escape and rescue openings. to read as follows:

Where windows are required to provide emergency escape and rescue openings, replacement windows shall comply with the maximum sill height requirements of section R310.2.2 and the minimum opening area requirements of sections R310.2.1.

Chapter 14.10

RESERVED

Chapter 14.11

HOUSING CODE

14.11.010 Modifications of the International Property Maintenance Code.

The 2018 International Property Maintenance Code, adopted in Section 14.01.020, shall have the full force and effect as if printed here in its entirety and is hereby modified, amended, and/ or supplemented as follows:

A. Amend Section 101 to read as follows:

SECTION 101.2.1-SCOPE

101.2.1 Where any building or portion thereof is used or intended to be used as a combination apartment house- hotel, the provisions of this code shall apply to the separate portions as if they were separate buildings.

101.2.2 Rooming houses, congregate residences or lodging houses shall comply with all requirements of this code for structures..

Chapter 14.12

DANGEROUS BUILDINGS CODE

14.12.010 Modifications of the Uniform Code for the Abatement of Dangerous Buildings.

The 1997 Uniform Code for the Abatement of Dangerous Buildings, adopted in Section 14.01.020, shall have the full force and effect as if printed here in its entirety and is hereby modified, amended, and/ or supplemented as follows:

A. Amend Section 103 to read as follows:

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SECTION 103- ALTERATIONS, ADDITIONS AND REPAIRS

All buildings or structures which are required to be repaired under the provisions of this code shall be subject to the provisions of Chapter 34 of the Building Code.

B. Amend the following definitions, located in Section 301, to read as follows:

BUILDING CODE is the California Building Code, as adopted and amended by this title.

HOUSING CODE is the 1997 Uniform Housing Code, as adopted and amended by this title.

Chapter 14.44

FRONTAGE IMPROVEMENTS

Sections:

14.44.010	Purpose.
14.44.020	Improvements Required.
14.44.030	Limitations.
14.44.040	Exceptions.
14.44.050	Permit issuance.
14.44.060	Appeals.
14.44.010	Purpose.

The purposes of the requirements of this chapter are to improve the public health, safety, welfare and convenience by installation of frontage improvements at locations within the city with high public pedestrian usage, or where necessary for passage of stormwater runoff and drainage.

14.44.020 - Improvements required.

Property owners and/or applicants for development permits shall at their own expense design, construct and install frontage improvements consisting of curb, gutters, thru-curb drains, sidewalks, street and street trees along the entire frontage of the subject property and/or shall correct existing deficiencies in them pursuant to the following provisions:

A. Such improvements shall be constructed by owner/applicant on all properties within commercial, industrial, or multiple-family residential (R-3 and R-4 zoning) districts within the city.

B. Sidewalk improvements shall not be required for properties within the single-family (R-1 and R-2 zoning) district on which a single-family home is being constructed or altered.

EXCEPTION: The installation of frontage improvements shall be required where the street(s) adjoining the property is being developed or redeveloped or has been designated as a pedestrian route, an arterial street, or collector street by the city council.

C. Subject to the limitations of Section 14.44.030, such frontage improvements shall be constructed by owner/applicant as a requirement of city approval of permits for any of the following types of development on the properties designated in subsections A and B of this section:

1. Change in the density or intensity of use of land including, but not limited to,

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subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use, or

2. Construction, reconstruction, demolition or alteration of the size of any structure, including any facility of any private, public, or municipal utility, or

3. Change in the occupancy or use of a building from residential purposes to commercial purposes.

D. Frontage improvements required to be installed pursuant to this chapter shall be constructed in accordance with the city's standard specifications as determined by the City Engineer.

E. Frontage improvements required to be installed pursuant to this chapter shall also include, but not be limited to, providing trees and tree wells adjacent to the curb of a size and spacing as designated in the city's standard improvement specifications and drawings or as approved by the City Engineer.

14.44.030 - Limitations.

A. Frontage improvements shall be required in relationship to the value of on-site improvements as set forth in paragraphs 1 and 2 of this section. The value of on-site improvements shall be as determined by the city engineer on the approved building permit.

1. Whenever the value of the proposed on-site improvements is greater than fifty percent of the value of the existing structure as determined by the city engineer, such frontage improvements shall be required.
2. Whenever the cumulative value of the proposed on-site improvements including the current proposal, and all other approvals during the preceding five-year period exceeds fifty percent of the value of the existing structure as determined by the city engineer, frontage improvements shall be required.

B. For remodels, additions and accessory structures, , the value of the following improvements shall not be counted when estimating the total valuation of project improvements; landscaping, fences, retaining walls, reroofs, painting, interior decorations and fixtures, signs and their supports, normal maintenance and repairs, resurfacing of improved parking areas and structural modifications associated with strengthening of unreinforced masonry buildings pursuant to Ordinance No. 366.

C. Where the property is being subdivided, frontage improvements shall be required, to be

installed by the subdivider, in accordance with Title 16 of this code.

14.44.040 - Exceptions.

The requirement for construction of new frontage improvements may be waived, deferred or modified by the director of public works in cases where they determine that existing nonstandard frontage improvements do not create potential safety hazards for pedestrians or motorists, cause a liability for the city, result in drainage problems, or compromise handicapped accessibility requirements. In granting such waivers, the director of public works may require any degree of corrective work to existing frontage improvements they deem necessary.

14.44.050 - Permit issuance.

No building permit or development approval shall be issued for any projects determined to require frontage improvements under the provisions of this section, until plans for the required improvements have been submitted to and approved by the director of public works. No final occupancy approval shall be granted by the building official until all required improvements have been installed to the satisfaction of the director of public works.

14.44.060 - Appeals.

Any person aggrieved by the requirements of this section shall have the right to appeal to the planning commission. If an appeal is made, it must be filed with the community development department not later than ten calendar days after the applicant is formally notified of the required improvements. The appeal shall state the reason why the requirements are inconsistent with the provisions of the ordinance codified in this chapter and should not be applied. The planning commission may grant the appeal and waive all or part of the requirements when, based on a report by the director of public works, it is determined the following conditions exist:

- A. That the waiver of improvements shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is situated;
- B. That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of this section is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification;
- C. That the waiver is found inconsistent with the intent of the general plan;
- D. That such improvements already exist in good condition and conform to city standard specifications on the entire property frontage;
- E. The property involved is part of an area within which construction of such improvements has been budgeted by the city, or is within an approved assessment

district;

- F. That waiver of the required improvements will not create potential safety hazards for pedestrians or motorists, cause a liability for the city, result in drainage problems, or compromise handicapped accessibility requirements.

Any person aggrieved by the decision of the planning commission shall have the right of further appeal to the city council on the same basis as the appeal to the planning commission.

SECTION 3. This Ordinance shall take effect January 1, 2020. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

SECTION 4. 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.

INTRODUCED at a regular meeting of the City Council of Morro Bay, held on the 22nd day of October 2019 by motion of Councilmember _____ and seconded by Councilmember _____.

PASSED AND ADOPTED on the 12th day of November 2019.

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO
HEREBY CERTIFY that the foregoing Ordinance Number 625 was duly adopted by the City
Council of the City of Morro Bay at a regular meeting of said Council on the 12th day of
November, 2019, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

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

DANA SWANSON, City Clerk

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AGENDA NO: A-5

MEETING DATE: November 12, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: October 26, 2019

FROM: Jennifer Callaway, Finance Director
Rob Livick, Public Works Director
Scot Graham, Community Development Director

SUBJECT: Accept Fiscal Year (FY) 2018/19 Status Report on Receipt and Use of Development Impact Fees

RECOMMENDATION:

Staff recommends Council Accept Fiscal Year (FY) 2018/19 status report on receipt and use of Development Impact Fees.

FISCAL IMPACT:

There is no fiscal impact associated with the requested action.

BACKGROUND/DISCUSSION:

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

The Mitigation Fee Act (California Government Code, Section 66000 et seq.) requires local agencies that impose Development Impact Fees to present an annual, consolidated report showing the receipt and use of those fees. The Annual Status Report (Attachment 1) must be reviewed by Council within 180 days after the close of the fiscal year represented. The AB 1600 report is required to be accessible to the public for viewing at least 15 days prior to the public meeting. The report was available at City Hall on October 26, 2019, 17 days in advance of the November 12, 2019 Council discussion of this item.

The City collects the following Development Impact Fees that meet the AB 1600 reporting requirements:

- Government Impact Fees (Fund 900)
 - Administration
 - Police
 - Fire
 - Street
 - Storm Drain
 - Parks Fees
- Affordable Housing In-Lieu Fees (Fund 941)
- Water Impact Fees (Fund 951)
- Sewer Impact Fees (Fund 952)
- Miscellaneous Impact Fees (Fund 515)
 - Highway 41/Main Impact Fees
 - Traffic Impact

- Sewer Mast Plan Impact
- Flood Hazard Plan Impact

Separate balances exist for each of these fees either as individual accounts or separate funds. As required by AB 1600, as of June 30, 2019, all accounts or funds with unspent balances have been credited interest revenue at the City’s current interest rate earned on its total investment portfolio.

AB 1600 requires that a status report be prepared annually which must include the following:

- A brief description of the fee and the fund into which the fee was deposited;
- The amount of the fee;
- The associated fund’s beginning and ending balances for the fiscal year;
- The total amount of the fees collected, and interest earned;
- Identification of each public improvement on which impact fees were expended and amount of the expenditure on each improvement, including the total percentage of the cost of the public improvement that was funded with impact fees;
- Identification of approximate date by which construction of a public improvement will begin;
- Determination that sufficient funds have been collected to complete financing on an incomplete public improvement;
- Description of each inter-fund transfer or loan made from the account or fund, including the public improvement on which the loaned funds will be expended, and in the case of an inter-fund loan, the date on which the loan will be repaid and the rate of interest that the account or fund will receive on the loan, and
- Amount of any refunds made due to inability to expend impact fees once a determination is made that sufficient impact fees have been collected to finance a public improvement, the improvement remains incomplete, and the City has not determined an approximate date by which the construction will begin.

The information is presented in the attached FY 2018/19 Annual Status Report on Receipt and Use of Development Impact Fees.

CONCLUSION

Staff recommends Council receive and file the FY 2018/19 Annual Status Report on Receipt and Use of Development Impact Fees as required under the Mitigation Fee Act (AB 1600).

ATTACHMENTS

1. FY 2018/19 Annual Status Report on Receipt and Use of Development Impact Fees.

Prepared By: <u> JC, RL, SG </u>	Dept Review: <u> JC, RL, SG </u>
City Manager Review: <u> SC </u>	City Attorney Review: <u> CFN </u>

CITY OF MORRO BAY
ANNUAL STATUS REPORT ON RECEIPT AND USE OF DEVELOPMENT IMPACT FEES
JUNE 30, 2019

Government Impact Fees:

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

The collected fees are held in fund 940, Government Impact Fees Accumulation Fund and are permitted to be used for capital projects for new facilities, vehicles, and rehabilitation and/or renovation of existing facilities, so long as the rehabilitation or renovation is needed to serve the new development that has paid the fee.

Fund 900	FY 18/19
Beginning Fund Cash Balance (07/01/2018)	\$ 880,214
Source of Funds	
Administration Fees Collected FY 18/19	\$ 77,798
Interest Earned FY 18/19	\$ 11,949
Police Fees Collected FY 18/19	\$ 848
Interest Earned FY 18/19	\$ 130
Fire Fees Collected FY 18/19	\$ 933
Interest Earned FY 18/19	\$ 143
Street Fees Collected FY 18/19	\$ 3,902
Interest Earned FY 18/19	\$ 599
Storm Drain Fees Collected FY 18/19	\$ 170
Interest Earned FY 18/19	\$ 26
Parks Fees Collected FY 18/19	\$ 20,812
Interest Earned FY 18/19	\$ 3,197
Transfers In	
Total Source of Funds	\$ 120,509
Use of Funds	
Interfund Transfer to Bocce Ball Capital Project	\$ 2,423
Interfund Transfer to purchase new Fire Truck	\$ 73,500
Interfund Transfer to fund GP Update	\$ 71,973
Total Use of Funds	\$ 147,895
Ending Fund Cash Balance (06/30/2018) Pre-Final Audit	\$ 852,828

**Cash Balance Per Category
FY 18/19**

Administration Fees	\$	490,212
Police Fees	\$	61,756
Fire Fees	\$	4,585
Street Fees	\$	120,250
Storm Drain Fees	\$	10,972
Parks Fees	\$	165,053
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Total Impact Fees	\$	852,828

Potential future funded projects are provided below. These are potential projects and may or may not be approved in the City's current budget. Any expenditures from these funds would require Council authorization and approval prior to expenditure.

Fund 900

Potential Future Projects	Total Funds Available			
Administration Fees	\$	-		
Council Chambers Improvements	\$	450,000		
Security Improvements and Upgrades	\$	95,000		
Total Potential Admin Projects	\$	545,000	\$	490,212
Police Fees	\$	-		
Police Facility Improvements and Upgrades	\$	75,000		
Total Potential Police Projects	\$	75,000	\$	61,756
Fire Fees				
PSPS Upgrades	\$	36,000		
Total Potential Fire Projects	\$	36,000	\$	4,585
Street Fees				
ADA Transition Plan Improve	\$	5,657,072		
Total Potential Street Projects	\$	5,657,072	\$	120,250
Storm Drain Fees	\$	-		
Laurel Ave Easement Rehabilitation	\$	97,000		
Total Potential Storm Drain Projects	\$	97,000	\$	10,972
Parks Fees	\$	-		
Bocce Ball Court	\$	20,000		
City Park Playground Equipment Upgrade	\$	150,000		
Total Potential Parks Projects	\$	170,000	\$	165,053
Total Potential Future Projects	\$	6,580,072	\$	852,828

Affordable Housing In-Lieu Fee:

Affordable Housing In-Lieu Fees are collected from residential development projects when the construction of affordable housing units is impractical. The required in-lieu fee is to be paid to the City prior to the issuance of a building permit (where square footage is added) or a final tract map. The Affordable Housing In-Lieu Fee is \$0.35 per square foot.

The collected fees are held in the 941 fund and are restricted to be used solely for the affordable housing program activities, including projects such as the Housing Element or General Plan Update, or transfer to another public agency for providing affordable housing in the City.

AFFORDABLE HOUSING IN-LIEU FEES

Fund 941	FY 18/19
Beginning Cash Balance (07/01/2018)	\$ 288,249
Source of Funds	
Fees Collected FY 18/19	\$ 10,337
Interest Earned FY 18/19	\$ 5,444
Total Source of Funds	\$ 15,781
Use of Funds	
Bequeathment for Home Share SLO	\$ 5,000
SLO County Housing Trust Fund	
Total Use of Funds	\$ 5,000
Ending Cash Balance (06/30/2019) Pre-Final Audit	\$ 299,029
Potential Future Projects	
Home Share SLO (5 year total - pending appropriation)	\$ 25,000
Housing Element Update	\$ 70,000
Housing Element Implementation	\$ 225,000
Total Potential Future Projects	\$ 320,000

Sewer Impact Fee:

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

The collected fees are held in the 952 fund and are restricted to be used solely for wastewater capital improvements.

Fund 952-5251-3950	FY 18/19
Beginning Cash Balance (07/01/2018)	\$ 408,497
Source of Funds	
Impact Fees FY 18/19	\$ 43,206
Interest Earned FY 18/19	\$ 17,600
Total Source of Funds	\$ 60,806
Use of Funds	
Interfund Transfer to WRF Capital Project	\$ 469,303
Total Use of Funds	\$ 469,303
Ending Cash Balance (06/30/2019) Pre-Final Audit	
	\$ 0
Potential Future Projects	
One Water Capital Improvements	\$ 500,000
Total Potential Projects	\$ 500,000

Water Impact Fee:

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

The collected fees are held in the 951 fund and are restricted to be used solely for water system facilities, assets and system upgrades and expansion.

Fund 951-5240-3950	FY 18/19
Beginning Cash Balance (07/01/2018)	\$ 0
Source of Funds	
Impact Fees FY 18/19	\$ 43,016
Interest Earned FY 18/19	\$ 1,050
Total Source of Funds	\$ 44,066
Use of Funds	
Nutmeg Tank	
Nutmeg St. Trench Repair	
Desale Plant Upgrade	
Desale Plant, Permit Upgrade	
Nitrate Study	
One WaterPlan	
WRF Project	\$ 44,066
Total Use of Funds	\$ 44,066
Ending Cash Balance (06/30/2019) Pre-Final Audit	
	\$ -
Potential Future Projects	
OneWater Capital Improvements	\$ 500,000
Total Potential Projects	\$ 500,000

Trust & Agency

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

Fund 515	FY 18/19	
Beginning Cash Balance (07/01/2018)	\$	253,837
Source of Funds		
Highway 41/Main Impact Fee (2600)	\$	-
Traffic Impact/All Sources (2607)	\$	-
Storm Drain Impact (2613)	\$	-
Calvary Baptist Drain Impact (2616)	\$	-
Sewer Master Plan Impact (2622)	\$	-
Flood Hazard Plan Impact (2740)	\$	-
Total Source of Funds	\$	-
Use of Funds		
Interfund Transfer to		
Total Use of Funds		
Highway 41/Main Impact Fee (2600)	\$	(5,637)
Ending Cash Balance (06/30/2019) Pre-Final Audit	\$	248,201

**Cash Balance Per Category
FY 18/19**

Highway 41/Main Impact Fee	\$	45,242
Traffic Impact/All Sources	\$	49,973
Storm Drain Impact	\$	4,208
Calvary Baptist Drain Impact	\$	314
Sewer Master Plan Impact	\$	146,073
Flood Hazard Plan Impact	\$	2,391
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Total Cash Balance	\$	248,201

Fund 515

Potential Future Projects	Total Funds Available	
Highway 41/Main Impact Fee		
State Rt (SR) 1/SR 41 Interchange Improvement	\$ 620,000	
Total Potential Projects	\$ 620,000	\$ 45,242
Traffic Impact/All Sources		
State Rt (SR) 1/SR 41 Interchange Improvement	\$ 620,000	
Total Potential Projects	\$ 620,000	\$ 49,973
Storm Drain Impact		
Laurel Ave Easement Rehabilitation	\$ 97,000	
Total Potential Projects	\$ 97,000	\$ 4,208
Calvary Baptist Drain Impact		
Laurel Ave Easement Rehabilitation	\$ 97,000	
Total Potential Projects	\$ 97,000	\$ 314
Sewer Master Plan Impact		
OneWater Plan	\$ 691,150	
Total Potential Projects	\$ 691,150	\$ 146,073
Flood Hazard Plan Impact		
OneWater Plan	\$ 691,150	
Total Potential Projects	\$ 691,150	\$ 2,391
Total Potential Future Projects	\$ 2,816,300	\$ 248,201

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AGENDA NO: A-6
MEETING DATE: November 12, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE: October 28, 2019**

FROM: Kirk Carmichael, Recreation Services Manager

SUBJECT: Adoption of Resolution No. 92-19 authorizing the submission of a Grant Application for State of California Department of Parks and Recreation General Per Capita Program Grant Funds

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 92-19 authorizing staff to submit application(s) for State of California Department of Parks and Recreation General Per Capita Program grant funds for City of Morro Bay park rehabilitation, creation and improvement with a minimum allocation amount of \$200,000.

ALTERNATIVES

Direct staff to discontinue application for the Per Capita Program Grant.

FISCAL IMPACT

These grant funds will require a 20% match which can come in the form of staff time, volunteer labor, and/or local funds totaling a minimum of \$40,000. If the City successfully receives the grant, the City will have to commit that amount to any project funded by the grant.

BACKGROUND/DISCUSSION

The State of California Department of Parks and Recreation has made available grant fund opportunities originating from Proposition 68, placed on the ballot via Senate Bill 5, and approved by voters on June 5, 2018. One of the grant opportunities available at this time through Proposition 68 is the non-competitive Per Capita Program which allocates funds to California cities, districts, counties, and regional park districts based on population.

In June of 2019, a Per Capita Allocation Questionnaire was submitted by the City to California State Parks with population information and a declaration of intent to participate in the Per Capita Grant Program. Through discussion with the State Park's Office of Grants and Local Services, the City of Morro Bay was identified as an entity eligible for the grant amount of \$200,000 based on our population.

Moving forward, the City must enter into a contract with the State to complete the project(s) identified by way of application. With this non-competitive grant, multiple projects may be completed under one contract with each project requiring its own application. Grant applications must be submitted by January 31, 2020 with a signed contract in place by March 31, 2020. Projects must be completed by December 31, 2021 in order to receive the grant funds.

Prepared By: <u> KK </u>	Department Review: <u> </u>
City Manager Review: <u> SC </u>	City Attorney Review: <u> CFN </u>

City Staff is assembling a team to address this grant opportunity, along with others that are available through Proposition 68, with the intent of identifying projects to move forward with the application processes.

CONCLUSION

Staff recommends the Council adopt Resolution No. 92-19 authorizing Staff to submit a grant application(s) to the State of California Department of Parks and Recreation for the Per Capita Program requesting funds which are made available to support efforts to rehabilitate existing infrastructure and to address deficiencies in parks within the City of Morro Bay.

ATTACHMENT

A. Resolution 92-19

Prepared By: __KK____	Department Review: _____
City Manager Review: __SC____	City Attorney Review: __CFN____

RESOLUTION NO: 92-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING APPLICATION(S) FOR PER CAPITA GRANT FUNDS**

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

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Per Capita Grant Program, setting up necessary procedures governing application(s); and,

WHEREAS, said procedures established by the State Department of Parks and Recreation require the grantee's Governing Body to certify by resolution the approval of project application(s) before submission of said applications to the State; and,

WHEREAS, the grantee will enter into a contract with the State of California to complete project(s);

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

1. Approves the filing of project application(s) for Per Capita program grant project(s); and
2. Certifies that said grantee has or will have available, prior to commencement of project work utilizing Per Capita funding, sufficient funds to complete the project(s); and
3. Certifies that the grantee has or will have sufficient funds to operate and maintain the project(s); and
4. Certifies that all projects proposed will be consistent with the park and recreation element of the City of Morro Bay general or recreation plan (PRC §80063(a)); and
5. Certifies that these funds will be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)); and
6. Certifies that it will comply with the provisions of §1771.5 of the State Labor Code; and
7. (PRC §80001(b)(8)(A-G)) To the extent practicable, as identified in the "Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters," dated January 12, 2017, the City of Morro Bay will consider a range of actions that include, but are not limited to, the following:

- (A) Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.
- (B) Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.
- (C) Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.
- (D) Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.

- (E) Expanding the use of multilingual and culturally appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.
- (F) Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.
- (G) Identifying possible staff liaisons to diverse populations.

8. Agrees that to the extent practicable, the project(s) will provide workforce education and training, contractor and job opportunities for disadvantaged communities (PRC §80001(b)(5)); and

9. Certifies that the grantee shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient's annual expenditures. (PRC §80062(d)); and

10. Certifies that the grantee has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide; and

11. Delegates the authority to the City Manager or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope(s); and

12. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of November 2019, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk



AGENDA NO.: A-7
MEETING DATE: November 12, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** October 29, 2019
FROM: Rob Livick, PE/PLS, Public Works Director/City Engineer
SUBJECT: Adoption of Resolution No. 93-19 Declaring the City’s intention to consider the abandonment (vacation) of portions of utility easement(s) on 196 Panay Street using the authority established by Streets and Highways Code Section 8333 and procedures provided by Streets and Highways Code, Sections 8335 *et seq.*

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 93-19 Declaring the City’s intention to abandon (vacate) portions of the existing utility easement(s) at 196 Panay Street, and set a public hearing for December 10, 2019.

ALTERNATIVES

1. Deny the abandonment, based on findings of inconsistency with the General Plan or other policies.
2. Continue the abandonment if additional information is needed, with specific direction given to staff.

FISCAL IMPACT

There is no fiscal impact as a result of this action.

APPLICANT/OWNER:

Jay and Cynthia Friensen
3512 Paradise Rd.
Modesto, CA 95358

ADDRESS/APN:

196 Panay Street; 065-106-046 and
065-106-147

ZONING:

R-1/S.2A
(Single-Family Residential)



Prepared By: <u>HE</u>	Dept Review: <u>RL</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>CFN</u>

BACKGROUND

The applicant has requested, based on a condition in their Coastal Development Permit (CDP), the City abandon approximately 1,408 square feet of the existing utility easement(s) which range in width from 2.5 feet to 10 feet that currently reside within the subject property. Currently only a portion of the existing utility easement at the southwesterly part of the property is occupied by an existing City sewer main. This sewer main will remain and shall be within a portion of the existing utility easement that will be reserved for this purpose. The applicant has provided letters from the primary franchise utility companies indicating no respective utility presence is currently within these areas to be abandoned. The proposed abandonments will allow the applicant to construct an addition to the existing single-family residence and to also construct a new detached Accessory Dwelling Unit (ADU). The CDP for the ADU was approved by the Planning Commission on September 17, 2019.

The State of California Streets and Highways Code §8300 *et seq.*, Public Streets, Highways, and Service Easements Vacation Law contains procedures under which a local agency can vacate or abandon its Rights-of-Ways. The Code requires that if the proposed abandonment of a street, highway, or public service easement is within an area for which a General Plan is adopted by a local agency, the legislative body of the public entity shall consider the General Plan prior to vacating the street, highway, or public service easement.

This abandonment was presented and recommended for approval at the October 1, 2019 Planning Commission Meeting. The Planning Commission determined that this abandonment is consistent with the General Plan. No conditions were recommended at this meeting, and a copy of the Planning Commission Resolution recommending this action is included as "Attachment 1."

DISCUSSION

Panay Street is designated as a local street in the Circulation Element of the General Plan. The proposed abandonment is located within the R-1/S.2A (Single-Family Residential) zoning district. The project area is bounded by developed single-family residential, and Highway 1. The two utility easements proposed for abandonment are confined to the subject property.

Notice of this item is published in the agenda and posted at the required locations. Prior to preceding to Public Hearing, the site will be noticed pursuant to the California Streets and Highways Code; additionally, while not required by law, all property owners of record within 500 feet of the subject site will be notified of the public hearing and invited to voice any concerns.

CONCLUSION

The proposal can be found consistent with the California Streets and Highways Code and the City's General Plan. The proposal is exempt under the general rule pursuant to State CEQA guidelines, and it appears that all of the required findings can be made to recommend abandonment to the City Council for approval.

Staff concurs with the recommendations by the Planning Commission and recommends the City Council adopt Resolution No. 93-19 a resolution of intention to abandon (vacate) portions of the existing utility easement(s) at 196 Panay Street, and set a public hearing for December 10, 2019.

ATTACHMENTS

1. Planning Commission Resolution No. 25-19
2. Proposed abandonment exhibit
3. Resolution No. 93-19 - Resolution of Intention to Consider Abandonment

RESOLUTION NO. PC 25-19

A RESOLUTION OF THE MORRO BAY PLANNING COMMISSION
DETERMINING THE PROPOSED UTILITY EASEMENT(S) ABANDONMENT
LOCATED UPON THE PROPERTY AT 196 PANAY STREET IS CONSISTENT
WITH THE MORRO BAY GENERAL PLAN

WHEREAS, the Planning Commission of the City of Morro Bay (the “City”) conducted hearings at the Morro Bay Veteran’s Hall, 209 Surf Street, Morro Bay, California, on October 1, 2019 for the purpose of considering consistency with the General Plan of utility easement(s) abandonment on the property located at 196 Panay Street; APN’s 065-106-046 and 065-106-147 described as follows:

That portion Block 9D of Atascadero Beach, in the City of Morro Bay, County of San Luis Obispo, State of California, according to the map filed in Book 2, page 4 of Maps, described in those certain Voluntary Mergers filed as Instrument No. 2007-073790 and 2007-073791, in the office of the County Recorder of said County; and

WHEREAS, pursuant to California Government Code Section 65402(a), the Planning Commission shall determine that the proposed portion of the existing utility easement(s) abandonment is in conformance with the adopted General Plan; and,

WHEREAS, the Planning Commission has duly considered all evidence, including public testimony, testimony of interested parties, and the evaluation and recommendations by staff, presented at said hearing.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Morro Bay as follows:

Section 1: Findings. Based upon all the evidence, the Commission makes the following findings:

California Environmental Quality Act (CEQA) Findings

1. Pursuant to the California Environmental Quality Act, the project is categorically exempt under Section 15601(b)(3) of the guidelines consistent with the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The activity in question is not a project, but instead is the abandonment of portions of the existing utility easement(s).
2. The exceptions to the categorical exemptions identified in Section 15300.2 of the guidelines do not apply.

Section 2. Finding. The Planning Commission of the City of Morro Bay has evaluated the suitability of the portion of the utility easement(s) abandonment in relation to applicable provisions of the General Plan, Local Coastal Plan and Zoning Code, including Section 17.24.040 of the Zoning Ordinance and finds that a portion of this easement can be abandoned consistent with these policy documents and that there are not special circumstances applicable to the easement to justify any future requests for either a variance or exception. Potential public interest (benefit) is by allowing the property to be developed to the fullest extent permitted by the General Plan and allowing the construction of an ADU and potentially providing additional affordable housing.

Section 3. Action. The Planning Commission does hereby find that the disposition of existing utility easement(s) located at 196 Panay Street (APN's 065-106-046 and 065-106-147) is in conformance with the adopted City of Morro Bay General Plan

Section 4. Recommendation. The Planning Commission does hereby recommend the City Council adopt a resolution of intention to abandon the subject utility easement(s) as described, and shown on attached Exhibits A and B.

PASSED AND ADOPTED by the Morro Bay Planning Commission at a regular meeting thereof held on this 1st day of October 2019 on the following vote:

AYES: Lucas, Stewart, Barron, Luhr

NOES: (None)

ABSENT: Ingraffia

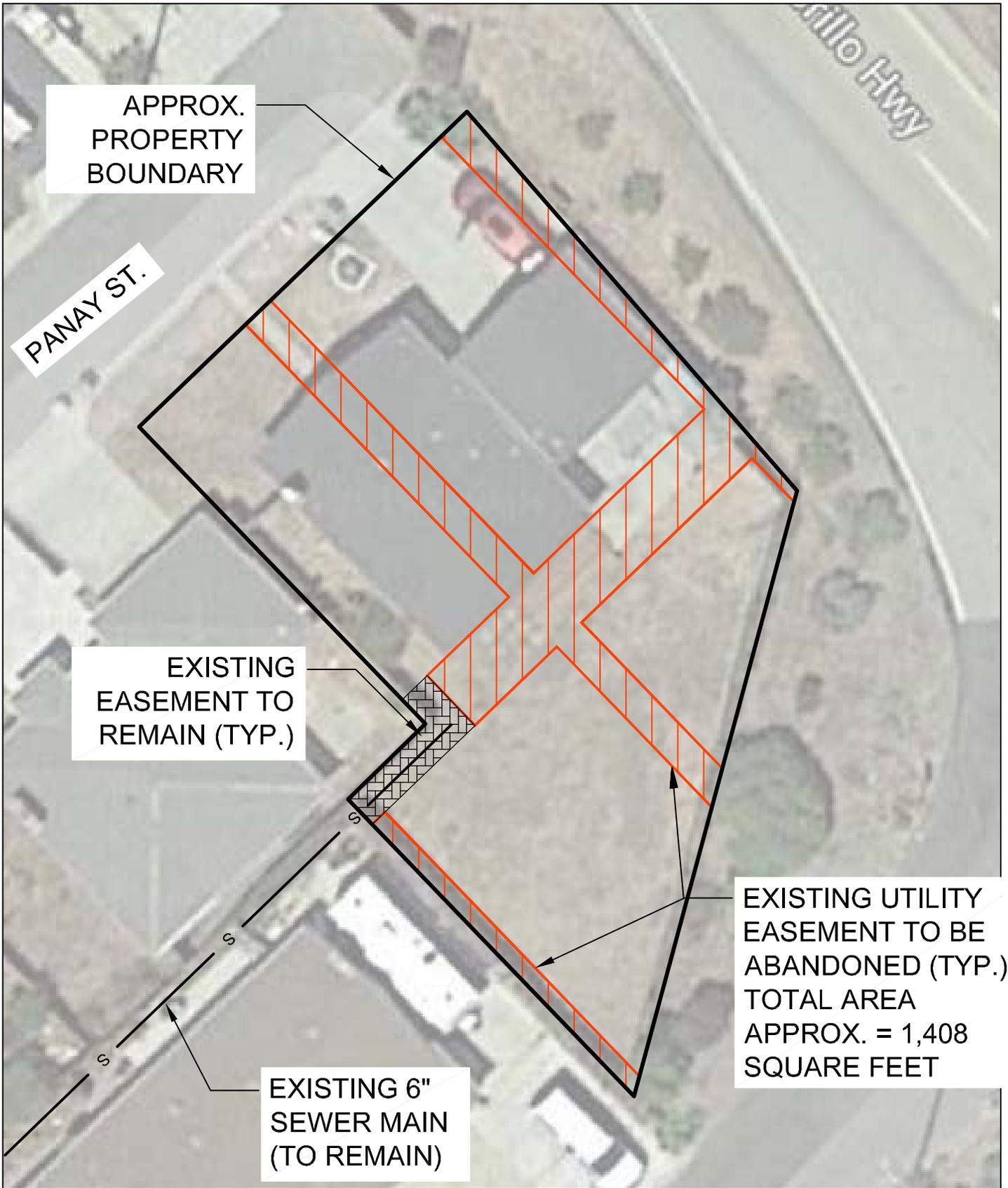
ABSTAIN: (None)


Chairperson Gerald Luhr

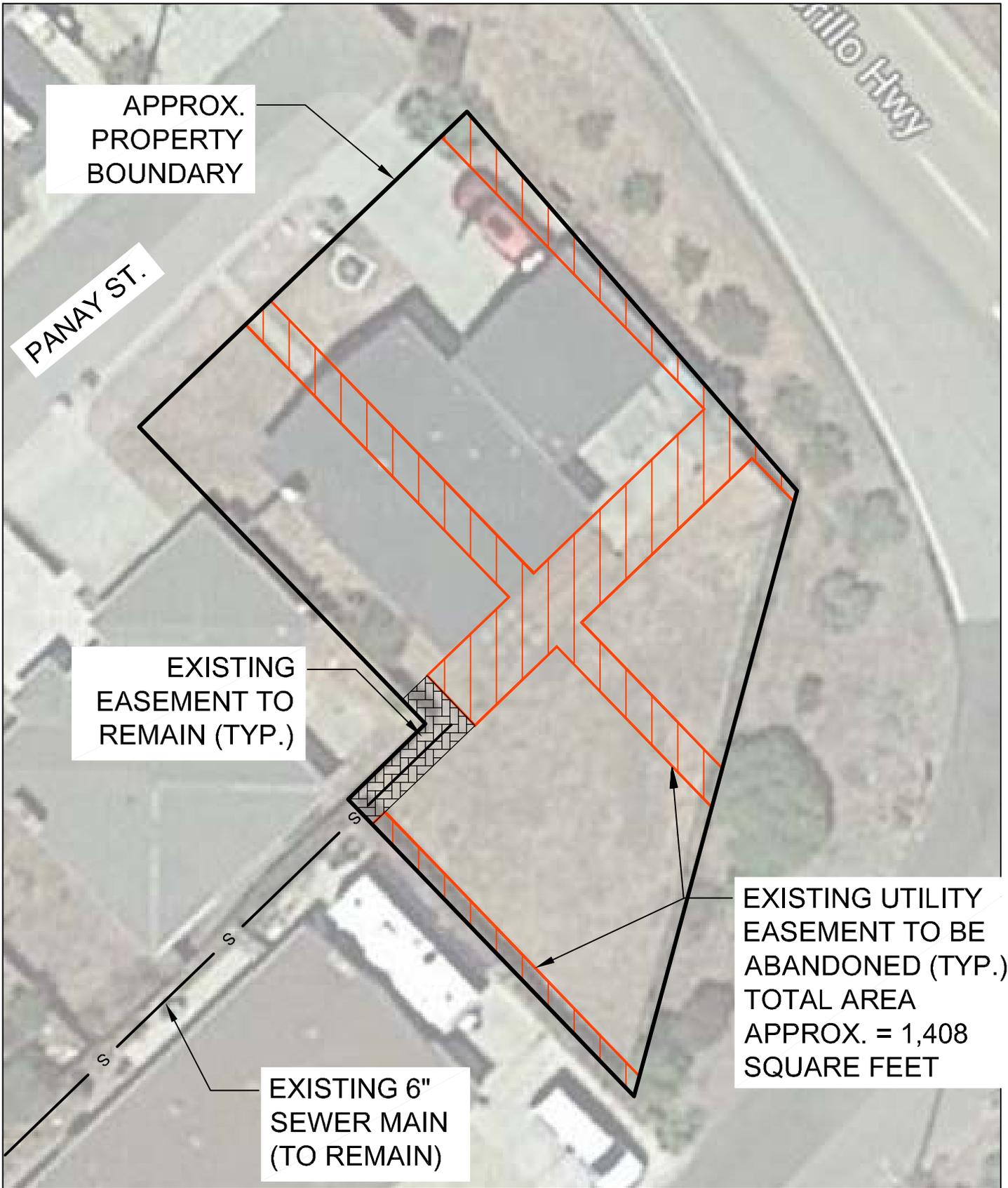
ATTEST


Scot Graham, Community Development Director

The foregoing resolution was passed and adopted this 1st day of October 2019.



ATTACHMENT-2: SITE PLAN (196 PANAY ST.)
NO SCALE



ATTACHMENT-2: SITE PLAN (196 PANAY ST.)
NO SCALE

RESOLUTION NO. 93-19

**RESOLUTION OF THE CITY COUNCIL OF
CITY OF MORRO BAY, CALIFORNIA
DECLARING THE INTENTION FOR THE PARTIAL ABANDONMENT OF
UTILITY EASEMENT(S) WHICH LIE UPON THE SUBJECT PARCEL LOCATED
AT 196 PANAY STREET AND SETTING A PUBLIC HEARING AND CAUSING
THE PUBLISHING AND POSTING OF THE NOTICES**

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

WHEREAS, pursuant to California Streets and Highways Code §8300 et seq, ('the Code") an interested person, may request the abandonment (vacation) of a public services easement; and

WHEREAS, property owner at 196 Panay Street, Morro Bay, California APN's 065-106-046 and 065-106-147 described as follows:

That portion Block 9D of Atascadero Beach, in the City of Morro Bay, County of San Luis Obispo, State of California, according to the map filed in Book 2, page 4 of Maps, described in those certain Voluntary Mergers filed as Instrument No. 2007-073790 and 2007-073791, in the office of the County Recorder of said County;

has requested abandonment of portions of existing utility easement(s) located on their property in order to receive the full enjoyment of said property; and

WHEREAS, at its discretion the City Council may, pursuant to code, abandon all or part of a public service easement within the City; and

WHEREAS, the Planning Commission of the City of Morro Bay conducted a hearing on October 1, 2019 and found the proposed abandonment consistent with the City's General Plan conformance; and

WHEREAS, the Planning Commission recommended approval to City Council.

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

1. The City Clerk shall set a hearing for the proposed abandonment for December 10, 2019 at the regular City Council meeting scheduled for on or about 5:30 p.m. at 219 Surf Street, Morro Bay, California.
2. The City Clerk shall cause the publication of a notice of the hearing on the proposed abandonment for at least two successive weeks prior to the hearing in a newspaper of general circulation for the City of Morro Bay.

3. At least two weeks before the day set for the hearing, the City Clerk shall cause the posting of conspicuously notices of the proposed abandonment along the line of the easement proposed to be abandoned in accordance with the California Streets and Highways code.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of November 2019 following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk



AGENDA NO: B-1
MEETING DATE: November 12, 2019

Staff Report

TO: Honorable Mayor and Council Members **DATE:** November 5, 2019

FROM: Scott Collins, City Manager

SUBJECT: Adoption of Resolution No. 94-19 Continuing the Program and Levying the Assessments for the 2019/20 Fiscal Year for the Morro Bay Tourism Business Improvement District (MBTBID) and Introduce for First Reading Ordinance No. 626 to Include Vacation Rentals in the MBTBID by Amending Morro Bay Municipal Code Chapter 3.60

RECOMMENDATION

Staff recommends the City Council conduct the public hearing, consider public comments and adopt Resolution No. 94-19 approving the supplemental MBTBID activities and assessments for Fiscal Year (FY) 2019/20 and introduce for first reading by title only, and with further reading waived, Ordinance No. 626, an ordinance to include vacation rentals into the MBTBID by amending Morro Bay Municipal Code Chapter 3.60.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

A 3% TBID assessment on VRs would result in approximately \$165,000 per fiscal year. However, with it being estimated that VRs will be added around mid-fiscal year this year, and accounting for City Council's direction to honor contracts executed prior to the VR's being part of the TBID, staff estimates added revenues will be approximately \$40,000 for the remainder of FY 2019-20. Council has also approved the movement of \$10,000 into the FY 2019-20 budget to support additional visiting journalists and grants expenses.

By adding Vacation Rentals (VRs) into the TBID at mid-year and the movement of \$10,000 into the TBID Budget from the accumulation fund, the estimated amended FY 2019/20 MBTBID budget is \$939,086.

BACKGROUND

This is the third Council meeting that will take place in the process to supplement the MBTBID FY 2019/20 Budget (1989 Law) and authorize the continued 3% assessment for hoteliers and addition of vacation rentals at the 3% assessment, as required by State law – Streets and Highway Code (SHC) sections 36530 to 36537 (*see steps below*).

The 1989 Law – Annual Improvement District Renewal Process

1. Completed in three City Council sessions (following review and recommended approval by the Tourism Business Improvement District Advisory Board):

Prepared By: ___SC/JL

Dept Review: _____

City Manager Review: ___SC

City Attorney Review: CFN__

- a. Step 1: The amended Annual Report (SHC section 36533) was produced by the MBTBID and filed with the City Clerk for Council consideration and approval. At the first Council session, the Council approved the amended annual report. The Council also adopted a resolution of intention to supplement the program through the addition of vacation rentals and levy assessments for FY 2019/20. That Resolution stated the date and time of a public hearing (SHC section 36534) and a public meeting. That Resolution was mailed to affected business owners. The resolution of intention was also published once in the newspaper of general circulation in the City not less than 7 days before the public hearing. That resolution was adopted at the Council meeting of October 8, 2019 (Resolution No. 83-19).
- b. Step 2: City Council held a public input session for hoteliers and vacation rental stakeholders at the October 22, 2019 Council meeting.
- c. Step 3: The third Council session is a public hearing (this meeting), which follows the negative protest procedure and is held pursuant to SHC sections 36524 and 36525. If hoteliers and vacation rental owners who will pay 50 percent or more of the assessments proposed to be levied do not protest prior to the conclusion of the public hearing, then at the conclusion of the hearing, the Council may adopt the resolution to continue the MBTBID program and assessments as currently levied and proposed, and also may introduce for first reading an ordinance amendment to add vacation rentals to the MBTBID.

If hoteliers and vacation rental owners who will pay 50 percent or more of the assessments proposed to be levied protest prior to the conclusion of the public hearing, then no further proceedings to renew the improvement district shall be taken for a period of one year term from the date of the protest at the public hearing.

As of the date of this Staff Report, the City has received nine (9) protests paying 0.59% of the assessment. All protests received will be published as agenda correspondence prior to the meeting. At the meeting the City Clerk will announce if any protests were received, and if so, whether they constitute the threshold of businesses who will pay 50 percent or more of the proposed assessments.

Ordinance to Amend Morro Bay Municipal Code Chapter 3.60

The MBTBID assessment is a crucial revenue stream that allows the City to market Morro Bay to tourists. Morro Bay Municipal Code (MBMC) Chapter 3.60 outlines the creation of the MBTBID, the assessment, and the way assessment funds can be used.

The use of funds is designed to enhance tourism to the community, which should increase overall Transient Occupancy Tax revenues that are utilized in the City's General Fund, and directly benefit the community's hotels, which see an increase in overnight stays.

As part of the process to bring vacation rentals into the MBTBID, the City Council will need to amend Chapter 3.60.

DISCUSSION

For the MBTBID assessment to add vacation rentals and continue hoteliers at the 3% assessment, State law requires the City Council approve a supplemental to the FY2019/20 business improvement district assessments and further amend Chapter 3.60.

This funding source is crucial to marketing Morro Bay to tourists and has greatly enhanced revenue collections for the City from Transient Occupancy Taxes. Retaining a protected revenue stream to be used specifically for tourism promotions and marketing gives Morro Bay a great opportunity to maximize its potential as a tourist destination that will benefit the local hoteliers along with the rest of the community. By adding vacation rentals to the TBID, it provides additional funding to support those important marketing activities.

The scheduled public hearing is another opportunity to hear from the community and hotelier and vacation rental stakeholders regarding this crucial protected revenue source for tourism marketing and operations.

In addition, the recommended ordinance will add vacation rentals to the MBMC Chapter 3.60.

CONCLUSION

Staff recommends the City Council adopt Resolution No. 94-19 supplementing the MBTBID activities and assessments for FY 2019/20 and introduce by title only, with further reading waived, Ordinance No. Ordinance No. 626 amending Morro Bay Municipal Code Chapter 3.60.

ATTACHMENTS

1. Resolution No. 94-19
2. Ordinance No. 626

RESOLUTION NO. 94-19

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
CONTINUING THE PROGRAM AND LEVYING THE ASSESSMENTS FOR THE
REMAINDER OF 2019/20 FISCAL YEAR FOR THE MORRO BAY
TOURISM BUSINESS IMPROVEMENT DISTRICT (MBTBID)**

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

WHEREAS, the Parking and Business Improvement Area Law of 1989, Sections 36500 *et seq.*, of the California Streets and Highway Code, authorizes cities to establish and review business improvement areas of the purpose of promoting tourism; and

WHEREAS, on April 13, 2009, the City Council held a public hearing and first reading of Ordinance 546 amending the Morro Bay Municipal Code (MBMC) to add a new Chapter 3.60 to establish the Morro Bay Tourism Business Improvement District (MBTBID), and adopted Ordinance 546 at its April 27, 2009 meeting, which set the MBTBID assessments at 3% from June 1, 2009 to May 31, 2010, and 2% from June 1, 2010 and thereafter; and

WHEREAS, on June 1, 2010, the MBTBID assessments returned to the 2% level, as established by then MBMC section 3.60.050; and

WHEREAS, on September 13, 2010, the City Council held a public hearing and first reading of Ordinance 562 to amend MBMC section 3.60.050, changing the assessment percentage to 3%, and adopted Ordinance 562 at its September 27, 2010 meeting; and

WHEREAS, on May 16, 2019, at a duly noticed public meeting, the MBTBID advisory board, formed pursuant to MBMC, Section 3.60.100, recommended the renewal of the TBID for the 2019/20 fiscal year to continue its activities, and the City Council has approved that renewal annually since 2010; and

WHEREAS, all other findings of Ordinances 546 and 562 remain unchanged; and

WHEREAS, on May 28, 2019, City Council conducted a public meeting where staff presented the annual assessment report, which provided a full and detailed description of activities to be provided during the FY 2019-20, as provided in the proposed budget for that Fiscal Year, and available for review in the City Clerk's office, and the City Council approved that Annual Assessment Report and declared its intention to renew the Morro Bay Tourism Business Improvement District for the 2019/20 Fiscal Year, and to levy and collect 3% assessments from hoteliers calculated in the manner set forth in MBMC, section 3.60.050; and

WHEREAS, that budget plan generally described the funded activities to be marketed, which attract and extend overnight stays in Morro Bay hotels, and are consistent with the authorized uses for the assessment revenue set forth in MBMC, section 3.60.030; and

WHEREAS, it was the intention of the City Council to levy and collect 3% assessments from the hoteliers within the TBID for the 2019/20 fiscal year; and

WHEREAS, at the public meeting held on May 28, 2019, City Council additionally set a public hearing, for the intent to levy the MBTBID assessment for Fiscal Year 2019/20, to be held at the Morro Bay Veterans Memorial Hall located at 209 Surf Street, Morro Bay, California, in accordance with the California Streets and Highway Code, sections 36534 and 36535; and

WHEREAS, that public hearing to adopt a resolution to reaffirm the MBTBID, and levy and collect the 3% assessments from hoteliers, was held on Tuesday, June 11, 2019. Before or at this public hearing written protests to the continuation of the MBTBID and the levy of the assessment were considered, consistent with the requirements of Streets & Highways Code, sections 36524 and 36525 and MBMC, section 3.60.060, and written protests were not received from hoteliers which pay 50% or more of the proposed continued assessment, and as such the annual assessment was continued for FY 2019-20; and

WHEREAS, on September 19, 2019, at a duly noticed public meeting, the TBID advisory board, formed pursuant to MBMC, section 3.60.100, pursuant to the request of the City Council at its August 27, 2019 regular meeting, considered the addition of vacation rentals (“VRs”) to the existing Morro Bay Tourism Business Improvement District (“TBID”) at the existing TBID assessment rate of 3% levied on hotels; and

WHEREAS, at that September 19, 2019 meeting, the TBID Board conducted a supplemental review of its Annual Report for FY 2019-20 (required by Section 3.60.060 of the Morro Bay Municipal Code and Streets & Highways Code section 36533 (“Section 36533”)), which was initially approved by the TBID Board on May 7, 2019, and then subsequently approved by the City Council on May 28, 2019; and

WHEREAS, the Annual Report pursuant to Streets & Highways Code Section 36533(a) provides that the TBID Board “shall cause to be prepared a report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report.” Subsection (b)(1-6) of Streets & Highways Code Section 36533 provides the Annual Report “shall contain” six elements. All six elements were addressed in the prior report submitted to, and approved by City Council, on May 28, 2019. Section 36533 also provides in subsection (a) that the TBID Board Annual Report submitted to the City Council “may propose changes, including, but not limited to, the boundaries of the parking and business improvement area or any benefit zones within the area, the basis and method of levying the assessments, and any changes in the classification of businesses.”; and

WHEREAS, pursuant to the request from City Council to add VRs to the TBID, the TBID Board recommended at its September 19, 2019 meeting the Council should approve a Supplemental Annual Report for FY 2019-20. This supplemental report both provides a supplemental recommendation on changes to “the basis and method of levying the assessments, and any changes in the classification of businesses,” so as to add VRs to the TBID at the existing assessment rate of 3%, and further addresses the effect of those proposed changes through a supplemental recommendation concerning the six required elements of an annual report; and

WHEREAS, on October 8, 2019, City Council conducted a public meeting where staff presented the Supplemental Annual Report for FY 2019-20, attached to this Resolution as Exhibit A and available for review in the City Clerk’s office; and

WHEREAS, the budget generally describes the funded activities to be marketed, which attract and extend overnight stays in Morro Bay hotels and vacation rentals, and are consistent with the authorized uses for the assessment revenue set forth in MBMC, section 3.60.030; and

WHEREAS, on October 8, 2019, City Council approved the Supplemental Annual Report for FY 2019-20 and declared its intent to continue the levy and collection of 3% assessments from the hoteliers within the TBID for the FY 2019-20, and to levy and collect 3% assessments from vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) within the TBID for the remainder of FY 2019-20 consistent with the effective date of an amendment of Chapter 3.60 (Tourism Business Improvement District Law) of the Morro Bay Municipal Code, so as to add vacation rental businesses to the TBID at the existing assessment rate of 3% and consistent with MBMC section 3.60.050; and

WHEREAS, at the public meeting held on October 8, 2019, City Council additionally set a public meeting date of October 22, 2019 to allow public testimony on, and a public hearing for November 12, 2019 to consider protests to, the intent to levy said MBTBID assessment for Fiscal Year 2019/20, to be held at the Morro Bay Veterans Memorial Hall located at 209 Surf Street, Morro Bay, California, in accordance with the California Streets and Highway Code, sections 36524 and 36525 and consistent with Government Code section 54954.6; and

WHEREAS, the City timely mailed to all businesses subject to the existing and proposed TBID assessment the resolution adopted on October 8, 2019 concerning the continuation of the levy of the annual TBID assessment, the intention to add vacation rental businesses to the TBID, and confirming the date and time for a public meeting on October 22, 2019 and a public hearing on November 12, 2019 concerning the addition of vacation rental businesses to the TBID; and

WHEREAS, on October 22, 2019, City Council at a public meeting solicited and allowed public testimony regarding the addition of vacation rental businesses to the Morro Bay Tourism Business Improvement District so as to levy an annual assessment on vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) at the existing TBID rate of 3% calculated in the manner set forth in MBMC, section 3.60.050; and

WHEREAS, the City timely published in a newspaper of general circulation in the City the resolution adopted on October 8, 2019 concerning the continuation of the levy of the annual TBID assessment, the intention to add vacation rental businesses to the TBID, and confirming the date and time for a public meeting on October 22, 2019 and a public hearing on November 12, 2019 concerning the addition of vacation rental businesses to the TBID; and

WHEREAS, at that public hearing on November 12, 2019 regarding the renewal of the TBID for the 2019/20 fiscal year and the addition of vacation rental business in the MBTBID, affected businesses had the opportunity to protest the TBID renewal and the inclusion of vacation rental businesses in the MBTBID assessment, with the following results:

FOR: None

AGAINST: Nine (9) properties paying 0.59% of the annual assessment.

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

1. The above recitations are true and correct, and incorporated herein by reference.
2. The City Council, having reaffirmed the Supplemental Annual Assessment Report and proposed budgets at its regular meeting held on October 8, 2019, and considered all testimony, reports and opinions presented at the October 22, 2019 public meeting and November 12, 2019 public hearing, hereby declares the renewal of the Morro Bay Tourism Business Improvement District for the remainder of the 2019/20 fiscal year, instructs the hoteliers to continue the levy and collection of 3% assessments from hoteliers calculated in the manner set forth in MBMC Section 3.60.050, and instructs vacation rental businesses to levy and collect a 3% assessments from vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) for the remainder of FY 2019-20 consistent with the effective date of amendment of Chapter 3.60 (Tourism Business Improvement District Law) of the Morro Bay Municipal Code, so as to add vacation rental businesses to the TBID at the existing assessment rate of 3%, calculated in the manner set forth in MBMC, section 3.60.050 and consistent with MBMC, section 3.60.070.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 12th day of November 2019 by the following vote:

AYES:

NOES:

ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

**Morro Bay Business Improvement District
Supplemental Annual Report for FY 2019-20**

Presented to the Morro Bay City Council by the Morro Bay Tourism Business Improvement District Advisory Board

The City of Morro Bay's Tourism Business Improvement District Advisory Board ("TBIDAB") at its regularly scheduled meeting on September 19, 2019, pursuant to the request of the City Council at its August 27, 2019 regular meeting, considered the addition of vacation rentals ("VRs") to the existing Morro Bay Tourism Business Improvement District ("TBID") at the existing TBID assessment rate of 3% levied on hotels.

The TBIDAB conducted a supplemental review of its Annual Report for FY 2019-20 (required by Section 3.60.060 of the Morro Bay Municipal Code and Streets & Highways Code section 36533 ("Section 36533")), which was initially approved by the TBIDAB on May 7, 2019, and then subsequently approved by the City Council on May 28, 2019.

The Annual Report pursuant to Section 36533(a) provides that the TBIDAB "shall cause to be prepared a report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report." Subsection (b)(1-6) of Section 36533 provides the Annual Report "shall contain" six elements. All six elements were addressed in the prior report submitted on May 28, 2019. Section 36533 also provides in subsection (a) that the TBIDAB Annual Report submitted to the City Council "may propose changes, including, but not limited to, the boundaries of the parking and business improvement area or any benefit zones within the area, the basis and method of levying the assessments, and any changes in the classification of businesses."

Pursuant to the request from City Council to add VRs to the TBID, the TBIDAB now submits this Supplemental Annual Report for FY 2019-20. This supplemental report both provides a supplemental recommendation on changes to "the basis and method of levying the assessments, and any changes in the classification of businesses," and further addresses the effect of those proposed changes through a supplemental recommendation concerning the six required elements of an annual report.

The TBIDAB submits the following, as supplements to the Annual Report for FY 2019-20 (previously submitted on May 22, 2019) for approval or modification by the City Council, and as general recommendations for City Council action, consistent (as required by law) with the Parking and Business Improvement Area Law of 1989.

A. Proposed Changes to the TBID (Streets & Highways Code §§ 36533(a), 36540)

1. Basis and method of levying assessments under Chapter 3.60 (Tourism Business Improvement Law) of the Morro Bay Municipal Code (“MBMC”), pursuant to the authority of the Parking and Business Improvement Area Law of 1989 (“1989 Law”), shall include the assessment of vacation rental businesses at the existing rate of 3%, as the term “vacation rental” is used in Chapter 5.47 (Short-Term Vacation Rental Permit) of the MBMC.
2. Classification of businesses subject to the existing assessment provided for in Chapter 3.60 of Chapter 3.60 shall expressly include such vacation rental businesses as referenced above.
3. Amend Chapter 3.60 of the MBMC, and take any other necessary action as required by law, to implement the above proposed changes.

B. Six Elements of Annual Report (Streets & Highways Code § 36533(b)(1-6)

1. The Morro Bay Tourism Business Improvement District (MTBID) Advisory Board did not propose any changes in the Boundaries of the TBID, which were established in MBMC Section 3.60.040 to be the boundaries of the City of Morro Bay.
2. The improvements and activities to be provided for in Fiscal Year FY 2019/20 are those services and activities permitted under Section 3.60.030 of the Morro Bay Municipal Code, which include:
 1. The general promotion of tourism within the district to include costs as specified in the business plan to be adopted annually; and
 2. Implementation of the strategic plan; and
 3. Marketing of Foreign Independent Travelers (FIT), conference, group, and film business that benefits local tourism and the local lodging (hotel/motel/vacation rentals) industry in the district; and
 4. The marketing of the district to the travel industry in order to benefit local tourism and the local lodging industry in the district

GOALS & OBJECTIVES for FY 2019/20

1. Continue to implement the Tourism Strategic Plan, adopted by City Council in 2019.
2. Increase overall occupancy & lodging revenues, especially during midweek and shoulder season through our new destination assets such as the website and implementation of the strategic plan and new branding.
3. Midweek – be more aggressive through digital media to increase stays plus grow mid-week stays through FIT and group longer stays.
4. Extend the number of average lodging room nights beyond the current level of 1.8 (this is an increase from 2018/19 at 1.5).
5. Help incrementally increase the lodging Average Daily Rate (ADR) through the promotion and elevation of the destination.
6. Bring exposure to Morro Bay as a viable domestic and international destination for individuals and groups which will increase longer stays.
7. Assist with the development and growth of athletic competitions and events that attract overnight guest and that fit in our strategic plan model.
8. Create opportunities to positively impact sales tax businesses & drive economic development in the City of Morro Bay such as new or upgrade of hotel stock, grow the quality of events to entice a higher level of visitor.

9. Positively impact transient occupancy tax (TOT) for the City of Morro Bay.
3. An estimate of the cost of providing the improvements and the activities for that fiscal year (as described below with the FY 2019/20 Revised Budget).

FY 2019-20 Approved Budget -

Sources: The FY 2019-20 revised projected actual sources include total sources of \$939,644, made up of \$863,643 from TBID assessment revenues (\$40,000 additional funds by adding vacation rentals), \$60,000 from the City's General Fund and \$6,000 from advertising revenue, and \$10,000 from the TBID Accumulation Fund.

Uses: The FY 2019/20 projected actual expenditures are \$939,086, netting no change to the fund balance.

The below budget shows FY 2019/20 revised budget, projected actuals, and the variance of the projected actuals compared to the revised budget.

City of Morro Bay
FY 2019/20 TBID Proposed Budget
Operating Revenues vs. Operating Expenditures

	FY19/20 Approved Budget	FY19/20 Revised Budget
Revenues		
Advertising - Guides and Magazines	\$ 6,000	\$ 6,000
Transient Occupancy Tax (TBID Assessment)	823,644	\$823,644
Transient Occupancy Tax (VR Assessment)		40,000
Interest		-
Transfers In - General Fund Contribution	60,000	60,000
Transfer In - Accumulation Fund		10,000
Total Revenues	\$ 889,644	\$939,644
Expenditures		
Salaries & Benefits	\$ 219,087	219,087
General Office Supplies	3,000	3,000
Forms Printing	500	500
Consulting Services	11,600	11,600
Contractual Services	165,000	165,000
Promotion & Advertising	12,000	12,000
Print Ads	4,500	4,500
Digital Media	272,000	289,000
Out of Home	6,600	6,600
Digital Services	45,000	45,000
Digital Assets	-	7,000
Marketing Consulting	-	4,375
Community Event Support	50,000	54,000
Promotion Media	8,000	8,000
Promotion Other	13,000	20,630
Promotion Visiting Journalist	10,000	20,000
Trade Shows - Space Rent	7,600	7,600
Trade Shows - Trans	500	500
Advertising Sponsorships	13,000	13,000
Professional Development	500	500
Other Professional Services	500	500
Postage	700	700
Utilities (Internet & Cell)	2,000	2,000
Workers Comp Insurance	1,200	1,200
Unemployment Insurance	900	900
Meetings and Conferences	2,000	2,000
Mileage Reimbursement	500	500
Meals & Lodging	4,500	4,500
Travel Expense	2,000	2,000
Association Memberships	1,500	1,500
Total Operating Expenditures	\$ 857,687	\$907,692
Transfer to Accumulation Fund	-	0
Transfer Out	31,394	31,394
Total Operating Expenditures Including	\$ 889,081	\$939,086
Net Operating Revenues over Expenditu	\$ 563	\$ 558

- The Morro Bay TBID Advisory Board approved a motion to recommend that the 3% Assessment be continued in FY 2019/20. The assessment will continue to apply to hotels, motels and bed and breakfasts (as presently defined in the MBMC) and now also shall include vacation rentals as the term "vacation rental" is used in Chapter 5.47 (Short-Term Vacation Rental Permit) of the MBMC.

5. The TBID budget for FY 2018/19 is projected to include \$0 surplus left over for carryover into FY 2019/20.
6. The TBID FY 2019/20 Budget also includes revenues of \$60,000 from the City's General Fund and \$4,000 from advertising revenue.

ORDINANCE NO. 626

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA TO INCLUDE VACATION RENTAL BUSINESSES IN ANNUAL MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT ASSESSMENT BY AMENDING CHAPTER 3.60 (TOURISM BUSINESS IMPROVEMENT DISTRICT LAW) OF TITLE 3 (REVENUE AND FINANCE) OF THE MORRO BAY MUNICIPAL CODE

WHEREAS, the Parking and Business Improvement Area Law of 1989, section 36500 *et seq.*, of the California Streets and Highway Code, authorizes cities to establish and review business improvement areas for the purpose of promoting tourism; and

WHEREAS, on April 13, 2009, City Council held a public hearing for the introduction and first reading of Ordinance 546 amending the Morro Bay Municipal Code (MBMC) to add a new Chapter 3.60 to establish the Morro Bay Tourism Business Improvement District (“MBTBID” and/or “TBID”), and adopted Ordinance 546 at its April 27, 2009 meeting, which set the MBTBID assessments at 3% from June 1, 2009 to May 31, 2010, and 2% from June 1, 2010 and thereafter; and

WHEREAS, on June 1, 2010, the MBTBID assessments returned to the 2% level, as established by Ordinance 546; and

WHEREAS, on September 13, 2010, the City Council held a public hearing and first reading of Ordinance 562 to amend MBMC section 3.60.050, changing the assessment percentage to 3%, and adopted Ordinance 562 at its September 27, 2010, meeting; and

WHEREAS, on May 16, 2019, at a duly noticed public meeting, the MBTBID advisory board, formed pursuant to MBMC, section 3.60.100, recommended the renewal of the MBTBID for Fiscal Year (FY) 2019-20 to continue its activities, and the City Council has approved that renewal for the past eight years; and

WHEREAS, all other findings of Ordinances 546 and 562 remain unchanged except as provided herein; and

WHEREAS, on May 28, 2019, City Council conducted a public meeting where staff presented the annual assessment report, which provided a full and detailed description of activities to be provided during the FY 2019-20, as provided in the proposed budget for that Fiscal Year, and available for review in the City Clerk’s office, and the City Council approved that Annual Assessment Report and declared its intention to renew the Morro Bay Tourism Business Improvement District for the 2019/20 Fiscal Year, and to levy and collect 3% assessments from hoteliers calculated in the manner set forth in MBMC, section 3.60.050, and that budget generally described the funded activities to be marketed, which attract and extend overnight stays in Morro Bay hotels, and are consistent with the authorized uses for the assessment revenue set forth in MBMC, section 3.60.030, and it was the intention of the City Council to levy and collect 3% assessments from the hoteliers within the TBID for the FY 2019-20; and

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WHEREAS, at the public meeting held on May 28, 2019, City Council additionally set a public hearing, for the intent to levy the MBTBID assessment for Fiscal Year 2019/20, to be held at the Morro Bay Veterans Memorial Hall located at 209 Surf Street, Morro Bay, California, in accordance with the California Streets and Highway Code, sections 36534 and 36535; and

WHEREAS, that public hearing to adopt a resolution to reaffirm the MBTBID, and levy and collect the 3% assessments from hoteliers, was held on Tuesday, June 11, 2019. Before or at that public hearing written protests to the continuation of the MBTBID and the levy of the assessment were considered, consistent with the requirements of Streets & Highways Code, sections 36524 and 36525 and MBMC, section 3.60.060, and written protests were not received from hoteliers which pay 50% or more of the proposed continued assessment, and as such the annual assessment was continued for FY 2019-20; and

WHEREAS, on September 19, 2019, at a duly noticed public meeting, the TBID advisory board, formed pursuant to MBMC, section 3.60.100, pursuant to the request of the City Council at its August 27, 2019 regular meeting, considered the addition of vacation rentals (“VRs”) to the existing MBTBID at the existing TBID assessment rate of 3% levied on hotels, and at that September 19, 2019 meeting, the TBID Board conducted a supplemental review of its Annual Report for FY 2019-20 (required by Section 3.60.060 of the Morro Bay Municipal Code and Streets & Highways Code section 36533 (“Section 36533”)), which was initially approved by the TBID Board on May 7, 2019, and then subsequently approved by the City Council on May 28, 2019; and

WHEREAS, the Annual Report pursuant to Streets & Highways Code Section 36533(a) provides that the TBID Board “shall cause to be prepared a report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report.” Subsection (b)(1-6) of Streets & Highways Code Section 36533 provides the Annual Report “shall contain” six elements. All six elements were addressed in the prior report submitted to, and approved by City Council, on May 28, 2019. Section 36533 also provides in subsection (a) that the TBID Board Annual Report submitted to the City Council “may propose changes, including, but not limited to, the boundaries of the parking and business improvement area or any benefit zones within the area, the basis and method of levying the assessments, and any changes in the classification of businesses.”; and

WHEREAS, pursuant to the request from City Council to add VRs to the TBID, the TBID Board recommended at its September 19, 2019 meeting the Council should approve a Supplemental Annual Report for FY 2019-20. This supplemental report both provided a supplemental recommendation on changes to “the basis and method of levying the assessments, and any changes in the classification of businesses,” so as to add VRs to the TBID at the existing assessment rate of 3%, and further addressed the effect of those proposed changes through a supplemental recommendation concerning the six required elements of an annual report; and

WHEREAS, the City timely mailed to all businesses subject to the existing and proposed TBID assessment a joint notice of both an upcoming public meeting on October 22, 2019 for the City Council to allow public testimony regarding the addition of VRs in the TBID, and an upcoming public hearing concerning the addition of VRs in the TBID to determine if written protests are received from the owners of all businesses in the current and proposed TBID which will pay 50 percent or more of the current and proposed assessments; and

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WHEREAS, on October 8, 2019, City Council conducted a public meeting where staff presented the Supplemental Annual Report for FY 2019-20, available for review in the City Clerk's office, and the budget generally described the funded activities to be marketed, which attract and extend overnight stays in Morro Bay hotels and vacation rentals, and are consistent with the authorized uses for the assessment revenue set forth in MBMC, section 3.60.030, and City Council approved the Supplemental Annual Report for FY 2019-20 and declared its intent to continue the levy and collection of 3% assessments from the hoteliers within the TBID for the FY 2019-20, and to levy and collect 3% assessments from vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) within the TBID for the remainder of FY 2019-20 consistent with the effective date of an amendment of Chapter 3.60 (Tourism Business Improvement District Law) of the Morro Bay Municipal Code, so as to add vacation rental businesses to the TBID at the existing assessment rate of 3% and consistent with MBMC section 3.60.050; and

WHEREAS, on October 8, 2019, City Council also set a date of October 22, 2019 for a public meeting on the addition of vacation rentals businesses to the Morro Bay Tourism Business Improvement District, to solicit and allow public testimony regarding the addition of vacation rental businesses to the Morro Bay Tourism Business Improvement District so as to levy an annual assessment on vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) at the existing TBID rate of 3% calculated in the manner set forth in MBMC, section 3.60.050;

WHEREAS, on October 8, 2019, City Council also set a date of Tuesday, November 12, 2019 for a public hearing to adopt a Resolution to reaffirm the MBTBID, and to affirm the renewal of the Morro Bay Tourism Business Improvement District for the 2019/20 Fiscal Year, to continue the levy and collection of 3% assessments from hoteliers calculated in the manner set forth in MBMC, section 3.60.050, and to levy and collect 3% assessments from vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) for the remainder of FY 2019-20 consistent with the effective date of amendment of Chapter 3.60 (Tourism Business Improvement District Law) of the Morro Bay Municipal Code so as to add vacation rental businesses to the TBID at the existing assessment rate of 3%, calculated in the manner set forth in MBMC, section 3.60.050; and

WHEREAS, the City timely mailed to all businesses subject to the existing and proposed TBID assessment the resolution adopted on October 8, 2019 concerning the continuation of the levy of the annual TBID assessment, the intention to add vacation rental businesses to the TBID, and confirming the date and time for a public meeting on October 22, 2019 and a public hearing on November 12, 2019 concerning the addition of vacation rental businesses to the TBID; and

WHEREAS, on October 22, 2019, City Council at a public meeting solicited and allowed public testimony regarding the addition of vacation rental businesses to the Morro Bay Tourism Business Improvement District so as to levy an annual assessment on vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) at the existing TBID rate of 3% calculated in the manner set forth in MBMC, section 3.60.050; and

WHEREAS, the City timely published in a newspaper of general circulation in the City the resolution adopted on October 8, 2019 concerning the continuation of the levy of the annual TBID assessment, the intention to add vacation rental businesses to the TBID, and confirming the date and time for a public meeting on October 22, 2019 and a public hearing on November 12, 2019 concerning the addition of vacation rental businesses to the TBID; and

WHEREAS, before or at the public hearing held on November 12, 2019, the City Council considered written and oral protests, from owners of businesses in the current and proposed assessment area, to the continuation of the MBTBID and the levy of the continued and proposed assessments, consistent with the requirements of Streets & Highways Code, sections 36524 and 36525 and MBMC, section 3.60.060, and such written protests were not received from the owners of businesses which will pay 50 percent or more of the existing and proposed assessments to be levied, and as such the annual assessment for FY 2019-20 was reaffirmed as continued; and

WHEREAS, the City Council having on October 8, 2019 affirmed and approved the Supplemental Annual Report for FY 2019-20 and declared its intent to continue the levy and collection of 3% assessments from the hoteliers within the TBID for the FY 2019-20, and to levy and collect 3% assessments from vacation rental businesses within the TBID for the remainder of FY 2019-20 consistent with the effective date of an amendment of Chapter 3.60 the MBMC, so as to add vacation rental businesses to the TBID at the existing assessment rate of 3% and consistent with MBMC section 3.60.050, and having on October 22, 2019 held a public meeting on such addition of vacation rentals businesses to the MBTBID, and on November 12, 2019 held a public hearing wherein written protests were not received from the owners of businesses which will pay 50 percent or more of the existing and proposed assessments to be levied, now desires pursuant to the authority provided by the Parking and Business Improvement Area Law of 1989, section 36500 *et seq.*, of the California Streets and Highway Code, to amend Chapter 3.60 (Tourism Business Improvement District Law) of Title 3 (Revenue and Finance) of the Morro Bay Municipal Code, so as to add vacation rental businesses to the Morro Bay Tourism Business Improvement District so as to levy an annual assessment on vacation rental businesses (as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code) at the existing TBID rate of 3% of the rent charged by the operator of the vacation rental for all transient occupancies; and

WHEREAS, the City Council further recognizes that contracts for vacation rental tenancies may have been entered into before the effective date of the inclusion of vacation rentals in the MBTBID assessment, and thus in the interests of equity the City Council desires that contracts executed, between owners/managers of vacation rental businesses and their customers, prior to the effective date of the inclusion of vacation rentals in the MBTBID as an operation of law, for tenancies up to and including June 30, 2020, be provided a limited exemption from the assessment; and

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

SECTION 1. CHAPTER 3.60 (TOURISM BUSINESS IMPROVEMENT DISTRICT LAW) OF TITLE 3 (REVENUE AND FINANCE) OF THE MORRO BAY MUNICIPAL CODE IS TO READ AS FOLLOWS (WITH NEW TEXT IN *BOLD ITALICS* AND DELETED TEXT IN STRIKETHROUGH):

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CHAPTER 3.60 - TOURISM BUSINESS IMPROVEMENT DISTRICT LAW

Sections:

3.60.010 - Title.

This chapter shall be known as the "City of Morro Bay Tourism Business Improvement District Law."

3.60.020 - Definitions.

"City Council" means the City Council of the City of Morro Bay.

"City Advisory Board" means the advisory body appointed by the City Council, pursuant to this chapter.

"District" means the City of Morro Bay Tourism Business Improvement District (or "MBTBID") created by this chapter and as delineated in Section 3.60.040.

"Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, motel, ***vacation rental***, or bed and breakfast that pays transient occupancy tax. ***For purposes of this chapter the definition of "hotel" shall include vacation rentals.*** For purposes of this chapter the definition of "hotel" shall not include RV parks ~~and vacation rentals.~~

"Law" means the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Sections 36500 et seq., as amended.

"Operator" means the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

"Transient" means any person who exercises occupancy or who is entitled to occupancy, by reason of concession, permit, right of access, license, or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days.

"Vacation rental" shall have the same meaning as the term "Short-term vacation rental" has as that term is defined in Chapter 5.47 (Short-Term Vacation Rental Permit) of the Morro Bay Municipal Code.

3.60.030 - Authorized uses.

This chapter is made and enacted pursuant to the provisions of the Parking and Business Improvement Area Law of 1989 (Sections 36500, et seq., of the Streets and Highways Code)

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(the "law"). The purpose of forming the district as a business improvement area under the Parking and Business Improvement Area Law of 1989 is to provide revenue to defray the costs of services, activities and programs promoting tourism which will benefit the operators of hotels in the district through the promotion of scenic, recreational, cultural and other attractions in the district as a tourist destination. It is the intent of this chapter to provide a supplemental source of funding for the promotion of tourism in the district. The specific services, activities and programs to be provided by the district are as follows:

- A. The general promotion of tourism within the district is to include costs as specified in the business plan to be adopted annually;
- B. The marketing of conference, group, and film business that benefits local tourism and the local hotel industry in the district; and
- C. The marketing of the district to the travel industry in order to benefit local tourism and the local hotel industry in the district.

3.60.040 - Boundaries.

The boundaries of the MBTBID shall be the boundaries of the City of Morro Bay.

3.60.050 - Levy of assessment and exemptions.

The MBTBID shall include all hotel businesses located within the MBTBID boundaries. The assessment to be levied on all hotel businesses within the MBTBID boundaries shall be based upon three percent of the rent charged by the operator per occupied room per night for all transient occupancies. The assessment shall be collected monthly, based on percent of the rent charged by the operator per occupied room per night in revenues for the previous month. New hotel businesses within the boundaries shall not be exempt from the levy of assessment authorized by Section 36531 of the law. Assessments pursuant to the MBTBID shall not be included in gross room rental revenue for purpose of determining the amount of the transient occupancy tax. The value of extended stays of more than thirty consecutive calendar days shall be exempt from the levy of assessment. Any other exclusion shall be based on benefit and the policies and ordinances of the collecting agency.

3.60.060 - Annual review of assessment.

All of the assessments imposed pursuant to this chapter shall be reviewed by the Morro Bay City Council annually, based upon the annual report prepared by the advisory board appointed pursuant to this chapter and Sections 36530 and 36533 of the law. After approval of the annual report, the Morro Bay City Council shall follow the hearing process as outlined in Section 36534 of the law. At the public hearing the Morro Bay City Council shall hear and consider all protests. If written protests are received from hotel businesses in the district paying fifty percent or more of the annual assessment, no further proceedings to continue the levy of assessments shall take place. The protests shall be weighted based upon the annual assessment for the prior year by each hotel business.

3.60.070 - Imposition of assessment.

The Morro Bay City Council hereby levies and imposes and orders the collection of an additional assessment to be imposed upon hotel businesses in the district described above, which shall be calculated pursuant to Section 3.60.050 above. Such levy shall begin on June 1, 2009. ***Vacation rental businesses are subject to such assessment upon the effective date of the inclusion of vacation rental businesses in the MBTBID as an operation of law. Rent charged by vacation rental businesses, for tenancies through June 30, 2020, that are pursuant to contracts entered into between the business and a tenant prior to the effective date of the inclusion of vacation rental businesses in the MBTBID as an operation of law, shall not be subject to the assessment.***

3.60.080 - Use of revenue.

The activities to be provided by the MBTBID will be funded by the levy of the assessments and any voluntary contributions. The total revenue from the levy of assessments and any other voluntary contributions within the MBTBID shall not be used to provide improvements or activities outside the MBTBID or for any purpose other than the purposes specified in the resolution of intention. The proceeds of the hotel business assessment and any other voluntary contributions shall be spent to administer marketing and visitor programs to promote the City of Morro Bay as a tourism visitor destination. All funds shall be expended consistent with the purposes of this section. Funds remaining at the end of any MBTBID term may be used in subsequent years in which MBTBID assessments are levied as long as they are used consistent with the requirements of this section. The Morro Bay City Council shall consider recommendations made by the advisory board created by Section 3.60.100 of this chapter as to the use of assessment revenue.

3.60.090 - Delinquency, penalty and interest.

Any hotel business that fails to remit any assessment imposed by this chapter within the time required shall pay a penalty of ten percent of the assessment amount in addition to the assessment. Any and all remedies available to the City of Morro Bay for non-payment of assessment or taxes shall be applicable in the event of non-payment of an assessment under this chapter. Any penalty and interest fees collected from a hotel business due to delinquency shall go to the City of Morro Bay.

3.60.100 - Advisory board.

The City Council shall appoint an advisory board pursuant to Section 36530 of the California Streets and Highways Code in order to make recommendations to the City Council on the expenditure of revenues derived from the levy of assessments, on proposed improvements and activities, and on the method and basis of levy assessments. The City Council may, by resolution, adopt bylaws governing the membership and operations of the advisory board.

3.60.110 - Severability.

If any section, subsection, sentence, clause or phrase of this chapter 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 the chapter. The Morro Bay City Council hereby declares that it would have passed the ordinance codified in this chapter and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any

one or more of the sections, subsections, sentences, clauses or phrases hereof be declared invalid or unconstitutional.

3.60.120 - Modification or disestablishment.

The City of Morro Bay, by ordinance, may modify the provisions of this chapter and may disestablish the district or parts of the district, after adopting a resolution of intention to such effect. Such resolution shall describe the proposed change or changes, or indicate that it is proposed to disestablish the district, and shall state the time and place of a hearing to be held by the Morro Bay City Council to consider the proposed action. If the operators of hotels which pay fifty percent or more of the assessments in the district file a petition with the City Clerk of the City of Morro Bay requesting the Morro Bay City Council to adopt a resolution of intention to modify or disestablish the district, the Morro Bay City Council shall adopt such resolution and act upon it as required by law. Signatures on such petition shall be those of a duly authorized representative of the operators of hotels in the district. In the event the resolution proposes to modify any of the provisions of this chapter, including changes in the existing assessments or in the existing boundaries of the district, such proceedings shall terminate if protest is made by the operators of hotels which pay fifty percent or more of the assessments in the district, or in the district as it is proposed to be enlarged.

In the event the resolution proposes disestablishment of the district, the Morro Bay City Council shall disestablish the district, unless at such hearing protest against disestablishment is made by the operators of hotels paying fifty percent or more of the assessments in the district.

3.60.130 - Effective date.

The City Clerk of the City of Morro Bay shall certify to the passage of this chapter by the Morro Bay City Council and cause it to be posted in three conspicuous places in the City of Morro Bay and it shall take effect on the thirty-first day after it is approved by the Morro Bay City Council.

SECTION 2. 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 3. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage.

SECTION 4. 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 of the City Council held on the 12th day of November 2019, by motion of Council Member _____ and seconded by Council Member _____.

PASSED AND ADOPTED on the ____ day of _____, 2019, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO
HEREBY CERTIFY that the foregoing Ordinance Number 626 was duly adopted by the
City Council of the City of Morro Bay at a regular meeting of said Council on the ____
day of _____, 2019, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

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

DANA SWANSON, City Clerk



AGENDA NO: C-1

MEETING DATE: November 12, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** November 5, 2019

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

SUBJECT: Participation in the Delta Conveyance Project, and Negotiations with California Polytechnic State University (Cal Poly) Regarding Additional Water Supply for the University

RECOMMENDATION

Staff recommends the City Council provide the following direction:

1. Authorize the Public Works Director, acting as the appointed representative to the State Water Subcontractors Advisory Committee (SWSAC) to the San Luis Obispo County Flood control and Water Conservation District (District), to vote in favor of recommending the District sign the Agreement in Principle (AIP) for the Delta Conveyance Project (DCP); and
2. Authorize staff to continue discussions with Cal Poly for the potential transfer of a portion of the City's State Water Allocation to the University.

ALTERNATIVES

1. **Delta Conveyance Project (DCP)**
 1. Take no action.
 2. Recommend to the County Board of Supervisors to not participate in this phase of the DCP, which would prevent future participation.
2. **Cal Poly:** Direct staff to discontinue discussions with Cal Poly regarding transfer of a portion of the City's State Water allocation.

FISCAL IMPACT

DCP - Costs for the first phase of the environmental review (per CEQA) and the preliminary planning and engineering efforts are projected to be about \$350 million in total for the participating State Water Contractors. The District's including 10 subcontractors anticipated prorated cost share would be approximately \$2.5 million dollars. The preliminary efforts are anticipated to take 2–3 years. The District has provided a cost breakdown for the District and Subcontractors in proportion to their total subscribed water (base Water Service Amount plus Drought Buffer). Morro Bay's share of the costs for the first phase of the environmental review and the preliminary planning and engineering efforts are projected to be \$360,300, which district staff will be recommending be amortized over five years. This amortization, assuming a nominal interest rate of three percent would result in an annual cost of approximately \$78,700 per year over the next five-years. It is estimated that the DCP will ultimately add between \$230 to \$400 per acre foot (\$302,000 to \$525,200 per year) to the City's State Water cost upon DCP anticipated completion by year 2034.

Cal Poly – With the anticipated provision of additional water to the City's water portfolio through the Water Reclamation Facility (WRF) the City could offset some of its water costs through the sale of a portion of its allocation to Cal Poly, subject to further discussion and negotiation.

Prepared By: <u>RL</u>	Dept Review: <u>RL</u>
City Manager Review: _____	City Attorney Review: <u>CFN</u>

DISCUSSION

DCP – At the October 23, 2019 meeting of the SWSAC, District staff presented Item IIIB “Consider recommending that the District participate in preliminary efforts associated with the Delta Conveyance Project.” Since this involved a recommendation regarding potential commitment of funds, Committee members tabled the vote on this item until they could receive direction from their respective governing bodies. This item seeks that direction from City Council.

The City of Morro Bay participates in the State Water Project through a subcontract with the District, which is a state water contractor. The District anticipates receiving a letter from the California Department of Water Resources (DWR) within the next few months requesting a decision on participating in the DCP and signing the Agreement in Principle (AIP). The AIP describes a methodology for the DCP cost allocation and other related matters that would be the basis of a contract amendment if the DCP is approved and after all necessary environmental review. The Board of Supervisors acting as the District must make the final decision on DCP participation, but it desires to work in partnership with the Subcontractors to determine whether to opt-in or out. Participation in this preliminary phase keeps the option open for DCP participation. If the District does not participate, then it would be opting-out of the DCP. There’s a future “opt-out” decision point (before construction begins).

At the direction of Governor Newsom, the California Department of Water Resources (DWR) rescinded all approvals and withdrew all requested applications for permits and approvals for the project previously referred to as "Cal Waterfix" or, more commonly, the "twin-tunnels" project. Governor Newsom directed DWR to engage in planning efforts for a strategically designed single tunnel to deliver water through the Delta. As a result, on May 2, 2019, DWR informed the State Water Project Contractors that it had rescinded its approvals and began withdrawing proposed permits for the Cal Waterfix project and planning for a smaller, single-tunnel project.

DWR is currently working on defining a proposed single tunnel project, which is being referred to as DCP. As part of this, on July 24, 2019, DWR and the State Water Project (SWP) Contractors began negotiations to amend the long-term water supply contracts to define the cost allocation and water supply benefits from a DCP facility. It is anticipated that at the conclusion of the contract amendment negotiations, which are expected to be completed Fall 2019, a draft AIP summarizes the various proposed amendments to the State Water Contract for consideration by each of the SWP Contractors. DWR is requesting that each SWP Contractor take an action to approve a proposed AIP and indicate whether each will be participating in the planning costs for the DCP. It is expected that DWR will set a date-certain for these votes to occur.

A Delta conveyance facility was part of the original State Water Project (SWP) plan, as approved by voters in 1960, to address the inherent challenges with moving water through the Delta. The single-tunnel DCP will be a major step towards completing the SWP as originally envisioned. The DCP seeks to restore lost delivery capacity due to new water quality and environmental regulatory restrictions now in place to protect the long-term welfare of the Delta ecological system. With DCP, projected average allocation for participants is to “effectively” increase to 67%. Non-participants average allocation reliability will be around 48%. The DCP is the preferred project alternative to address the risks for (1) potential levee failure due to the high probability of significant seismic activity in the region, and (2) salinity increase in south Delta water exports due to sea level rise.

Over the course of the 2012-2016 drought, State water proved reliable and saved the City in 2016 when groundwater supplies were running critically low. State water provides resilience to local agencies, in part, through:

- Supply type diversification: SWP is an imported surface water supply; other supply types may include local or imported surface water, groundwater, recycled water, desal.
- Geographical diversification: Often when it is dry locally, it is wet in northern California.

Water provided through the DCP is relatively low-cost and provides great value compared with other options for developing new local supplies since the DCP is part of the larger State Water Project which the District has been part of since 1963.

Cal Poly – Over the past several months, City staff has met with Cal Poly representatives to discuss the possibility of the City providing the campus with additional water supply that had been identified in their master planning for water supply resiliency. This water supply would be from the City's State Water Allocation. The City would be able to provide this allocation to Cal Poly as a result of the additional potable water added to the City's portfolio through the WRF project. In concept, Cal Poly would take delivery of the water from the Chorro Valley Pipeline and said allocation and the sale would also be subject to District approval. The potential benefits to the City could include: Cost recovery of unused State Water allocation, recovery of capital and debt service costs for the WRF potable water infrastructure, interconnection with other water purveyor and emergency supply agreements.

CONCLUSION

Staff recommends the City Council authorize the Public Works Director, acting as the appointed representative to the State Water Subcontractors Advisory Committee (SWSAC) to the San Luis Obispo County Flood control and Water Conservation District (District), to vote in favor of recommending the District sign the AIP with DWR for the Delta Conveyance Project (DCP) and authorize staff to continue discussions with Cal Poly for the transfer and sale of a portion of the City's State Water Allocation to the University.

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AGENDA NO: C-2

MEETING DATE: November 12, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** November 7, 2019

FROM: Scott Collins, City Manager
Dana Swanson, City Clerk/Human Resources Manager

SUBJECT: Certify Results of Referendum Petition Against the Adoption of Ordinance No. 623 pre-zoning the 27.6 acre portion of the Water Reclamation Facility parcel APN 073-101-017 as a Public Facility Zone (Case No. MIN#19-009) and either: 1) Repeal Ordinance No. 623 in its entirety; or, 2) Submit the Ordinance to the Qualified Voters of the City as a Proposed Measure at either a Special or Regular Municipal Election

RECOMMENDATION

Staff recommends the City Council receive the report, discuss the following alternatives as provided by Elections Code section 9241, and direct staff accordingly:

1. The Council may repeal Ordinance No. 623 in its entirety by introducing for first reading by title only, with further reading waived, Ordinance No. 628, An Ordinance of the City Council of the City of Morro Bay, California, Repealing Existing Ordinance No. 623 Establishing Pre-Zoning for the 27.6-acre Portion of Parcel APN #073-101-017 (Case No.#MIN19-001); or
2. The Council may adopt Resolution No. 95-19 calling for a Special Municipal Election to be held on Tuesday, March 3, 2020, for the submission of Ordinance No. 623 to the qualified voters of the City as a proposed measure, and adopt Resolution No. 96-19 setting priorities for written argument(s) and directing the City Attorney to prepare an impartial analysis, and consider the adoption of Resolution No. 97-19 providing for the filing of rebuttal arguments; or
3. The Council may direct staff to bring back election resolutions for the submission of Ordinance No. 623 to the voters at an election no less than 88 days from the order of the election, and no later than the next regular municipal election date of November 3, 2020.

ALTERNATIVES

None.

Election Code section 9241 provides that upon certification of a valid referendum petition to the Council, if the Council “does not entirely repeal the ordinance against which the petition is filed, the [Council] shall submit the ordinance to the voters, either at the next regular municipal election occurring not less than 88 days after the order of the [Council], or at a special election called for the purpose, not less than 88 days after the order of the [Council].”

FISCAL IMPACT

Based on estimates provided by the San Luis Obispo County Clerk-Recorder’s office, it is

Prepared By: <u>SC/DS</u>	Dept Review: _____
City Manager Review: _____	City Attorney Review: <u>CFN</u>

estimated placing a ballot measure on the March 2020 Primary Election will cost \$15,000 - \$25,000. The estimated cost to add a ballot measure to the November 2020 General Election is approximately \$4,000 and the estimated cost for a stand-alone mail-only election is \$40,000 - \$55,000.

Costs incurred by the City to date in processing the referendum petition and conducting signature verification is approximately \$2,500.

Funds to process and verify a referendum petition, and to hold a special election, were not anticipated in the City's FY 2019/20 budget. Staff may need to return to Council for a budget authorization for this unanticipated City expense.

BACKGROUND

1. Ordinance No. 623 – Subject of the Referendum Petition

At the August 27, 2019 Council meeting, the City Council adopted Ordinance No. 623 approving pre-zoning for a 27.6 acre portion of Parcel APN #073-101-017 in unincorporated San Luis Obispo County (South Bay Site). The South Bay Site is the intended location of the City's new Water Reclamation Facility (WRF). Ordinance No. 623 establishes pre-zoning to facilitate annexing the South Bay Site parcel from the County to the City for the WRF.

If the facility site is not annexed, the City can still locate, construct and operate the WRF at that location. The City has no legal requirement to annex the South Bay Site prior to construction and operation of the WRF. The City "may purchase ... real estate situated ... outside the city limits as is necessary or proper for municipal purposes. It may control, dispose of, and convey such property for the benefit of the city." (Government Code section 37351.) In addition, the County has confirmed the property in question conforms with the County's General Plan and Local Coastal Program in terms of allowed use, and the County Board of Supervisors approved consolidation of the Coastal Development Permit for the WRF project at that site in April 2019.

The impact of no annexation will be less local control (as the WRF will remain sited on County land) and, while the most recent information available from San Luis Obispo County Assessor's office indicates it's unlikely that property taxes would be assessed on a parcel (or portions thereof) where a public facility is located, staff cautions there may be some unanticipated costs which otherwise would not be due.

If the subject property is annexed to the City it will be zoned as Public Facility Zone District for construction and operation of the WRF. The Public Facility Zone District (PF) is intended for "facilities that serve the public, such as government buildings and service facilities, schools, hospitals, cultural centers, and other public and quasi-public uses." This pre-zoning of the South Bay Site to PF is consistent with the City's General Plan and Local Coastal Program.

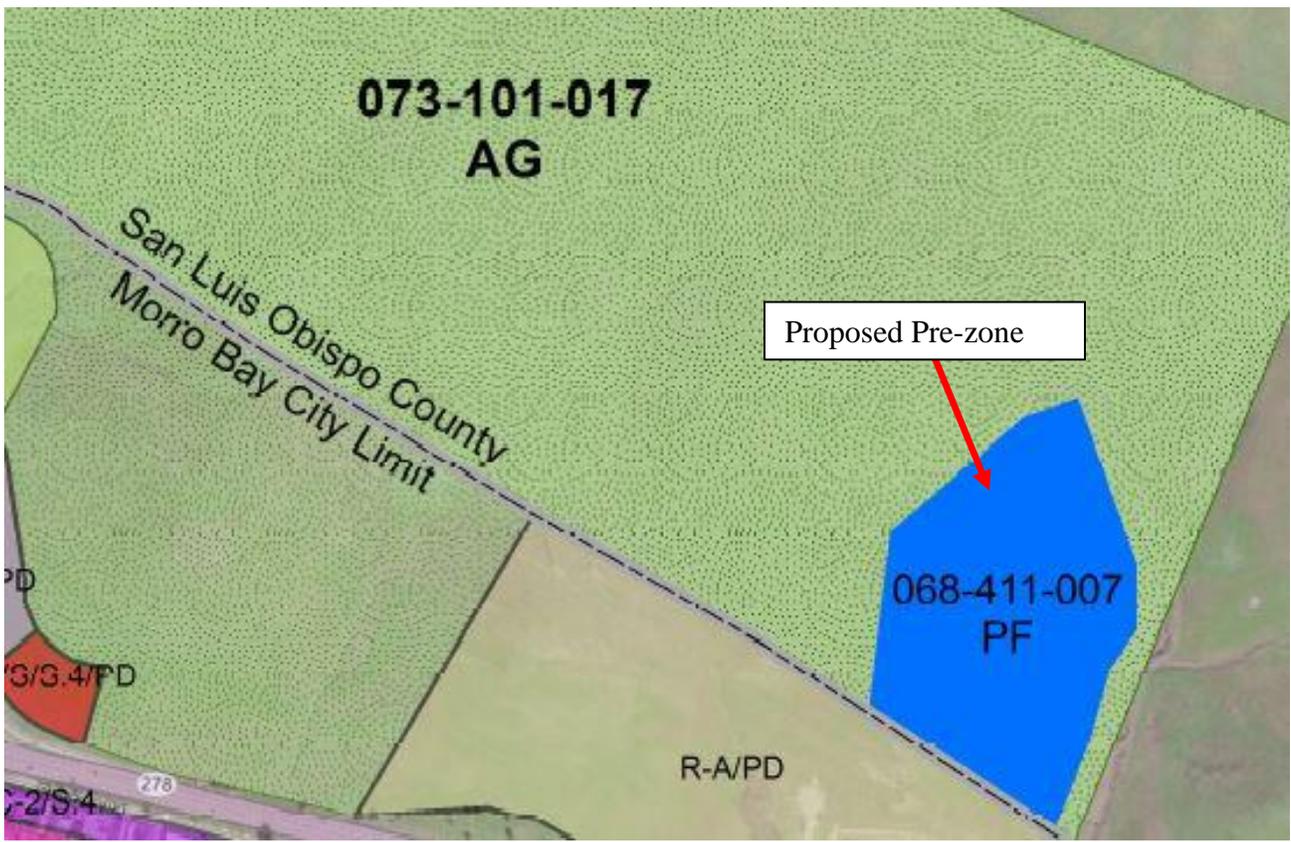
State law provides that prior to annexation such as the one contemplated, the land generally must be "pre-zoned." (Government Code section 56375(A)(7); San Luis Obispo County Local Agency Formation Commission (LAFCO) Policies and Procedures section 2.3(8).) The City's General Plan also requires pre-zoning at time of annexation request.

The City's General Plan Program LU-22.3 states:

At the time of request for annexation, the City shall pre-zone all lands within its sphere of influence in keeping with the above policy will utilize all methods available to insure county cooperation therewith. (LUE 8) Pre-zoning shall be applied to the sphere of influence with the intent to minimize urban expansion and maximize environmental conservation. (LUE 39) The sphere of influence areas will not be allowed to annex to the City until the Local Coastal Plan has been amended to include those areas within the LCP Urban-Rural Boundary.

The area to be pre-zoned is illustrated below, being the 27.6-acre piece of the overall 396-acre parcel (APN 073-101-017) in the process of being created as a public lot, which is required as part of the LAFCO Sphere of Influence (SOI) Amendment and Annexation application.

Pre-zoning Ordinance 623 is provided as Attachment 1.



On September 26, 2019, pursuant to authority provided by the California Constitution and the State Elections Code, both Dan Sedley and Linda Donnelly presented for filing, on behalf of Citizens for Affordable Living, a referendum petition against Ordinance No. 623, to repeal the ordinance or submit it to a vote of the qualified voters of the City of Morro Bay (cover letter provided as Attachment 2).

Elections Code Section 9237 provides in part that a referendum petition qualifies if it “is signed by not

less than 10 percent of the voters of the city.” As of the most recent report of voter registration to the Secretary of State, there were 7,475 registered voters in the City of Morro Bay. Pursuant to Elections Code section 9210, the referendum petition was examined by the City Clerk and it was determined the number of signatures prima facie, was in excess of 10% (748) of the registered voters of the City and the petition was accepted for filing. The City Clerk’s office coordinated with the County Registrar of Voters’ to examine signatures and, in accordance with Election Code Sections 9114-9115, the referendum petition was determined to contain 894 valid signatures and deemed sufficient on October 23, 2019. The results of the petition signature verification are being certified to the Council as presented in Attachment 3.

Election Code Section 9237 provides that when a referendum petition against an ordinance qualifies, “the effective date of the ordinance shall be suspended and the legislative body shall reconsider the ordinance.” Elections Code Section 9241 provides in part that when a city council is presented with a qualified petition, the Council must either: a) repeal the ordinance against which the petition is filed, or b) submit the ordinance to the voters, either at the next regular municipal election occurring not less than 88 days after the order of the legislative body, or at a special election called for the purpose, not less than 88 days after the order of the legislative body, and that the ordinance shall not become effective until a majority of the voters voting on the ordinance vote in favor of it.

If the legislative body repeals the ordinance or submits the ordinance to the voters, and a majority of the voters voting on the ordinance do not vote in favor of it, the ordinance shall not be enacted by the legislative body for a period of one year after the date of its repeal or disapproval by the voters.

2. Council Decisions for Ordinance No. 623 – Repeal or Call a Referendum Election

Upon certification of a qualified referendum petition to a city council, the council has two options pursuant to Election Code section 9241. A council shall either repeal in its entirety the ordinance which is the subject of the referendum. Or, the council shall send the ordinance to the voters for approval no later than the next regular municipal election (Morro Bay’s next regular municipal election is November 3, 2020).

If Council decides to repeal Ordinance No. 623, then Council can adopt Ordinance No. 628 (Attachment No 4).

If Council decides to send Ordinance No. 623 to the voters, then a special election can be called no less than 88 days after the order of the election, or Ordinance No. 623 can go to the voters at the next regular municipal election on November 3, 2020 (the latest date that Ordinance No 623 can go to the voters).

If the Council calls a special election for the referendum then generally the most inexpensive option will be to consolidate that special election with an already scheduled election date. The next special election date at which Ordinance No. 623 can be sent to the voters, and also be consolidated with a scheduled election, is March 3, 2020.

3. Process for Calling a Special Referendum Election for March 3, 2020.

To send Ordinance No. 623 to the voters at a special election on March 3, 2020, three election resolutions are presented for consideration by the City Council.

The first resolution orders the submission of the ordinance to the voters at a March 3, 2020 Special Municipal Election and requests from the County a consolidation of that election with the Statewide Primary Election scheduled for the same date. (See Attachment No. 5)

Ballot Label. The first resolution includes a “ballot label” which describes the proposed ordinance and which is the question actually presented to the voters. Ballot labels are limited to 75 words or less. The Council may revise the language used for the ballot label within the following state law restrictions: “The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.” (Election Code section 13119(c).)

The second resolution is concerned with written arguments (both pro and con) about the referendum measure, as well as directing the City Attorney to prepare an impartial analysis of the referendum measure. (See Attachment No. 6.) The second resolution establishes priorities under state law for choosing among multiple arguments. In consultation with the City Clerk the second resolution sets a deadline for written arguments (pro and con) of Tuesday, November 26, 2019 at the close of business.

Argument Authorization. The second resolution authorizes one or two councilmembers to write an argument concerning the ballot measure. If three or more Councilmembers jointly write a ballot argument then the Brown Act will require the collaboration to occur at a noticed public meeting. As such, staff suggests the Council appoint one or two councilmembers to write an authorized argument.

The third resolution provides for the filing of rebuttal arguments to the primary written arguments. (See Attachment No. 7.) The rebuttal arguments are prepared by the opposite authors of the primary written arguments. In consultation with the City Clerk the third resolution sets a deadline for rebuttals of Friday, December 6, 2019 at the close of business. Rebuttal arguments are optional under state law and are allowed at the discretion of the City Council. Disallowing rebuttal arguments will result in lowering the total cost for placing the referendum on the ballot (as extra pages in the voter books cost more money). The exact amount of cost savings is unknown at the present. If the City Council does not desire to authorize rebuttal arguments then Council should not approve this third election resolution.

CONCLUSION

Upon certification of a valid referendum petition concerning a local ordinance, a city council pursuant to state law shall either repeal the ordinance, or shall send the ordinance to the voters at an election no less than 88 days from the order of election and no more than the date of the next regular municipal election.

Staff recommends that Council determine whether to repeal Ordinance No. 623, or send Ordinance No. 623 to the voters. If Council chooses to send Ordinance No. 623 to the voters, resolutions are provided to call a referendum election to be consolidated with the Statewide Primary Election scheduled for March 3, 2020, or staff asks for direction to come back to Council with election resolutions for a different election date (but no later than November 3, 2020).

Consistent with recent City Council action on the WRF (City Council certification of the Final Environmental Impact Report (FEIR), approval of water and sewer rates, approval of consolidation

of the California Coastal Development Permit), it is recommended that the WRF project continue to move forward regardless of whether or not the South Bay site is annexed.

The effect of annexation, however, will be local control of the land the WRF is being constructed on, as the WRF will then be within City limits. Furthermore, while the most recent information available from San Luis Obispo County Assessor's office indicates it's unlikely that property taxes would be assessed on a parcel (or portions thereof) where a public facility is located, staff cautions there may be some unanticipated costs which otherwise would not be due.

ATTACHMENTS

1. Pre-Zoning Ordinance No. 623
2. September 26, 2019 letter from Citizens for Affordable Living
3. October 23, 2019 Certificate of Sufficiency of Petition
4. Ordinance No. 628 (Repeal of Pre-Zoning Ordinance No. 623)
5. Resolution No. 95-19 Calling for a Special Municipal Election for the Submission of Ordinance No. 623 to the Qualified Voters of the City
6. Resolution No. 96-19 Setting Priorities for Filing Written Argument(s) and Directing the City Attorney to Prepare an Impartial Analysis regarding Ordinance No. 623
7. Resolution No. 97-19 Providing for the Filing of Rebuttal Arguments Regarding Ordinance No. 623

ORDINANCE NO. 623

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ESTABLISHING PRE-ZONING FOR THE 27.6-ACRE PORTION OF
PARCEL APN #073-101-017
(CASE NO. #MIN19-001)**

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

WHEREAS, California Government Code subdivision 65859 (a) states, a city may pre-zone unincorporated territory to determine the zoning that will apply to that territory upon annexation to the city. The zoning shall become effective at the same time that the annexation becomes effective; and

WHEREAS, the City intends to pursue annexation and a sphere of influence (SOI) amendment of the subject 27.6-acre parcel, which is currently uninhabited and located in unincorporated San Luis Obispo County and to be addressed as 555 South Bay Blvd; and

WHEREAS, the current zoning designation in the unincorporated County is agriculture and the City desires to pre-zone the subject 27.6-acre parcel as Public Facility (PF); and

WHEREAS, PF zoning is consistent with the Public/Institutional General Plan Land Use Designation; and

WHEREAS, the Site is currently uninhabited and is designated by the draft combined General Plan / Local Coastal Program ("Plan Morro Bay") for Public/ Institutional land use with the draft Zoning Code to be Public Facility (PF) zone district.; and

WHEREAS, the City of Morro Bay received approval on July 11, 2019, for a coastal development permit from the California Coastal Commission for construction of a Water Reclamation Facility to be located on the subject 27.6-acre portion of an overall 396 acre parcel (APN #073-101-017); and

WHEREAS, at its meeting of July 16, 2019, the Planning Commission took the following actions:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Conducted a public hearing to obtain public testimony on the proposed project;

WHEREAS, at its meeting of August 13, 2019, the City Council took the following actions:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Considered the recommendations of the Planning Commission;
- c. Conducted a public hearing to obtain public testimony on the proposed project;
- d. Approved Resolution 70-19 approving General Plan and Local Coastal Program Text and Map amendments adding the Public/Institutional land use classification to both documents to facilitate the pre-zoning of the site.

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

SECTION 1. The above stated facts of this ordinance are true and correct.

SECTION 2. This subject pre-zoning to PF is consistent with the City's General Plan and Local Coastal Program.

SECTION 3. The area being pre-zoned is outside of the City limits and hereby established as shown on the attached Exhibit A.

SECTION 4. This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the 13th day of August 2019, by motion of Council Member McPherson and seconded by Council Member Davis.

PASSED AND ADOPTED on the 27th day of August 2019.



JOHN HEADING, Mayor

ATTEST:



DANA SWANSON, City Clerk

APPROVED AS TO FORM:



CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO
HEREBY CERTIFY that the foregoing Ordinance Number 623 was duly adopted by the
City Council of the City of Morro Bay at a regular meeting of said Council on the 27th
day of August, 2019, and that it was so adopted by the following vote:

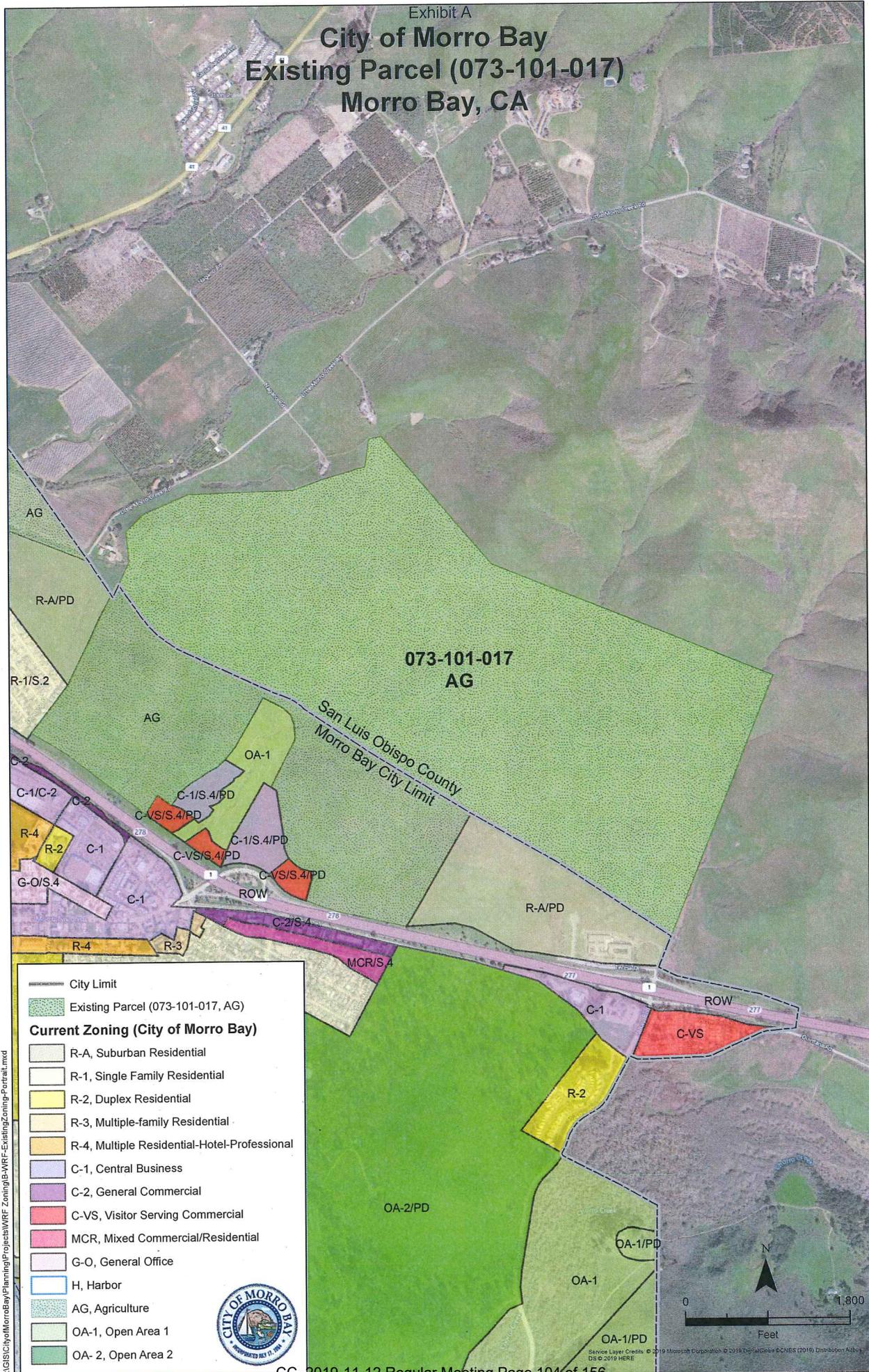
AYES: Headding, Addis, Davis, McPherson
NOES: Heller
ABSENT: None

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official
seal of the City of Morro Bay, California, this 28th day of Aug, 2019.



DANA SWANSON, City Clerk

Exhibit A
City of Morro Bay
Existing Parcel (073-101-017)
Morro Bay, CA



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	City Limit
	Existing Parcel (073-101-017, AG)
Current Zoning (City of Morro Bay)	
	R-A, Suburban Residential
	R-1, Single Family Residential
	R-2, Duplex Residential
	R-3, Multiple-family Residential
	R-4, Multiple Residential-Hotel-Professional
	C-1, Central Business
	C-2, General Commercial
	C-VS, Visitor Serving Commercial
	MCR, Mixed Commercial/Residential
	G-O, General Office
	H, Harbor
	AG, Agriculture
	OA-1, Open Area 1
	OA-2, Open Area 2

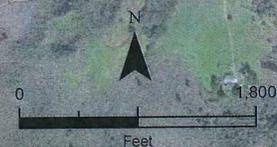
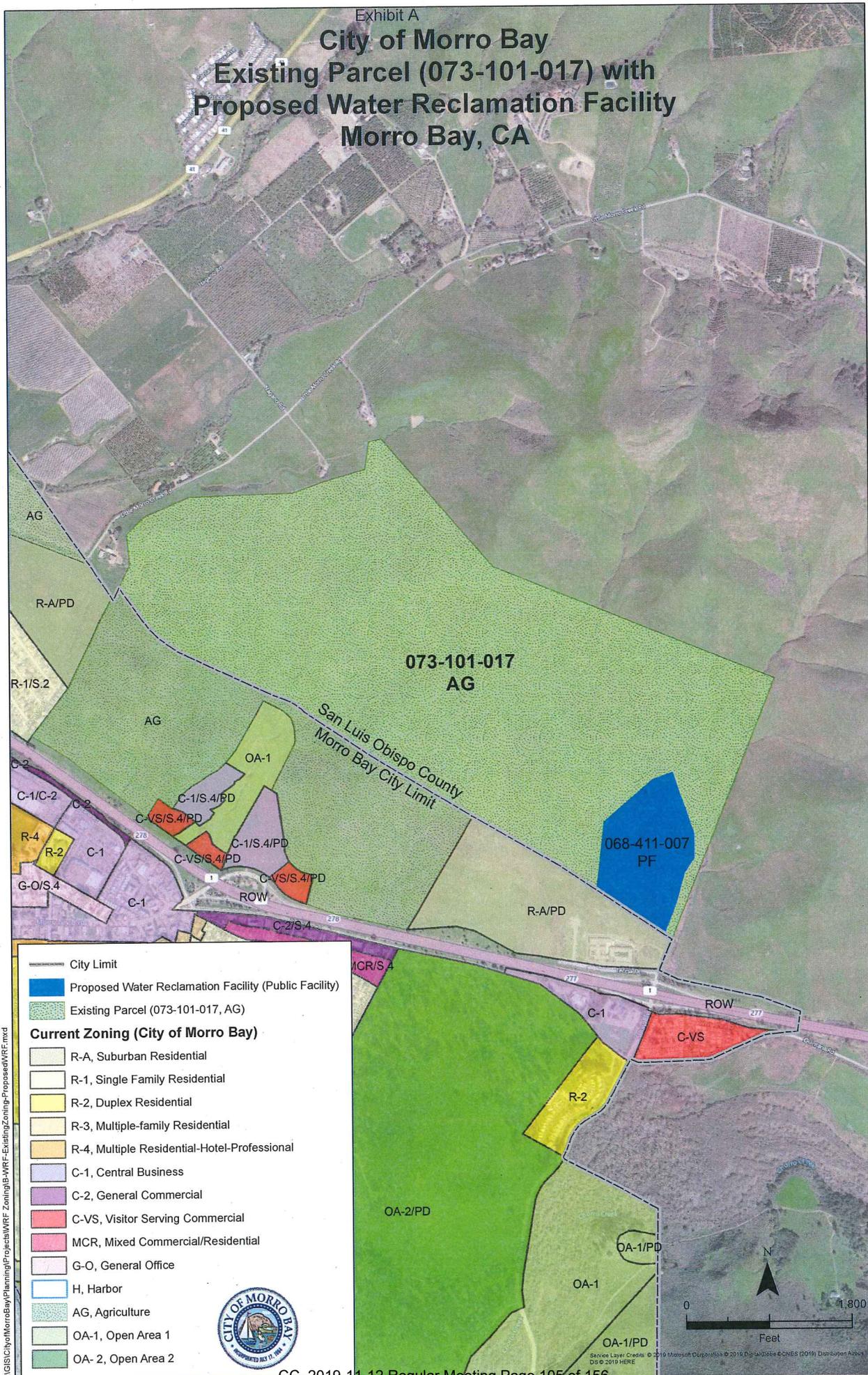


Exhibit A
City of Morro Bay
Existing Parcel (073-101-017) with
Proposed Water Reclamation Facility
Morro Bay, CA



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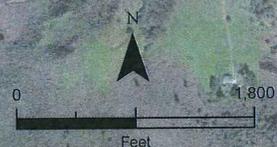
City Limit

Proposed Water Reclamation Facility (Public Facility)

Existing Parcel (073-101-017, AG)

Current Zoning (City of Morro Bay)

- R-A, Suburban Residential
- R-1, Single Family Residential
- R-2, Duplex Residential
- R-3, Multiple-family Residential
- R-4, Multiple Residential-Hotel-Professional
- C-1, Central Business
- C-2, General Commercial
- C-VS, Visitor Serving Commercial
- MCR, Mixed Commercial/Residential
- G-O, General Office
- H, Harbor
- AG, Agriculture
- OA-1, Open Area 1
- OA-2, Open Area 2



CITIZENS FOR AFFORDABLE LIVING

September 26, 19

Dear Ms. Swanson:



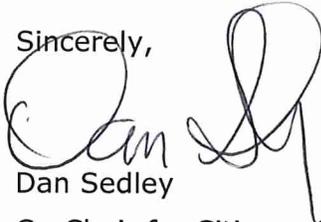
pages

Citizens for Affordable Living is submitting 205 of petition ~~sections~~ containing 1114 of signatures requesting a referendum vote on Ordinance No. 623.

In return, please provide written verification with a written receipt to us of your independent count of the number of petition sections submitted and the gross number of signatures submitted.

Please advise us also whether you will be contracting out the signature verification to the County Registrar, or will you be verifying the signatures in house? If you will be doing the verification, when will that begin, will you conduct the verification in public, and what observation rights will be accorded referendum proponents? Also, please verify that you will maintain petition signatures securely in your office when the petitions are not being verified.

Sincerely,



Dan Sedley

Co-Chair for Citizens for Affordable Living (CAL)



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

CERTIFICATE OF SUFFICIENCY OF PETITION

I, Dana Swanson, City Clerk of the City of Morro Bay, County of San Luis Obispo, State of California, hereby certify that:

The referendum petition against the adoption of Ordinance No. 623, adopted by the City Council of the City of Morro Bay on August 27, 2019 and attested to by the City Clerk on August 28, 2019, entitled, "An Ordinance of the City Council of the City of Morro Bay, California, Establishing Pre-zoning of the 27.6-acre portion of Parcel APN #073-101-017 (Case No. #MIN19-001)," was filed with the City Clerk on September 26, 2019.

The said petition contained 37 sections on 205 pages;

That each section contained signatures purporting to be signatures of qualified electors of the City of Morro Bay, California;

That attached to this petition at the time it was filed, was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that Section, that all of the signatures were made in his or her presence, and that to the best of his or her own information and belief, each signature to that section was the genuine signature of the person whose name it purports to be;

That after the proponents filed this petition and based on the County of San Luis Obispo Registrar of Voters' Signature Verification Certificate, I have determined the following facts regarding this petition:

1. Total number of signatures filed by proponent raw count:	1,114
2. Total number of signatures verified:	1,114
3. Number of signatures found sufficient:	894
4. Number of signatures found insufficient:	220
5. Number of signatures insufficient because of Duplication:	15
6. Total number of signatures required (10% x 7,475 registered voters)	748

Based on the above, the petition is deemed to be sufficient.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Morro Bay this 23rd day of October 2019.

Dana Swanson, City Clerk
CITY OF MORRO BAY

ORDINANCE NO. 628

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
REPEALING ORDINANCE NO. 623
ESTABLISHING PRE-ZONING FOR THE 27.6-ACRE PORTION OF
PARCEL APN #073-101-017 (CASE NO. #MIN19-001)**

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

WHEREAS, California Government Code subdivision 65859 (a) states, a city may pre-zone unincorporated territory to determine the zoning that will apply to that territory upon annexation to the city. The zoning shall become effective at the same time that the annexation becomes effective; and

WHEREAS, the City intended to pursue annexation and a sphere of influence (SOI) amendment of the subject 27.6-acre parcel, which is currently uninhabited and located in unincorporated San Luis Obispo County and to be addressed as 555 South Bay Blvd; and

WHEREAS, on June 25, 2019, the City Council authorized filing of two separate applications with the San Luis Obispo County Local Agency Formation Commission (LAFCO) through Resolution Nos. 54-19 and 55-19, which respectively authorized: 1) an application with LAFCO for a sphere of influence (SOI) designation and annexation of the South Bay Site for the public purpose of construction of the City's Water Reclamation Facility (WRF), and 2) a SOI designation for a remainder parcel known as the Tri-W parcel; and

WHEREAS, the application requirements of LAFCO for said resolutions include City Council approval of Pre-Zoning of the South Bay WRF site; and

WHEREAS, the current zoning designation in the unincorporated County is agriculture and the City desired to pre-zone the subject 27.6-acre parcel as Public Facility (PF); and

WHEREAS, PF zoning is consistent with the Public/Institutional General Plan Land Use Designation; and

WHEREAS, the Site is currently uninhabited and is designated by the draft combined General Plan / Local Coastal Program ("Plan Morro Bay") for Public/ Institutional land use with the draft Zoning Code to be Public Facility (PF) zone district.; and

WHEREAS, the City of Morro Bay received approval on July 11, 2019, for a coastal development permit from the California Coastal Commission for construction of a Water Reclamation Facility to be located on the subject 27.6-acre portion of an overall 396 acre parcel (APN #073-101-017); and

WHEREAS, at its meeting of July 16, 2019, the Planning Commission took the following actions:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Conducted a public hearing to obtain public testimony on the proposed project;

WHEREAS, at its meeting of August 13, 2019, the City Council took the following actions:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Considered the recommendations of the Planning Commission;
- c. Conducted a public hearing to obtain public testimony on the proposed project;
- d. Approved Resolution 70-19 approving General Plan and Local Coastal Program Text and Map amendments adding the Public/Institutional land use classification to both documents to facilitate the rezoning of the site.

WHEREAS, on August 13, 2019, the City Council introduced for first reading, Ordinance No. 623, An Ordinance of the City Council of the City of Morro Bay, California Establishing Pre-Zoning for the 27.6-acre Portion of Parcel APN #073-101-017 (Case No. #MIN19-001) ("South Bay Site"), which was adopted on August 27, 2019, attested by the City Clerk on August 28, 2019, and published as required by law; and

WHEREAS, the City Council adopted Ordinance No. 623 consistent with both Government Code section 56375(A)(7) which in part reads that the LAFCO "shall require, as a condition to annexation, that a city prezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at build-out, and are consistent with the city's general plan," as well as LAFCO Policies and Procedures (February 21, 2019) which provides in Subsection 8 of Section 2.3 ("Policies for City Annexations") of Chapter 2 ("Policies") in part "That the City Prezone the area to be annexed."; and

WHEREAS, pursuant to authority provided by the California Constitution and the State Elections Code, on September 26, 2019, Dan Sedley and Linda Donnelly, presented for filing on behalf of Citizens for Affordable Living, a referendum petition against Ordinance No. 623, so as to repeal the ordinance or submit it to a vote of the qualified voters of the City of Morro Bay; and

WHEREAS, Election Code Section 9237 provides in part that a referendum petition qualifies if it "is signed by not less than 10 percent of the voters of the city,;" and

WHEREAS, in accordance with Election Code Section 9237, it was determined that the County Clerk's last official report of City of Morro Bay voter registration to the Secretary of State was 7,475 registered voters and that 10% of said registration would require 748 valid signatures to qualify the referendum petition; and

WHEREAS, on September 26, 2019, pursuant to the provisions of Election Code section 9210, the referendum petition was examined by the City's Elections Official and it was determined the number of signatures, prima facie, was in excess of the number of signatures required, and the City's Elections Official accepted the petition for filing; and

WHEREAS, based on the County of San Luis Obispo Registrar of Voters' Signature Verification Certificate and, in accordance with Election Code Sections 9114 – 9115, the referendum petition against the adoption of Ordinance No. 623 was determined to contain 894 valid signatures and deemed to be sufficient on October 23, 2019; and

WHEREAS, in accordance with Election Code Section 9114, the Elections Official certified the results of the examination to the City Council at the next regular meeting held on November 12, 2019;

WHEREAS, Election Code Section 9237 provides that when a referendum petition against an ordinance qualifies, “the effective date of the ordinance shall be suspended and the legislative body shall reconsider the ordinance,”; and

WHEREAS, Election Code Section 9241 provides in part that when a city council is presented with a qualified referendum petition, the city council shall either “entirely repeal the ordinance against which the petition is filed” or the city council “shall submit the ordinance to the voters”; and

WHEREAS, Election Code Section 9241 further provides in part: “If the legislative body repeals the ordinance ... the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body”.

THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DOES HEREBY FIND AND ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Morro Bay hereby finds and determines that the foregoing recitals of this ordinance are true and correct and are hereby incorporated into this ordinance as fully set forth herein.

SECTION 2. Based upon the forgoing, the City Council hereby repeals Ordinance No. 623 in its entirety.

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

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

SECTION 5. 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 of the City Council held on the 12th day of November 2019, by motion of _____ and seconded by _____.

PASSED AND ADOPTED on the 10th day of December 2019.

AYES:
NOES:
ABSENT:
ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO
HEREBY CERTIFY that the foregoing Ordinance Number 628 was duly adopted by the
City Council of the City of Morro Bay at a regular meeting of said Council on the ____
day of _____, 2019, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

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

DANA SWANSON, City Clerk

RESOLUTION NO. 95-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
CALLING FOR THE HOLDING OF A SPECIAL MUNICIPAL ELECTION
TO BE HELD ON TUESDAY, MARCH 3, 2020, FOR THE SUBMISSION OF ORDINANCE NO
623 TO THE QUALIFIED VOTERS OF THE CITY AS A PROPOSED MEASURE; AND,
REQUESTING THE BOARD OF SUPERVISORS OF SAN LUIS OBISPO COUNTY TO
CONSOLIDATE SAID ELECTION WITH THE STATEWIDE PRIMARY ELECTION TO BE
HELD IN THE COUNTY ON TUESDAY, MARCH 3, 2020 PURSUANT TO SECTION 10403 OF
THE ELECTION CODE; AND, OTHER ELECTION MATTERS AS REQUIRED BY LAW**

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

WHEREAS, the City Council of the City of Morro Bay, under the provisions of the laws related to general law cities in the State of California, has called for the holding of a Special Municipal Election to be held on March 3, 2020 to consider a ballot measure concerning Ordinance No. 623, and further desires that this election be consolidated with the Statewide Primary Election to be held on the same date; and

WHEREAS, on August 13, 2019, the City Council introduced for first reading, Ordinance No. 623, An Ordinance of the City Council of the City of Morro Bay, California Establishing Pre-Zoning for the 27.6-acre Portion of Parcel APN #073-101-017 (Case No. #MIN19-001) ("South Bay Site"), which was adopted on August 27, 2019, attested by the City Clerk on August 28, 2019, and published as required by law; and

WHEREAS, on June 25, 2019, the City Council authorized filing of two separate applications with the San Luis Obispo County Local Agency Formation Commission (LAFCO) through Resolution Nos. 54-19 and 55-19, which respectively authorized: 1) an application with LAFCO for a sphere of influence (SOI) designation and annexation of the South Bay Site for the public purpose of construction of the City's Water Reclamation Facility (WRF), and 2) a SOI designation for a remainder parcel known as the Tri-W parcel; and

WHEREAS, the application requirements of LAFCO for said resolutions include City Council approval of Pre-Zoning of the South Bay WRF site; and

WHEREAS, the City Council adopted Ordinance No. 623 consistent with both Government Code section 56375(A)(7) which in part reads that the LAFCO "shall require, as a condition to annexation, that a city prezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at build-out, and are consistent with the city's general plan," as well as LAFCO Policies and Procedures (February 21, 2019) which provides in Subsection 8 of Section 2.3 ("Policies for City Annexations") of Chapter 2 ("Policies") in part "That the City Prezone the area to be annexed."; and

WHEREAS, pursuant to authority provided by the California Constitution and the State Elections Code, on September 26, 2019, Dan Sedley and Linda Donnelly, presented for filing on behalf of Citizens for Affordable Living, a referendum petition against Ordinance No. 623, so as to repeal the ordinance or submit it to a vote of the qualified voters of the City of Morro Bay; and

WHEREAS, Election Code Section 9237 provides in part that a referendum petition qualifies if it “is signed by not less than 10 percent of the voters of the city,”; and

WHEREAS, in accordance with Election Code Section 9237, it was determined that the County Clerk’s last official report of City of Morro Bay voter registration to the Secretary of State was 7,475 registered voters and that 10% of said registration would require 748 valid signatures to qualify the referendum petition; and

WHEREAS, on September 26, 2019, pursuant to the provisions of Election Code section 9210, the referendum petition was examined by the City’s Elections Official and it was determined the number of signatures, prima facie, was in excess of the number of signatures required, and the City’s Elections Official accepted the petition for filing; and

WHEREAS, based on the County of San Luis Obispo Registrar of Voters’ Signature Verification Certificate and, in accordance with Election Code Sections 9114 – 9115, the referendum petition against the adoption of Ordinance No. 623 was determined to contain 894 valid signatures and deemed to be sufficient on October 23, 2019; and

WHEREAS, in accordance with Election Code Section 9114, the Elections Official certified the results of the examination to the City Council at the next regular meeting held on November 12, 2019; and

WHEREAS, Election Code Section 9237 provides that when a referendum petition against an ordinance qualifies, “the effective date of the ordinance shall be suspended and the legislative body shall reconsider the ordinance,”; and

WHEREAS, Election Code Section 9241 provides in part that when a city council is presented with a qualified referendum petition, if the City Council “does not entirely repeal the ordinance against which the petition is filed, the [City Council] shall submit the ordinance to the voters, either at the next regular municipal election occurring not less than 88 days after the order of the [City Council], or at a special election called for the purpose, not less than 88 days after the order of the [City Council]. The ordinance shall not become effective until a majority of the voters voting on the ordinance vote in favor of it.”; and

WHEREAS, Election Code Section 9241 further provides in part: “If the legislative body repeals the ordinance or submits the ordinance to the voters, and a majority of the voters voting on the ordinance do not vote in favor of it, the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body or disapproval by the voters.”; and

WHEREAS, the City Council has not voted in favor of the repeal of the ordinance; and

WHEREAS, because the City Council has not voted in favor of the repeal of the ordinance, the City Council is authorized and directed by statute to submit the ordinance to the voters; and

WHEREAS, the City Council desires to have the voters consider this measure at the next statewide primary election to be held on March 3, 2020; and

WHEREAS, it is desirable that said Special Municipal Election be consolidated with the Statewide Primary Election to be held on the same date and that within the City of Morro Bay

the precincts, polling places and election officers of the two elections be the same, and that the County Election Department of the County of San Luis Obispo canvass the returns of the Special Municipal Election and that the election be held in all respects as if there were only one election; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, including California Elections Code Sections 306, 9222 and 1301, there is called and ordered to be held in the City of Morro Bay, California, on Tuesday, March 3, 2020, a Special Municipal Election for the purpose of submitting to the voters of the City of Morro Bay a ballot measure. Pursuant to Elections Code Section 9222, it is the intent of the City Council the measure be submitted to the voters of Morro Bay at the aforementioned Special Election. The full text of the measure is attached hereto and marked as Exhibit A. The San Luis Obispo County Registrar of Voters is requested to print the Full Text of the Measure contained on Exhibit A in the sample ballot pamphlet. As required by Elections Code Section 13247, the abbreviated form of the measure to appear on the ballot is specified below in Section 2. The City Clerk is hereby authorized and directed to make any changes to the text of the proposition or this resolution as required to conform to any requirements of the San Luis Obispo County Registrar of Voters.

SECTION 2. That the City Council hereby orders the following measure be submitted to the voters at the aforementioned Special Election:

Shall the measure to approve Ordinance No 623, which pre-zones as a Public Facility (PF) zone a 27.6-acre uninhabited parcel, located in unincorporated San Luis Obispo County and to be addressed as 555 South Bay Blvd., be adopted?	YES
	NO

SECTION 3. That the text of Ordinance No. 623 to be submitted to the voters as a proposed measure is attached as Exhibit "A" to this resolution.

SECTION 4. That the ordinance shall not take effect unless and until the ordinance receives the approval of a majority of the votes cast by the qualified voters of the City voting upon the ballot measure on the proposed ordinance at the March 3, 2020 Special Municipal Election.

SECTION 5. That the vote requirement for the ballot measure to pass is a majority (50% + 1) of the votes cast.

SECTION 6. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 7. That the City Clerk is authorized, instructed and directed to coordinate with the County of San Luis Obispo Clerk-Recorder to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 8. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code Section 10242, except as provided in Section 14401 of the Elections Code of the State of California.

SECTION 9. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding a Special Municipal Election consolidated with a Statewide Primary Election.

SECTION 10. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.

SECTION 11. That pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of San Luis Obispo is hereby requested to consent and agree to the consolidation of a Special Municipal Election with the Statewide Primary Election on Tuesday, March 3, 2020, for the purpose of submitting to the voters a ballot measure concerning City of Morro Bay Ordinance No. 623.

SECTION 12. That the County Election Department is authorized to canvass the returns of the Special Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 11. That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

SECTION 12. That the City of Morro Bay recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs incurred by reason of this consolidation.

SECTION 12. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the County Election Department of the County of San Luis Obispo.

SECTION 13. That the City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

SECTION 14. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

SECTION 15. That this Resolution is effective on the day of its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of November 2019 following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

ORDINANCE NO. 623

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ESTABLISHING PRE-ZONING FOR THE 27.6-ACRE PORTION OF
PARCEL APN #073-101-017
(CASE NO. #MIN19-001)**

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

WHEREAS, California Government Code subdivision 65859 (a) states, a city may pre-zone unincorporated territory to determine the zoning that will apply to that territory upon annexation to the city. The zoning shall become effective at the same time that the annexation becomes effective; and

WHEREAS, the City intends to pursue annexation and a sphere of influence (SOI) amendment of the subject 27.6-acre parcel, which is currently uninhabited and located in unincorporated San Luis Obispo County and to be addressed as 555 South Bay Blvd; and

WHEREAS, the current zoning designation in the unincorporated County is agriculture and the City desires to pre-zone the subject 27.6-acre parcel as Public Facility (PF); and

WHEREAS, PF zoning is consistent with the Public/Institutional General Plan Land Use Designation; and

WHEREAS, the Site is currently uninhabited and is designated by the draft combined General Plan / Local Coastal Program ("Plan Morro Bay") for Public/ Institutional land use with the draft Zoning Code to be Public Facility (PF) zone district.; and

WHEREAS, the City of Morro Bay received approval on July 11, 2019, for a coastal development permit from the California Coastal Commission for construction of a Water Reclamation Facility to be located on the subject 27.6-acre portion of an overall 396 acre parcel (APN #073-101-017); and

WHEREAS, at its meeting of July 16, 2019, the Planning Commission took the following actions:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Conducted a public hearing to obtain public testimony on the proposed project;

WHEREAS, at its meeting of August 13, 2019, the City Council took the following actions:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Considered the recommendations of the Planning Commission;
- c. Conducted a public hearing to obtain public testimony on the proposed project;
- d. Approved Resolution 70-19 approving General Plan and Local Coastal Program Text and Map amendments adding the Public/Institutional land use classification to both documents to facilitate the pre-zoning of the site.

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

SECTION 1. The above stated facts of this ordinance are true and correct.

SECTION 2. This subject pre-zoning to PF is consistent with the City's General Plan and Local Coastal Program.

SECTION 3. The area being pre-zoned is outside of the City limits and hereby established as shown on the attached Exhibit A.

SECTION 4. This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the 13th day of August 2019, by motion of Council Member McPherson and seconded by Council Member Davis.

PASSED AND ADOPTED on the 27th day of August 2019.



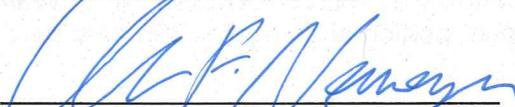
JOHN HEADDING, Mayor

ATTEST:



DANA SWANSON, City Clerk

APPROVED AS TO FORM:



CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO
HEREBY CERTIFY that the foregoing Ordinance Number 623 was duly adopted by the
City Council of the City of Morro Bay at a regular meeting of said Council on the 27th
day of August, 2019, and that it was so adopted by the following vote:

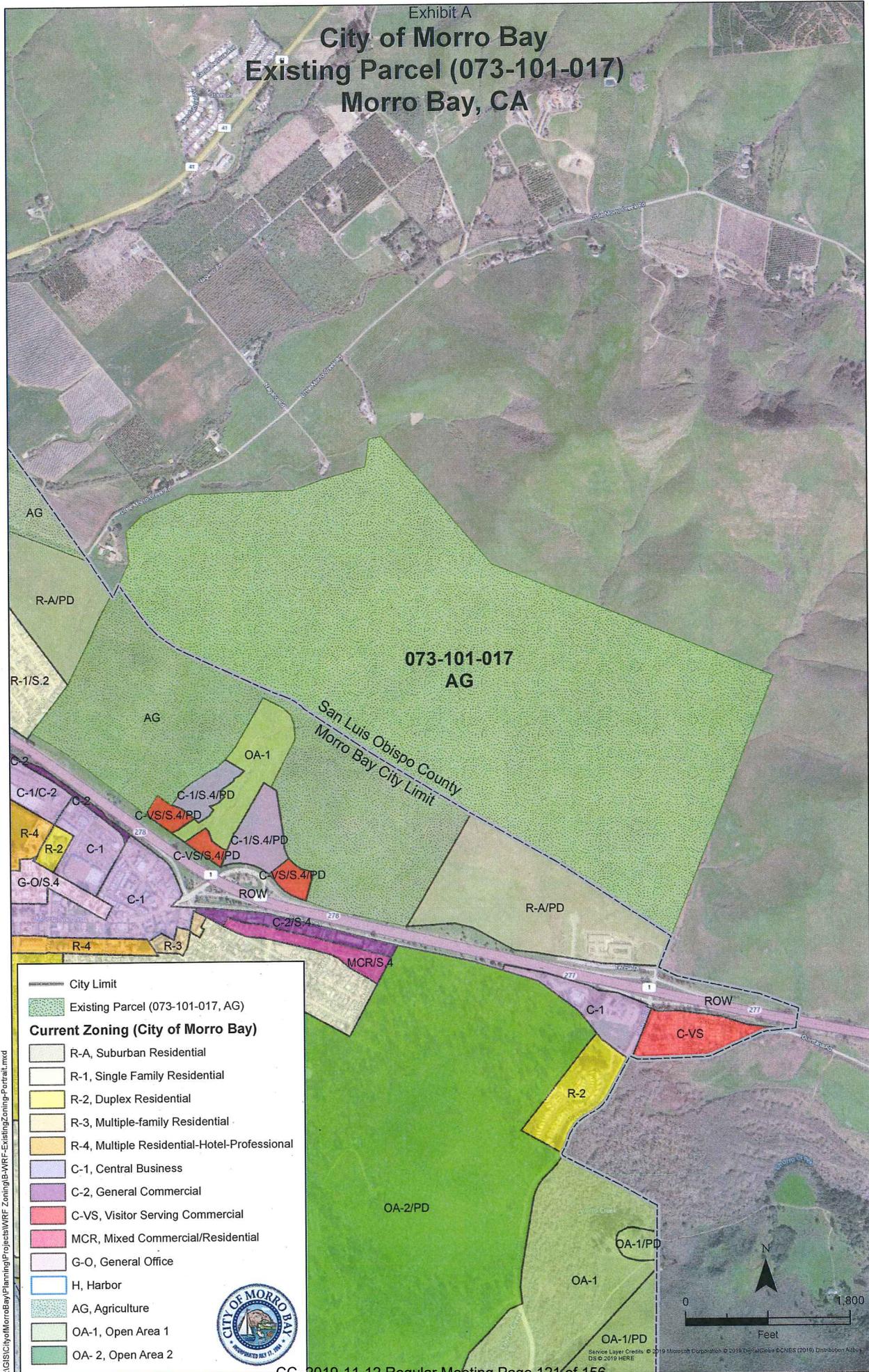
AYES: Headding, Addis, Davis, McPherson
NOES: Heller
ABSENT: None

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official
seal of the City of Morro Bay, California, this 28th day of Aug, 2019.



DANA SWANSON, City Clerk

Exhibit A
City of Morro Bay
Existing Parcel (073-101-017)
Morro Bay, CA



W:\GIS\CityOfMorroBay\Planning\Projects\WRF Zoning\B-WRF-ExistingZoning-Portrait.mxd

	City Limit
	Existing Parcel (073-101-017, AG)
Current Zoning (City of Morro Bay)	
	R-A, Suburban Residential
	R-1, Single Family Residential
	R-2, Duplex Residential
	R-3, Multiple-family Residential
	R-4, Multiple Residential-Hotel-Professional
	C-1, Central Business
	C-2, General Commercial
	C-VS, Visitor Serving Commercial
	MCR, Mixed Commercial/Residential
	G-O, General Office
	H, Harbor
	AG, Agriculture
	OA-1, Open Area 1
	OA-2, Open Area 2

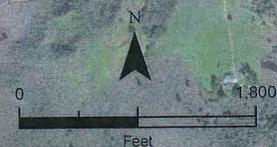
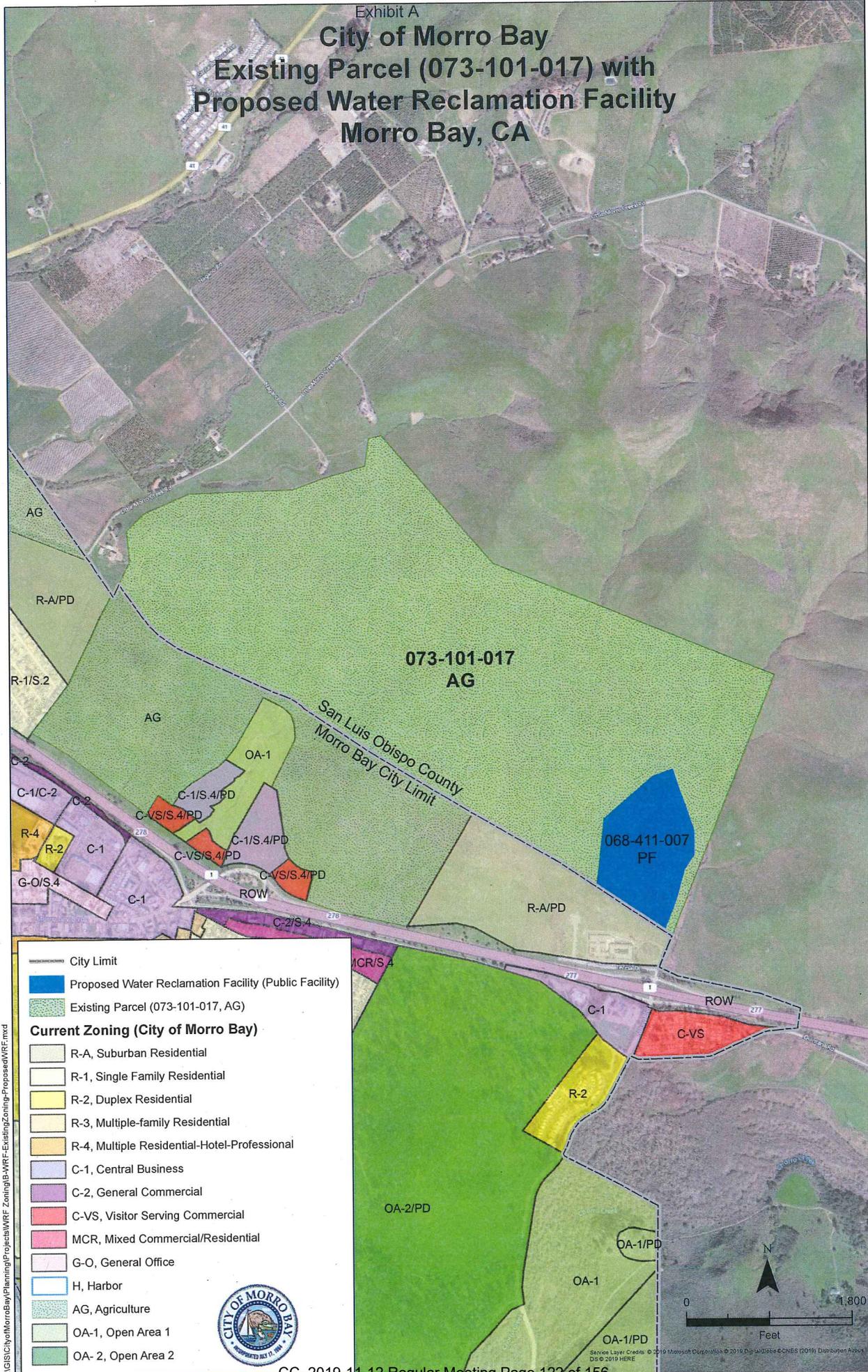


Exhibit A
City of Morro Bay
Existing Parcel (073-101-017) with
Proposed Water Reclamation Facility
Morro Bay, CA



W:\GIS\CityofMorroBay\Planning\Projects\WRF-ExistingZoning-ProposedWRF.mxd

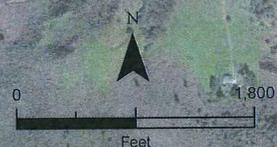
City Limit

Proposed Water Reclamation Facility (Public Facility)

Existing Parcel (073-101-017, AG)

Current Zoning (City of Morro Bay)

- R-A, Suburban Residential
- R-1, Single Family Residential
- R-2, Duplex Residential
- R-3, Multiple-family Residential
- R-4, Multiple Residential-Hotel-Professional
- C-1, Central Business
- C-2, General Commercial
- C-VS, Visitor Serving Commercial
- MCR, Mixed Commercial/Residential
- G-O, General Office
- H, Harbor
- AG, Agriculture
- OA-1, Open Area 1
- OA-2, Open Area 2



RESOLUTION NUMBER 96-19

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA, SETTING PRIORITIES
FOR FILING WRITTEN ARGUMENT(S) AND DIRECTING THE CITY
ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS, REGARDING
THE SUBMISSION OF ORDINANCE NO 623 TO THE QUALIFIED
VOTERS OF THE CITY AS A PROPOSED MEASURE**

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

WHEREAS, a Special Municipal Election is to be held in the City of Morro Bay, California, on March 3, 2020, at which there will be submitted to the voters a ballot measure to consider adopting Ordinance No 623 for the pre-zoning of the 27.6-acre portion of Parcel APN #073-101-017 (Case No. #MIN19-001).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That pursuant to Election Code § 9282, the City Council hereby authorizes the following Councilmember(s) to prepare a written argument for the foregoing measure:

1. Council Member
2. Council Member

Section 2. That in the event that more than one argument for or against the foregoing measure is timely submitted, the City's elections official shall give preference and priority first, to arguments submitted by member(s) of the City Council, as authorized by this Resolution, and second, to individual voters, bona fide associations, or a combination thereof, in the order set forth at California Elections Code § 9287.

Section 3. That in accordance with the requirements of Division 9, Chapter 3, Article 4 of the California Elections Code, all written arguments for or against the foregoing measure: (1) shall not exceed three hundred (300) words in length; (2) shall be filed with the City's elections official; (3) shall be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of the principal officers who is the author of the argument; and (4) shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. **All written arguments may be changed or withdrawn until and including the date fixed by the City's elections official, being the close of business on Tuesday, November 26, 2019, after which time no arguments for or against the foregoing measure may be submitted to the elections official.**

Section 4. That the City Council hereby directs the City's elections official to transmit a copy of the foregoing measure to the City Attorney. In accordance with California Elections

Code § 9280, the City Attorney is hereby directed to prepare an impartial analysis of the measure, not to exceed five hundred (500) words in length, showing the effect of the measure on the existing law and the operation of the measure. The analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the city. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows: "The above statement is an impartial analysis of Ordinance or Measure ____ (letter to be determined by the County Clerk Recorder). If you desire a copy of the ordinance or measure, please call the elections official's office at (insert telephone number) and a copy will be mailed at no cost to you." The impartial analysis shall be filed by the date set by the City's elections official for the filing of primary arguments.

Section 6. That the City's elections official shall cause the City Attorney's Impartial Analysis, and duly selected arguments, to be printed and distributed to voters in accordance with State law regarding same.

Section 7. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. This Resolution shall be effective immediately upon passage and adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay, California, at a regular meeting held on the 12th day of November 2019.

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

JOHN HEADDING, Mayor

DANA SWANSON, City Clerk

RESOLUTION NUMBER 97-19

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS REGARDING
THE SUBMISSION OF ORDINANCE NO 623 TO THE QUALIFIED VOTERS OF
THE CITY AS A PROPOSED MEASURE**

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

WHEREAS, a Special Municipal Election is to be held in the City of Morro Bay, California, on March 3, 2020, at which there will be submitted to the voters a ballot measure to consider adopting Ordinance No 623 for the pre-zoning of the 27.6-acre portion of Parcel APN #073-101-017 (Case No. #MIN19-001); and

WHEREAS, California Elections Code § 9285 authorizes the City Council, by majority vote, to adopt provisions to provide for the filing of rebuttal arguments regarding city measures submitted at municipal election;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That pursuant to Elections Code § 9285, when the City's elections official has selected the arguments for and against the foregoing measure which will be printed and distributed to the voters, the City's elections official shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The author or a majority of the authors of an argument relating to the foregoing city measure may prepare and submit a rebuttal argument not to exceed two hundred and fifty (250) words in length. A rebuttal argument may not be signed by more than five (5) authors. The rebuttal arguments shall be filed with the City Clerk not more than ten (10) days after the final date for filing direct arguments. The final date for filing direct arguments is November 26, 2019, and as **such rebuttal arguments shall be filed with the City Clerk no later than the close of business on December 6, 2019**. The rebuttal arguments shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Section 2. That all previous resolutions providing for the filing of rebuttal arguments for city measures are repealed.

Section 3. That the provisions of Section 1 of this Resolution shall apply only to the Special Municipal Election to be held on March 3, 2020, and shall then be repealed.

Section 4. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. This Resolution shall be effective immediately upon passage and adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay, California, at a regular meeting held on the 12th day of November 2019.

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

JOHN HEADDING, Mayor

DANA SWANSON, City Clerk



AGENDA NO: C-3

MEETING DATE: November 12, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: November 3, 2019

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: Introduction of Ordinance No. 627 concerning Tobacco, Vaping and Secondhand Smoke, including through a Tobacco Retailer Licensing Program, a Prohibition on the Sale of E-Cigarettes (Vaping Products), and Enhancing the City’s Current Secondhand Smoking Regulations by a Smokefree Policy for Multi-unit Housing

RECOMMENDATION

1. Introduce for first reading, by title only with further reading waived, Ordinance No. 627 to both add Chapter 5.54 (Tobacco, Electronic Cigarettes and Vaping) to Title 5 of the Municipal Code as well as to amend Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 of the Municipal Code; and
2. Provide direction to staff on possible ordinance revisions as presented in “Issues for Council Consideration” in Section B of the Discussion Section below; and
3. Provide direction to staff on whether to proceed with establishing “retailer location restrictions” within the City for tobacco retailers as discussed in the third paragraph in Section A of the Discussion Section below.

ALTERNATIVES

Council could elect to not move forward with the proposed ordinance, or to move forward with a revised version of the ordinance.

FISCAL IMPACT

The tobacco retailer’s license program (added in Chapter 5.54) will create additional administrative costs, and the new regulations may create additional enforcement costs. Chapter 5.54 provides for the recovery of administrative and enforcement costs related to the tobacco retailer’s license program through the assessment of a license fee. The tobacco regulations may have an impact on the local economy in a way that would affect City finances, but the nature and extent of such effects are currently unknown.

BACKGROUND

Recently, City Council directed staff to review its smoking ordinance in the wake of the City receiving a grade of “D” for its anti-smoking efforts in late 2018 from the American Lung Association (ALA). The ALA score sheet (*See Attachment No 1, 2018 American Lung Association Score Card for SLO County and Cities*) identified several areas in which the City could significantly improve its score. Those included adopting a smokefree policy for multi-unit housing (apartments and condominiums), pursuing a local tobacco retail license program to help reduce the sale of tobacco to minors, and addressing various emerging issues.

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Prepared By: CFN

Dept Review: _____

City Manager Review: SC

City Attorney Review: CFN

On October 8, 2019, the City Council considered a staff report (See Attachment No 2) providing background information on several issues related to smoking and tobacco products, including secondhand smoking and the growing use and dangers of vaping. The Council also considered several programmatic and policy options designed to curtail the sale of tobacco and vaping products to underage individuals in Morro Bay, and enhance the City's existing efforts to prevent exposure to secondhand smoking.

These options included amendment of Chapter 9.24 (Secondhand Smoking Regulations) of the Morro Bay Municipal Code (MBMC) consistent with recommendations from the American Lung Association. The proposed policy options included a ban on e-cigarettes, a ban on flavored tobacco products, and other regulations recommended by the ALA.

After deliberation, the Council directed staff to prepare an ordinance to provide for smokefree multi-unit housing, a local tobacco retail license program, a prohibition on the sales of vaping/electronic cigarette products in the City, and enacting further regulations recommended by the ALA as emerging issues.

Between October 8, 2019 Council meeting and November 6, 2019, the City ran a survey on Polco regarding vaping. The City asked participants if they supported a ban on the sale of vaping/e-cigarette products in Morro Bay. 45 residents responded to the survey, with 77% of respondents indicating support for such a ban.

DISCUSSION

A. Proposed Ordinance

The proposed ordinance (Attachment 3) would implement the direction of the Council from the October 8, 2019 Council meeting, by doing all of the following:

1. Banning the sale of e-cigarettes and e-cigarette paraphernalia.
2. Banning the sale of all flavored tobacco products, including those flavored with menthol.
3. Implementing regulations recommended by the ALA, including bonus categories (with the present exception of "Retail Location Restrictions" as discussed below). These regulations include:
 - a. Multi-unit residences (e.g., apartments and condominium) (does not include single-family homes and mobile home parks)
 - i. Prohibiting smoking in both the units and common areas of apartment and condo complexes, senior and assisted living facilities, and long-term health care facilities, except in designated smoking areas.
 - ii. Requires that all new and renewed leases for occupancy of a unit in a multi-unit residence shall prohibit smoking.
 - iii. Requires landlords of multi-unit housing to provide written notice of new restrictions to tenants and to also post "no smoking" signs.
 - b. Creating a tobacco retailer's license program aimed at providing the City with a

mechanism for punishing violations of local, state, and federal tobacco laws by tobacco retailers. The model used was from a jurisdiction which received an “A” grade in this category from the ALA.

- c. Prohibiting the sale of tobacco products by retail establishments that contain a pharmacy.
- d. Prohibiting the sale of (a) single cigars that cost less than five dollars, (b) any number of cigars fewer than the number contained in the manufacturer’s original consumer packaging designed for retail sale to a consumer, and (c) any package of cigars containing fewer than five cigars.

The adoption of the proposed ordinance should raise the City’s ALA Overall Tobacco Control Grade from a D (current score) to an A.

One of the “emerging issues” bonus points recommendations from the ALA is “retailer location restrictions.” The City can restrict where tobacco retailers are located and may prohibit them from being located within a certain distance from schools and parks and other sensitive uses. This can be accomplished through a conditional use permit, other zoning restrictions or through a local tobacco retailer licensing ordinance. Zoning restrictions would require Planning Commission review prior to Council action. Staff seeks direction from Council on whether to proceed with this recommendation, and if so, to provide guidance on the proposed restrictions.

Lastly, as the October 8, 2019 staff report discussed, the federal government is considering implementing new regulations on e-cigarettes. If any new federal or state regulations conflict with the proposed ordinance or create new options for regulating tobacco use and the sale of tobacco products, staff can provide further briefing as requested.

B. Issues for Council Consideration

1. **Effective Date of Prohibition on Sale of Vaping Products and Certain Cigars.** The proposed ordinance is being presented on November 12, 2019 for a first reading (introduction) with an anticipated second reading (adoption) at the December 10, 2019 regular City Council meeting. As an operation of law, the ordinance is effective 30 days after adoption. Thus, it is anticipated the prohibitions in Section 5.54.020 on sale of e-cigarettes, e-cigarette paraphernalia, flavored tobacco products and certain types of cigars, would go into effect early January 2020. Issue is posed whether Council is interested in delaying the date these prohibitions go into effect. Section 5.54.020 could be revised to delay the commencement date of the prohibitions.
2. **Menthol Flavored Cigarettes.** The proposed ordinance prohibits all flavored tobacco products, including the use of menthol. Federal law prohibits the sale of cigarettes with a characterizing flavor – *other than menthol and tobacco* – but does not apply to cigars, e-cigarettes, or other non-cigarette tobacco products. Issue is posed whether Council desires to allow the sale of menthol flavored tobacco products (i.e., menthol cigarettes, in so far as the ordinance prohibits all vaping products). The definition of “Characterizing flavor” in Section 5.54.010 could be revised to exclude menthol cigarettes from the prohibition.
3. **Sale of Single Cigars.** Section 5.54.020(D)(1) prohibits the sale of single cigars that are less than \$5.00. This compromise (within the context of ALA “bonus points”) is intended to decrease youth access which presumably is often driven by inexpensive pricing, while also respecting the

desires of cigar connoisseurs.

4. **Effective Date of Prohibition on Smoking in Multi-Unit Residences.** The proposed ordinance adds multi-unit residences to areas within the City where smoking is prohibited pursuant to amendment of Section 9.24.040 (with limited exception for “designated smoking areas” as stated in Section 9.24.060(B)). Council raised the issue at the October 8, 2019 meeting as to when this prohibition should go into effect. As the ordinance is written, the prohibitions would go into effect March 15, 2020 through the use of that date in multiple sections of Chapter 9.24. The effective date can be modified. The intent of the proposed ordinance is a two-month period from the presumed effective date of the ordinance (early January) for education and awareness concerning the new prohibitions, including the notice requirements for landlords and unit owners in Section 9.24.086.
5. **Sale of Cannabis Vaping Products.** The proposed ordinance does not include cannabis in the prohibitions on sale of vaping products in consideration of the pending opening of two cannabis retail establishments in the City of Morro Bay. Cannabis is exempt from the definition of “electronic cigarette” in Section 5.54.010 for purposes of the prohibition of sales. Cannabis vaping remains subject to all the restrictions on secondhand smoke contained in Chapter 9.24.
6. **Tobacco Retailer License.** Section 5.54.030 provides for an effective date of January 1, 2021 for the deadline to secure a tobacco retailer license. This period will provide time for City staff to establish the program, determine and set licensing fees, and disseminate information to tobacco retailers about the new licensing program. Council can modify this date.
7. **Annual Compliance Checks on Tobacco Retailers.** Section 5.54.110 provides for four compliance check on tobacco retailers by City law enforcement agents on an annual basis. The Council can modify this number.

CONCLUSION

The proposed ordinance will provide for smokefree multi-unit housing, a local tobacco retail license program, a prohibition on the sales of vaping/electronic cigarette products in the City, and enact further regulations recommended by the American Lung Association as emerging issues.

ATTACHMENTS

1. American Lung Association Score Card for SLO County and Cities
2. “Review of Options Related to Local Tobacco and Vaping Regulation,” 10/8/19 Staff Report
3. Ordinance No. 627

ATTACHMENT 1



San Luis Obispo County

	Arroyo Grande	Atascadero	Grover Beach	Morro Bay	Paso Robles	Pismo Beach	San Luis Obispo	San Luis Obispo County Unincorporated
Overall Tobacco Control Grade	C	F	C	D	C	F	B	C
TOTAL POINTS	5	1	5	4	5	1	10	5
Smokefree Outdoor Air	D	D	D	A	B	D	A	D
Dining	0	0	0	4	4	0	2	0
Entryways	0	0	0	4	4	0	4	0
Public Events	0	0	0	3	4	0	4	0
Recreation Areas	4	4	4	4	4	4	4	2
Service Areas	0	0	0	4	0	0	4	0
Sidewalks	0	0	1	1	0	0	1	1
Worksites	0	0	0	1	0	0	1	0
TOTAL POINTS	4	4	5	21	16	4	20	3
Smokefree Housing	F	F	F	F	C	F	C	F
Nonsmoking Apartments	0	0	0	0	0	0	0	0
Nonsmoking Condominiums	0	0	0	0	0	0	0	0
Nonsmoking Common Areas	0	0	0	0	4	0	4	0
TOTAL POINTS	0	0	0	0	4	0	4	0
Reducing Sales of Tobacco Products	A	F	A	F	F	F	A	A
Tobacco Retailer Licensing	4	0	4	0	0	0	4	4
TOTAL POINTS	4	0	4	0	0	0	4	4
Emerging Issues Bonus Points								
Emerging Products Definition - <i>Secondhand Smoke</i>	0	0	0	1	1	0	1	0
Emerging Products Definition - <i>Licensing</i>	1	0	1	0	0	0	1	1
Retailer Location Restrictions	0	0	0	0	0	0	0	0
Sale of Tobacco Products in Pharmacies	0	0	0	0	0	0	0	0
Flavored Tobacco Products	0	0	0	0	0	0	0	0
Minimum Pack Size of Cigars	0	0	0	0	0	0	0	0
TOTAL POINTS	1	0	1	1	1	0	2	1



AGENDA NO: C-1
MEETING DATE: October 8, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** October 2, 2019

FROM: Scott Collins, City Manager

SUBJECT: Review of Options Related to Local Tobacco and Vaping Regulations

RECOMMENDATION

Staff recommends the City Council receive the status report and provide direction with regard to local smoking regulations and the sale of tobacco and vaping products.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

None.

BACKGROUND

This report provides background on several issues related to nicotine/smoking, including public smoking / second hand smoke regulations, the growing use and dangers of vaping and the report presents several programmatic and policy options for City Council consideration designed to curtail the sale of tobacco and vaping products to underaged individuals in Morro Bay.

IMPROVING GRADE FOR OUTDOOR SMOKING REGULATIONS AND OTHER TOBACCO REGULATIONS

The City, like most local governments in California, has taken significant steps to reduce indoor and outdoor smoking where people tend to congregate. That movement occurred in the wake of irrefutable and comprehensive evidence that secondhand smoke causes numerous public health problems. Outdoor smoking also leads to litter, which can damage sensitive environmental habitats and waterways. Thus, the City has banned smoking in both indoor and outdoor public places, including places of employment, public accommodations, and public transit, with limited exceptions for private residences and vehicles and designated smoking areas, as further detailed in Chapter 9.24 of the Morro Bay Municipal Code.

More recently, City Council directed staff to review its smoking ordinance in the wake of the City receiving a grade of "D" for its anti-smoking efforts in late 2018 from the American Lung Association (ALA). The ALA score sheet (Attachment 1) identified several areas in which the City could significantly improve its score. Those include enhancing the City's multi-family home indoor and outdoor common area smoking policy, pursuing a local tobacco retail license program to help reduce the sale of tobacco to minors, and addressing emerging issues such as vaping. Those policy options are provided in summary form in the "Discussion" section.

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

VAPING/E-CIGARETTE USE SKYROCKETS AMONG TEENAGERS

At the same time the City began exploring options for outdoor smoking and locally regulating the tobacco market, public health concerns about the immediate and long-term harm caused by vaping/e-cigarette use (to be referred to as “vaping” throughout remainder of report) has emerged as a pressing national issue. Over 800 cases of vaping related lung illnesses have been reported in hospitals, health clinics and emergency rooms nationwide, with twelve deaths related to vaping. In response, the U.S. Surgeon General and the California Department of Public Health (CDPH) issued health advisories to educate the public about the imminent health risk posed by vaping any product.

Vaping is inhaling aerosol from an e-cigarette or other vaping device that heats a liquid that can contain nicotine, marijuana (THC), cannabidiol (CBD) or other substances. According to the CDPH, the shapes and sizes of the device vary and include colorful vape pens, modified tank systems, and new pod devices that can look like the USB flash drives for computers, cell phones, credit card holders, and highlighters. These devices are frequently referred to as e-cigarettes, e-cigs, vapes, vape pens, electronic vaporizers, pod mods, or pod systems. The vapor can also contain toxins (including ones that cause cancer) and tiny particles that are harmful when breathed in. Vaping can deliver a significant amount of concentrated nicotine to its user, and the long-term effects of vaping have still yet to be fully explored. This is particularly troubling given the fact that teenage use of vaping products is skyrocketing.

Beyond the potential immediate health risk posed by vaping to all ages, teen use of vaping has exploded in recent years. According to a February 2019 National Institutes of Health report, over 17.6% of 8th graders, 32.3% of 10th graders and 37.3% of 12th graders reported trying vaping last year nationwide. The U.S. Surgeon General reports vaping use is higher among high school aged individuals than adults. Vape products, particularly the flavored variety, are popular among younger users and it is likely that vape product companies purposefully packaged and advertised their products to children in hopes of gaining more lifelong customers. There are over 15,000 flavors available on the market, with youth like flavors such as bubble gum, cotton candy, and fruit punch to name a few.

According to a 2017-2018 *California Healthy Kids Survey (CHKS)* of Morro Bay High School 9th and 11th graders conducted in 2018, of those surveyed, 18% of 9th graders and 22% of 11th graders used vaping products at least once in the past month. Over 60% of students surveyed thought it was fairly easy or very easy for high school students to obtain vaping products. City staff also spoke with school administrators at Morro Bay High School and Los Osos Middle School (LOMS). Use appears to have grown significantly at the high school in the past couple years, following national trends, and vaping with cannabis is becoming more popular among students. At-risk students are especially susceptible to vaping use according to administrators at LOMS, though they said vaping is not widespread among the general student population at this time. Both schools are working hard with students and parents to educate them about the dangers of vaping any product, especially nicotine and cannabis.

Unfortunately, one of the serious health risks associated with teenage use of vaping is the potential for addiction to nicotine. According to Dr. Richard Miech of the University of Michigan who led the NIH study, “vaping is reversing hard-fought declines in the number of adolescents who use nicotine...these results suggest that vaping is leading youth into nicotine use and nicotine addiction, not away from it.” As Council and community members know, nicotine addiction leads to numerous hazardous health issues for all ages, such as lung disease, cancer and early death. For youth, nicotine exposure during adolescence can harm the developing brain.

In response to the growing safety concern surrounding vaping, the U.S. Food and Drug Administration (FDA), issued more than 1,300 warning letters and civil money penalty complaints to retailers who

illegally sold vaping products to minors during a nationwide undercover operation in September 2019, and ordered vaping companies to cease selling misleading labeled and/or advertised e-liquids resembling kid-friendly food products such as candy and cookies. The top-selling national brands of vaping products must submit plans to the FDA by the end of the year describing how they will address the widespread youth access and use of their products. The FDA has yet to formally review and approve vaping and vape products, which has stated it will complete its review by 2021. It is in the process, however, of finalizing guidance to remove all non-tobacco flavors of e-cigarettes from the market.

In the meantime, many states and local communities across the nation have banned the sale of flavored vaping products that appeal to children and teenagers, and some have taken the step of instituting wholesale bans of vaping products in their communities. City Council may want to consider similar actions. Those options, along with other policies designed to curb the sale of tobacco products to minors and reduce indoor smoking, are discussed below.

DISCUSSION

OPTIONS TO IMPROVE GRADE AND ADDRESS VAPING USE AMONG TEENS:

Summary of Proposed Revisions to Morro Bay's Secondhand Smoke Ordinance

Below is a summary of the proposed changes to be made to Morro Bay's smoking regulations paired with the American Lung Association (ALA) grade criteria.

Revised Municipal Code Chapter 9.24 – Secondhand Smoking Regulations

ALA Criteria: Smokefree housing – (1) non-smoking units in apartments; (2) non-smoking units in condominiums; and (3) non-smoking common areas.

Proposed Changes to Municipal Code:

Definitions – amended to include:

- “Common area,” defined in accordance with ALA criteria as “every enclosed area and every unenclosed area of a multi-unit residence that residents of more than one unit are entitled to enter or use,” including hallways, lobbies, community rooms, parking garages, etc.
- “Multi-unit residence,” defined to include apartment buildings and condominium complexes, among others.

Areas where smoking is prohibited – amended to include:

- Common areas in multi-unit residences.
- All units in multi-unit residences.

Areas where smoking is permitted – amended to include:

- Private residences other than multi-unit residences – revised from *all* private residences.

Required lease terms for multi-unit residences:

- New or existing leases for multi-unit residences must be amended to ban smoking within the residences and provide other residents with ability to enforce ban. If such provisions are not included in a lease, they will be deemed to be included by law.

New Municipal Code Chapter 9.25 – Tobacco Retailer License

ALA Criteria: Reducing Sales of Tobacco Products – (1) requiring tobacco retailers to pay an annual fee that sufficiently covers administration and enforcement efforts, including compliance checks; (2) requiring that all retailers obtain a license to sell tobacco and renew it annually; (3) providing that any violation of a local, state or federal tobacco law is considered a violation of the license; and (4) creating a financial deterrent for violations through fines and penalties as well as suspension and revocation of the license.

Proposed Additions to Municipal Code:

- Requirement that all tobacco retailers, including e-cigarette retailers, obtain a tobacco retailer's license from the City, valid for one year and requiring annual renewal.
- Provision establishing procedure for City to enforce violations of tobacco-related laws.
- License may be revoked if retailer violates local, state, or federal tobacco-related laws.
- Fines may be assessed against retailers for non-compliance.

Morro Bay's ALA Local Grade

If the City's municipal code was amended as described above, the City's grade would change as follows:

Morro Bay's current grade:

A for Smokefree Outdoor Air
F for Smokefree Housing
F for Reducing Sales of Tobacco Products
Overall Grade: D

Morro Bay's grade following the new ordinance:

A for Smokefree Outdoor Air
A for Smokefree Housing
A for Reducing Sales of Tobacco Products
Overall Grade: A

ALA Bonus Points – Emerging Issues

The ALA also gives bonus points to cities and counties that address emerging issues. There are six areas available, and each one gives an additional 1 point towards the total score. Although Morro Bay could earn an A without the bonus points if the changes proposed above were implemented, the bonus points would serve as additional evidence of the City's commitment to preventing harm from smoking.

The emerging issues are:

- Secondhand Smoke & Electronic Cigarettes – A bonus point is available for a jurisdiction which includes electronic cigarette smoke within its definition of secondhand smoke. **(Morro Bay already qualifies for this bonus point.)**

- Tobacco Retailers & Electronic Cigarettes – A bonus point is available for a jurisdiction which includes electronic cigarettes within its definition of tobacco products in the jurisdiction’s tobacco retailer ordinance. (**Morro Bay would qualify for this bonus point if it implements the changes proposed above.**)
- Flavored Tobacco Products – A bonus point is available for a jurisdiction which bans the sale of flavored tobacco products.
- Tobacco Retailer Location Restrictions – A bonus point is available for a jurisdiction which limits the location of tobacco retailers based on proximity to schools or parks, limits proximity of tobacco retailers to one another to avoid high concentration or limits the total number of tobacco retailer licenses which can be issued.
- Sale of Tobacco Products in Pharmacies – A bonus point is available for a jurisdiction which prohibits the sale of tobacco products at pharmacies.
- Minimum Pack Size of Cigars – A bonus point is available for a jurisdiction which prohibits the sale of cigars in individual or small packages.

The municipal code could be amended to achieve all of these bonus points if desired by the City Council.

Summary of Available Vaping Restrictions

If the City Council desires to ban or regulate vaping, the following options are available:

- Permanently ban sale of all e-cigarettes and related products and accessories.

Temporarily ban sale of all e-cigarettes and related products and accessories until they are approved by the FDA. San Francisco adopted a temporary of this kind in June 2019. (The San Francisco ordinance is attached as Attachment 2.)
- Ban only *flavored* e-cigarette cartridges (e-liquid), on the grounds that these are more likely to be used by minors.

Note: The Municipal Code already includes e-cigarette smoke in the definition of “smoke” for purposes of the secondhand smoking regulations in Chapter 9.24. Furthermore, as proposed, the tobacco retailer’s license in Chapter 9.25 would be required for the sale of e-cigarettes.

Summary of San Francisco’s New Ordinance

San Francisco recently passed a new ordinance that limits the ability of tobacco retailers to sell certain products which have not been approved by the Federal Food and Drug Administration (“FDA”). In 2008, Congress passed the Family Smoking Prevention and Tobacco Control Act (“Act”). One element of the Act is that any new tobacco products which enter the market following 2007 must be pre-approved by the FDA. Most current electronic cigarettes entered the market following 2007 but have yet to be pre-approved by the FDA. The FDA has given electronic cigarette manufacturers until May 2020 to submit their products for evaluation.

San Francisco’s ordinance addresses this extended review period. The ordinance prohibits the sale of new tobacco products or electronic cigarettes until they have been approved by the FDA. This ordinance ties the ban to the FDA’s review period, so if the FDA expedites its review process, the ordinance may have a shorter effective regulation period.

The ordinance also bans the sale of flavored tobacco products, without reference to the FDA review process.

JUUL, the leading manufacturer of vaping products, has placed a referendum on the upcoming November 2020 ballot in San Francisco to repeal the vaping product ban and replace it with less restrictive regulations. However, in late September 2019, JUUL representatives announced they will stop supporting the measure to overturn the anti-vaping regulations and will suspend all advertising of its products in the United States¹.

Potential Federal Action on Vaping

According to recent news reports, the FDA is set to release a policy restricting the sale of flavored vaping products in the coming weeks. In late September, JUUL issued a statement saying that they would not push back on a Trump administration plan to pull flavored e-cigarettes from the market until the products gain approval from federal regulators. Consequently, the federal legal landscape regarding flavored vaping products may shift in coming months.²

Questions for City Council Discussion

- Would City Council like to pursue changes to the secondhand smoke ordinance, to include restrictions on multi-family units?
- Would City Council like to pursue a local tobacco retail license program?
- Is the City Council interested in regulating sales of vaping/e-cigarette products in Morro Bay?
If yes, what level of regulation would City Council like to pursue?
 - Ban of flavors?
 - Ban on all vaping/e-cigarette products like San Francisco?
- Are there any other tobacco/vaping regulations City Council would like to pursue?

CONCLUSION

The City has an opportunity, with a few relatively minor policy changes, to significantly boost its grade with the American Lung Association regarding tobacco and secondhand smoke regulations. In addition, with the proliferation of vaping products use and early understanding now available of the dangers associated with vaping, City Council may want to consider regulating the local sales of vaping products. Several policy options are available that can help reduce the sale of tobacco and vaping products to our youth in Morro Bay.

ATTACHMENTS

1. American Lung Association Score Card for SLO County and Cities
2. City and County of San Francisco vaping ban ordinance
3. City of Morro Bay Draft Ordinance

1 Sources: JUUL Articles entitled “Statement Regarding San Francisco Ballot Initiative” dated September 30, 2019, <https://newsroom.juul.com/statement-regarding-san-francisco-ballot-initiative/> and “JUUL Labs Names New Leadership, Outlines Changes to Policy and Marketing Efforts” dated September 25, 2019 <https://newsroom.juul.com/juul-labs-names-new-leadership-outlines-changes-to-policy-and-marketing-efforts/>

2 Source: JUUL Article entitled “Juul Accepts Proposed Ban on Flavored Vaping Products as ECO Steps Down” dated September 25, 2019 <https://www.npr.org/2019/09/25/764201798/juul-will-agree-to-ban-on-flavored-vaping-products-says-its-ceo-is-stepping-down>.

ORDINANCE NO. 627

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 5.54 (TOBACCO, ELECTRONIC CIGARETTES AND VAPING) TO TITLE 5 (BUSINESS TAX CERTIFICATES AND REGULATIONS), AND AMENDING CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), OF THE MORRO BAY MUNICIPAL CODE, TO REGULATE THE SALE OF TOBACCO AND VAPING PRODUCTS AND UPDATE AND EXPAND THE CITY'S SECONDHAND SMOKING REGULATIONS

WHEREAS, the City of Morro Bay ("City") is empowered to enact legislation to protect the health, safety, and welfare of the public; and

WHEREAS, there are currently serious public health concerns about the immediate and long-term harm caused by vaping/e-cigarette use ("vaping"); and

WHEREAS, approximately 1,300 cases of vaping-related lung illnesses have been reported in hospitals, health clinics, and emergency rooms nationwide, with at least 26 confirmed vaping-related deaths; and

WHEREAS, the U.S. Surgeon General and the California Department of Public Health (CDPH) have issued health advisories to educate the public about the imminent health risk posed by vaping any product; and

WHEREAS, teen use of vaping products has grown rapidly in recent years, with a February 2019 National Institutes of Health report finding that over 17.6% of 8th graders, 32.3% of 10th graders, and 37.3% of 12th graders reported trying vaping last year nationwide; and

WHEREAS, according to a 2017-2018 California Healthy Kids Survey (CHKS) of Morro Bay High School 9th and 11th graders conducted in 2018, 18% of 9th graders and 22% of 11th graders had used vaping products at least once in the past month, and over 60% of students surveyed thought it was fairly easy or very easy for high school students to obtain vaping products; and

WHEREAS, vaping products, particularly the flavored variety, are popular among younger users, and the packaging and advertising of vaping products by vaping companies are often attractive to younger users; and

WHEREAS, there are over 15,000 vaping flavors available on the market, including youth-orientated flavors such as bubble gum, cotton candy, and fruit punch, among others; and

WHEREAS, in addition to vaping products, several other tobacco products are flavored in ways that make them attractive to minors, thus increasing the risk that minors will use, and potentially become addicted to, these products; and

WHEREAS, the Federal Family Smoking Prevention and Tobacco Control Act prohibits the sale of cigarettes with a characterizing flavor – other than tobacco and menthol – but does not apply to cigars, e-cigarettes, or other non-cigarette tobacco products; and

WHEREAS, the Tobacco Products Scientific Advisory Committee (TPSAC) issued a report on menthol cigarettes, concluding that they have “an adverse impact on public health in the United States” and that “[t]here are no public health benefits of menthol compared to non-menthol cigarettes.” The report recommended to the FDA that “[r]emoval of menthol cigarettes from the marketplace would benefit public health in the United States;” and

WHEREAS, in July 2013, the Food and Drug Administration published an independent report that concluded that “menthol use is likely associated with increased smoking initiation by youth and young adults,” “menthol in cigarettes is likely associated with greater addiction,” and “that menthol cigarettes pose a public health risk above that seen with nonmenthol cigarettes;” and

WHEREAS, through the sale of tobacco products, pharmacies, and business establishments containing pharmacies, convey tacit approval of the purchase and use of tobacco products. This approval sends a mixed message to consumers who generally patronize pharmacies for health care services; and

WHEREAS, tobacco products are often sold individually to make them less expensive, and more enticing to youth. Establishing policies to ensure minimum packaging, or a minimum unit in which cigars can be sold in, will increase the purchase price and help protect youth from the health dangers of smoking little cigars and cigarillos; and

WHEREAS, secondhand smoke has been shown to be extremely hazardous to the health and safety of those who are exposed to it; and

WHEREAS, the City’s existing secondhand smoke regulations focus on limiting or eliminating secondhand smoke in public areas; and

WHEREAS, these regulations have not completely eliminated the risks posed by secondhand smoke to the community; and

WHEREAS, the City desires to amend its regulations to make them more comprehensive and effective at protecting the community from the harmful effects of secondhand smoking.

THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DOES HEREBY FIND AND ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 5.54 (TOBACCO, ELECTRONIC CIGARETTES AND VAPING) IS HEREBY ADDED TO TITLE 5 OF THE MORRO BAY MUNICIPAL CODE, TO READ AS FOLLOWS:

“Chapter 5.54 – TOBACCO, ELECTRONIC CIGARETTES AND VAPING

5.54.010 – Definitions.

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

“Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

“Cigar” means (1) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (2) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. “Cigar” includes, but is not limited to, tobacco products known or labeled as “cigar,” “cigarillo,” “tiparillo,” “little cigar,” “blunt wrap,” or “cigar wrap.”

“Electronic cigarette,” (i.e., e-cigarettes) for purposes of solely this Chapter 5.54, means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances (excluding 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.

“Electronic cigarette paraphernalia” means an item that is marketed as or can be used as a component part of an electronic cigarette.

“Flavored tobacco product” means any tobacco product that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacture of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

“Hearing officer” means the person or persons designated by the city manager to serve in this capacity. Compensation of a hearing officer shall not depend on any particular outcome of any hearings the hearing officer is involved with concerning this Chapter 5.54.

“Licensing agent” means a person or persons designated by the city manager to serve in this capacity.

“Person” means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Pharmacy” means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals. “Pharmacy” includes any retail establishment that contains a pharmacy, even if the pharmacy is not the sole or primary business of the retail establishment.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-today operations of a business.

“Tobacco product paraphernalia” includes cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco or products prepared from tobacco.

“Tobacco product” means any product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, electronic cigarettes or any other preparation of tobacco including Indian cigarettes called “bidis.” “Tobacco product” includes electronic cigarette paraphernalia and tobacco product paraphernalia. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes and is marketed and sold solely for such an approved purpose.

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco, or any tobacco product; “tobacco retailing” shall mean the doing of any of these things.

“Vaping” is a term that commonly refers to the use of an electronic cigarette.

5.54.020 – Prohibition on sale of certain tobacco products.

It is unlawful to sell, offer to sell, or exchange or offer to exchange for consideration any of the following products in the City of Morro Bay:

- A. Electronic cigarettes.
- B. Electronic cigarette paraphernalia.
- C. Flavored tobacco products.
- D. Cigars meeting any of the following criteria:

1. Any single cigar, whether or not packaged for individual sale, unless the retail price exceeds \$5.00; or
2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer; or
3. Any package of cigars containing fewer than five cigars.

5.54.030 – Requirement for tobacco retailer license.

- A. Beginning on January 1, 2021, it shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur.
- B. Licenses are valid for one year and each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license prior to its expiration.
- C. The conference of a tobacco retailer license does not confer any new rights under any other law and does not exempt any business that otherwise would be subject to the smoking related provisions within the Morro Bay Municipal Code and Labor Code Section 6404.5.

5.54.040 – Retailer limitations.

- A. No license will be issued to authorize tobacco retailing at other than a fixed location. Itinerant tobacco retailing and tobacco retailing from vehicles are prohibited.
- B. No license will be issued to authorize tobacco retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); tobacco retailing in bars and restaurants serving alcoholic beverages is prohibited.
- C. No license will be issued to authorize tobacco retailing in a pharmacy and no pharmacy shall engage in tobacco retailing at any time.

5.54.050 – License application procedure.

- A. Application for a tobacco retailer's license shall be submitted to the licensing agent in the name of each proprietor/person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the licensing agent and shall contain the following information:
 1. The name, address, and telephone number of the applicant.

2. The business name, address, and telephone number of each location for which a tobacco retailer's license is sought.
 3. Such other information as the licensing agent deems necessary for enforcement of this chapter.
 4. Whether or not any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.
- B A licensed tobacco retailer shall inform the city in writing of any change in the information submitted on an application for a tobacco retailer's license within ten business days of a change.

5.54.060 – Issuance of license.

Upon the receipt of an application for a tobacco retailer's license, the licensing agent shall issue a license unless substantial evidence in the record demonstrates one of the following bases for denial:

- A. The application is incomplete or inaccurate; or
- B. The application seeks authorization for tobacco retailing at a location prohibited by section 5.54.040; or
- C. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension is in effect pursuant to Section 5.54.120 of this chapter.

5.54.070 – Display of license.

Each licensee shall prominently display the license in a public place at each location where tobacco retailing occurs.

5.54.080 – Fees for license.

The fee for a tobacco retailer's license shall be established by resolution of the city council. The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation, and prosecution of violators. The fee for tobacco retailer's license shall be paid to the licensing agent.

5.54.090 – Licenses nontransferable.

A tobacco retailer's license is not transferable to a new location or to another person. For example, if a proprietor to whom a license has been issued changes business location, that proprietor must apply for a new license prior to acting as a tobacco retailer at the new location;

or, if the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer.

5.54.100 – Noncompliance with tobacco-related laws - License violation.

It shall be a violation of a tobacco retailer’s license for a licensee or his or her agents or employees to violate any local, states or federal tobacco-related law.

5.54.110 – License compliance monitoring.

Compliance with this chapter shall be monitored by City law enforcement agents. At least four compliance checks of each tobacco retailer shall be conducted during each twelve-month period. The cost of compliance monitoring shall be incorporated into the license fee.

5.54.120 – Suspension or revocation of license.

- A. In addition to any other penalty authorized by law, a tobacco retailer’s license may be suspended or revoked if the city finds, after notice to the licensee consistent with Section 1.03.120 of this Code, and reasonable opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to this chapter, or that the information contained in the application, including supplemental information, if any, is false in any material respect, as follows:
 - 1. Upon a finding by the city of a first license violation within any five-year period, the license shall be suspended for thirty days.
 - 2. Upon a finding by the city of a second license violation within any five-year period, the license shall be suspended for ninety days.
 - 3. Upon a finding by the city of a third license violation within any five-year period, the license shall be suspended for one year.
 - 4. Upon a finding by the city of a fourth license violation within any five-year period, the license shall be revoked.
- B. During a period of license suspension, the tobacco retailer shall remove all tobacco products from public view at the retail location.
- C. The suspension or revocation of a tobacco retailer’s license shall become effective on the date specified in the notice of suspension or revocation issued by the city, which shall not be sooner than the 11th business day following the date of the city’s decision to suspend or revoke the license.

5.54.130 – Appeal of suspension or revocation.

A decision of the city to suspend or revoke a license is appealable to a hearing officer and must be filed with the city clerk no later than ten business days following the date of the city’s decision to suspend or revoke the license. Appeal procedures shall follow those contained

in Sections 1.03.080-090 of this Code except when in conflict with this Chapter 5.54. An appeal shall stay all proceedings in furtherance of the appealed action. Following appeal, the decision of the hearing officer may be appealed to the city manager or his or her designee by filing a notice of appeal with the city clerk no later than ten business days following the date of the decision of the hearing officer. A decision of the city manager or his or her designee shall be the final decision of the city.

5.54.140 – Administrative fine – Penalties - Enforcement.

- A. Any violation of the provisions of this chapter by any person is a misdemeanor and is punishable as provided in Chapter 1.16 of this code. Any violation of the provisions of this chapter by any person is also subject to administrative fines as provided in Chapter 1.03 of this code.
- B. Each day that a person acts as a tobacco retailer without a valid tobacco retailer's license shall constitute a separate violation of this chapter.
- C. Violations of this chapter are hereby declared to be public nuisances.
- D. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- E. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity."

SECTION 2. CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MORRO BAY MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS (NEW TEXT IN *BOLD ITALICS* AND DELETED TEXT IN ~~STRIKETHROUGH~~):

"9.24.020 – Purpose.

This chapter is enacted with the specific intent to:

- A. Prohibit smoking in certain ~~public~~ places not preempted by California Labor Code Section 6404.5, which provides further smoking regulations;
- B. 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;
- C. Ensure a cleaner and more hygienic environment for the city, its residents, and its natural resources, including its creeks and streams and beaches;
- D. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including residents and visitors, particularly children, to

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breathe smoke-free air, recognizing the threat to public health and the environment which smoking causes;

E. Designate the enforcing agency for this chapter and for Labor Code Section 6404.5.

9.24.020 – Definitions.

The following words and phrases, as used in this chapter or in any other applicable law regulating smoking, shall have the following meanings:

“Business” means any sole proprietorship, partnership, joint venture, corporation, association or other entity formed for profit-making purposes or that has an employee.

“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.

“City beach” means the sandy area on either side of the mean high tide line from Atascadero Road all the way up to, but not including the parking lot at the Rock. City beach shall also include the area of the Sand Spit that is owned by the city.

“City T-piers” means the municipal piers located North of Beach Street and at Tideland Park.

“Code compliance officer” means the city code compliance officer or duly authorized designee of the city code compliance officer.

“Common area” means every enclosed area and every unenclosed area of a multi-unit residence that residents of more than one unit are entitled to enter or use, including, without limitation, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

~~“Dining area” means any area available to or customarily used by the general public that is designed, established or regularly used for consuming food or drink.~~

“Electronic cigarette” 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.

“Employee” means any person who is employed or retained as an independent contractor by any employer as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit or volunteer entity.

“Employer” means any person, partnership, corporation, association, nonprofit or other entity that employs or retains the service of one or more persons, or supervises volunteers.

“Enclosed” means any covered or partially covered space having more than fifty percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or any space open to the sky (hereinafter “uncovered”) having more than seventy-five percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard.

“Landlord” means any person or agent of a person who owns, manages, or is otherwise legally responsible for a unit in a multi-unit residence, except that “landlord” does not include a tenant who sublets a unit.

“Multi-unit residence” means a new or existing property containing two or more units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit residences do not include the following:

- 1. A hotel or motel;***
- 2. A mobile home park;***
- 3. A single-family home; and***
- 4. A single-family home with a detached or attached accessory dwelling unit or second unit.***

“Nonprofit entity” means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

“Place of employment” means any area under the legal or de facto control of an employer, business or nonprofit entity that an employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, vehicles used in employment or for business purposes, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities,

long-term health facilities, warehouses and private residences that are used as childcare or healthcare facilities subject to licensing requirements.

“Playground” means any park or recreational area designed in part to be used by children, that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on city property.

“Premises” means a lot or contiguous lots and any improvements thereon such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same person or are under common control.

“Present” means within a reasonable distance.

“Public place” means any public or private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, parking lots, parking garages, plazas, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, city beaches, T-Piers, taxis and buses. For the purposes of the provisions of this chapter, a “public place” does not mean a private residence except for residences used as an adult or child care, health care, board and care, or community foster care facility as such terms are defined by the state Health and Safety Code.

“Reasonable distance” means the greatest distance practicable that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty feet.

“Recreational area” means any public or private area open to the public for recreational purposes whether or not any fee for admission is charged, including without limitation, parks, trails, gardens, sporting facilities, stadiums, beaches, T-piers and playgrounds.

“Restaurant” means any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria, eating establishment, **vending cart**, boardinghouse or guest house or similar establishment which gives or offers for sale food to the public.

“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 cigarette; 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 cigarette.

“Service area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place or make a transaction whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, taxi stands and takeout counters.

“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 cigarette, used for burning any tobacco product, weed, plant, cannabis, or any other combustible substance.

“Sports arena” means an outdoor or nonenclosed sports pavilion, stadium, swimming pool, roller rink, or other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events, including the concession stand areas thereof.

“Unenclosed area” means any area which is not enclosed.

“Unit” means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio.”

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.”

9.24.040 – Public and other places where smoking shall be prohibited.

Except as otherwise provided by this chapter or by state or federal law, smoking shall be prohibited everywhere in the city, including but not limited to:

- A. All public places;
- B. Residences used as child care, health care, board and care, or community foster care facility as such terms are defined by state Health and Safety Code;
- C. Places of employment, except outdoor construction sites;
- D. Enclosed and unenclosed places of hotels, businesses, restaurants, bars and other public accommodations; ~~and~~
- E. Any means of public transit including associated waiting areas, and service areas, enclosed or not-;
- F. Units in multi-unit residences; and**

G. Common areas of multi-unit residences.

The prohibitions stated in subsections (F) and (G) of this Section shall become effective on March 15, 2020.

9.24.050 – Reasonable distance.

Smoking in unenclosed areas shall be prohibited within a reasonable distance of ~~of~~ **(at least** twenty feet) from any entrance, opening, crack or vent into an enclosed area where smoking is prohibited, except while actively passing on the way to another destination and so long as smoke does not enter any enclosed area in which smoking is prohibited.

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 **residences other than multi-unit residences.** ~~Residential and Multifamily Properties.~~ This chapter does not preclude private regulation of smoking on private residential and multifamily properties.
- B. Designated **smoking areas** ~~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**090** 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.

9.24.070 – Modifications of designated **smoking areas** ~~smokers' outposts.~~

The city reserves the right to prohibit or require modifications to a **designated smoking area** ~~smoker's outpost~~ at a certain location if it undermines the purposes of this chapter, **or violates the requirements of Section 9.24.060(B) of this code.**

9.24.080 – Allowing, aiding or abetting smoking.

- A. No person, employer, business, **landlord** or nonprofit entity shall knowingly permit smoking in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law.
- B. ~~Except as provided in Section 9.24.050 of this code, no~~ **No** person, employer, business, **landlord** or nonprofit entity shall allow the placement or maintenance of a receptacle for smoking waste in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law, provided however, that a receptacle may be placed at the entry to a nonsmoking area, along with a "No Smoking" sign, in order to encourage any smokers in violation of this chapter to immediately extinguish and properly dispose of smoking materials.
- C. No person shall intimidate, threaten, effect a reprisal or retaliate against another person who seeks to attain compliance with one or more of this chapter's provisions.

9.24.085 – Required lease terms for all new and existing units in multi-unit residences.

- A. **Every lease or other agreement (collectively, "lease") for the occupancy of a unit in a multi-unit residence, entered into, renewed, or continued month-to-month, effective on or after March 15, 2020, shall include the following:**
 - 1. **A clause stating that smoking is prohibited in the unit, including exclusive-use areas such as balconies, porches, or patios.**
 - 2. **A clause providing that it is a material breach of the lease for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, including sublessees, to (i) smoke in any common area of the property other than a designated smoking area, (ii) smoke in the unit, or (iii) violate any law regulating smoking anywhere on the property.**
 - 3. **A clear description of all areas on the property and in the immediate vicinity of the property where smoking is allowed or prohibited.**
 - 4. **A clause expressly conveying third-party beneficiary status to all occupants of the multi-unit residence as to the smoking provisions of the lease. Such a clause shall provide that any tenant of the multi-unit residence may sue another tenant/owner to enforce the smoking provisions of the lease but that no tenant shall have the right to evict another tenant for a breach of the smoking provisions of the lease.**

- B. Whether or not a landlord complies with subsection (A), above, the clauses required by that subsection shall be implied and incorporated by law into every lease to which subsection (A) applies that is entered into, renewed, or continued month-to-month on or after March 15, 2020.**
- C. This chapter shall not create additional liability for a landlord to any person for a tenant's breach of any smoking provision in a lease for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with this section.**
- D. Failure to enforce any smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.**

9.24.086 – Notice requirements for landlords and unit owners.

- A. On or before March 15, 2020, every landlord shall provide to the occupants of each unit of a multi-unit residence a written notice of the requirements prohibiting smoking in units and common areas as stated in Section 9.24.040 of this code.**
- B. Beginning on March 15, 2020, every seller of a unit in a multi-unit residence shall provide prospective buyers with a written notice clearly stating that:**
 - 1. Smoking is prohibited in units, including any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio; and**
 - 2. Smoking is prohibited in all common areas, except for specifically designated smoking areas.**

9.24.090 – Signs.

Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

- A. "No Smoking" or "Smoke Free" signs, with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) or any alternative signage approved by the public services ~~community development~~ director must be conspicuously posted ~~at each entrance to any place in which smoking is prohibited by this chapter~~ by the person, employer, business or nonprofit entity who or which has legal or de facto control of such place ~~at each entrance to a public place in which smoking is prohibited by this chapter or any other place where the public services director reasonably determines that smoking in violation of this chapter has occurred, or is likely to occur.~~**

- B. Within designated smoking areas, one or more conspicuously displayed sign(s) shall be posted identifying the area as a **designated smoking area** ~~smokers' outpost~~ pursuant to Section 9.24.060 of this code as follows: signs with arrows directing the public to the smoking area may be allowed; signs shall be no smaller than three inches high and eight inches long with a pictorial representation of a burning cigarette; signs shall contain "Designated Smoking Area" and shall be posted prominently between five feet and seven feet above the floor or ground; and all signs are subject to approval by the ~~public services~~ **community development** director.
- C. Every hotel and motel shall have signs posted conspicuously in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available; rooms designated as being nonsmoking shall have signs announcing such restriction conspicuously placed inside the room.
- D. No person shall alter, deface, obscure, remove or destroy a sign or placard that this chapter authorizes.

9.24.100 - Disposal of smoking waste.

No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, in any place where smoking is prohibited under this chapter, except in a designated waste disposal container.

9.24.110 - Fires on city beaches.

No person shall build, light or maintain any fire on any city beach except in designated containers or areas approved by the city.

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.
- 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.
- D. 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.

- E. 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.

9.24.130 - Public education—Purposes of chapter.

The code compliance officer, in conjunction and coordination with the county health officer of the county of San Luis Obispo and, where feasible, appropriate health or safety oriented community-based organizations and coalitions, shall engage in a continuing program to explain and clarify the purposes of the provisions of the chapter to citizens affected by it, and to guide business owners, operators and managers in their compliance with it.

9.24.140 - Governmental cooperation.

The city manager shall request all governmental and educational agencies which maintain an office within the city to establish local operating procedures to cooperate and comply with this chapter.

9.24.150 - Other laws.

The provisions of this chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. Further, it is not the intent of the provisions of this chapter to regulate smoking where such regulation has been preempted by the state.”

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

SECTION 4. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(3) and 15061(b)(3) of the CEQA Guidelines.

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

SECTION 6. 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 of the City Council held on the ____ day of _____ 2019, by motion of Council Member _____ and seconded by Council Member _____.

PASSED AND ADOPTED on the ____ day of _____ 2019, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

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

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 627 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____, 2019, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

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

DANA SWANSON, City Clerk